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: Liliana Teresa Marin

Heard: April 6, 2022 by electronic hearing in Toronto, Ontario
Decision: April 6, 2022
Reasons for Decision: June 7, 2022

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Joan Smart	Chair
Cheryl Hamilton	Industry Representative
Joseph Yassi	Industry Representative

Appearances:

Sarah Glickman	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Steven Broadley	)	Counsel for Respondent
Liliana Teresa Marin	)	Respondent

I. INTRODUCTION

1. On March 17, 2021, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing against Liliana Teresa Marin (the "Respondent"). After several appearances, the matter was scheduled for a hearing on the merits on April 5 and 6, 2022.

2. On April 5, 2022 the MFDA announced that it would hold an electronic hearing by videoconference (the "Settlement Hearing") on April 6, 2022, before a hearing panel of the Central Regional Council of the MFDA (the "Hearing Panel") in respect of the settlement agreement (the "Settlement Agreement") entered into between Staff of the MFDA ("Staff") and the Respondent.

3. At the Settlement Hearing on April 6, 2022, after hearing the submissions of counsel for the MFDA and the Respondent and considering the Settlement Agreement, the Hearing Panel decided to accept it. These are our reasons for that decision.

II. CONTRAVENTIONS

4. The Respondent admitted that between January 2016 and November 2019, she engaged in personal financial dealings with a client by depositing cheques from the client into a bank account that she could access or control and paid the proceeds of those cheques to the client or to third parties on behalf of the client in accordance with the client's directions, thereby engaging in conduct which gave rise to a conflict or potential conflict of interest that the Respondent failed to disclose to the Member or otherwise ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 1.1.2, 2.5.1, and 2.1.1.

III. TERMS OF SETTLEMENT

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

a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for one year, pursuant to s. 24.1.1(e) of MFDA By-law. No. 1;

b) the Respondent shall pay a fine to the MFDA of $10,000 upon acceptance of the Settlement Agreement pursuant to s. 24.1.1(b) of MFDA By-law No. 1, with $2,500

in certified funds to be paid on the date the Settlement Agreement is accepted by an MFDA Hearing Panel and $1,875 to be paid on or before the last days of each of May, June, July and August 2022; and

c) the Respondent shall pay costs to the MFDA of $7,500 in certified funds on the date when the Settlement Agreement is accepted by an MFDA Hearing Panel, pursuant to s. 24.2 of MFDA By-law No. 1.

IV. AGREED FACTS

Registration History

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

7. From September 1, 2006 to November 4, 2016 in Ontario, and from September 1, 2006 to February 11, 2016 in British Columbia, the Respondent was registered as a dealing representative with FundEX Investments Inc. ("FundEX"), a Member of the MFDA.

8. From November 7, 2016 in Ontario, and April 18, 2019 in British Columbia, to March 31, 2022, the Respondent was registered as a dealing representative with Monarch Wealth Corporation ("Monarch"), a Member of the MFDA. The Respondent resigned from Monarch effective March 31, 2022.

Members' Policies and Procedures

9. At all material times, FundEX and Monarch had policies and procedures that required its Approved Persons to immediately disclose to the Member if they became aware of any conflicts or potential conflicts of interest between an Approved Person and a client of the Member. They also noted that any conflict or potential conflict must be disclosed in writing to the client and addressed by the exercise of reasonable business judgment influenced only by the best interest of the client.

10. Monarch's policies and procedures expressly provided the example of commingling of client and Approved Person monies as conduct that could give rise to a conflict of interest.

The Respondent's Tax Preparation Business and Joint Bank Account

11. At all material times, the Respondent operated ML Tax and Financial Services ("MLTF"), together with her spouse, MN, who is now deceased. MN was not a registrant in the securities industry. MLTF was a partnership between the Respondent and MN.

12. MLTF was a business that offered tax preparation services, including preparing tax returns, and payroll and HST calculations for individuals and small businesses. MLTF also offered to negotiate payment arrangements with the Canada Revenue Agency (the "CRA").

13. At all material times, the Respondent and MN jointly owned, operated and controlled a bank account they used primarily for business transactions relating to the MLTF business (the "MLTF Bank Account").

Client GL

14. Commencing in 2005, client GL ("GL") became a client of FundEX. The Respondent was responsible for servicing GL's registered retirement savings plan ("RRSP") account at FundEX. In 2016, after the Respondent transferred her registration from FundEX to Monarch, GL became a client of Monarch, where the Respondent continued to service her account.

