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: Han Liu

Heard: August 12, 2020 by electronic hearing in Calgary, Alberta
Decision: August 12, 2020
Reasons for Decision: September 29, 2020

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Sherri Walsh	Chair
Danielle Tétrault	Industry Representative
Howard Mix	Industry Representative

Appearances:

Sakeb Nazim	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Han Liu	)	Respondent, in attendance

I. BACKGROUND

1. On July 7, 2020, Han Liu (the "Respondent") entered into a Settlement Agreement with Staff of the Mutual Fund Dealers Association of Canada (the "MFDA") pursuant to which the Respondent agreed to be disciplined under sections 20 and 24.4.1.1 of MFDA By-law No. 1 (the "Settlement Agreement").

2. On July 8, 2020, the MFDA issued a Notice of Settlement Hearing advising that an electronic hearing was to be held before a Hearing Panel of the Prairie Regional Council of the MFDA (the "Panel") to consider whether, pursuant to section 24.4 of MFDA By-law No. 1, the Panel should accept the Settlement Agreement (the "Settlement Hearing").

3. The Settlement Hearing took place on August 12, 2020.

4. The Respondent attended and participated in the hearing, without counsel.

5. At the conclusion of the Settlement Hearing, the Panel accepted the Settlement Agreement and issued an Order to that effect. The Panel's Reasons for Decision are set out below.

II. CONTRAVENTIONS

6. In the Settlement Agreement, the Respondent admitted to the following violations of the By-laws, Rules or Policies of the MFDA:

> Between January 2018 and February 2019, the Respondent photocopied signature pages from account forms that had been previously signed by clients and re-used the signature pages to complete 14 additional forms in respect of 4 clients, contrary to MFDA Rule 2.1.1.

III. TERMS OF SETTLEMENT

7. Staff and the Respondent agreed on the following terms of settlement:

a) the Respondent shall pay a fine in the amount of $12,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1 (b) of MFDA By-law No. 1;

b) the Respondent shall pay costs in the amount of $2,500.00 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 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 the Settlement Hearing in person.

IV. AGREED FACTS

8. The agreed facts are set out at paragraphs 7 through 20 inclusive of the Settlement Agreement and are reproduced below as follows:

Registration History

7. Since August 2008, the Respondent has been registered in the mutual funds industry.

8. From October l 8, 2010 to March 21, 2019, the Respondent was registered in Alberta as a dealing representative with Royal Mutual funds Inc. (the "Member"), a Member of the MFDA.

9. On March 21, 2019, the Member terminated the Respondent, and he is not currently registered in the securities industry in any capacity.

10. At all material times, the Respondent carried on business in the Calgary, Alberta area.

Re-Using Client Signatures

I l. Between January 2018 and February 2019, the Respondent photocopied the signature pages from account forms that had previously been signed by clients and re-used the signature pages to complete 14 additional forms in respect of 4 clients.

12. The account forms consisted of Contribution Acknowledgement, Registered Plan Withdrawal and Redemption Acknowledgement forms.

13. The Respondent submitted all of the account forms to the Member for processing.

Member's Investigation

14. In February 2019, the Member identified one of the account forms that are the subject of this Settlement Agreement during an onsite branch review. The Member subsequently commenced a review of all the client files serviced by the Respondent and identified the remaining account forms.

15. In May 2019, as part of its investigation, the Member contacted the affected clients by telephone to determine whether they had any unauthorized transactions in their accounts. No clients reported any concerns to the Member.

16. On March 21, 2019, the Member terminated the Respondent's registration.

Additional Factors

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

18. 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.

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

20. 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

9. A Hearing Panel has two options when considering a Settlement Agreement: to accept or reject it.

MFDA By-law No. 1, s.24.4.3

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

11. 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." [1999] I.D.A.C.D. No. 17 at page 12
>
> *Sterling Mutuals Inc. (Re)*, MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 3, 2008, at page 9

12. 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, para.31

13. 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

Appropriateness of the Proposed Penalty

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

> *Pezim v British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 at paras.59 & 68

15. 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 v British Columbia (Superintendent of Brokers), supra, at paras.59 & 68*

16. Hearing Panels have repeatedly expressed the view that generally, 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

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

a) the protection of the investing public;

b) the integrity of the securities markets;

c) specific and general deterrence;

d) the 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

18. The Hearing 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

Enhanced Penalty

19. Staff submitted that there was an additional factor for the Panel to take into account when considering the appropriateness of the proposed penalty: MFDA Bulletin #0661-E. That Bulletin, dated October 2, 2015, reminded Members and Approved Persons that "Signature Falsification" is not permissible under MFDA Rules. The Bulletin stated that Members and Approved Persons may only use forms that are properly executed by the client after information on the form has been properly completed. Examples of signature falsification listed in the Bulletin included but were not limited to: "cutting and pasting, photocopying or using correction fluid on a document to 're-use' a previous signature".

