



Now New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA

**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: Laura Caitlin Kowall

Heard: December 6, 2022 by electronic hearing in Winnipeg, Manitoba

Decision: December 6, 2022

Reasons for Decision: January 23, 2023

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Sherri Walsh
Adam Dudley
Sean Shore

Chair
Industry Representative
Industry Representative

Appearances:

Justin Dunphy)	Senior Enforcement Counsel for the Mutual
)	Fund Dealers Association of Canada
)	
Jonathan Kroft)	Counsel for the Respondent
)	
)	
Laura Kowall)	Respondent
)	
)	

I. INTRODUCTION

1. On October 6, 2021, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 in respect of Laura Caitlin Kowall (the “Respondent”).
2. On December 5, 2022 MFDA Staff (“Staff”) and the Respondent entered into a Settlement Agreement, pursuant to which the Respondent agreed to a proposed settlement of matters for which she could be disciplined on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1 (the “Settlement Agreement”).
3. A settlement hearing was held by videoconference on December 6, 2022 (the “Hearing”) before a Hearing Panel of the MFDA Prairie Regional Council (the “Panel”).
4. The Respondent attended the Hearing where she was represented by counsel.
5. At the outset of the Hearing, the Panel granted Staff’s request for an Order that the Hearing be held in the absence of the public, pursuant to MFDA Rule of Procedure 15.2(2) and s. 20.5 of MFDA By-law No. 1.
6. At the conclusion of the Hearing, the Panel accepted the Settlement Agreement and issued an Order to that effect. These are the Panel’s reasons for that decision.

II. CONTRAVENTIONS

7. In the Settlement Agreement, the Respondent admitted to having committed the following violation of the MFDA’s By-laws, Rules or Policies:
 - a) between February 2018 and September 2019, the Respondent altered and in some cases, used to process transactions, 18 account forms in respect of 15 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and
 - b) between January 2017 and January 2019, the Respondent obtained, possessed, and used to process transactions, 8 pre-signed account forms in respect of 5 clients, contrary to MFDA Rule 2.1.1.

III. TERMS OF SETTLEMENT

8. Staff and the Respondent agreed to the following terms of settlement:
- a) the Respondent shall pay a fine in the amount of \$17,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
 - b) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
 - c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
 - d) the Respondent will attend in person or via video-conference, on the date set for the Settlement Hearing.

IV. AGREED FACTS

9. The facts which Staff and the Respondent agreed upon would form the basis of the Settlement Agreement were set out at paragraphs 7 through 23 of that agreement and are reproduced below:

7. Commencing in February 2018, the Respondent was registered in Manitoba as a dealing representative with Investia Financial Services Inc. (the "Member"), a Member of the MFDA.

8. At all material times, the Respondent worked as a licensed assistant for Approved Person RW.

9. At all material times, the Respondent conducted business in the Winnipeg, Manitoba area.

Altered Account Forms

10. Between February 2018 and September 2019, the Respondent altered, and in 17 instances, used 18 account forms in respect of 15 clients by altering information on the account forms without having the clients initial the alterations. In some instances, the Respondent used liquid correction fluid to alter information on the account forms.

11. The altered account forms consisted of

- a) 1 transfer form;
- b) 2 investment application forms;
- c) 10 order instruction forms;
- d) 2 systematic instruction forms;
- e) 1 trade ticket; and
- f) 2 transfer authorization forms.

12. The alterations the Respondent made to the account forms included alterations to dates, amounts, fund names and codes, and clients' net worth.

13. There is no evidence of any client loss, complaints, or that any transactions in relation to the altered account forms were unauthorized.

Pre-Signed Account Forms

14. At all material times, the Member's policies and procedures prohibited its Approved Persons from obtaining, holding, or using pre-signed account forms.

15. Between January 2017 and January 2019, the Respondent obtained, possessed, and used to process transactions, 8 pre-signed account forms in respect of 5 clients.

16. The pre-signed account forms consisted of:

- a) 2 investment application forms;
- b) 1 order instruction form; and
- c) 5 trade tickets.

