



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Shauna Marie Kotschorek

Heard: April 2, 2020 in Edmonton, Alberta

Decision: April 2, 2020

Reasons for Decision: April 14, 2020

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, QC
Adam Dudley
Richard Sydenham

Chair
Industry Representative
Industry Representative

Appearances:

Sakeb Nazim)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Shauna Marie Kotschorek)	Respondent, by teleconference
)	
)	

I. BACKGROUND

1. On January 2, 2020 the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to Section 24.4 of By-law No. 1 in respect of Shauna Marie Kotschorek (the “Respondent”).
2. The Respondent entered into a Settlement Agreement with Staff of the MFDA dated December 16, 2019 in which the Respondent agreed to a proposed settlement of matters.
3. Because of extenuating circumstances and by mutual agreement, all participants attended the hearing by teleconference.
4. On April 2, 2020, after hearing submissions from Enforcement Counsel and the Respondent, this Hearing Panel approved the Settlement Agreement, and signed an Order reflecting that approval. These are our written reasons for doing so.

II. AGREED FACTS

Registration History

5. Since August 2008, the Respondent has been registered in Alberta as a mutual fund salesperson (now known as a dealing representative) with WFG Securities Inc. (the “Member”), a Member of the MFDA.
6. Since September 2012, the Respondent has also been registered as a dealing representative with the Member in Manitoba.
7. At all material times, the Respondent carried on business in the Edmonton, Alberta area.

Signing a client’s signature and initials

8. At all material times, the policies and procedures of the Member prohibited Approved Persons from signing a client’s name on account forms regardless of the circumstances.

9. At all material times, the Respondent and her spouse, client SK, maintained a joint Registered Education Savings Plan account with the Member (the “Joint RESP account”). Client SK also maintained a Tax Free Savings Account with the Member (the “TFSA account”).

10. Between January 2017 and August 2017 the Respondent signed client SK’s signature and initials on ten trade forms and submitted them for processing to redeem and withdraw monies from the Joint RESP account and the TFSA account.

11. The Respondent signed client SK’s signature and initials on the trade forms with client SK’s knowledge and authorization.

12. The Respondent and client SK used the monies from the redemptions to pay for family expenses.

Member’s Response

13. On October 12, 2018, the Member issued a warning letter to the Respondent and imposed a 12 month period of increased supervision on the Respondent for the misconduct described above. The Respondent was also required to complete an industry course within 3 months, which she did.

14. On January 10, 2019, the Member conducted a review of all of the client files serviced by the Respondent but did not identify any additional concerns.

Additional Factors

15. The Respondent has not previously been the subject of an MFDA disciplinary proceeding.

16. There is no evidence of any client loss or that the transactions were unauthorized.

17. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

III. ANALYSIS

18. The Respondent admits that she signed the signature and initials of one client on ten account forms and submitted the forms to the Member for processing.

19. The forms were processed after the MFDA issued MFDA Bulletin #0661-E on October 2, 2015 (the “MFDA Bulletin”). In the MFDA Bulletin, Staff advised Members and Approved Persons that Staff will be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the MFDA Bulletin on October 2, 2015.

20. The conduct here was committed after the issuance of the MFDA Bulletin.

21. The Settlement Agreement provides that the Respondent has agreed to pay a fine of \$13,500 and costs of \$2,500.

22. A hearing panel should not interfere lightly in a negotiated settlement and should not reject a settlement agreement unless it views the proposed penalty as clearly falling outside the range of reasonableness. In our view, this Settlement Agreement advances the public interest and is reasonable and proportionate, having regard to all of the circumstances.

23. We have arrived at this conclusion having considered the following factors:

a) Nature of the Misconduct: Falsified Client Signatures

24. Hearing Panels have held that altering or falsifying forms is a contravention of the standard of conduct as set out in MFDA Rule 2.1.1 and falsification of a client signature or initials is particularly serious misconduct.

25. It adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud and misappropriation.

b) Post-Bulletin Misconduct

26. The falsifications were committed after the MFDA issued the MFDA Bulletin on October 2, 2015. In the MFDA Bulletin, Staff advised Members and Approved Persons that Staff will be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the MFDA Bulletin on October 2, 2015. MFDA Hearing Panels have considered this an aggravating factor.

c) The Respondent's Experience in the Securities Industry

27. The Respondent was registered as a mutual fund dealing representative since August 2008. She is an experienced dealing representative who ought to have known and respected the MFDA's and the Member's compliance requirements.

d) The Respondent's Past Conduct

28. The Respondent has not previously been disciplined by the MFDA.

e) The Respondent's Recognition of the Seriousness of his Misconduct

29. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing of the allegations. She also gave a convincing sincere expression of recognition and remorse.

f) Client Harm and Benefits Received by the Respondent

30. There is no evidence of client harm and the transaction was authorized by the client, who was the Respondent's spouse. The Respondent and the client used the monies from the redemptions to pay for family expenses.

g) Deterrence

31. A fine of \$13,500 is necessary and sufficient to achieve the goals of specific and general deterrence, having regard to the factors described above. It demonstrates that the Respondent's misconduct in all of the circumstances is serious and has significant consequences. The penalty will also deter others in the capital markets from engaging in similar activity.

IV. CONCLUSION

32. We have considered the existing precedents on penalty, as well as the MFDA non-binding Sanction Guidelines.

33. In summary, we find that the Settlement Agreement is in the public interest, it is reasonable and proportionate, it addresses specific and general deterrence and will foster public confidence in

the integrity of the Canadian capital markets, and the industry.

V. ORDER

34. For these reasons, the Settlement Agreement was approved.

35. We thank Enforcement Counsel and the Respondent for their cooperation during the hearing.

DATED this 14th day of April, 2020.

“Shelley L. Miller”

Shelley L. Miller, QC
Chair

“Adam Dudley”

Adam Dudley
Industry Representative

“Richard Sydenham”

Richard Sydenham
Industry Representative

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