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: David Bruce Lasher

Heard: August 27, 2020 by electronic hearing in Toronto, Ontario
Decision: August 27, 2020
Reasons for Decision: October 13, 2020

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Thomas J. Lockwood, QC	Chair
Edward Jackson	Industry Representative
Kenneth P. Mann	Industry Representative

Appearances:

Brendan Forbes	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Ellen Bessner	)	Counsel for the Respondent
Zach Pringle	)	
David Bruce Lasher	)	Respondent

I. INTRODUCTION

1. By Notice of Settlement Hearing, dated July 24, 2020, the Mutual Fund Dealers Association of Canada ("MFDA") gave notice that an electronic hearing would be held before a hearing panel of the Central Regional Council of the MFDA ("Hearing Panel") on August 27, 2020, to consider whether, pursuant to Section 24.4 of MFDA By-law No. 1, the Hearing Panel should accept the settlement agreement ("Settlement Agreement") entered into between Staff of the MFDA and David Bruce Lasher ("Respondent"):

2. Due to the existence of COVID-19, and with the consent of the parties, the Settlement Hearing was conducted by way of electronic hearing on August 27, 2020.

3. At the commencement of the Settlement Hearing, the Hearing Panel granted the joint request of the parties to move the proceedings "in camera" so that the Settlement Agreement could be considered in the absence of the public. This procedure is consistent with Rule 15.2(2) of the MFDA *Rules of Procedure*.

4. The Hearing Panel then considered the provisions of the Settlement Agreement. After hearing submissions both as to the applicable law and as to why this particular Settlement Agreement met the appropriate criteria, the Hearing Panel retired to consider whether we were in a position to accept the Settlement Agreement on the basis of the material before us.

5. After carefully considering the Settlement Agreement and the submissions of the parties, the Hearing Panel unanimously accepted the Settlement Agreement. We made an Order to this effect on August 27, 2020. At that time, we advised that written Reasons would follow. These are those Reasons.

II. THE SETTLEMENT AGREEMENT

6. The salient portions of the Settlement Agreement are as follows:

> **"II. JOINT SETTLEMENT RECOMMENDATION**
>
> 4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the Mutual Fund Dealers Association of Canada ("MFDA"):

a) between September 2013 and August 2018, the Respondent altered and used to process transactions 35 account forms in respect of 39 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and
b) between January 2013 and October 2018, the Respondent obtained, possessed and, in some instances, used to process transactions, 96 pre-signed account forms in respect of 78 clients, contrary to MFDA Rule 2.1.1.

5. Staff and the Respondent agree and consent to the following terms of settlement:

a) the Respondent shall pay a fine in the amount of $18,000 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, on the date set for the Settlement Hearing.

III. AGREED FACTS

Registration History

7. Since September 1994, the Respondent has been registered in the securities industry.

8. Since October 2002, the Respondent has been registered in Ontario as a dealing representative (formerly known as a mutual fund salesperson)[1] with Investia Financial Services Inc. (the "Member"), a Member of the MFDA.

9. At all material times, the Respondent conducted business in the Belleville, Ontario area.

Altered Account Forms

10. Between September 2013 and August 2018, the Respondent altered and used to process transactions 35 account forms in respect of 39 clients by altering information on the account forms without having the client initial the alterations.

11. The altered account forms included: 25 Know Your Client ("KYC") Update Forms, 5 Order Instruction Forms, 3 Investment Applications and 2 New Client Application Forms.

[1] In September 2009, the registration category mutual fund salesperson was changed to "dealing representative" when National Instrument 31-103 came into force.

12. The alterations made by the Respondent include alterations to: client KYC information, client contact information, plan types, investment amounts and fund descriptions.

Pre-Signed Account Forms

13. At all material times, the Member's policies and procedures prohibited Approved Persons from holding blank or incomplete forms that had been signed by a client.

14. Between January 2013 and October 2018, the Respondent obtained, possessed and, in some instances, used to process transactions, 96 pre-signed account forms in respect of 78 clients.

15. The pre-signed forms included: 53 KYC Update Forms, 24 New Client Account Forms, 6 Registered Education Savings Plan Redemption Forms, 6 Order Instruction Forms, 3 Systematic Instruction Forms, 2 Transfer Authorization Forms, 1 Investment Application and 1 Fee for Service Agreement.

The Member's Investigation

16. In or around December 2018, the Member conducted an audit of the client files maintained by the Respondent, during which the Member identified some of the account forms that are the subject of this Settlement Agreement.

