



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: Jason Martineau

Heard: May 11, 2021 by electronic hearing in Toronto, Ontario

Decision: May 11, 2021

Reasons for Decision: October 6, 2021

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

John Lorn McDougall, Q.C.
Samuel Mah
Eugene Park

Chair
Industry Representative
Industry Representative

Appearances:

David Barbaree)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Geoff Jefferies)	Counsel for the Respondent
)	
)	
Jason Martineau)	Respondent
)	
)	

I. INTRODUCTION

1. This is a Settlement Hearing pursuant to Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”) announced by MFDA news release (the “News Release”) dated May 6, 2021, that a hearing panel of the Central Regional Council (The “Hearing Panel”) of the MFDA on May 11, 2021 should accept the settlement agreement dated May 3, 2021 (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and Jason Martineau (the “Respondent”).

2. The News Release sets out the following allegations that the Respondent:

- a) between May 4, 2018 and June 28, 2018, signed the signature of a client on 3 forms and submitted them to the Member for processing, contrary to MFDA Rule 2.1.1;
- b) between May 4, 2018 and June 28, 2018, altered or completed 4 forms without the client’s knowledge or authorization, and submitted the forms to the Member for processing, contrary to MFDA Rule 2.1.1;
- c) commencing on April 30, 2018, failed to inform or misled a client about the circumstances of the transfer of the commuted value of her pension to the Member, contrary to MFDA Rule 2.1.1; and
- d) commencing June 27, 2018, made false or misleading statements to the Member and MFDA Staff during the course of investigations into his conduct, contrary to MFDA Rule 2.1.1.

3. In Part V of the Settlement Agreement at paragraph 44, the Respondent admits to allegations (a), (b), (c), and (d) as set out in paragraph 2 above.

4. Further, as set out in paragraph 45 of the Settlement Agreement, the Respondent agreed to the following penalties and terms:

The Respondent agrees 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 a period of 2 years from the date that this Settlement Agreement is accepted by a Hearing Panel, pursuant to section 24.1.1(e) of the MFDA By-law No.1;
- b) the Respondent shall pay a fine in the amount of \$17,500, pursuant to section 24.1.1(b) of MFDA By-law No. 1;

- c) the Respondent shall pay costs to the MFDA in the amount of \$2,500, pursuant to section 24.2 of MFDA By-law No. 1;
- d) The payment by the Respondent of the fine and costs shall be made and received by MFDA staff in certified funds as follows:
 - i. \$10,000 upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$2,000 on or before July 1, 2021;
 - iii. \$2,000 on or before September 1, 2021;
 - iv. \$2,000 on or before November 1, 2021;
 - v. \$2,000 on or before January 1, 2022; and
 - vi. \$2,000 on or before March 1, 2022;
- e) if the Respondent becomes registered again in the future, he shall comply with MFDA Rule 2.1.1; and
- f) the Respondent will attend in person or participate by teleconference on the date set for the Settlement Hearing.

II. SETTLEMENT AGREEMENT AND AGREED FACTS

5. The additional portions of the Settlement Agreement which are pertinent to these reasons (the whole of which is appended) are contained in Part IV Agreed Facts and are reproduced below:

Registration History

- 6. Commencing in 2009, the Respondent was registered in the securities industry.
- 7. From February 23, 2011 to September 5, 2018, the Respondent was registered in Ontario as a dealing representative with Scotia Securities Inc. (the “Member”), a Member of the MFDA.
- 8. On September 5, 2018, the Member terminated the Respondent’s employment for the conduct described herein.
- 9. At all material times, the Respondent carried on business at a branch of the Member located in Sudbury, Ontario (the “Sudbury Branch”).

The Respondent Signed a Client’s Signature and Altered or Completed Pension Transfer Forms

- 10. On January 25, 2018, the Respondent met with client HE at the Sudbury Branch. Client HE informed the Respondent that she wished to transfer the commuted value of her pension to a registered retirement savings plan (“RRSP”) with the Member. The

Respondent reviewed and completed with client HE four forms to facilitate the transfer of her pension monies (collectively, the Transfer Forms).

11. Pursuant to the Transfer Forms, client HE elected to transfer the total value of her pension plan, namely \$16,227.57, to an RRSP with the Member with the Respondent as the Approved Person servicing her account.