15. In 2015, the Respondent also began providing tax preparation services to GL through MLTF, which included preparing and filing tax returns on behalf of GL.

The Respondent Deposits Cheques Payable to GL into MLTF's Bank Account

16. GL ran a cleaning business and regularly received payment for services by cheque. Prior to 2016, GL typically deposited her pay cheques into a bank account.

17. In or about October 2015, the CRA began garnishing money that was deposited into GL's personal bank account to address GL's outstanding tax liability (for unpaid personal income tax and HST). GL retained MLTF to try to negotiate a payment arrangement with CRA.

18. In or about February 2016, GL's bank account was closed. GL did not open another bank account until March 2019.

19. In or about January 2016, the Respondent and MN agreed to deposit cheques payable to GL that GL received from her cleaning business into the MLTF Bank Account and to distribute the monies from these deposits in accordance with GL's directions.

20. The Respondent stated that in most cases GL endorsed the cheques she delivered to the Respondent or MN and then the Respondent or MN deposited the cheques into the MLTF Bank Account in the presence of GL, who would sign her name on the withdrawal slip to indicate she was aware of how the proceeds of the deposits would be disbursed, including any cash remittance.

21. There was no evidence that the Respondent misappropriated any of the monies from the proceeds of the cheques, nor has GL alleged that any of the monies were unaccounted for.

22. The Respondent stated that she and MN disbursed the proceeds from the cheques they received from GL and deposited into the MLTF Bank Account in accordance with GL's instructions, including as follows:

a) they made payments to the CRA on GL's behalf to gradually pay down GL's outstanding tax liability;
b) they provided cash remittances to GL so she could meet her day to day expenses; and
c) on two occasions, they purchased bank drafts to facilitate contributions and investment purchases in GL's RRSP account at Monarch.

23. By depositing cheques she received from GL into the MLTF Bank Account, the Respondent commingled monies received on behalf of GL and held for the benefit of GL with monies owned or controlled by the Respondent and MN.

24. Between January 2016 and November 2019, the Respondent and MN accepted from GL approximately 181 cheques payable to GL totaling approximately $100,300 and deposited those cheques into the MLTF Bank Account. The money received from GL was subsequently returned to GL in cash or applied to payments for GL's benefit and pursuant to GL's directions.

The Respondent Did Not Disclose Commingling of Monies to the Members

25. Commencing in January 2016, the Respondent engaged in personal financial dealings with GL by accepting cheques from GL payable to GL and depositing those cheques into the MLTF Bank Account and making payments to GL or on GL's behalf as described above. Such personal financial dealings between the Respondent and GL gave rise to a conflict of interest. The Respondent did not disclose to FundEX that she was engaging in personal financial dealings with GL.

26. The Respondent continued to engage in personal financial dealings with GL after she became an Approved Person of Monarch in November 2016. The Respondent did not disclose to Monarch that she was engaging in personal financial dealings with GL.

27. The Respondent admitted that she was required to disclose to FundEX and subsequently to Monarch that she was engaged in personal financial dealings with GL that gave rise to a conflict of interest so that FundEX and Monarch could ensure that the conflict of interest was addressed by the exercise of responsible business judgment influenced only by the best interests of the client.

Monarch Discovered the Respondent Was Engaged in Personal Financial Dealings With GL

28. On February 22, 2019, the Respondent submitted to Monarch a $500 bank draft (the "2019 Bank Draft") and the required paperwork to purchase units of a mutual fund in GL's RRSP account (the "2019 RRSP Contribution").

29. Monarch's trade desk received an error message from the mutual fund company after submitting the 2019 Bank Draft and paperwork to process the 2019 RRSP Contribution in GL's account. The mutual fund company informed Monarch that the order was on hold because the mutual fund company had received a copy of a "Requirement to Pay" notice from the CRA that required the mutual fund company to pay to the CRA any monies it was holding for GL.

30. The Respondent's branch manager asked the Respondent to explain the source of the 2019 Bank Draft. She informed the branch manager that the source of the monies were cheques payable to GL that were deposited into the MLTF Bank Account. Thereafter, the branch manager referred the matter to Monarch's compliance department and Monarch commenced an investigation.

31. Monarch's investigation revealed that in addition to the 2019 Bank Draft, in February 2018, the Respondent had purchased a bank draft payable to Monarch in the amount of $600 (the "2018 Bank Draft") that was applied to the purchase of mutual fund units in GL's RRSP account at Monarch (the "2018 RRSP Contribution"). The Respondent informed Monarch that the source of the monies used to fund the 2018 Bank Draft was a cheque payable to GL that was deposited into the MLTF Bank Account.