17. In January 2019, the Member commenced an investigation that identified the remaining account forms that are the subject of this Settlement Agreement.

18. On May 13, 2019, as a result of the Member's findings during its investigation, the Member placed the Respondent under strict supervision. The Member also required that the Respondent pay $2,200 in respect of the Member's investigation.

19. On May 17, 2019, the Member sent letters to clients whose accounts the Respondent serviced along with a transaction history for the prior 3 years and, in some cases, the KYC information on file for the client. The Member asked the clients to review the transactions within their account and to review their KYC information to ensure that all transactions and KYC information were accurate. No clients raised any concerns to the Member about the activity within their accounts.

20. On September 12, 2019, the Member removed the Respondent from strict supervision and issued the Respondent a warning letter in respect of the misconduct described herein.

21. Since September 12, 2019, the Respondent has engaged the Member's auditor to review all forms and related transactions processed by him. Beginning in September 2019, 10% of the Respondent's commissions were deducted by the Member as a result of additional

supervisory functions imposed by the Member. As of July 2020, the total amount deducted from the Respondent's commissions is approximately $10,764.

Additional Factors

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

23. The Respondent states that he has since corrected his practices going forward and no longer obtains or uses pre-signed forms or alters information on account forms without clients initialing the alterations.

24. There is no evidence of client loss or lack of authorization.

25. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

26. 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."

III. THE LAW

7. MFDA Rule 2.1.1 states, in part, as follows:

> "2.1.1 **Standard of Conduct**. Each Member and each Approved Person of a Member shall:
>
> (a) deal fairly, honestly and in good faith with its clients;
>
> (b) observe high standards of ethics and conduct in the transaction of business;
>
> (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; . . ."

Pre-Signed Forms are Not Permissible

8. "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 information on the form has been properly completed.

9. 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.

> *Lok (Re)*, [2020] Hearing Panel of the Central Regional Council, MFDA File No. 202011, Hearing Panel Decision dated May 11, 2020 at para 9.
>
> *Martin (Re)*, [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201893, Hearing Panel Decision dated December 7, 2018 at para 6.

10. The MFDA has previously warned Approved Persons against the use of pre-signed forms. Among other things, the use of pre-signed forms 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.

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

11. As the Hearing Panel explained in *Price* (*Re*):

> "Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading....At its 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...Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. 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* (*Re*), [2011] Hearing Panel of the Central Regional Council, MFDA File No. 200814, Panel Decision (Misconduct) dated April 18, 2011 at paras. 122-124.

12. The prohibition on the use of pre-signed account forms applies regardless of whether:

a) the client was aware, or authorized the use, of the pre-signed account forms; and

b) the forms were used by the Approved Person for discretionary trading or other improper purposes.

13. In the case before us, the Respondent obtained, possessed and, in some instances, used to process transactions, 96 pre-signed forms in respect of 78 clients, contrary to MFDA Rule 2.1.1.

Altered Forms are not Permissible

14. 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.

> *Lok* (*Re*), *supra* at para 9.
>
> *Martin*, *supra* at para 6.

15. As with "pre-signed forms", the MFDA previously warned Approved Persons against altering account forms without having the client initial the form to show that they are aware of the change.

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

16. In the case before us, the Respondent admits that he altered and used to process transactions 35 account forms in respect of 39 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

IV. PRINCIPLES REGARDING THE ACCEPTANCE OF SETTLEMENT AGREEMENTS

17. In our view, the role of a Hearing Panel in a Settlement Hearing is not the same as its role in making a penalty determination after a contested Hearing. In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

18. Previous MFDA Hearing Panels have determined the factors which should be considered in determining whether a Settlement Agreement should be accepted. These include the following:

(i) Whether acceptance of the Settlement Agreement would be in the public interest and whether the penalty imposed will protect investors;

(ii) Whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;

(iii) Whether the Settlement Agreement addresses the issues of both specific and general deterrence;

(iv) Whether the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;

(v) Whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets;

(vi) Whether the Settlement Agreement will foster confidence in the integrity of the MFDA;

(vii) Whether the Settlement Agreement will foster confidence in the regulatory process itself.

> *Jacobson (Re)*, [2007], Hearing Panel of the Prairie Regional Council, MFDA File No. 200712, Reasons for Decision, dated July 13, 2007, at para. 70.