12. At the January 25 meeting, the Respondent told client HE that it would take approximately 6 to 8 weeks for her pension plan monies to transfer to her RRSP at the Member. However, the Respondent did not submit the Transfer Forms to the Member for processing for more than three months and only after client HE inquired about the delay.

13. On April 23, 2018, client HE contacted the Respondent and inquired about the status of the transfer of her pension monies as the investments had not been received by the Member within the time period that the Respondent had estimated.

14. On April 28, 2018, the Respondent submitted the Transfer Forms to the Member for processing.

15. On April 30, 2018, the Respondent replied to client HE, stating “Money is on route from what I was told. Once it gets here I will let you know. Apparently there was some kind of delay, however I do not know what it was, this happens sometimes in the financial world when transferring funds from one place to another, companies do not like to let the money go.”

16. On May 4, 2018, the Member sent a rejection notice to the Respondent and directed him to complete two of the Transfer Forms, namely the Spousal and Beneficiary Designation Form and the Request for a Transfer From a Registered Pension Plan form.

17. The Respondent did not contact client HE to advise her that the Transfer Forms had been rejected by the Member or that the transfer of her pension monies was delayed.

18. On or about May 4, 2018, without client HE’s knowledge or authorization, the Respondent:

a. completed the Spousal and Beneficiary Designation form by inputting into the form client HE’s name, telephone number, email address, social insurance number, and named her spouse, TE, as the spouse entitled to receive survivor benefits, and signed client HE’s signature on the form;

b. added information into Section 3C and Section 5 of the Request for Transfer From a Registered Pension Plan form by inputting the name of the Member’s affiliate bank that was to receive the excess amount of the transfer monies to be paid as an RRSP contribution, which had previously been left blank, and signed client HE’s signature on the form; and

c. resubmitted the two forms described above to the Member for processing.

19. On June 1, 2018, the Member sent a rejection notice to the Respondent and advised that an option had to be selected for the amount over the maximum limit permitted under the *Income Tax Act*. This notice advised the Respondent that client HE was not eligible to

transfer the full value of her pension to her RRSP with the Member. The Respondent did not contact client HE to inform her that she was not eligible to transfer the full value of her pension to her RRSP.

20. In response to the rejection notice, on or about June 7, 2018, without client HE's knowledge or authorization, the Respondent altered or completed two of the Transfer Forms. More particularly, the Respondent:

- a. altered the Termination Benefit Election form by changing the election client HE had chosen on January 25, 2018 so that it appeared that client HE had elected to have \$9,125.46 transferred to her RRSP and the remaining \$7,102.11, less applicable withholding taxes, deposited into her bank account; and
- b. completed the Request for Direct Deposit form without client HE's knowledge or authorization by inputting information about her bank account into the form, and signed client HE's signature.

21. On June 11, 2018, client HE wrote to the Respondent about the delay in receiving her pension monies, noting that she had not heard from him in about a month. She asked: "Was there anything else that was outstanding that would delay this even further? It's going on 5 months now. Should I be calling them myself and asking for an update?"

22. On June 11, 2018, the Respondent replied to client HE, stating, "I am expecting your money in the next 2 weeks, we have been having issues with the transfers this year and especially from employers like yourself [*sic*]."

23. On June 20, 2018, client HE emailed the Respondent and asked him to provide documentation relating to the delay. She also asked him to confirm that her pension monies would not be taxed.

24. On that same date, the Respondent sent an email to client HE stating, "[u]nder pension legislation according to your documents, you will receive a portion into your RRSP, the rest has to be taken in cash, in which you will be taxed." The Respondent further indicated that he had sent in the forms requesting that all client HE's funds go into her RRSP, "but it got rejected so I had to send it back as 2 parts". This was the first time that the Respondent informed client HE that the documentation to transfer her pension to the Member had been changed after she signed it on January 25, 2018.

25. On that same date, client HE asked the Respondent to send her "the rejection letter requesting it all to be into an RRSP ... I do not want anything deposited into our bank account ... I would like an explanation as to why it was rejected".

26. On that same date, the Respondent replied to client HE by email, stating, "Sorry I got busy, can you remind me of this tomorrow[.] I will have to look through my emails to send it to you."

27. The Respondent did not provide client HE with the explanation she had requested about why her application had been rejected, and on or about June 28, 2018, he submitted the altered forms described in paragraph 20 to the Member in order to process the transfer

of a portion of the value of her pension to an RRSP at the Member with the remainder, less applicable withholding taxes, deposited into client HE's bank account.