32. The Respondent did not disclose to Monarch that since January 2016 she had been routinely accepting cheques from GL payable to GL and depositing the cheques into the MLTF Bank Account.

33. On or about July 9, 2019, Monarch met with the Respondent and issued a letter to her setting out the findings of its investigation and the disciplinary action it intended to take to address the Respondent's conduct (the "July 2, 2019 Letter"). The July 2, 2019 Letter stated that the Respondent was prohibited from accepting cheques endorsed to her from mutual fund clients.

34. Between July 2, 2019 and November 2019, the Respondent and MN accepted at least seven additional cheques from GL and deposited the cheques into the MLTF Bank Account.

35. On December 11, 2019, the Respondent attended an interview with Staff to give information relevant to Staff's investigation into her conduct. The Respondent informed Staff that she had been routinely accepting cheques from GL and depositing them into the MLTF Bank Account since January 2016. The full duration and extent of the Respondent's personal financial dealings with GL came to light for the first time during that interview.

Additional Factors

36. GL did not complain about the Respondent's conduct as described above.

37. Staff is not aware of any evidence that indicates that the Respondent failed on any occasion to distribute monies received from GL in accordance with GL's instructions.

38. The Respondent is 66 years old.

39. The Respondent stated that she accepted cheques from GL, deposited the cheques into the MLTF Bank Account and disbursed the proceeds from those cheques in accordance with GL's instructions to enable GL to make payments owing to CRA and pay her other living expenses without having all of her income garnished.

40. The Respondent stated that she mistakenly believed she was not required to inform FundEX or Monarch that she was depositing cheques from GL into the MLTF Bank Account because her personal financial dealings with GL arose during the course of providing tax services to GL. The Respondent acknowledged she now understands that all personal financial dealings between an Approved Person and a client must be disclosed to the Member.

41. After its investigation, Monarch imposed the following discipline on the Respondent:

a) a requirement to complete the CSI's IFSE 90 day training course course;
b) a requirement to complete Monarch's anti-money laundering course;

c) a 60 day suspension between August 1, 2019 and September 30, 2019 (the "Suspension Period");

d) a deduction of 50% of the commission income the Respondent would have otherwise earned during the Suspension Period, which totaled $5,066.45; and

e) a requirement to submit to 6 months of close supervision by Monarch compliance staff and pay $1,000 per month during that period to cover the Member's costs of heightened supervision.

V. CONSIDERATIONS

Role of the Hearing Panel

42. Pursuant to s. 24.4.3 of MFDA By-law No. 1, a hearing panel may only accept or reject a settlement agreement. It cannot substitute its own decision.

43. It is generally accepted that a hearing panel will not lightly interfere with a settlement agreement reached between Staff and a respondent and will not reject it unless it views the penalty as clearly falling outside a reasonable range of appropriateness. See, for example, *Sterling Mutuals Inc. (Re),* LNCMFDA 16 at para. 37. A hearing panel should be reluctant to interfere with a settlement given that it is generally not aware of all of the facts and motivations that led to the settlement and what may have been given up by the parties to resolve the matter. This is particularly so in cases such as this where the Respondent is represented by counsel.

44. In determining whether to accept the Settlement Agreement, the Hearing Panel considered primarily whether it: was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's misconduct and previous MFDA cases; would serve as a specific and general deterrent; and was aligned with the MFDA's regulatory objectives to protect investors and strengthen public confidence in the mutual fund industry.

Misconduct

45. MFDA Rule 2.1.1 requires that Approved Persons 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.

46. Pursuant to MFDA Rule 2.1.4 (as it was in effect at the relevant time), where an Approved Person becomes aware of any conflict or potential conflict of interest between the interests of the Approved Person and a client, the Approved Person must immediately disclose that conflict to his or her member firm and the Approved Person and Member must address all such conflicts by the exercise of reasonable business judgment influenced only by the best interest of the client.

47. In this case, as admitted by the Respondent, she engaged in personal financial dealings with GL when she deposited GL's money into an account the Respondent could access or control thus giving rise to a conflict or potential conflict of interest.

48. Depositing a client's monies in an Approved Person's account can clearly put the client's funds at risk, including through potentially limiting the client's access to the funds in various circumstances or more seriously leading to the funds being misappropriated. We note that those potential concerns did not in fact arise in this case.