17. There is no evidence of any client loss, complaints, or that any transactions were unauthorized with respect to the pre-signed account forms.

The Member's Investigation

18. In September 2019, during the course of a full review of client files maintained by the Respondent and Approved Person RW, the Member identified the altered and pre-signed account forms that are the subject of this Settlement Agreement.

19. On or about January 10, 2020, the Member sent letters to all clients whose accounts the Respondent and Approved Person RW serviced, along with a three-year transaction history, in order to determine whether the transactions in the clients' accounts were authorized. Where the Member identified pre-signed or altered account forms containing Know-Your-Client ("KYC") information, the Member sent clients letters that included the clients' KYC information in order to determine whether the KYC information was accurate. No clients reported any concerns in response to the Member's letters.

20. On or about March 18, 2020, the Member issued a warning letter to the Respondent.

Additional Factors

21. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that she would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

22. The Respondent has not been the subject of prior MFDA disciplinary proceedings.

23. 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.

V. ANALYSIS

Role of the Panel

10. The role a Hearing Panel performs at a Settlement Hearing is fundamentally different from the role it performs at a Contested Hearing.

11. When considering a settlement agreement, a Hearing Panel has only two options: either to accept or reject the settlement agreement.

MFDA By-law No. 1, s. 24.4.3

12. As stated by the Hearing Panel in *Sterling Mutuals Inc. (Re)* citing the I.D.A. Ontario District Council in *Milewski (Re)*:

...while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel "will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness." (In *re Milewski*, [1999] I.D.A.C.D. No. 17)

Sterling Mutuals Inc. (Re), MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 3, 2008, at para 37

13. Hearing Panels have acknowledged that one of the reasons that settlement agreements which have been worked out by the parties should be respected is because Panels do not know what led to the settlement, or what was given up by the parties during the course of their negotiations. The presence of experienced legal counsel during the negotiation of a settlement agreement, as was the case in this matter, is also a factor to consider.

Fike (Re), MFDA File No. 2017102, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 7, 2017, at paras. 22 and 23

14. The rationale for respecting settlements of the nature found in the Settlement Agreement in this case, was further articulated by the British Columbia Court of Appeal:

Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation. Enforcement is rarely a concern because the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing. Or, they can settle some matters, and direct their resources to the matters that are in dispute, and therefore to be resolved by way of a hearing.

British Columbia (Securities Commission) v Seifert, 2007 BCCA 484, at para. 31

15. Although the *Seifert* decision dealt with an agreement that was before the British Columbia Securities Commission, the case has been frequently cited by Hearing Panels in MFDA Settlement Hearings.

Factors Concerning Acceptance of a Settlement Agreement

16. Hearing Panels have repeatedly expressed the view that in general, settlement agreements should be accepted, bearing in mind the following criteria:

- a) That it is in the public interest to do so and that the penalties proposed will be sufficient to protect investors;
- b) That the agreement is reasonable and proportionate, having regard to the conduct of the Respondent;

- c) That the agreement addresses the issues of both specific and general deterrence;
- d) That the agreement is likely to prevent the type of conduct set out in the facts;
- e) That the agreement will foster confidence in the integrity of the Canadian capital markets;
- f) That the agreement will foster confidence in the integrity of the MFDA; and
- g) That the agreement will foster confidence in the regulatory process itself.

Sterling Mutuals Inc. (Re), *supra*, at para. 36

Appropriateness of the Proposed Penalty

17. The primary goal of all securities regulation is investor protection.

Pezim v British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557, at para. 68

18. In addition to investor protection, the goals of securities regulation include fostering public confidence in the capital markets and in the securities industry, as a whole.