19. Previous Hearing Panels have also identified a number of additional factors which should be considered when determining whether the penalty sought to be imposed is appropriate. These include:

a) The seriousness of the allegations proved against the Respondent;

b) The Respondent's past conduct, including prior sanctions;

c) The Respondent's experience in the capital markets;

d) The level of the Respondent's activity in the capital markets;

e) Whether the Respondent recognizes the seriousness of the improper activity;

f) The harm suffered by investors as a result of the Respondent's activities;

g) The benefits received by the Respondent as a result of the improper activity;

h) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;

i) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;

j) 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;

k) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and

l) Previous decisions made in similar circumstances.

> *Headley* [*Re*], 2006, Hearing Panel of the Central Regional Council, MFDA File No. 200509, Reasons for Decision dated February 21, 2006 at para.85.

V. CONSIDERATIONS IN THE PRESENT CASE

20. Staff made very detailed submissions as to how these principles applied to the case before us. These submissions included the following.

a) Nature of the Misconduct

21. We agree with the submissions of Staff that the use of pre-signed and altered forms, in the manner described in the Settlement Agreement, are serious breaches of MFDA Rule 2.1.1.

b) The Respondent's Experience and Level of Activity in the Capital Markets

22. The Respondent has been registered in the mutual fund industry for over 25 years. The conduct that is the subject of the Settlement Agreement went on for many years. As an experienced Dealing Representative, the Respondent ought to have known and respected the compliance requirements of the Member and the MFDA.

c) The Respondent's Recognition of the Seriousness of the Misconduct

23. The Respondent has acknowledged that his conduct constitutes a serious contravention of MFDA Rules. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct, and has saved the MFDA the time, resources and expenses associated with a full disciplinary hearing.

d) The Respondent's Past Conduct Including Prior Sanctions

24. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

e) Harm Suffered by Investors

25. We accept the submission of Staff that there is no evidence of client loss or lack of authorization with respect to the Respondent's conduct described in the Settlement Agreement.

f) Benefits Received by the Respondent

26. We, further, accept the submission of Staff that there is no evidence that the Respondent received a financial benefit from engaging in the admitted misconduct beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

g) Deterrence

27. Staff submitted that the proposed fine of $18,000 and costs in the amount of $2,500 will act as a general deterrent by reinforcing the message that the use of pre-signed and altered forms will not be tolerated within the mutual fund industry.

28. The new MFDA Sanction Guidelines, which came into effect on November 15, 2018, indicate that sanctions imposed by a Member may be a consideration in determining the appropriate monetary sanction to be imposed. In the case before us, the Respondent has paid approximately $13,000 in fees payable to the Member and reduced commissions as a result of his misconduct. This, along with the proposed penalties, will, in our view, specifically deter the Respondent from engaging in misconduct in the future.

h) Previous Decisions Made in Similar Circumstances

29. Staff provided the Hearing Panel with a detailed chart seeking to show that the proposed resolution is within the reasonable range of appropriateness with regards to other decisions made by MFDA Hearing Panels in similar circumstances.

30. The following cases were discussed:

a) *Martin* (*Re*), *supra*.
b) *Mills* (*Re*), [2019] Hearing Panel of the Central Regional Council, MFDA File No. 2018103, Reasons for Decision dated January 25, 2019.

c) *Culliton* (*Re*), [2020] Hearing Panel of the Central Regional Council, MFDA File No. 201966, Reasons for Decision February 25, 2020.

d) *Graham* (*Re*), [2020] Hearing Panel of the Central Regional Council, MFDA File No. 201969, Reasons for Decision dated February 25, 2020.

e) *Parlee* (*Re*), [2019] Hearing Panel of the Prairie Regional Council, MFDA File No. 201964, Reasons for Decision dated December 6, 2019.

f) *Mailloux* (*Re*), [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201955, Reasons for Decision dated December 17, 2019.

VI. DECISION

31. After a thorough review of the factors by which we should be guided, and the facts of this case, as reflected in the Settlement Agreement, we were, unanimously, of the view that this Settlement Agreement was reasonable and in the public interest and should be accepted by the Hearing Panel. We so informed the parties at the conclusion of the Settlement Hearing.

VII. ORDER

32. After accepting the Settlement Agreement, we made the following Order:

a) The Respondent shall pay a fine in the amount of $18,000 in certified funds, 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, 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) If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

DATED this 13th day of October, 2020.

"Thomas J. Lockwood"
Thomas J. Lockwood, QC
Chair

"Edward Jackson"
Edward Jackson
Industry Representative

"Kenneth P. Mann"
Kenneth P. Mann
Industry Representative

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