



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

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

Re: Craig Richard MacDonald

Heard: October 7, 2015 in Winnipeg, Manitoba
Reasons for Decision: September 21, 2016

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Richard L. Yaffe
James Samanta
Greg Wiebe

Chair
Industry Representative
Industry Representative

Appearances:

David Babin)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Ian St. John (by)	Counsel for the Respondent, Craig Richard
teleconference))	MacDonald
)	
)	

1. By Notice of Hearing dated March 13, 2015 (“Notice of Hearing”), a Hearing Panel of the Prairie Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened in Winnipeg, Manitoba on October 7, 2015 to conduct a hearing on the merits pursuant to Sections 20 and 24 of MFDA By-law No. 1 in connection with a disciplinary proceeding against Craig Richard MacDonald (the “Respondent”).

2. The Notice of Hearing set out the following allegations:

Allegation #1: Between July 23, 2012 and April 12, 2013, the Respondent falsified the signature of client KH on two New Account Application Forms, a redemption form, and a letter of direction, which documents he used to process transactions in client KH’s account, thereby:

- (a) failing to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1; and
- (b) engaging in discretionary trading, contrary to MFDA Rule 2.3.1 and the terms of his registration as a dealing representative.

Allegation #2: In April 2013, the Respondent failed to comply with the Member’s policies and procedures, and instructions he received from the Member’s head office, regarding the requirements necessary to process a wire transfer request and protect against wire transfer fraud by third parties, contrary to MFDA Rules 1.1.2 and 2.5.1 and MFDA Rule 2.1.1.

3. The facts, in the form agreed upon by the parties pursuant to an agreed statement of facts dated September 29, 2015 (the “Agreed Statement of Facts”), are as follows:

Registration

- i) From June 12, 2000 to July 2, 2013, the Respondent was registered in Manitoba as a mutual fund salesperson (now known as a dealing representative) with Investors Group Financial Services Inc. (“Investors Group”), a Member of the MFDA. Investors Group terminated the Respondent as a result of the events described herein.

ii) At all material times, the Respondent operated from a branch in Minnedosa, Manitoba.

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

Background

(a) Account opening

iv) On May 17, 2012, the Respondent and KH met to discuss, in general terms, KH's investment goals and expectations. At that time, KH was not yet a client of Investors Group. According to the Respondent, KH did not sign any account opening documents at the May 17, 2013 meeting because KH indicated that she was not in possession of monies to invest at that time.

v) On July 4, 2012, while the Respondent was on holiday, he was notified that KH had dropped off a cheque for \$10,000 at an Investors Group branch located in Brandon, Manitoba. KH had not left any investment instructions when she dropped off her cheque. The Respondent states that he was unable to contact KH between July 4 and July 23, 2012 to seek instructions from her because either one or both of them were on vacation during this period.

vi) On July 23, 2012, after having held the cheque for 20 days, the Respondent completed two New Account Application Forms ("NAAFs") in KH's name in order to open an account for her and deposit the cheque. According to the Respondent, he populated the information on the NAAFs, including KH's risk tolerance, investment objectives and investment portfolio profile, based on his discussion with KH on May 17, 2012. The first NAAF the Respondent filled out was an out-of-date form from 2011 and was not used to process any transactions in KH's account. The second NAAF was the 2012 version of the form, which the Respondent used to open an account in KH's name, deposit KH's \$10,000 cheque and purchase two mutual funds using the proceeds of the cheque. The trades settled in client KH's account on August 2, 2012. The Respondent falsified KH's signature on the NAAF, using KH's signature as it appeared on her cheque as his guide for doing so.

vii) On August 5, 2012, (now) client KH emailed the Respondent to inquire if her monies had been deposited in her account. On August 7, 2012, the Respondent replied to client KH confirming that he had used her monies to purchase conservative to moderate mutual funds for her account. The Respondent subsequently reviewed the mutual funds

selected by the Respondent with client KH in September 2012 and client KH did not express any concerns.

