



**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: Zeleen Mitha**

Heard: March 19, 2021 by electronic hearing in Toronto, Ontario

Decision: March 19, 2021

Reasons for Decision: May 14, 2021

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Emily Cole  
Selwyn Kossuth  
Timothy Pryor

Chair  
Industry Representative  
Industry Representative

Appearances:

Paul Blasiak	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Zeleen Mitha	)	Respondent
	)	
	)	
	)	

## **I. INTRODUCTION**

1. This was a hearing pursuant to section 24.4 of By-Law No.1 of the Mutual Fund Dealers Association of Canada (“MFDA”) to consider a settlement agreement dated January 28, 2021 (“Settlement Agreement”) between staff of the MFDA (“Staff”) and Zeleen Mitha (“Respondent”).

2. After reviewing the Settlement Agreement and the material filed by Staff and hearing the submissions of counsel for Staff, the Hearing Panel accepted the Settlement Agreement attached and signed an order reflecting our approval. These are the reasons for our decision.

## **II. CONTRAVENTIONS**

3. Based on the Agreed Facts set out below the Respondent admits that:

- a) On February 28, 2019, she sent emails from her business email address to her personal email address attaching documents containing confidential information of clients of the Member without the consent of the clients, thereby failing to maintain in confidence all information received by the Member relating to clients, contrary to the Member’s policies and procedures and MFDA Rules 2.1.3, 2.1.1, 1.1.2 and 2.5.1, and
- b) In or about February 2019, she altered her manager’s written assessment of her performance on a performance review document, inserted the electronic initials of her manager and Regional Vice President on the performance review document without their knowledge or approval, and submitted the performance review to another financial institution in support of an application for employment, contrary to MFDA Rule 2.1.1.

## **III. PROPOSED SANCTIONS**

4. Staff and the Respondent agree and consent to the following proposed sanctions:

- a) the Respondent shall be prohibited for a period of 12 months from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to section 24.1.1(e) of MFDA By-law No.1;
- b) the Respondent shall pay a fine in the amount of \$5,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1, which shall be payable in certified funds on the date that this Settlement Agreement is accepted by a Hearing Panel;

- c) the Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of MFDA By-law No. 1, which shall be payable in certified funds on the date that this Settlement Agreement is accepted by a Hearing Panel;
- d) the Respondent shall in the future comply with MFDA Rules 2.1.3, 2.1.1, 2.5.1 and 1.1.2; and
- e) the Respondent will attend by videoconference on the date set for the Settlement Hearing.

#### **IV. AGREED FACTS**

##### **Registration History**

- 5. From June 19, 2014 to March 15, 2019, the Respondent was registered in Ontario as a dealing representative with Royal Mutual Funds Inc. (the “Member”), a Member of the MFDA.
- 6. From September 22, 2017 to November 1, 2018, the Member designated the Respondent as a branch manager.
- 7. At all material times, the Respondent was also an employee of the Member’s bank affiliate (the “Bank”).
- 8. On March 1, 2019, the Respondent submitted her resignation from the Member and the Bank effective March 15, 2019.
- 9. The Respondent is not currently registered in the securities industry in any capacity.
- 10. At all material times, the Respondent conducted business at a branch of the Member in Toronto, Ontario.

##### **Overview**

- 11. The Respondent submitted her resignation to the Member on March 1, 2019. Prior to resigning, the Respondent was seeking new employment, and on or about February 4, 2019, attended an interview for a position with another financial institution. As described below, during the process of interviewing for this position, the Respondent provided the other financial institution with an electronic version of a 2018 performance review document pertaining to the Respondent (the “Performance Review”) on which the Respondent had altered her manager’s written assessment of the Respondent and inserted the electronic initials of her manager and Regional Vice President on the Performance Review.

12. In addition, as described below, on the day prior to submitting her resignation to the Member on March 1, 2019, the Respondent sent emails from her business address to her personal email address that included, among other things, personal and financial information about clients of the Member.