The Respondent Failed to Inform or Misled Client HE

28. As described above at paragraphs 13, 21, 23 and 25, client HE contacted the Respondent on a number of occasions to inquire about the status of the transfer of her pension monies or to obtain an explanation of the reasons the full amount of her pension could not be transferred to her RRSP.

29. As described above at paragraphs 15, 22, 24 and 26, the Respondent failed to accurately inform her of the reason for the delay of the transfer, namely that the Respondent failed to complete the Transfer Forms in the manner required to facilitate the transfer of her pension monies to the Member. In addition, the Respondent did not provide client HE with the explanation she had requested about why her application had been rejected, namely, that she was not eligible to transfer the full amount of her pension to an RRSP. Moreover, the Respondent made misleading statements to client HE that he knew or ought to have known were not the cause of the delay, including blaming third parties such as client HE's former employer.

Client HE's Complaint to the Member

30. On June 22, 2018, client HE called the Respondent's branch manager to complain about the delays in the transfer of her pension. She also complained that she had received an email from the Respondent informing her that a portion of her pension would be direct deposited into her bank account, which, she informed the branch manager, was not what she had signed for or consented to in January 2018.

31. Client HE informed the Member that she had planned to use the monies from her pension plan to purchase her first home. Because of the Respondent's delay and misleading statements, client HE's purchase of her first home was delayed and she missed out on several opportunities during the period of delay.

32. The Member paid client HE \$200 for lost interest that she incurred as a result of the delay caused by the Respondent.

The Respondent Made False and Misleading Statements to the Member

33. On June 22, 2018, the Respondent was not in the Sudbury Branch. After receiving the complaint from client HE, the branch manager checked his desk and found the rejection notices from the transfer department and samples of attempts by the Respondent to imitate client HE's signature.

34. On June 27, 2018, the branch manager questioned the Respondent upon his return to the Sudbury Branch, and the Respondent denied falsifying client HE's signature on the altered or completed Transfer Forms. The Respondent also falsely stated to the branch manager that client HE attended the Sudbury Branch on a date subsequent to January 25, 2018 and signed documentation at that time.

35. On August 20, 2018, the Respondent was interviewed by staff of the Member about his interactions with client HE, the transfer of her pension to the Member, and the Transfer Forms. The Respondent falsely claimed that client HE signed her signature on all of the Transfer Forms on January 25, 2018 “just in case” the forms were needed. The Respondent also denied signing client HE’s signature on the Request for Transfer From a Registered Pension Plan form, the Spousal and Beneficiary Designation form, and the Request for Direct Deposit form.

The Respondent Made False and Misleading Statements to MFDA Staff

36. In or about October 2018, Staff of the MFDA (“Staff”) commenced its investigation into the Respondent’s conduct.

37. On February 22, 2019, the Respondent stated in a letter to Staff that during the meeting in January 2018 “the client signed all of the relevant documents pertaining to the pension transfer”.

38. On June 14, 2019, Staff of the MFDA interviewed the Respondent during the course of an investigation into his conduct, at which time the Respondent falsely stated that (a) he completed the Transfer Forms on January 25, 2018 with client HE, (b) client HE signed the four Transfer Forms at the January 25, 2018 meeting; and (c) denied signing client HE’s signature to the Request for Transfer From a Registered Pension Plan form, the Spousal and Beneficiary Designation form, and the Request for Direct Deposit form.

III. REASONS AND ANALYSIS

6. In each of the four allegations made and admitted, as set out in paragraphs 2 and 3 above, the specific breach by the Respondent was of MFDA Rule 2.1.1. as follows:

7. The Respondent admits to contravening MFDA Rule 2.1.1, which establishes the standard of conduct expected of 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 is central to the MFDA mandate of enhancing investor protection and strengthening public confidence in the Canadian mutual fund industry.

MFDA Rule 2. 1.1.

Stemshorn-Russel (Re), 2018 CanLII 11771 (CA MFDAC) at para. 20, SBA Tab 2.

8. The Respondent admits to signing the signature of a client on three forms and also admits to altering or completing four forms without the client’s knowledge or authorization. These are both acts that are ones that previous hearing panels have long held constitute breaches of MFDA Rule 2.1.1.

