



**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: David Juno McMillan**

Heard: August 18, 2021 by electronic hearing in Toronto, Ontario

Decision: August 18, 2021

Reasons for Decision: October 22, 2021

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.  
Robert Christianson  
Melody Potter

Chair  
Industry Representative  
Industry Representative

Appearances:

Audrey Smith	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
David Juno McMillan	)	Respondent
	)	
	)	
Bruce O'Toole	)	Counsel for the Respondent
	)	

## **Settlement Agreement**

1. The Hearing Panel accepted the settlement agreement dated July 8, 2021 (“Settlement Agreement”) between the Staff of the MFDA (“Staff”) and David Juno McMillan (“Respondent”) at an electronic settlement hearing held in accordance with MFDA rules for an electronic hearing.
2. A copy of the Settlement Agreement is attached to these Reasons as Schedule “1”. The agreed facts are set out in section III of the Settlement Agreement.

## **Contraventions**

3. The Respondent admitted that
  - a) between August 23, 2017 and November 4, 2019, the Respondent obtained, possessed and used to process transactions, 83 pre-signed account forms in respect of 57 clients, contrary to MFDA Rule 2.1.1;
  - b) between October 13, 2017 and June 9, 2019, the Respondent altered and used to process transactions, 11 account forms in respect of 12 clients, by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and
  - c) on or about October 1, 2018 and December 19, 2018, the Respondent re-used the signatures of 2 clients on 3 account forms by photographing a signature from a previously signed form to complete a new transaction and submitting the account forms to the Member for processing, contrary to MFDA Rule 2.1.1.

## **Agreed penalties**

4. Under the terms of the Settlement Agreement, the Respondent:
  - a) will pay a fine of \$30,000;
  - b) will pay costs of \$2,500; and
  - c) will successfully complete the Ethics and Professional Conduct Course offered by the IFSE Institute, or an industry course acceptable to Staff, within 12 months of acceptance of the Settlement Agreement.

## **Considerations**

5. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement. First, the agreed penalties had to be within an

acceptable range taking into account similar cases. Secondly, the agreed penalties had to be fair and reasonable (i.e. proportional to the seriousness of the contravention taking into consideration relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalties should serve as a deterrent to the Respondent and to industry. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on the Respondent of the agreed penalties.

### **Misconduct**

6. The Hearing Panel determined that the alleged misconduct was in contravention of MFDA Rule 2.1.1.

### **Other considerations in determining acceptability of agreed penalties**

7. On October 24, 2019, the Member placed the Respondent on strict supervision for 90 days.

8. On February 12, 2020 the Member ended the period of strict supervision, issued a warning letter to the Respondent, and required the Respondent to pay the Member a \$500 fee for the costs associated with strict supervision.

9. In addition the Respondent confirmed to the Member that he had reviewed and would adhere to the Member's Compliance Policies and Procedures Manual.

10. There was no evidence that the Respondent received any financial benefit from the conduct set out above beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

11. There was no evidence of client complaints, client loss or lack of client authorization.

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

13. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

14. The agreed penalties are within the recommendations of the MFDA Sanction Guidelines and the reasonable range of appropriateness with regard to MFDA decisions submitted to us by Staff and Respondent's counsel, made by MFDA Hearing Panels in similar circumstances. They are fair and reasonable and will serve as a specific and general deterrent.

## **Costs**

15. The costs award is reasonable.

## **Conclusion**

16. We concluded that the Settlement Agreement was in the public interest and, consequently, we accepted it.

**DATED** this 22<sup>nd</sup> day of October, 2021.

“Paul M. Moore”

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Paul M. Moore, Q.C.  
Chair

“Robert Christianson”

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Robert Christianson  
Industry Representative

“Melody Potter”

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Melody Potter  
Industry Representative



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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, David Juno McMillan (the "Respondent"), consent and agree to settlement of this matter by way of this agreement (the "Settlement Agreement").

2. Staff conducted an investigation of the Respondent's activities which disclosed activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No.1.

**II. JOINT SETTLEMENT RECOMMENDATION**

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the Mutual Fund Dealers Association of Canada ("MFDA"):

- a) between August 23, 2017 and November 4, 2019, the Respondent obtained, possessed and used to process transactions, 83 pre-signed account forms in respect of 57 clients, contrary to MFDA Rule 2.1.1;

- b) between October 13, 2017 and June 9, 2019, the Respondent altered and used to process transactions, 11 account forms in respect of 12 clients, by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and
  - c) on or about October 1, 2018 and December 19, 2018, the Respondent re-used the signatures of 2 clients on 3 account forms by photocopying a signature from a previously signed form to complete a new transaction and submitting the account forms to the Member for processing, contrary to MFDA Rule 2.1.1.
5. Staff and the Respondent agree and consent to the following terms of settlement:
- a) the Respondent shall pay a fine in the amount of \$30,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No.1;
  - b) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No.1;
  - c) the Respondent shall successfully complete the Ethics and Professional Conduct Course offered by the IFSE Institute, or an industry course acceptable to Staff of the MFDA, within 12 months of the acceptance of the Settlement Agreement, pursuant to section 24.1.1(f) of By-law No. 1;
  - d) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
  - e) the Respondent will attend in person or by videoconference on the date set for the Settlement Hearing.
6. Staff and the Respondent agree to the settlement on the basis of the facts set out in Part III herein and consent to the making of an Order in the form attached as Schedule “A”.