**Sending Client Information to the Respondent’s Personal Email Address**

13. At all material times, Approved Persons of the Member were required to adhere to a Code of Conduct and privacy and risk management policies, which, among other things, prohibited Approved Persons from sending client information to an Approved Person’s personal email address.

14. On February 28, 2019, the day prior to submitting her resignation from the Member on March 1, 2019, the Respondent sent emails from her business email address to her personal email address attaching documents containing personal and financial information relating to clients of the Member, as follows:

<b>Document No.</b>	<b>Date of Email<sup>1</sup></b>	<b>Name of Document</b>	<b>Type of Information in Document</b>
1.	February 28, 2019	2018 Mortgage book.xlsx	Client information including client names, account numbers, mortgage amounts, and mortgage closing dates.
2.	February 28, 2019	HOBf List 2018.xml	Client information including client names, ages, account numbers, amounts held in mutual funds, assets held at the Bank, estimated other assets, liabilities held at the Bank, and estimated other liabilities.
3.	February 28, 2019	ONE RBC INTRO Sept 10-14.mht	Client information including client names, proposed investment amounts, and names of advisors assigned to clients.
4.	February 28, 2019	One RBC Sept 10-14.mht	Client information including client names, mortgage application numbers, and names of advisors assigned to clients.

<sup>1</sup> The Respondent sent two emails on February 28, 2019. Documents #1 and 2 were attached to the first email sent on February 28, 2019, and documents #3 and 4 were attached to the second email sent on February 28, 2019.

15. The Respondent had not informed the Member or the clients and had not obtained the consent of the affected clients to send confidential client information from her business e-mail address to her personal e-mail address.

16. By emailing personal and financial information of clients to her own personal e-mail address, the Respondent: put herself in a position to benefit from access to that client information, for example, if she was able to find future employment at another Member or financial institution; and potentially affected the Member's ability to safeguard the confidentiality of the client information that she sent to her personal e-mail address.

17. In addition to the documents described above, between February 2, 2019 and February 28, 2019, the Respondent emailed to her personal email address documents containing confidential information relating to the business performance of the branch at which she conducted business, and a document containing information relating to the termination of another Approved Person from the Member.

18. The Respondent did not obtain authorization or approval to send confidential business performance information concerning the branch or confidential information about a former Approved Person of the Member from her business e-mail address to her personal e-mail address.

19. The Respondent states that she did not disclose the documents containing client information as described above to a third party, and there is no evidence to the contrary.

20. As described below, the Respondent provided to another financial institution in support of her application for employment with the other financial institution, a document that she emailed to her personal e-mail address showing the performance of her branch.

21. The Respondent has signed a declaration stating that she has deleted all the documents she emailed to her personal email address as described above. The Respondent states that she deleted these documents immediately after being contacted by her manager.

22. By sending emails to her personal email address containing documents with information relating to clients of the Member as described in the table above, the Respondent failed to keep the documents in confidence, and engaged in conduct that was contrary to the Member's policies and procedures.

## **Altered Performance Review**

23. Among other things, the Performance Review document described above at paragraph 11, contained a section where the Respondent's manager could provide comments about the Respondent's quarterly work performance, and provide an assessment of the Respondent's quarterly performance using the following assessment levels: "Meeting"; "Developing"; or "Does Not Meet".

24. As described above at paragraph 11, in or about February 2019, without the knowledge or authorization of the Member, the Respondent submitted to another financial institution in support of her application for employment with the financial institution, an electronic version of the Performance Review where the Respondent:

- a) added an assessment level by her Manager of the Respondent's second quarter performance that indicated that the Respondent was "Meeting" the required standard, when the assessment her manager had actually provided of her performance for the second quarter was "DNM" (i.e., Does Not Meet);
- b) did not include her manager's comments about her second quarter performance;
- c) inserted the word "Meeting" as her assessment level for the third quarter to indicate that she was meeting the required standard, when in fact her manager had not previously recorded any assessment level for the third quarter; inserted the word "Meeting" as her assessment level for the fourth quarter to indicate that she was meeting the required standard, when in fact her manager had not previously recorded any assessment level for the fourth quarter; and
- d) inserted electronic initials of her manager and Regional Vice President on the Performance Review without their knowledge or authorization, thereby making the document appear to be a formal evaluation of her work performance that had been approved by her superiors.