(b) Redemptions

viii) In January 2013, due to concerns about wire transfer fraud, Investor's Group revised their policies and procedures regarding third party disbursements and email wire transfer requests. Among the changes made to the policies and procedures were the requirements that wire requests to third parties be authorized by client signatures on the investment instructions, and that email requests would not be accepted unless an Approved Person confirmed in writing that they had validated the email request with the client either by phone or in person.

ix) On April 8, 2013, the Respondent received a series of emails which appeared to be coming from client KH's email account stating that she required an urgent redemption of \$8,220. The emails stated that client KH was out of town at a family funeral and was unable to attend at her bank to facilitate a wire transfer to her bank account. The emails provided wire transfer information for what was represented to be an account belonging to client KH's brother at a different bank.

x) The Respondent did not initially question the request because it was customary for him to communicate with client KH by email. Unbeknownst to the Respondent, client KH's email had been hacked by a third party who was passing him or herself off as client KH.

xi) The Respondent contacted Investors Group's head office to determine what steps were necessary to facilitate the requested transaction. Investors Group head office staff informed the Respondent that, due to its concerns about wire fraud cases, Investors Group's had implemented the above noted revisions to its policies and procedures regarding the type of transaction that the Respondent had inquired about.

xii) On April 9, 2013, notwithstanding the directions received from Investors Group's head office, the Respondent falsified client KH's signature on a redemption form to give effect to the redemption request he believed he had received from client KH and also falsely recorded that he had confirmed the transaction with client KH in person.

xiii) On April 12, 2013, the Respondent falsified client KH's signature on a letter of direction forwarded to him by the individual impersonating client KH through her email account.

xiv) At no time did the Respondent speak with client KH by phone or in person to confirm the transaction. On April 15, 2013, relying on the Respondent's representation that he had confirmed the transaction with client KH, Investors Group wired the redemption proceeds of \$8,220 from client KH's account to the third party bank account.

xv) On April 25, 2013, the Respondent received a further email from client KH's email account asking for the balance of the monies in client KH's account at Investors Group to be wired to a bank account in the United States. On this occasion, the Respondent refused to wire the monies to the requested account, and instead electronically transferred the monies to client KH's bank account that was on file with Investors Group. The Respondent then called client KH at home to inquire about the two transfers. The Respondent spoke directly with client KH, who informed him that she had not requested either redemption and she did not have a family emergency. The Respondent immediately informed Investor's Group that KH's email had been hacked and that he had processed the redemption of \$8,220 from client KH's account.

xvi) Upon being notified that client KH's email account had been hacked and the fraudulent redemption had taken place, Investors Group contacted client KH, obtained her client file and interviewed the Respondent. They also reviewed the Respondent's client files to determine if the Respondent had falsified any other client signatures.

xvii) Investor's Group subsequently sent letters to all of the Respondent's clients to determine if there were any other clients affected by his actions, or any additional clients for whom the Respondent falsified signatures. No additional concerns or additional further falsified signatures were identified.

xviii) Investor's Group reimbursed client KH a total of \$8,396.59 as repayment for the fraudulent redemption from her account.

Misconduct Admitted

Allegation #1 – Falsified Signatures for Client KH's account and Discretionary Trading

xix) By falsifying the signature of client KH on two NAAFs, a redemption form, and a letter of direction to process transactions in client KH's account, the Respondent failed to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rules 2.1.1.

xx) By processing purchases and redemptions of mutual funds in client KH's account without receiving instructions from client KH with respect to the names and amounts of

the specific mutual funds to be purchased and redeemed, the Respondent engaged in discretionary trading, contrary to MFDA Rule 2.3.1 and the terms of his registration as a dealing representative.

Allegation #2 – Failing to Comply with Member’s Requirements for Wire Transfers

xxi) By falsifying the signature of client KH on a redemption form and a letter of direction in order to give effect to a redemption request, and falsely recording that he had confirmed the transaction with client KH in person, the Respondent failed to comply with the Member’s policies and procedures, and instructions he received from the Member’s head office, regarding the requirements necessary to process a wire transfer request and protect against wire transfer fraud by third parties, contrary to MFDA Rules 1.1.2 and 2.5.1 and MFDA Rule 2.1.1.

4. The Respondent admits the facts as set out in paragraph 3 above and in the Agreed Statement of Facts, and the Respondent admits that the facts as set out in paragraph 3 above and in the Agreed Statement of Facts constitute misconduct for which the Respondent may be penalized on the exercise of the discretion of the Hearing Panel pursuant to section 24.1 of MFDA By-law No. 1.

5. MFDA Staff submits, and the Respondent does not oppose, that the appropriate penalty to impose on the Respondent is a fine of \$10,000, a suspension of the Respondent from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of one year, commencing from the date of the Hearing Panel’s Order, and costs of \$2,500 pursuant to section 25.1.1(b), section 24.1.1(e) and section 24.2 of MFDA By-law No. 1.

