



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

**IN THE MATTER OF A DISCIPLINARY HEARING  
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Saveth Law**

Heard: February 5, 2019 in Calgary, Alberta

Decision: February 5, 2019

Reasons for Decision: April 12, 2019

**REASONS FOR DECISION**

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, QC  
Adam Dudley  
Charlene Snell

Chair  
Industry Representative  
Industry Representative

Appearances:

Sakeb Nazim	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Saveth Law	)	Respondent, not in attendance or represented by
	)	counsel
	)	

## **Background**

1. On August 15, 2018 the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing pursuant to sections 20 and 24 of By-law No. 1 in respect of a disciplinary proceeding commenced against Saveth Law (the “Respondent”). The allegations in the Notice of Hearing stated as follows:

- a) Allegation #1 - In September 2016, the Respondent signed the initials of a client on an account form in order to change the client’s Know-Your-Client information without the client’s knowledge or approval, contrary to MFDA Rule 2.1.1;
- b) Allegation #2 -Commencing May 2017, the Respondent failed to cooperate with an investigation conducted by MFDA Staff, contrary to section 22.1 of MFDA By-law No. 1;

## **Evidence as to Service**

2. MFDA Enforcement Counsel submitted an affidavit of one Allison Howse (“Howse”), a Manager of Investigations with MFDA, in which she deposed that:

- a) From May 8, 2017 to July 27, 2017, multiple attempts were made by MFDA Staff to contact the Respondent without success at her registered address on the National Registration Database, confirmed by a search on the Alberta Land Titles Registry, which shows the address on the National Registration Database is listed in the name of the Respondent.
- b) By registered and regular mail from MFDA on May 8, 2017, an agent of MFDA requested the Respondent provide a written statement by May 30, 2017 with respect to the allegations against her.
- c) On May 11, 2017 the Respondent signed for the registered mail but did not respond to the request contained within.
- d) Other registered and regular mail sent from MFDA to the Respondent on June 1 and June 5, 2017 was returned to MFDA, marked “Refused” and “return to sender” respectively.
- e) No responses were received from the Respondent.

- f) On July 27, 2017 MFDA sent a letter to the Respondent requesting she contact MFDA Staff to schedule an interview within 10 days. The letter was personally served on the Respondent on August 14, 2017.
- g) On May 29, 2018, the Notice of Hearing in this matter was delivered by regular mail, registered mail, and via process server without success to the last known address of the Respondent.
- h) The Notice of Hearing was sent to the Respondent via process server on August 17, 2018 and via courier service on August 27, 2018. The process server confirmed that the Respondent lived at the Respondent's address but that personal service could not be effected.
- i) The Notice of Hearing was sent to the Respondent via courier service on August 29, 2018.

3. The Respondent did not attend the first appearance by teleconference before the Chair of a hearing panel of the Prairie Regional Council of the MFDA (the "Hearing Panel") on October 15, 2018, when a hearing on the merits was scheduled before a Hearing Panel on February 5, 2019 in Calgary, Alberta at the offices of the MFDA.

4. On the day of the hearing, neither the Respondent nor anyone on her behalf appeared.

5. At the hearing, Enforcement Counsel confirmed that there had been no communication from the Respondent to MFDA since the commencement of the proceeding.

6. Under the relevant provisions of the MFDA By-law No. 1, the Rules of Procedure, and applicable case authorities, a hearing panel may conduct a hearing into the allegations in the absence of the Respondent. These provisions provide as follows.

#### **Failure to Deliver a Reply**

7. Under the MFDA Rules of Procedure, specifically Rule 8.1, a Respondent is required to serve and file a Reply within 20 days of service of the Notice of Hearing.