9. Past hearing panels have held that failing to inform or misleading a client contravenes Rule 2.1.1, particularly the requirement that an Approved Person deal fairly, honestly and in good faith with clients. As the hearing panel in *Lau (Re)* stated: "Approved Persons carry on a business that is based on the trust of their clients. A violation of this trust is serious and the resulting penalty should help re-establish the trust of the public."

Chung (Re), 2018 CifflH 77309 (CA MFDAC), SBA, Tab 6.

Lau (Re), 2018 CanLII 11790 (CA MFDAC) at para. 10, SBA, Tab 7.

10. The Respondent admits to making false or misleading statements to the Member and Staff during investigations into his conduct.

Approved Persons also have a duty to cooperate with MFDA investigations and to be truthful throughout. As the hearing panel in *Li (Re)* explained:

Unlike in criminal law matters where a defendant is under no obligation to defend herself, or to provide information to assist those investigating a crime, in investigations and proceedings by the MFDA a respondent has contractual and regulatory obligations. A respondent has a duty to cooperate with the MFDA in its investigation, to comply with requests for information, and to be truthful.

Li (Re), 2020 CanLII 99159 (CA MFDAC) at para. 35, SBA, Tab 9.

Para. 22 of Submissions of Staff of the MFDA.

11. Staff, understandably, expresses the view in its submission that these are serious offences and should be treated as such. The Hearing Panel agrees. However, that does not complete the analysis which is essentially one of balancing competing objectives of deterrence and encouraging settlement.

12. Pursuant to section 24.4.3 of MFDA By-law No. 1, a hearing panel may either accept or reject a settlement agreement. A hearing panel's role is therefore not to determine the correct sanction, but instead to ascertain whether the sanction agreed to between Staff and a respondent falls within the reasonable range of appropriateness. As stated by the hearing panel in *Sterling Mutuals Inc. (Re)*:

[W]hile 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."

Section 24.4.3 of MFDA By-law No. 1, SBA, Tab 1B.

Sterling Mutuals Inc. (Re) 2008 LNCMFDA 16 ("Sterling Mutuals 2008") at para. 37, SBA, Tab 14.

13. The Respondent had not been the subject of MFDA disciplinary proceedings. Further, the Client alleged damages of only \$200 which is her own estimate of lost interest for which she was reimbursed. There appears to have been no further financial loss.

ASF at paras. 39 & 40.

Factors When Evaluating Whether the Proposed Sanction is Appropriate

14. When determining whether it would be appropriate to accept a proposed settlement, MFDA hearing panels have taken into account the following considerations:

- a) whether acceptance of the settlement agreement would be in the public interest and whether the sanction imposed will protect investors;
- b) whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the respondent as set out in the settlement agreement;
- c) whether the settlement agreement addresses the issues of both specific and general deterrence;
- d) whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
- e) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
- f) whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- g) whether the settlement agreement will foster confidence in the regulatory process itself.

Sterling Mutuals Inc. (Re), 2016 LNCMFDA 77 ("*Sterling Mutuals* 2016") at para. 13.

15. Hearing panels have taken into account the following factors when evaluating whether the penalties proposed in the settlement agreement are appropriate:

- a) the seriousness of the contraventions admitted to by the Respondent;

- b) the Respondent's past conduct, experience in the capital markets and disciplinary history;
- c) whether the Respondent recognizes that the conduct was improper and has demonstrated remorse;
- d) the harm suffered by investors as a result of the Respondent's conduct;
- e) whether the settlement agreement addresses both specific and general deterrence and will tend to prevent both the Respondent and others who participate in the capital markets from engaging in similar improper activity in the future;
- f) whether acceptance of the settlement agreement would be in the public interest as the penalties agreed upon will protect investors and are reasonable and proportionate having regard to the conduct of the Respondent;
- g) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets, the MFDA and the regulatory process; and
- h) previous decisions made in similar circumstances.

Sterling Mutuals 2016, *supra*, at para. 14.

16. The foregoing paragraphs are listings of things that a hearing panel should consider, as are the MFDA Sanction Guidelines. It is for a hearing panel to decide whether a particular one is relevant to the case before them and if so, what weight to give it in determining whether the penalty agreed to by the parties falls within an appropriate range of what is reasonably acceptable.

17. In the present case, we considered that the last item in the list in the foregoing paragraph, “previous decision in similar circumstances” was perhaps the most important. This is not unusual; facts always matter. However, they are very important here because of the interplay between them. How previous hearing panels have dealt with the same or similar situation as is before us provides guidance on the appropriate weighting.