### **III. AGREED FACTS**

#### ***Registration History***

7. Since April 19, 1994, the Respondent has been registered in the securities industry.

8. Since August 4, 2017, the Respondent has been registered in Ontario and British Columbia as a dealing representative with Investia Financial Services Inc. (the “Member”), a Member of the MFDA.<sup>1</sup>

9. At all material times, the Respondent conducted business in the Richmond Hill, Ontario area.

### ***Pre-signed Account Forms***

10. At all material times, the Member’s policies and procedures prohibited its Approved Persons from using pre-signed forms.

11. Between August 23, 2017 and November 4, 2019, the Respondent obtained, possessed and used to process transactions, 83 pre-signed account forms in respect of 57 clients.

12. The pre-signed account forms included: Know Your Client update forms; New Client Application Forms; Order Instructions Forms; Systemic Withdrawal Instruction Forms; Tax Free Savings Account Application Forms; RESP Withdrawal Forms; Transfer Authorization Forms for Registered Investments; Systematic Instruction Forms; Transfer Authorization Forms for Non-Registered Investments; Deregistration/Withdrawal Request Forms for Registered or Investment Accounts; CI Open and Registered Plan Mutual Fund Application Forms; Systematic Purchase Instruction Forms; Summit Account Service Agreements and a CRA Direct Transfer of Single Amount (Pension Account) Form.

### ***Altered Account Forms***

13. Between October 13, 2017 and June 9, 2019, the Respondent altered and used to process transactions, 11 account forms in respect of 12 clients, by altering information on the account forms without having the client initial the alterations.

14. The Respondent altered information on the account forms such as fund codes; investment objectives; risk tolerance; investment amounts; client net worth; client annual income; investment instructions; relinquishing institution information; client social insurance numbers and client date of birth information.

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<sup>1</sup> On February 8, 2019, the Respondent also became registered as a dealing representative in the province of Quebec.

### ***Respondent re-used client signatures***

15. On or about October 1, 2018 and December 19, 2018, the Respondent re-used the signatures of 2 clients on 3 account forms by photocopying a signature from a previously signed form to complete a new transaction and submitted the account forms to the Member for processing.

16. The forms with re-used and photocopied client signatures included Transfer Authorization for Registered Investments Forms and a CI Open and Registered Plan Mutual Fund Application Form.

### ***The Member's Investigation***

17. On or about August 2, 2019, the Member conducted a full review of the client files maintained by the Respondent and discovered the account forms that are described above.

18. On or about October 24, 2019, the Member placed the Respondent on strict supervision for a period of 90 days.

19. On or about January 24, 2020, the Member sent letters to all clients for whom the Respondent obtained pre-signed forms or altered forms, along with 3-year transaction histories. The Member requested that the clients review their transaction histories to ensure that the trading activity was as the client had directed and to advise the Member of any inconsistencies in the information. The Member also requested that clients contact the Member if the client's personal and financial circumstances changed in order to ensure the clients' portfolios are in-line with the clients' investment objectives and risk tolerance. No clients reported any concerns to the Member in response to its letters.

20. On February 12, 2020, the Member ended the period of strict supervision, and issued a Warning Letter to the Respondent.

21. The Member required that the Respondent pay a \$500 fee to the Member for the costs associated with being under strict supervision.

22. The Respondent was also required to sign a Letter of Undertaking to confirm that he had reviewed and would adhere to the Member's Compliance Policies Procedures Manual.

### ***Additional Factors***

23. There is no evidence that the Respondent received any financial benefit from the misconduct described above beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in their required manner.
24. There is no evidence of client loss, client complaints or lack of authorization for the underlying transactions.
25. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
26. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

### **IV. ADDITIONAL TERMS OF SETTLEMENT**

27. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.
28. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (the “Settlement Hearing”). At, or following the conclusion of, the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. 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](http://www.mfda.ca).
29. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.
30. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:
  - a) the Settlement Agreement will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter;

- b) 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;
- c) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts and contraventions described in this Settlement Agreement. 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 this Settlement Agreement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;
- d) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1; and
- e) 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 the Respondent.

31. If, for any reason, this Settlement Agreement is not accepted 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 the Settlement Agreement or the settlement negotiations.

32. Staff and the Respondent agree that the terms of the 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.

33. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile copy of any signature shall be effective as an original signature.

**DATED** this 8<sup>th</sup> day of July, 2021.

“David Juno McMillan”

\_\_\_\_\_  
David Juno McMillan

“XC”

\_\_\_\_\_  
Witness – Signature

XC

\_\_\_\_\_  
Witness – Print Name

“Charles Toth”

\_\_\_\_\_  
Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement



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**ORDER**

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**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 David Juno McMillan (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 ss. 20 and 24.1 of MFDA By-law No. 1;

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

- a) between August 23, 2017 and November 4, 2019, the Respondent obtained, possessed and used to process transactions, 83 pre-signed account forms in respect of 57 clients, contrary to MFDA Rule 2.1.1;
- b) between October 13, 2017 and June 9, 2019, the Respondent altered and used to process transactions, 11 account forms in respect of 12 clients, by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and
- c) on or about October 1, 2018 and December 19, 2018, the Respondent re-used the

signatures of 2 clients on 3 account forms by photocopying a signature from a previously signed form to complete a new transaction and submitting the account forms to the Member for processing, 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 pay a fine in the amount of \$30,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No.1;
2. The Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No.1;
3. The Respondent shall successfully complete the Ethics and Professional Conduct Course offered by the IFSE Institute, or an industry course acceptable to Staff of the MFDA, within 12 months of the acceptance of the Settlement Agreement, pursuant to section 24.1.1(f) of By-law No. 1;
4. The Respondent shall in the future comply with MFDA Rule 2.1.1; and
5. 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]