8. Under the MFDA Rules of Procedure, specifically Rule 8.4(1), where a Respondent fails to serve and file a Reply to the Notice of Hearing, a Hearing Panel may do one or more of the following:

- a) proceed with the hearing without further notice to and in the absence of the Respondent;
- b) accept the facts alleged and conclusions drawn by the Corporation [MFDA] in the Notice of Hearing as proven and impose any of the penalties and costs described in sections 24.1 and 24.2 respectively of MFDA By-law No. 1;
- c) order that the Respondent pay costs, at any stage of the proceeding, regardless of the outcome of the proceeding and in addition to any other penalties and costs imposed on the Respondent, in an amount which reflects the extent to which, in the Hearing Panel's discretion, the hearing will be or has been unnecessarily prolonged or complicated by the failure of the Respondent to deliver a proper Reply;
- d) prohibit, restrict, or place terms on the right of the Respondent to call witnesses or present evidence at the hearing.

#### **Failure to Attend Hearing**

9. Under the MFDA Rules of Procedure, specifically Rule 7.3, where a Respondent fails to attend a Hearing, a Hearing Panel may:

- a) proceed with the hearing without further notice to and in the absence of the Respondent; and
- b) accept the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing as proven and impose any of the penalties and costs described in sections 24.1 and 24.2 respectively of MFDA By-law No. 1.

#### **Finding as to sufficiency of service**

10. This Hearing Panel finds that the intention of the MFDA to investigate potential wrongful conduct of the Respondent came to her attention between May 8, 2017 and the date of the hearing, probably on the date she signed for the registered mail that was delivered to her.

11. Having regard to the other details of attempted service thereafter, this Hearing Panel concludes that service of notice of the intention of the MFDA to proceed to hearing of the allegations in the absence of the Respondent was good and sufficient.

12. Further, this Hearing Panel was satisfied that there was ample authority to allow the hearing to proceed in the absence of the Respondent.

13. The Hearing Panel then proceeded to receive affidavit evidence from Hawse as to the allegations in the Notice of Hearing, which established the following:

### **Registration History**

14. Between October 2011 and December 7, 2016 when she was terminated, the Respondent was registered in Alberta as a mutual fund salesperson (now known as a dealing representative) with BMO Investments Inc. (“BMO”), a Member of the MFDA.

15. The Respondent is not currently registered in the securities industry in any capacity.

### **Signature Falsification**

16. On December 2, 2016 and on January 25, 2017, BMO filed Member Event Tracking System (“**METS**”) reports with MFDA Staff . In the METS reports, BMO advised that the Respondent had falsified client initials on a client account form.

17. In response to the METS reports, MFDA Staff opened an investigation into the Respondent’s conduct at BMO and obtained information from BMO with respect to the allegations.

18. In particular, BMO advised MFDA Staff that it identified a mutual fund redemption form in which the Respondent signed the initials of a client on a redemption form in order to change the client’s Know-Your-Client (“KYC”) information. The Respondent changed the client’s risk tolerance from “low to medium” to “medium”, and time horizon from “short term (less than 2 years)” to “medium”.

19. BMO advised MFDA Staff that during an interview on December 1, 2016, the Respondent admitted that she had made the changes to the redemption form and forged the client initials.

20. BMO also advised MFDA Staff that the client had advised BMO that she did not authorize the Respondent to make the above-mentioned changes to her form.

### **Failure to Co-Operate**

21. As indicated earlier, from May 8, 2017 to July 27, 2017, multiple attempts were made by MFDA Staff without success to contact the Respondent.

### **Findings as to Allegation #1 - Falsification of Client Initials**

22. The prohibition against falsifying forms exists regardless of the client authorization or the motive behind the use of the form has been clearly communicated to Approved Persons for a number of years, including in October 2007 and 2015.

MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013)

MFDA Bulletin #0661-E dated October 2, 2015

23. Hearing Panel decisions have clearly held that falsifying forms is a contravention of the standard of conduct as set out in MFDA Rule 2.1.1.