Pezim, supra, at paras. 59 & 68

19. In determining the appropriateness of a proposed penalty, Hearing Panels also frequently cite the decision in *Breckenridge (Re)*, where the Panel stated that sanctions "... should be preventative, protective and prospective in nature ..." taking into account the following considerations:

- a) protection of the investing public;
- b) integrity of the securities markets;
- c) specific and general deterrence;
- d) protection of the MFDA's membership; and
- e) protection of the integrity of the MFDA's enforcement processes.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, 2007 LNCMFDA 38, at paras. 75 & 76

20. The Panel in *Breckenridge (Re)* set out the following additional factors which a Hearing Panel should consider, having regard to the specific circumstances of the case:

- a) the seriousness of the allegations proved against the respondent;
- b) the respondent's experience in the capital markets;

- c) the level of the respondent's activity in the capital markets;
- d) the harm suffered by investors as a result of the respondent's activities;
- e) the benefits received by the respondent as a result of the improper activity;
- f) the risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;
- g) the damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;
- h) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- i) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
- j) previous decisions made in similar circumstances.

Breckenridge (Re), supra at para. 77

MFDA Sanction Guidelines

21. On November 15, 2018, the MFDA issued Sanction Guidelines (the "Guidelines") to assist Staff and Respondents in conducting disciplinary proceedings and negotiating settlement agreements and to assist Hearing Panels in determining the fair and efficient disposition of settled and contested disciplinary proceedings.

22. In cases involving the type of misconduct in the present case, Staff submitted that the following factors set out in the Sanction Guidelines were relevant to the Panel's decision:

- a) General and specific deterrence;
- b) Public confidence;
- c) Seriousness of the allegations proved against the Respondent;
- d) The Respondent's recognition of the seriousness of the misconduct; and
- e) Previous decisions made in similar circumstances.

Application of the Factors Listed Above to the Present Case

Seriousness of the Misconduct

23. The admitted misconduct in this matter – obtaining and using pre-signed forms and altering forms without obtaining client initials, is conduct which the Panel finds amounts to serious breaches of MFDA Rule 2.1.1.

Standard of Conduct

24. MFDA Rule 2.1.1 prescribes the standard of conduct applicable to all registrants in the mutual fund industry. It requires that each Member and Approved Person: deal fairly, honestly, and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

25. Rule 2.1.1 has been interpreted and applied in a purposeful manner in a wide range of circumstances. As stated by the MFDA Hearing Panel in *Breckenridge (Re)*:

The Rule articulates the most fundamental obligations of all registrants in the securities industry.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, 2007 LNCMFDA 38, at para. 71

Pre-signed Forms

26. The term “pre-signed forms” is a generic term that applies to account forms that were incomplete at the time they were signed. Members and Approved Persons are only permitted to obtain, use and rely upon forms that are executed by the client after all the information on the form has been properly completed.

27. MFDA Hearing Panels have consistently held that obtaining or using pre-signed forms is a contravention of the standard of conduct prescribed under MFDA Rule 2.1.1.

Mandic (Re), MFDA File No. 202031, Hearing Panel of the Central Regional Council, Panel Decision dated August 19, 2020, at para. 16

Dick (Re), MFDA File No. 201818, Hearing Panel of the Central Regional Council, Panel Decision dated July 20, 2018, at para. 9

28. The MFDA Hearing Panel in *Price* identified the dangers that are posed by pre-signed account forms which can be summarized as follows:

- a) pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading;
- b) at worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client; and,
- c) pre-signed forms subvert the ability of a Member to properly supervise trading activity.

Price, (Re), MFDA File No. 200814, Hearing Panel of the Central Regional Council, Panel Decision dated April 18, 2011, at paras. 122-124

29. With respect to the last point cited, the Panel in *Price* pointed out that the reason that pre-signed forms interfere with the Member's ability to properly supervise trading activity is because they destroy the audit trail. It noted:

The presence of the client's signature on a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account.

Price, supra, at para. 124

Altered Forms

30. When an Approved Person alters information on an account form without having the client initial the form to show that the client is aware of the change and has authorized it, the Approved Person engages in conduct that is contrary to MFDA Rule 2.1.1.

Mandic (Re), supra, at para. 16

Dick (Re), supra, at para. 5

31. The reasoning in *Price*, with respect to the rationale for prohibiting the use of pre-signed forms, is equally applicable to the use of altered account forms, with the additional concern that there exists the possibility that changes made to the forms were done without the client's knowledge or consent.

