



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

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

**Re: Lee Scott McIvor**

Heard: March 5, 2019 in Winnipeg, Manitoba  
Decision: March 5, 2019  
Reasons for Decision: May 6, 2020

**REASONS FOR DECISION**

Hearing Panel of the Prairie Regional Council:

Richard L. Yaffe  
Marc Albert  
Richard Bergeron

Chair  
Industry Representative  
Industry Representative

Appearances:

|                  |   |   |
|------------------|---|---|
| Justin Dunphy    | ) | Enforcement Counsel for the Mutual Fund         |
|                  | ) | Dealers Association of Canada                   |
|                  | ) |   |
|                  | ) |   |
| Lee Scott McIvor | ) | Respondent, not in attendance or represented by |
|                  | ) | counsel   |
|                  | ) |   |

## **I. INTRODUCTION**

1. By Notice of Hearing dated February 9, 2018 (the “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 March 5, 2019 for a Hearing on the Merits pursuant to Sections 20 and 24 of MFDA By-law No. 1 in respect of Lee Scott McIvor (the “Respondent”).

## **II. HISTORY OF PROCEEDINGS**

2. On February 9, 2018, the MFDA issued a Notice of Hearing pursuant to Sections 20 and 24 of MFDA By-law No. 1 in respect of a disciplinary proceeding commenced against the Respondent.

3. The first appearance in this proceeding took place by teleconference before the Chair of the Hearing Panel on July 24, 2018 at 11:30 a.m. (Mountain) in accordance with Section 19.13(b) of MFDA By-law No. 1.

4. The second appearance in this proceeding took place by teleconference before the Chair of the Hearing Panel on August 3, 2018 at 11:30 a.m. (Mountain) in accordance with Section 19.13(b) of MFDA By-law No. 1.

5. The third appearance in this proceeding took place by teleconference before the Chair of the Hearing Panel on September 17, 2018 at 11:30 a.m. (Mountain) in accordance with Section 19.13(b) of MFDA By-law No. 1.

6. The fourth appearance in this proceeding took place by teleconference before the Chair of the Hearing Panel on December 6, 2018 at 10:00 a.m. (Central) in accordance with Section 19.13(b) of MFDA By-law No. 1. This appearance was originally scheduled as a settlement hearing but was converted to a teleconference after there had been no reply from the Respondent.

7. The Hearing on the Merits in this proceeding took place before the Hearing Panel on March 5, 2019 at 10:00 a.m. (Central) in Winnipeg, Manitoba.

8. No one appeared on behalf of the Respondent. The Respondent was notified of the hearing by MFDA Staff as to the purpose, timing, and location of the hearing, and was personally served

with the Notice of Hearing. Arrangements were made to facilitate the participation of the Respondent by way of teleconference, and the Respondent was provided with the dial-in information for the Hearing. When the Hearing was ready to begin, the Chair of the Hearing Panel requested that the proceedings be delayed by several minutes in order to give the Respondent the opportunity to participate. The proceedings were delayed by seven minutes, and the Hearing then commenced.

9. Enforcement Counsel referred to MFDA Rules of Procedure 7.3 and 13.5, which permit a hearing panel to proceed with a hearing on the merits in the absence of the respondent.

### **III. EVIDENCE AND CONCLUSIONS**

10. Present at the Hearing was Allison Howse, an Investigation Manager with the MFDA, who had conducted the MFDA investigation into the conduct of the Respondent and who affirmed an affidavit (the “Affidavit”) containing evidence addressing the allegations against the Respondent. The Affidavit was entered as evidence.

11. Enforcement Counsel reviewed relevant rules of evidence including, in particular, MFDA Rules of Procedure 1.6 and 13.4 which permit evidence to be adduced by way of sworn statements and which also permit hearsay evidence to be admitted as evidence in prescribed circumstances.

12. Although the Respondent ceased to be an Approved Person in or about March, 2017, the Respondent remains subject to the jurisdiction of the MFDA pursuant to Section 24.1.4 of MFDA By-law No. 1. The Ontario Court of Appeal has determined that there is no statutory impediment preventing self-regulatory organizations such as the MFDA from continuing to exercise jurisdiction over former Approved Persons.

*Taub v Investment Dealers Association of Canada*, 2009 ONCA 628, Staff’s Book of Authorities, Tab 8.

13. The Affidavit provided evidence that:

- a) in June 2015, the Respondent, or his assistant for whom he was responsible, cut and pasted one client signature from an account form that had been previously signed

by a client onto a new account form and submitted the form for processing, contrary to MFDA Rule 2.1.1;

- b) between March 2013 and March 2014, the Respondent falsified, and used to process transactions, two account forms in respect of two clients, by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and
- c) between March 2007 and March 2016, the Respondent, or his assistant for whom he was responsible, obtained, possessed, and, in some instances, used to process transactions, 92 pre-signed account forms in respect of 35 clients, contrary to MFDA Rule 2.1.1.

14. MFDA Staff sought a fine of \$25,000 to \$30,000, and costs of \$7,500.

15. Based on the evidence of Ms Howse, of the 95 forms that were the subject of the allegations in 13 (a), (b) and (c) above, the Respondent provided direct admissions with respect to 90 of them. Compelling evidence was also presented in support of the allegations in respect of the remaining five forms.

16. An Approved Person is responsible for the actions of a licensed or unlicensed assistant who is employed to provide support and to whom the Approved Person delegates tasks. To the extent that the Respondent's assistant may have had a role in the obtaining and using of deficient forms, the Respondent is ultimately responsible for the misconduct.

17. No evidence was presented to suggest that the actions of the Respondent, or of his assistant for whom he was responsible, were unintentional. Rather, all evidence suggests that the actions of the Respondent were deliberate. Further, the defects are apparent on the face of the forms such that the Respondent ought to have detected the deficiencies to the extent that the Respondent denied responsibility for the deficient forms.

18. There is no evidence of client harm, and the Respondent has no history of previous offences. The Respondent is no longer registered and has ceased to be an Approved Person.

19. The documentary evidence in this matter is extensive, and we accept the evidence as presented. We have concluded that the allegations against the Respondent have been established.

20. The use of pre-signed account forms is serious misconduct and has been the subject of MFDA Staff notices and bulletins. It adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud and misappropriation. The creation, possession or use of an altered or falsified form is extremely serious misconduct, particularly given the possibility that the changes were made to the forms without the clients' knowledge or consent.

21. These contraventions are in fundamental violation of the principles of dealing fairly, honestly and in good faith; of high standards of ethics and conduct in the transaction of business; and of refraining from any business conduct or practice that is unbecoming or detrimental to the public interest.

22. A Bill of Costs for \$7,500 was provided by Enforcement Counsel to the Hearing Panel.

#### **IV. DISPOSITION**

23. Pursuant to its Order dated March 5, 2019, the Hearing Panel ordered as follows:

- a) The Respondent shall pay a fine in the amount of \$30,000 pursuant to Section 24.1.1.(b) of MFDA By-law No. 1;
- b) The Respondent shall pay costs attributable to conducting the investigation and hearing of this matter in the amount of \$7,500, pursuant to Section 24.2 of MFDA By-law No. 1; and
- c) 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 6<sup>th</sup> day of May, 2020.

“Richard L. Yaffe”

---

Richard L. Yaffe, Q.C.  
Chair

“Marc Albert”

---

Marc Albert  
Industry Representative

“Richard Bergeron”

---

Richard Bergeron  
Industry Representative

DM 739466