*Ewart (Re)*, MFDA File No. 201528, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 11, 2015

24. Hearing Panel decisions have clearly pronounced that the falsification of a client signature or initials is particularly serious. In *Barnai (Re)*, MFDA File No 201325, Hearing Panel of the Central Regional Council, Decision and Reasons dated March 17, 2015 citing earlier decisions, summarized the principles with respect to falsifying client signatures (emphasis added):

- a) Falsifying client signatures or initials is serious misconduct. Signature falsification (like 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.

- b) As a Hearing Panel of the Investment Dealers Association (now IIROC) stated in *Bell (Re)*:

**"Forgery is always serious. It is unequivocally condemned because it is fundamentally dishonest and dangerous. Any act of forgery is a step onto a steep and slippery slope of deception that is always potentially harmful to clients and actually harmful to the Member firm and the securities industry as a whole."**

[...]

- c) *Lamontagne (Re)* reiterated the principle set out in *Bell (Re)*, but went on to state that, where warranted, hearing panels may distinguish between serious and less egregious instances of falsification:

**"Forgery is always a serious regulatory matter because it shows that the Respondent lacks the honesty required of a professional in the securities industry. . .forgery often attracts severe sanctions. While there is no such thing as a "minor case" of forgery, hearing panels may distinguish between more and less egregious examples of forgery."**

[...]

25. As stated in *Barnai (Re, (supra)*, MFDA Rule 2.1.1 sets the standard of conduct to be followed by all Approved Persons and is designed to protect the public interest by requiring Approved Persons to adhere to a high standard of ethical conduct, and, as stated by the MFDA Hearing Panel in *Breckenridge (Re)* MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007: "The Rule articulates the most fundamental obligations of all registrants in the securities industry."

26. MFDA Rule 2.1.1 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.

27. On the basis of the foregoing, by falsifying client initials on an account form as described in the Howse Affidavit, the Respondent engaged in conduct prohibited by MFDA Rule 2.1.1, and therefore, engaged in misconduct that should be regarded as serious.

## **Post-Bulletin Misconduct**

28. All of the falsifications were committed after the MFDA issued MFDA Bulletin #0661-E on October 2, 2015. MFDA Hearing Panels have considered this an aggravating factor.

*Techer (Re)*, MFDA File No. 201662, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated December 5, 2016, at para.44

*Owen (Re)*, MFDA File No 201325, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated November 23, 2017, at para.35

## **Allegation #2 – Failure to Cooperate**

29. Pursuant to s. 21 of MFDA By-law No. 1, the MFDA has a duty to conduct examinations and investigations of a Member, an Approved Person, and any other person under its jurisdiction as it considers necessary or desirable in connection with any matter related to that Member's or person's compliance with, among other things, the By-laws, Rules and Policies of the MFDA.

30. In carrying out its s. 21 duty, the MFDA is authorized to request and oblige a Member, Approved Person or any other person under its jurisdiction to:

- a) submit a report in writing with regard to any matter involved in any investigation;
- b) produce for investigation and provide copies of the books, records and accounts of such person relevant to the matters being investigated;
- c) attend and give information respecting such matters; and
- d) make any of the above information available through any directors, officers, employees, agents and other persons under the direction or control of the Member, Approved Person or other person under the jurisdiction of the MFDA.

31. Correspondingly, Section 22.1 of MFDA By-law No. 1 provides that the Member, Approved Person or other person under investigation is obliged to cooperate with the s. 21 requirements.

32. This obligation is consistent with the duties owed by all members of self-governing professions. In *Artinian v. College of Physicians and Surgeons of Ontario*, [1990] O.J. No. 1116,

at p.4 the Ontario Divisional Court stated, “fundamentally, every professional has an obligation to cooperate with his self-governing body”.

33. There is ample authority for the proposition that an Approved Person must provide Staff with information and documentation when requested to do so. To hold otherwise would hinder the MFDA’s ability to investigate the conduct of registrants in the mutual fund industry and prevent the MFDA from fulfilling its regulatory mandate to protect the public.