18. The Hearing Panel had to consider two things; the need to encourage co-operation with the regulator which leads, as here, to an agreed settlement. On the other hand, this Respondent has admitted to one of the gravest breaches, that of lying or otherwise misleading clients. It is a breach that goes to the very foundation of the MFDA regulatory regime, and it must be dealt with in a way that provides a real deterrence to others in the industry.

MFDA Rule 2. 1.1.

19. Staff, in its submissions identified several cases that provided welcome guidance for the Hearing Panel. The most significant of these was *Lau (Re)* 2018 CanLII 11790 (CA MFDAC) where the facts are very similar to the case at bar. The Respondent in the *Lau* case admitted to falsifying four client signatures, opening an account without authorization, attempting to pay compensation to the clients and to misleading the Member and the client.

Lau (Re) 2018 CanLII 11790 (CA MFDAC) at para. 10, SBA, Tab 7.

20. On the other hand, Lau derived no financial benefit from his misconduct and there was no evidence of client loss. There was no history of previous MFDA disciplinary proceedings. Lau cooperated with Staff and accepted responsibility for his misconduct.

21. In the *Lau* case the agreed penalties were:

- a) a 30-month suspension
- b) a \$10,000 fine payable in installments
- c) costs of \$2,500.

22. The facts of the *Lau* case and the present case are very similar as are the penalties imposed. The present Hearing Panel found the following words of the *Lau (Re)* Hearing Panel particularly helpful and respectfully agree with them as follows: “Approved Persons carry on a business that is based on the trust of their clients. A violation of this trust is serious and the resulting penalty should help re-establish the trust of the public.”

Lau (Re) 2018 CanLII 11790 (CA MFDAC) at para. 10, SBA, Tab 7.

23. The Hearing Panel also found *Bilton (Re)* and *Castelino (Re)*, two recent MFDA cases, of assistance in assessing what weight should be attached to the various types of misconduct under consideration in this instance. In the *Bilton* and *Castelino* cases the offences were signature falsification and misleading the Member and nothing else which was more serious, as there is in the present case. In each case the settlement was a \$13,500 fine and \$2,500 costs.

Bilton (Re), 2020 CanLII 30034 (CA MFDAC), SBA, Tab 8.

Castelino (Re) MFDA File No. 202019, Central Region, June 30, 2020, SBA, Tab 21.

24. Comparing the three cases, it is clear that the breaches of the duty of fidelity to the client was the dominant factor in accepting the much more severe sanctions in the *Lau (Re)* case.

25. We concluded that similar treatment was appropriate in the present case. We accepted the Settlement Agreement here because we were of the opinion that the result fits well within the zone of what is reasonably appropriate.

26. It was for the foregoing reasons that we accepted the terms agreed to in the Settlement Agreement and issued an order to that effect on May 11, 2021, which is attached.

DATED this 6th day of October, 2021.

“John Lorn McDougall”

John Lorn McDougall, Q.C.

Chair

“Samuel Mah”

Samuel Mah

Industry Representative

“Eugene Park”

Eugene Park

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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: Jason Martineau

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the “MFDA”) will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (the “Hearing Panel”) of the MFDA should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Jason Martineau.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondent’s activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to section 24.1 of By-law No.1.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

III. ACKNOWLEDGEMENT

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part IX) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

IV. AGREED FACTS

Registration History

6. Commencing in 2009, the Respondent was registered in the securities industry.

7. From February 23, 2011 to September 5, 2018, the Respondent was registered in Ontario as a dealing representative with Scotia Securities Inc. (the “Member”), a Member of the MFDA.

8. On September 5, 2018, the Member terminated the Respondent’s employment for the conduct described herein.

9. At all material times, the Respondent carried on business at a branch of the Member located in Sudbury, Ontario (the “Sudbury Branch”).

The Respondent Signed a Client’s Signature and Altered or Completed Pension Transfer Forms

10. On January 25, 2018, the Respondent met with client HE at the Sudbury Branch. Client HE informed the Respondent that she wished to transfer the commuted value of her pension to a registered retirement savings plan (“RRSP”) with the Member. The Respondent reviewed and completed with client HE four forms to facilitate the transfer of her pension monies (collectively, the Transfer Forms).

11. Pursuant to the Transfer Forms, client HE elected to transfer the total value of her pension plan, namely \$16,227.57, to an RRSP with the Member with the Respondent as the Approved Person servicing her account.