25. With respect to the alterations that the Respondent made pertaining to the third and fourth quarter described above at subparagraphs 24(c) and (d), the Respondent's manager did not record any assessment levels of the Respondent's performance in the third and fourth quarters on the true version of the Performance Review completed by the manager because the Respondent was on leave during that period.

26. The Respondent states that she made the alterations and insertions of information and manager initials to the Performance Review described above at paragraph 24 in support of an application for employment with another financial institution, and that she used an electronic copy of a Performance Review that she had prepared for the purpose of making self-evaluations of her performance prior to in-person performance reviews with her manager. Neither the Member or her managers were aware that the Respondent made the alterations or insertions of information and initials described in paragraph 24.

27. The Respondent provided the altered Performance Review containing the alterations described above at paragraph 24, as well as a document showing the performance of her branch to another financial institution in support of her application for employment with the other financial institution. The Respondent was not ultimately hired by the other financial institution.

### **Additional Factors**

28. The Respondent states that during the period that she sent the emails to her personal email address as described above, she was experiencing stress and anxiety.

29. The Respondent's conduct put her in a position to benefit personally, however, there is no evidence that she ultimately received any financial benefit from her conduct.

30. There is no evidence of client financial loss because of the Respondent's conduct.

31. No complaints have been received by the Member from clients whose confidential information was sent to the Respondent's personal e-mail address.

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

33. The Respondent has fully cooperated with MFDA Staff during its investigation.

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

## **V. ANALYSIS**

### **Jurisdiction of the Hearing Panel**

35. A Hearing Panel is authorized to either accept or reject a settlement agreement.

36. The role of a Hearing Panel in reviewing a settlement agreement is to determine whether the proposed penalties agreed to by Staff and the Respondent fall within a reasonable range of appropriateness – not to determine what is, in its view, the correct penalty. A Hearing 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.”

*Milewski (Re)*, [1999] I.D.A.C.D. No. 17.

*Sterling Mutuals Inc. (Re)*, 2008 LNCMFDA 16 at para 37

37. Settlements are to be encouraged. They make a significant contribution to meeting the MFDA’s primary objective of investor protection by providing a practical and efficient way of addressing misconduct in the securities industry. Where the Respondent takes responsibility and admits his misconduct and the parties can agree upon appropriate sanctions, settlements can save time and conserve the regulator’s limited resources. Settlements also provide certainty and are likely to result in greater compliance with the sanctions imposed.

*British Columbia (Securities Commission v. Seifert)*, [2006] B.C.J. No 225 at paras. 48-49 (S.C.), aff’d [2007] B.C.J. No 2186 at para. 31 (C.A.)

### **The Seriousness of the Misconduct**

38. The Respondent admitted to the following contraventions:

- a) Failing to maintain confidential client information, and
- b) Altering a performance review and submitting it to another financial institution.

### **Failing to Maintain Confidential Client Information**

39. The Respondent sent confidential client information to the Respondent’s personal email address.

40. MFDA Rule 2.1.3 sets out the duty of a Member and its Approved Persons to keep client information confidential:

#### **2.1.3 Confidential Information**

- a) **All information received by a Member relating to a client or the business and affairs of a client shall be maintained in confidence by the Member and its Approved Persons** and other employees and agents. No such information shall be disclosed to any other person or used for the

advantage of the Member or its Approved Persons or other employees or agents without the prior written consent of the client or as required or authorized by legal process or statutory authority or where such information is reasonably necessary to provide a product or service that the client has requested. [Emphasis added]

- b) Each Member shall develop and maintain written policies and procedures relating to confidentiality and the protection of information held by it in respect of clients.