6. The Respondent claims to be impecunious and unable to pay any amount toward either a fine or costs.

7. As pointed out by Enforcement Counsel, this Hearing is not a typical hearing on the merits and the nature of this Hearing is in certain ways analogous to a settlement hearing, although in the present case the Hearing Panel has the authority to impose any penalties it considers appropriate in the circumstances pursuant to section 24 of MFDA By-law No. 1.

8. Enforcement Counsel cited and summarized the well-known cases of prior MFDA hearing panels which confirm that the primary goal of securities regulation is investor protection¹ and the fostering of public confidence in the capital markets and the securities industry². He emphasized that sanctions are intended to be forward-looking and that because MFDA Staff and the Respondent are making a joint submission on penalty, the Hearing Panel should refrain from interfering with the joint recommendation unless the recommended penalty is seen to be “manifestly unfit in the circumstances”³.

9. Enforcement Counsel also and cited and summarized the usual authorities regarding the factors to be considered in determining whether proposed penalties are appropriate, and also reviewed the relevant MFDA penalty guidelines, all of which are set out in detail in MFDA Staff’s submissions.⁴

10. The Hearing Panel accepts Enforcement Counsel’s submission that in applying the various penalty guidelines to the present case, certain of the facts tend to be mitigating. Specifically, the Respondent has no prior history of contravention. Further, we are told that the Respondent has recognized the seriousness of his actions, has expressed remorse for his actions, has received no benefit as a result of his misconduct, does not pose a risk to the securities industry or to the investing public, and may actually have believed he was acting in the best of interests of the client.

11. However, the aggravating factors in this case, as summarized by Enforcement Counsel and as set out in the Agreed Statement of Facts, are considerable. They include the gravity of the contraventions by the Respondent and the resulting monetary loss experienced by the client.

¹ *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007.

² *Pezim*, *supra*, at para. 8.

³ *McAuley (Re)*, MFDA File No. 201018, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 11, 2011.

⁴ *Breckenridge (Re)*, *supra*, at para. 8

12. We believe that the falsification of a client's signature by a registered person (or by any person) is an egregious act. This is exacerbated by the Respondent's apparent disregard for the trading guidelines imposed by Investors Group, and his decision to affect a trade manifestly in contravention of those guidelines. The failure by the Respondent to exercise good judgement is, in our opinion, extreme. The Hearing Panel accepts Enforcement Counsel's submission with respect to the gravity of the misconduct in Allegation #1; the signature falsification by the Respondent was of a particularly serious nature because there was no client knowledge of the discretionary trading, the client experienced loss, and the documents on which the signature was falsified were trade-related documents. The Hearing Panel also accepts Enforcement Counsel's submission with respect to the seriousness of the misconduct in Allegation #2.

13. Enforcement Counsel reiterated that the penalties in the present case must offer both specific and general deterrence, with an emphasis on general deterrence with respect to the contravening actions. We agree.

14. In response to a question from the Hearing Panel, Enforcement counsel submitted that it would not be appropriate in this case to aggregate the recommended penalties as per the MFDA Penalty Guidelines for each of the contraventions, as the actions of the Respondent were "interwoven". We accept this submission of Enforcement Counsel, on the basis that the recommended penalty is not "manifestly unfit".

DISPOSITION

15. The Hearing Panel accepts the penalty recommendations of MFDA Staff, which the Respondent does not oppose. However, the Hearing Panel is of the view that, although the recommended penalties are not "manifestly unfit", the gravity of the Respondent's actions are such that it is appropriate to modify the recommended sanctions to include a requirement that the Respondent successfully complete a course in ethics prior to becoming an Approved Person of an MFDA Member.

IT IS HEREBY ORDERED THAT:

16. If at any time a non-party to this proceeding requests production of, or access to, any material filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*;

17. The Respondent shall be suspended from conducting securities related business in any capacity while in the employ of, or in association with, any MFDA Member for a period of one (1) year, pursuant to Section 224.1(e) of MFDA By-law No. 1;

18. The Respondent shall pay a fine of \$10,000.00 pursuant to Section 24.1.1(b) of MFDA By-law No. 1;

19. In the event that the Respondent seeks to become an Approved Person of a MFDA Member, the Respondent shall successfully complete an ethics course prior to becoming an Approved person, pursuant to Section 24.1.1(f) of MFDA By-law No. 1; and

20. The Respondent shall pay costs of \$2,500.00 pursuant to Section 24.2 of MFDA By-law No. 1.

DATED this 21st day of September, 2016.

“Richard L. Yaffe”

Richard L. Yaffe
Chair

“James Samanta”

James Samanta
Industry Representative

“Greg Wiebe”

Greg Wiebe
Industry Representative

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