12. At the January 25 meeting, the Respondent told client HE that it would take approximately 6 to 8 weeks for her pension plan monies to transfer to her RRSP at the Member. However, the

Respondent did not submit the Transfer Forms to the Member for processing for more than three months and only after client HE inquired about the delay.

13. On April 23, 2018, client HE contacted the Respondent and inquired about the status of the transfer of her pension monies as the investments had not been received by the Member within the time period that the Respondent had estimated.

14. On April 28, 2018, the Respondent submitted the Transfer Forms to the Member for processing.

15. On April 30, 2018, the Respondent replied to client HE, stating “Money is on route from what I was told. Once it gets here I will let you know. Apparently there was some kind of delay, however I do not know what it was, this happens sometimes in the financial world when transferring funds from one place to another, companies do not like to let the money go.”

16. On May 4, 2018, the Member sent a rejection notice to the Respondent and directed him to complete two of the Transfer Forms, namely the Spousal and Beneficiary Designation Form and the Request for a Transfer From a Registered Pension Plan form.

17. The Respondent did not contact client HE to advise her that the Transfer Forms had been rejected by the Member or that the transfer of her pension monies was delayed.

18. On or about May 4, 2018, without client HE’s knowledge or authorization, the Respondent:

- a) completed the Spousal and Beneficiary Designation form by inputting into the form client HE’s name, telephone number, email address, social insurance number, and named her spouse, TE, as the spouse entitled to receive survivor benefits, and signed client HE’s signature on the form;
- b) added information into Section 3C and Section 5 of the Request for Transfer From a Registered Pension Plan form by inputting the name of the Member’s affiliate bank that was to receive the excess amount of the transfer monies to be paid as an RRSP contribution, which had previously been left blank, and signed client HE’s signature on the form; and
- c) resubmitted the two forms described above to the Member for processing.

19. On June 1, 2018, the Member sent a rejection notice to the Respondent and advised that an option had to be selected for the amount over the maximum limit permitted under the *Income Tax*

Act. This notice advised the Respondent that client HE was not eligible to transfer the full value of her pension to her RRSP with the Member. The Respondent did not contact client HE to inform her that she was not eligible to transfer the full value of her pension to her RRSP.

20. In response to the rejection notice, on or about June 7, 2018, without client HE's knowledge or authorization, the Respondent altered or completed two of the Transfer Forms. More particularly, the Respondent:

- a) altered the Termination Benefit Election form by changing the election client HE had chosen on January 25, 2018 so that it appeared that client HE had elected to have \$9,125.46 transferred to her RRSP and the remaining \$7,102.11, less applicable withholding taxes, deposited into her bank account; and
- b) completed the Request for Direct Deposit form without client HE's knowledge or authorization by inputting information about her bank account into the form, and signed client HE's signature.

21. On June 11, 2018, client HE wrote to the Respondent about the delay in receiving her pension monies, noting that she had not heard from him in about a month. She asked: "Was there anything else that was outstanding that would delay this even further? It's going on 5 months now. Should I be calling them myself and asking for an update?"

22. On June 11, 2018, the Respondent replied to client HE, stating, "I am expecting your money in the next 2 weeks, we have been having issues with the transfers this year and especially from employers like yourself [*sic*]."

23. On June 20, 2018, client HE emailed the Respondent and asked him to provide documentation relating to the delay. She also asked him to confirm that her pension monies would not be taxed.

24. On that same date, the Respondent sent an email to client HE stating, "[u]nder pension legislation according to your documents, you will receive a portion into your RRSP, the rest has to be taken in cash, in which you will be taxed." The Respondent further indicated that he had sent in the forms requesting that all client HE's funds go into her RRSP, "but it got rejected so I had to send it back as 2 parts". This was the first time that the Respondent informed client HE that the documentation to transfer her pension to the Member had been changed after she signed it on January 25, 2018.

25. On that same date, client HE asked the Respondent to send her “the rejection letter requesting it all to be into an RRSP ... I do not want anything deposited into our bank account ... I would like an explanation as to why it was rejected”.

26. On that same date, the Respondent replied to client HE by email, stating, “Sorry I got busy, can you remind me of this tomorrow[.] I will have to look through my emails to send it to you.”

27. The Respondent did not provide client HE with the explanation she had requested about why her application had been rejected, and on or about June 28, 2018, he submitted the altered forms described in paragraph 20 to the Member in order to process the transfer of a portion of the value of her pension to an RRSP at the Member with the remainder, less applicable withholding taxes, deposited into client HE’s bank account.