49. The Respondent failed to disclose the conflict to her Member firms as required by MFDA Rule 2.1.4. That precluded the Members from supervising the activity and being able to ensure that the conflict was disclosed to GL and addressed through the exercise of reasonable business judgment influenced only by the best interests of the client.

50. In our view, it was also inconsistent with the standard of conduct set out in MFDA Rule 2.1.1 for the Respondent to place client funds in an account owned, controlled or accessible by her and fail to comply with her Member firm's policies.

51. The seriousness of the misconduct was aggravated by several factors:

a) the misconduct was not an isolated incident, but rather involved approximately 181 cheques totalling over $100,000 over a period of almost four years;
b) the Respondent was not entirely forthcoming about her personal financial dealings with GL when questioned by Monarch in 2019; and
c) after Monarch provided the Respondent with the July 2, 2019 Letter,

informing her that she was prohibited from accepting cheques endorsed to her from mutual fund clients, she accepted cheques from GL on seven further occasions. This fact was of particular concern to us as it indicated an intentional disregard of compliance requirements.

Penalty

52. In our view, the seriousness of the misconduct warranted a significant sanction.

53. In determining the sanction, we considered the following as mitigating factors:

a) the Respondent stated that her intention was to help GL and there was no evidence to the contrary;

b) GL did not complain about the conduct;

c) the Respondent has not previously been the subject of disciplinary proceedings; and

d) Monarch had previously taken disciplinary action against the Respondent.

54. The proposed penalty is within a reasonable range of appropriateness, having regard to previous MFDA cases summarized below involving Approved Persons depositing client funds in their personal accounts.

CASE	MISCONDUCT	PENALTIES
Wang, (Re), [2017] Hearing Panel of the Pacific Regional Council, MFDA File No. 201762, Reasons for Decision dated October 2, 2017	The Respondent: • accepted $15,000 cash from client PL, and deposited the monies into her own bank account prior to transferring the monies to the client PL's bank account, thereby engaging in personal financial dealings with a client; • deposited $15,000 cash from client PL into her own bank account in two transactions, thereby circumvented the large cash transaction reporting requirements to the Financial Transactions and Report Analysis Centre of Canada; and • falsely represented to the Member that she had returned $15,000 received from client PL when she had in fact deposited the monies into her own bank account, thereby misleading the Member and interfering with its ability to supervise her conduct. <u>Additional facts</u> • No evidence of client loss	**Settlement Hearing:** • 6 month prohibition • Fine of $20,000 • Costs of $5,000
Loyola, (Re), [2021], Hearing Panel of the Prairie Regional Council, MFDA File No. 202063, Reasons for Decision dated August 30, 2021	The Respondent: • engaged in personal financial dealings with a client when he deposited $27,604 from the proceeds of redemptions into his bank account; and • failed to co-operate with an investigation by MFDA Staff into his conduct. <u>Additional facts</u> • Client complaint	**Uncontested Hearing:** • Permanent prohibition • Fine of $60,000 • Costs of $5,000

CASE	MISCONDUCT	PENALTIES
Alam (Re), [2020] Hearing Panel of the Central Regional Council, MFDA File No. 202016, Reasons for Decision dated July 24, 2020	The Respondent: • borrowed $15,000 from a client; and • engaged in a transaction with a client whereby the client paid $17,000 to the Respondent and at approximately the same time a third party paid the equivalent of $17,000 CAD to the client's brother outside Canada. <u>Additional facts</u> • The Respondent repaid the client with interest. • No client complaint	**Settlement Hearing:** • 6 month prohibition • Fine of $7,500 • Costs of $3,750

55. While we concluded that the proposed sanction was within a reasonable range of appropriateness, we are of the view that the sanction, particularly the length of the suspension, is at the very high end of the range, and would be concerned about it setting the bar for penalties in future cases.

56. The sanction in this case should deter the Respondent from engaging in similar misconduct in the future. It should also act as a general deterrent by sending a message that commingling client funds with those of an Approved Person is not acceptable even if done with the intention of assisting the client in a difficult situation.

VI. CONCLUSION

57. We concluded that the proposed sanction was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's conduct and previous MFDA cases. It should serve as a specific and general deterrent. We were also of the view that it is aligned with the MFDA's regulatory objectives. Accordingly, we decided to accept the Settlement Agreement.

DATED this 7th day of June, 2022.

"Joan Smart"

Joan Smart
Chair

"Cheryl Hamilton"

Cheryl Hamilton
Industry Representative

"Joseph Yassi"

Joseph Yassi
Industry Representative

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