MFDA Bulletin #0661-E

20. The Bulletin confirmed that: "Any falsification is unacceptable whether or not it is done for the purposes of client convenience;".

21. It also advised Members and Approved Persons that Staff would be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the date the Bulletin was published - October 2, 2015.

Application in the present case

Seriousness of the allegations – nature of the misconduct: re-used client signatures

22. The Respondent photocopied signature pages from account forms that had been signed by clients and then re-used the signature pages to complete 14 additional forms in respect of 4 clients.

23. The authenticity of client signatures is one of the foundations upon which client trust is established and client instructions are carried out. The Panel agrees with Staff's submission that the replication of client signatures is a serious breach of MFDA Rule 2.1.1.

24. MFDA Rule 2.1.1 is a broad rule that sets out the standard of conduct to be followed by all Approved Persons. It is designed to protect the public interest by requiring Approved Persons to adhere to a high standard of ethical conduct. The Rule has been interpreted and applied in a purposive manner in a wide range of circumstances. As stated by the Hearing Panel in *Breckenridge (Re)*:

> The Rule articulates the most fundamental obligations of all registrants in the securities industry.
>
> *Breckenridge (Re), supra, at page 20*

25. Rule 2.1.1 requires that an Approved Person, among other things:

a) deal fairly, honestly, and in good faith with its clients;
b) observe high standards of ethics and conduct in the transaction of business; and
c) not engage in any business, conduct or practice which is unbecoming or detrimental to the public interest.

26. Although the terms "business, conduct or practice which is unbecoming"; "good faith"; and "high standards of ethics" are not defined in the MFDA Rules, the Courts have held that these are concepts which fall within a Hearing Panel's specialized knowledge. As stated by Cory, J. (as he then was) in *Re Milstein and Ontario College of Pharmacy et al (No. 2)*:

> One of the essential indicia of a self-governing profession is the power of self-discipline. That authority is embodied in the legislation pertaining to the profession. The power of self-discipline perpetuated in the enabling legislation must be based on the principle that members of the profession are uniquely and best qualified to establish the standards of professional conduct. Members of the profession can best determine whether the conduct of a fellow member has fallen below the requisite standards and determine the consequences. The peers of the professional person are deemed to have and, indeed, they must have special knowledge, training and skill that particularly adapts them to formulate their own professional standards and to

judge the conduct of a member of their profession. No other body could appreciate as well the problems and frustrations that beset a fellow member.

> *Re Milstein and Ontario College of Pharmacy et al. (No. 2) (1977), 13 O.R. (2d) 700 (Ont. Div. Ct.) at page 7 (Quicklaw), varied on other grounds 20 O.R. (2d) 283 (C.A.), leave to appeal to the SCC dismissed, [1992] SCCA No. 85*

27. Since October 31, 2007, the MFDA has made clear to Approved Persons in its Staff Notices and Bulletins, that possessing and using pre-signed and altered account forms is contrary to the obligations imposed by Rule 2.1.1.

> *Member Staff Notice 0066: Pre-Signed Forms, dated October 31, 2007 (updated March 4, 2013)*
>
> *MFDA Bulletin #0661-E: Signature Falsification, dated October 2, 2015*

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

> *Byce (Re), MFDA File No. 201311, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 4, 2013*
>
> *Price (Re), MFDA No. 200814, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 8, 2011*

29. Like pre-signed account forms, the prohibition against engaging in the type of misconduct to which the Respondent has admitted in this case, exists, regardless of the motive behind the conduct.