The Respondent Failed to Inform or Misled Client HE

28. As described above at paragraphs 13, 21, 23 and 25, client HE contacted the Respondent on a number of occasions to inquire about the status of the transfer of her pension monies or to obtain an explanation of the reasons the full amount of her pension could not be transferred to her RRSP.

29. As described above at paragraphs 15, 22, 24 and 26, the Respondent failed to accurately inform her of the reason for the delay of the transfer, namely that the Respondent failed to complete the Transfer Forms in the manner required to facilitate the transfer of her pension monies to the Member. In addition, the Respondent did not provide client HE with the explanation she had requested about why her application had been rejected, namely, that she was not eligible to transfer the full amount of her pension to an RRSP. Moreover, the Respondent made misleading statements to client HE that he knew or ought to have known were not the cause of the delay, including blaming third parties such as client HE’s former employer.

Client HE’s Complaint to the Member

30. On June 22, 2018, client HE called the Respondent’s branch manager to complain about the delays in the transfer of her pension. She also complained that she had received an email from the Respondent informing her that a portion of her pension would be direct deposited into her bank account, which, she informed the branch manager, was not what she had signed for or consented to in January 2018.

31. Client HE informed the Member that she had planned to use the monies from her pension plan to purchase her first home. Because of the Respondent's delay and misleading statements, client HE's purchase of her first home was delayed and she missed out on several opportunities during the period of delay.

32. The Member paid client HE \$200 for lost interest that she incurred as a result of the delay caused by the Respondent.

The Respondent Made False and Misleading Statements to the Member

33. On June 22, 2018, the Respondent was not in the Sudbury Branch. After receiving the complaint from client HE, the branch manager checked his desk and found the rejection notices from the transfer department and samples of attempts by the Respondent to imitate client HE's signature.

34. On June 27, 2018, the branch manager questioned the Respondent upon his return to the Sudbury Branch, and the Respondent denied falsifying client HE's signature on the altered or completed Transfer Forms. The Respondent also falsely stated to the branch manager that client HE attended the Sudbury Branch on a date subsequent to January 25, 2018 and signed documentation at that time.

35. On August 20, 2018, the Respondent was interviewed by staff of the Member about his interactions with client HE, the transfer of her pension to the Member, and the Transfer Forms. The Respondent falsely claimed that client HE signed her signature on all of the Transfer Forms on January 25, 2018 "just in case" the forms were needed. The Respondent also denied signing client HE's signature on the Request for Transfer From a Registered Pension Plan form, the Spousal and Beneficiary Designation form, and the Request for Direct Deposit form.

The Respondent Made False and Misleading Statements to MFDA Staff

36. In or about October 2018, Staff of the MFDA ("Staff") commenced its investigation into the Respondent's conduct.

37. On February 22, 2019, the Respondent stated in a letter to Staff that during the meeting in January 2018 "the client signed all of the relevant documents pertaining to the pension transfer".

38. On June 14, 2019, Staff of the MFDA interviewed the Respondent during the course of an investigation into his conduct, at which time the Respondent falsely stated that (a) he completed

the Transfer Forms on January 25, 2018 with client HE, (b) client HE signed the four Transfer Forms at the January 25, 2018 meeting; and (c) denied signing client HE's signature to the Request for Transfer From a Registered Pension Plan form, the Spousal and Beneficiary Designation form, and the Request for Direct Deposit form.

Additional Factors

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

40. Client HE suffered a financial loss from the lost interest which the Member estimated at \$200 as described above at paragraph 32. She also suffered the missed real estate opportunities described above at paragraphs 31.

41. As described above at paragraph 19, the Member advised the Respondent that the full commuted value of client HE's pension could not be transferred to client HE's RRSP. However, the Respondent had an obligation to explain this fact to client HE and obtain instructions from her with respect to how she wished to proceed.

42. The Respondent has provided documentation to Staff to demonstrate that he has limited financial resources and cash flow to pay a fine. In particular, the Respondent has not been working in the industry since September 2018. His current employment has been reduced because of the COVID-19 pandemic. Staff has therefore agreed to the Respondent's request to pay a portion of the fine in installments as described below.

43. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a contested hearing on the merits.