*Armani (Re)*, MFDA File No. 201701, Hearing Panel of the Central Regional Council Panel Decision, Decision and Reasons dated August 3, 2017

34. Based on all the foregoing, and in particular, but without limitation, paragraphs 2-13 and 29-33, above, this Hearing Panel concludes that all the allegations have been proven to the required standard.

35. The Hearing Panel then turned to the question of the appropriate penalties in this case.

### **Penalties**

36. Enforcement Counsel sought the following penalties:

- a) A permanent prohibition on the authority of the Respondent to conduct securities related business while in the employ of or associated with any Member of the MFDA, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- b) A fine of at least \$50,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, and
- c) Costs of \$7,500, pursuant to s. 24.2 of MFDA By-law No. 1.

### **Appropriateness of Permanent Prohibition**

37. The failure of this Respondent to cooperate during the course of the MFDA investigation into the Respondent’s conduct hindered the ability of the MFDA to provide effective oversight of the mutual fund industry.

38. The Respondent was an experienced dealing representative who ought to have known and respected the MFDA’s and the Member’s compliance requirements.

39. Due to the Respondent's failure to cooperate with Staff's investigation, the Respondent has demonstrated that she is ungovernable and would therefore pose a risk to investors and the capital markets were she to continue to operate in the capital markets.

40. This Hearing Panel finds these factors justify the imposition of the penalty of permanently prohibiting the Respondent from conducting securities related business while in the employ of or associated with any Member of the MFDA.

41. This Hearing Panel accepts that a substantial fine is also necessary to communicate to this Respondent and to other Approved Persons that signature falsification is serious misconduct that has no place in the mutual fund industry.

42. The Respondent has not demonstrated that she recognizes the seriousness of her misconduct, nor has she expressed remorse for her actions. By declining to participate in the investigative or hearing process, she has presented the impression she does not take seriously her obligations as an Approved Person.

43. The Respondent has engaged in very serious misconduct. Signature falsification, and failure to cooperate with her self-governing body, both demonstrate a fundamental breach of the Respondent's obligations. Due to the Respondent's failure to cooperate with Staff's investigation, Staff has been unable to investigate the full nature and extent of her conduct with respect to client AT and her other clients.

44. Despite her lack of prior disciplinary history, and the absence of evidence of client harm, the serious misconduct associated with subverting the ability of the regulator to fully investigate the Respondent's conduct and to determine, in an expeditious manner, all of the relevant facts, is an aggravating factor.

45. Enforcement Counsel cited three decisions for consideration with respect to penalties:

- *Armani (Re)*, MFDA File No. 201701, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 3, 2017,
- *Theroux (Re)*, MFDA File No. 201307, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 1, 2014

- *McBurney (Re)*, MFDA File No. 201522, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 29, 2015

46. In all of the above-cited cases, the Hearing Panel ordered a permanent prohibition in respect of a finding of failure to cooperate. In *Armani Re*, (supra) and *McBurney (Re)* supra) fines of \$75,000 were also imposed and in *Theroux (Re)* supra, the fine imposed was \$50,000.

47. In the view of this Hearing Panel, the penalties sought in this case are in line with the above-cited authorities. The proposed penalties are necessary in order to communicate to other Approved Persons that failing to cooperate with an MFDA investigation has no place in the mutual fund industry. Further, the proposed sanctions will prevent future misconduct by the Respondent, deter others from engaging in similar misconduct, improve overall compliance by mutual fund industry participants and foster confidence in the mutual fund industry.

48. In summary, this Hearing Panel orders:

- a) a permanent prohibition on the authority of the Respondent to conduct securities related business while in the employ of or associated with any Member of the MFDA, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- b) a fine of \$50,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1 for the Respondent's failure to cooperate; and
- c) payment of costs of \$7,500, pursuant to s. 24.2 of MFDA By-law No. 1.

**DATED** this 12<sup>th</sup> day of April, 2019.

“Shelley L. Miller”

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Shelley L. Miller, QC  
Chair

“Adam Dudley”

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Adam Dudley  
Industry Representative

“Charlene Snell”

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Charlene Snell  
Industry Representative