Price (Re), supra, at paras. 118-121

32. For all of the above reasons, the Panel finds that by obtaining and using pre-signed and altered account forms as described in Part III of the Settlement Agreement, the Respondent engaged in conduct which is prohibited by MFDA Rule 2.1.1 and, therefore, engaged in misconduct that must be regarded as serious.

Enhanced Penalties

33. The prohibition against using pre-signed and altered account forms has been widely published by the MFDA to its Members and dealing representatives dating as far back as 2007. See, for example:

- MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017); and
- MFDA Bulletin #0661-E dated October 2, 2015

34. In Bulletin #0661-E Staff advised Members and Approved Persons that Staff would be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin on October 2, 2015.

35. All the account forms which are the subject of this matter were obtained after October 2, 2015. Hearing Panels have considered this to be an aggravating factor.

Owen (Re), MFDA File No. 201784, Hearing Panel of the Prairie Regional Council, Panel Decision dated December 7, 2017, at para. 35

Lo (Re), MFDA File No. 201776, Hearing Panel of the Central Regional Council, Panel Decision dated February 7, 2018, at paras. 16 and 18

36. In their submissions at the Hearing, Staff pointed out that Hearing Panels have increasingly emphasized the need to impose penalties which will dissuade Approved Persons from engaging in the type of misconduct which is the subject of these proceedings, in order to curtail similar misconduct in the mutual fund industry.

Ramjohn (Re), MFDA File No. 202067, Hearing Panel of the Central Regional Council, Panel Decision dated October 22, 2021, at para. 1

Gilchrist (Re), MFDA File No. 2016100, Hearing Panel of the Central Regional Council, Panel Decision dated May 29, 2017, at para. 16

Armstrong (Re), MFDA File No. 202161, Hearing Panel of the Pacific Regional Council, Panel Decision dated November 30, 2021, at para. 8

37. The Panel in *Liu (Re)* specifically addressed the trend towards the imposition of higher fines in these types of matters, recognizing that:

Other Hearing Panels have expressed concern about whether the sanctions being imposed have been sufficient to combat this problem. They have also observed that the danger of low fines being tantamount to a licensing fee for registrants to engage in this misconduct as a matter of convenience is an acknowledged consideration in the MFDA Sanction Guidelines.

Mitigating Factors

38. The Panel has considered the following mitigating factors in accepting the proposed penalty.

The Respondent's Experience in the Securities Industry

39. At the time of the misconduct which is the subject of these proceedings the Respondent was relatively inexperienced in the industry having only just become registered in February 2018.

The Respondent's Past Conduct Including Prior Sanctions

40. The Respondent has not been the subject of prior MFDA disciplinary proceedings.

Client Harm and Benefits Received by the Respondent

41. Staff's investigation did not reveal any evidence of unauthorized trades or client losses. Further there was no evidence to suggest that the Respondent received financial or other benefit through her conduct; nor were there any client complaints.

The Respondent's Recognition of the Misconduct

42. Finally, by entering into the Settlement Agreement, the Respondent has accepted responsibility for her misconduct and has saved the MFDA the time, resources, and expenses associated with conducting a full contested hearing.

Deterrence

43. Both the Supreme Court of Canada and MFDA Hearing Panels have held that deterrence is an important factor to be taken into account when determining the appropriateness of a penalty.

Cartaway Resources Corp. (Re), [2004] 1 SCR 672 (SCC) at paras. 52-62

44. The effect of general deterrence should advance the goal of protecting investors. The penalty levied should be sufficient so as to affirm public confidence in the regulatory system and ensure that the misconduct is not repeated by others in the industry.

Cartaway Resources Corp. (Re), *supra*, at para. 61

45. The Panel finds that the penalty which is proposed in the Settlement Agreement is sufficient to demonstrate that the Respondent’s misconduct is, in all of the circumstances, serious.

46. We find that the proposed penalty will specifically deter the Respondent from engaging in similar activity by imposing a meaningful sanction upon her which reflects the seriousness of the misconduct at issue.

47. The proposed penalty will act as a general deterrent by reinforcing the message that the misconduct described in these proceedings will not be tolerated within the mutual fund industry and will result in significant sanctions.