#### MFDA Rule 2.1.3

41. There are three components of Rule 2.1.3: (1) the duty to maintain the confidentiality of clients' information and (2) the duty not to disclose confidential client information and (3) the duty not to use confidential client information.

42. Maintaining confidential client information is achieved by policies and procedures such as the Member's policy that prohibits its approved persons from sending client information to the approved person's personal email address.

43. Other examples include restricting access to confidential client information on a "needs to know" basis, password protecting electronic documents and storing physical documents in locked cabinets.

44. The Respondent admits she sent emails from her business email address to her personal email address attaching documents containing confidential information of clients of the Member without the consent of the clients, thereby failing to maintain in confidence information relating to a client or the business and affairs of a client. The documents are described above.

45. By emailing confidential client information to her personal mailbox, the Respondent failed to maintain confidential client information.

#### **Altered Performance Review**

46. The Respondent admitted that she altered her performance review by inflating her ratings from "does not meet" to "meeting" expectations and inserted the electronic initials of her Manager and Regional Vice President with the intent to mislead a third-party non-Dealer entity.

47. MFDA Rule 2.1.1 prescribes the standard of conduct expected of registrants in the mutual fund industry:

### **2.1.1 Standard of Conduct**

Each Member and each Approved Person of a Member shall:

- a) deal fairly, honestly and in good faith with its clients;
- b) observe high standards of ethics and conduct in the transaction of business;
- c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and
- d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

MFDA Rule 2.1.1.

48. There is no case directly on point, but Staff referred us to *Re White*. In *Re White*, the Respondent falsely represented that he had completed a university degree in his application for employment with the Member with which he was seeking to become registered contrary to MFDA Rule 2.1.1.

*White (Re)*, [2019] Hearing Panel of the Atlantic Regional Council, MFDA File No. 2018120, Panel Decision dated July 5, 2019.

49. We agree with Staff's submission that by altering her performance review, the Respondent similarly breached MFDA Rule 2.1.1. Specifically, the Respondent engaged in business conduct which was unbecoming contrary to Rule 2.1.1 (c) and demonstrated poor character contrary to Rule 2.1.1 (d).

### **General and Specific Deterrence**

50. General deterrence and specific deterrence are achieved by the proposed sanctions: a 12-month prohibition from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, a \$5,000 fine, and \$2,500 costs. While the Respondent is not currently registered in the securities industry in any capacity, a 12-month prohibition will prevent her from reapplying for at least a year.

### **Mitigating Factors**

51. We considered the following mitigating factors:

- a) There was no client harm;
- b) The Respondent did not benefit financially from her misconduct;

- c) We acknowledge the Respondent's statement that during the period that she sent emails to her personal email address she was experiencing stress and anxiety;
- d) The Respondent has not previously been the subject of MFDA disciplinary proceedings;
- e) The Respondent has fully cooperated with MFDA Staff during its investigation; and
- f) The Respondent entered into the Settlement Agreement saving the MFDA time resources, and expenses associated with conducting a full hearing of the allegations.

### **Costs**

52. The costs award is appropriate and consistent with previous MFDA decisions.

## **VI. CONCLUSION**

53. We are satisfied that the proposed sanctions, including the twelve-month prohibition of the Respondent's authority to conduct securities related business, the \$5,000 fine and \$2,500 in costs will serve as a specific deterrence to the Respondent and a general deterrence to others in the industry who may contemplate engaging in similar misconduct in the future.

54. Staff provided MFDA decisions which addressed similar but not the same misconduct. Based on a review of the cases and taking into consideration the factors discussed above, we are satisfied the proposed sanctions fall within a reasonable range of appropriateness.

55. We therefore accepted the Settlement Agreement and made an order reflecting the agreed upon sanctions against the Respondent.

**DATED** this 14<sup>th</sup> day of May 2021.

“Emily Cole”

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Emily Cole  
Chair

“Selwyn Kossuth”

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Selwyn Kossuth  
Industry Representative

“Timothy Pryor”

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Timothy Pryor  
Industry Representative

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