V. CONTRAVENTIONS

44. The Respondent admits that:

- a) between May 4, 2018 and June 28, 2018, he signed the signature of a client on 3 forms and submitted them to the Member for processing, contrary to MFDA Rule 2.1.1;
- b) between May 4, 2018 and June 28, 2018, he altered or completed 4 forms without the client's knowledge or authorization, and submitted the forms to the Member for processing, contrary to MFDA Rule 2.1.1;

- c) commencing on April 30, 2018, he failed to inform or misled a client about the circumstances of the transfer of the commuted value of her pension to the Member, contrary to MFDA Rule 2.1.1; and
- d) commencing June 27, 2018, the Respondent made false or misleading statements to the Member and MFDA Staff during the course of investigations into his conduct, contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

45. The Respondent agrees 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 a period of 2 years from the date that this Settlement Agreement is accepted by a Hearing Panel, pursuant to section 24.1.1(e) of the MFDA By-law No.1;
- b) the Respondent shall pay a fine in the amount of \$17,500, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- c) the Respondent shall pay costs to the MFDA in the amount of \$2,500, pursuant to section 24.2 of MFDA By-law No. 1;
- d) The payment by the Respondent of the fine and costs shall be made and received by MFDA staff in certified funds as follows:
 - i. \$10,000 upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$2,000 on or before July 1, 2021;
 - iii. \$2,000 on or before September 1, 2021;
 - iv. \$2,000 on or before November 1, 2021;
 - v. \$2,000 on or before January 1, 2022; and
 - vi. \$2,000 on or before March 1, 2022;
- e) if the Respondent becomes registered again in the future, he shall comply with MFDA Rule 2.1.1; and
- f) the Respondent will attend in person or participate by teleconference on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

46. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts set out in Part IV and the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

47. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

48. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the Settlement Hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive any rights to a full hearing, a review hearing or appeal before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction.

49. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to section 24.1.1 and 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with section 24.5 of By-law No. 1.

50. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against it him.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

51. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

52. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule "A" is not made by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

53. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

XI. DISCLOSURE OF AGREEMENT

54. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

55. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

XII. EXECUTION OF SETTLEMENT AGREEMENT

56. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

57. A facsimile copy of any signature shall be effective as an original signature.

DATED this 3rd day of May 2021.

“Jason Martineau”

Jason Martineau

“SW”

Witness – Signature

SW

Witness – Print Name

“Charles Toth”

Staff of the MFDA
Per: Charles Toth
Vice-President, Enforcement



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: Jason Martineau

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of MFDA By-law No. 1 in respect of [Respondent] (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to sections 20 and 24.1 of MFDA By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that the Respondent:

- a) between May 4, 2018 and June 28, 2018, he signed the signature of a client on 3 forms and submitted them to the Member for processing, contrary to MFDA Rule 2.1.1;
- b) between May 4, 2018 and June 28, 2018, he altered or completed 4 forms without the client's knowledge or authorization, and submitted the forms to the Member for processing, contrary to MFDA Rule 2.1.1;

- c) commencing on April 30, 2018, he failed to inform or misled a client about the circumstances of the transfer of the commuted value of her pension to the Member, contrary to MFDA Rule 2.1.1; and
- d) commencing June 27, 2018, the Respondent made false or misleading statements to the Member and MFDA Staff during the course of investigations into his conduct, contrary to MFDA Rule 2.1.1.

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. 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 a period of 2 years from the date that this Settlement Agreement is accepted by a Hearing Panel, pursuant to section 24.1.1(e) of the MFDA By-law No.1.
2. The Respondent shall pay a fine in the amount of \$17,500, pursuant to section 24.1.1(b) of MFDA By-law No. 1.
3. The Respondent shall pay costs to the MFDA in the amount of \$2,500, pursuant to section 24.2 of MFDA By-law No. 1.
4. The payment by the Respondent of the fine and costs shall be made and received by MFDA Staff in certified funds as follows:
 - a) \$10,000 upon acceptance of the Settlement Agreement by the Hearing Panel;
 - b) \$2,000 on or before July 1, 2021;
 - c) \$2,000 on or before September 1, 2021;
 - d) \$2,000 on or before November 1, 2021;
 - e) \$2,000 on or before January 1, 2022; and
 - f) \$2,000 on or before March 1, 2022;
5. If the Respondent becomes registered again in the future, he shall comply with MFDA Rule 2.1.1.
6. 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 [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

DM 845646