48. As noted earlier in these Reasons, MFDA Hearing Panels have recently commented with dismay that misconduct similar to the misconduct engaged in by the Respondent continues to occur.

49. In our view, therefore, the proposed penalty is necessary in order to achieve effective deterrence within the mutual fund industry as a whole.

Previous Decisions made in Similar Circumstances

50. The Panel agrees with Staff’s submission that the following cases were sufficiently similar for us to consider in determining the appropriateness of the proposed penalty.

Case	Facts	Penalty
<i>Kachur (Re)</i> MFDA File No. 202201, Hearing Panel of the Prairie Regional Council, Panel Decision dated July 6, 2022	<ul style="list-style-type: none"> • 29 altered forms in respect of 18 clients. • Member charge of \$3,250. • Post-bulletin conduct. 	The Hearing Panel approved the following settlement: <ul style="list-style-type: none"> • \$18,000 fine • \$5,000 costs
<i>Mandic (Re), supra</i>	<ul style="list-style-type: none"> • . 30 pre-signed account forms in respect of 16 clients. • 1 altered account form in respect of 1 client. • Member charge of \$14,000. • Post-bulletin conduct. 	The Hearing Panel approved the following settlement: <ul style="list-style-type: none"> • \$8,000 fine • \$2500 costs
<i>Romaniuk (Re)</i> , MFDA File No. 202155, Hearing Panel of the Central Regional Council, Panel Decision dated January 20, 2022	<ul style="list-style-type: none"> • 18 pre-signed account forms in respect of 12 clients. • 5 altered account forms in respect of 4 clients. • Member charge of \$14,000. • Post-bulletin conduct. 	The Hearing Panel approved the following settlement: <ul style="list-style-type: none"> • \$6,000 fine • \$2,500 costs

<p><i>Ravn (Re)</i>, MFDA File No. 202104, Hearing Panel of the Central Regional Council, Panel Decision dated May 10, 2021</p>	<ul style="list-style-type: none"> • 9 pre-signed account forms in respect of 4 clients. • 18 altered account forms in respect of 15 clients. • Post-bulletin conduct. • Member charge of \$1,875. • Lower costs in light of this matter being investigated together with another matter. 	<p>The Hearing Panel approved the following settlement:</p> <ul style="list-style-type: none"> • \$11,500 fine • \$1,750 costs
<p><i>Treble (Re)</i>, MFDA File No. 202137, Hearing Panel of the Prairie Regional Council, Panel Decision dated September 30, 2021 (Reasons Pending)</p>	<ul style="list-style-type: none"> • 11 pre-signed account forms in respect of 8 clients. • 15 altered account forms in respect of 13 clients. • Member charge of \$863. • Post-bulletin conduct. 	<p>The Hearing Panel approved the following settlement:</p> <ul style="list-style-type: none"> • \$14,000 fine • \$2,500 costs

51. At the Hearing, Staff spent considerable time reviewing these decisions, for the Panel’s benefit.

52. Based on their submissions, the Panel agrees that the proposed penalty falls within a range of appropriate penalties having regard to the circumstances of this case and is consistent with what Staff identified as “the trend towards higher fines in these types of matters” the necessity for which was discussed earlier in these Reasons.

VI. CONCLUSION

53. Having reviewed the Settlement Agreement and having considered Staff’s submissions, both written and oral, the Panel is satisfied that the penalty which is set out in the Settlement Agreement falls within a reasonable range of appropriateness having regard to the nature and extent of the Respondent’s misconduct in all of the circumstances. In the Panel’s view, this penalty is reasonable and proportionate and will deter the Respondent and other dealing representatives from engaging in the type of misconduct that is the subject of these proceedings. It will advance the public interest and the MFDA’s objective to enhance investor protection and ensure high standards of conduct in the mutual fund industry.

54. For all of the above reasons, therefore, the Panel accepts the Settlement Agreement.

DATED this 23rd day of January, 2023.

“Sherri Walsh”

Sherri Walsh
Chair

“Adam Dudley”

Adam Dudley
Industry Representative

“Sean Shore”

Sean Shore
Industry Representative

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