> *Member Staff Notice 0066: Pre-Signed Forms, dated October 31, 2007 (updated March 4, 2013)*
>
> *MFDA Bulletin #0661-E: Signature Falsification, dated October 2, 2015*

30. See, as well, the decision in *Leung (Re)* where the Panel approved a Settlement Agreement in which the Respondent admitted that the reason he falsified a client's signature on a Redemption Form was in order to avoid inconveniencing the client.

> *Leung (Re), MFDA File No. 201555, Hearing Panel of the Central Regional Council, Decision and Reasons dated January 25, 2016*

Post-Bulletin Conduct

31. All of the forms which were the subject matter of these proceedings were processed after the MFDA had issued Bulletin #0661-E on October 2, 2015. MFDA Hearing Panels have acknowledged this as an aggravating factor.

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

Respondent's Experience in the Securities Industry

32. Having been registered as a mutual fund dealing representative since August 2008, the Respondent was an experienced dealing representative who ought to have known and respected both the MFDA's and the Member's compliance requirements.

The Respondent's Past Conduct

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

The Respondent's Recognition of the Seriousness of his Misconduct

34. As Enforcement Counsel submitted, the Respondent has taken full responsibility for his conduct and has co-operated throughout this investigation on a prompt and complete basis. By entering into the Settlement Agreement, the Respondent has also saved the MFDA the time, resources and expenses associated with conducting a full hearing of the allegations.

35. The Respondent, in his oral submission before the Panel, expressed deep regret for his actions. He confirmed that he had no ill intention towards his clients or the Member and that the sole motive for his conduct was the convenience of his clients.

36. As MFDA Bulletin #0661-E and the cases cited above indicate, motive, including the desire to avoid inconveniencing clients, does not justify falsifying signatures. The Panel was satisfied, however, that the Respondent was sincere in expressing remorse and that he had no intention to cause his clients any harm; rather, he was acting in what he thought were his clients' best interests.

37. The Panel reminds Approved Persons and Members, however, that in order to act in their clients' best interests, Members and Approved Persons must comply with all of the Rules which are prescribed by the MFDA – those Rules having been put in place specifically and intentionally for the benefit and protection of the investing public.

Client Harm; Benefits Received by the Respondent

38. There is no evidence of client harm.

39. There is also no evidence that the Respondent received any financial benefit from engaging in the misconduct described in the Settlement Agreement.

Deterrence

40. In this case the Panel is satisfied that a fine of $12,500 is necessary and sufficient to achieve the goals of both specific and general deterrence. The penalty demonstrates that the Respondent's misconduct in all of the circumstances is serious and has significant consequences. It will deter others in the capital markets from engaging in similar activity.

Previous Decisions in Similar Cases

41. The Panel agrees with Enforcement Counsel's submission that the following cases were sufficiently similar for us to consider in determining the appropriateness of the penalty agreed upon by the parties.

CASE	**FACTS**	**OUTCOME**
Heide, MFDA File No. 2018122, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated April 15, 2019	• Respondent re-used client signatures on 20 forms • Post bulletin conduct	• Fine of $15,000 • Costs of $2,500
Yip, MFDA File No. 2017106, Hearing Panel of the Central Regional Council, Decision and Reasons dated July 20, 2018	• Respondent obtained, possessed, and in some instances, used 4 pre-signed forms • Respondent falsified 10 client signatures	• Fine of $12,500 • Costs of $2,500

CASE	FACTS	OUTCOME
Boucher, MFDA File No. 201744, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 8, 2017	• Respondent re-used client signatures on 2 forms • Respondent obtained, possessed, and in some instances, used 27 pre-signed forms • Respondent altered 3 account forms without having the clients initial the alterations	• Fine of $12,500 • Costs of $2,500

VI. CONCLUSION

42. Having reviewed the Settlement Agreement and having considered submissions from Enforcement Counsel and from the Respondent, 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.

43. The proposed penalty will deter the Respondent and other Approved Persons from engaging in the type of conduct that is the subject of these proceedings. It will advance the public interest as well as the MFDA's objective to enhance investor protection and ensure high standards of conduct in the mutual fund industry.

44. The Panel, therefore, accepts the Settlement Agreement.

DATED this 29th day of September, 2020.

"Sherri Walsh"
Sherri Walsh
Chair

"Danielle Tétrault"
Danielle Tétrault
Industry Representative

"Howard Mix"
Howard Mix
Industry Representative

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