



**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: Nancy Carol Myers**

Heard: December 7, 2021 by electronic hearing in Toronto, Ontario

Decision: December 7, 2021

Reasons for Decision: January 10, 2022

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Joan Smart  
Melody Potter  
Vasant Pachapurkar

Chair  
Industry Representative  
Industry Representative

Appearances:

Michael A.M. Mantle	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
Zachary Pringle	)	Counsel for Respondent
	)	
	)	
Nancy Carol Myers	)	Respondent
	)	
	)	

## **I. INTRODUCTION**

1. By Notice of Hearing, dated August 17, 2021, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced proceedings against Nancy Carol Myers (the “Respondent”) indicating that a first appearance would take place by teleconference on October 6, 2021. At that time a second appearance was scheduled to be held on December 7, 2021. On November 17, 2021, the MFDA announced that a Settlement Hearing would take place by electronic hearing on December 7, 2021, at which a Hearing Panel would be asked to consider whether it should accept a settlement agreement, dated October 26, 2021, (the “Settlement Agreement”) entered into between the staff of the MFDA (“Staff”) and the Respondent.

2. At the Settlement Hearing on December 7, 2021, which was held electronically by videoconference, the Hearing Panel, after hearing submissions of counsel for the parties and considering the Settlement Agreement, decided to accept it. These are our reasons for that decision.

## **II. THE RESPONDENT’S ADMISSION OF CONTRAVENTIONS**

3. The Respondent admitted to the following violations of MFDA Rule 2.1.1:

- a) Between January 21, 2013 and May 14, 2019 she obtained, possessed and, in some instances, used to process transactions, 88 pre-signed account forms in respect of 36 clients;
- b) Between January 7, 2014 and January 12, 2018, she altered and used to process transactions, 8 account forms in respect of 7 clients by altering information on the account forms without having the clients initial the alterations; and
- c) Between February 25, 2015 and April 8, 2016 she photocopied signature pages from account forms that had been signed by clients and re-used the signature pages to complete 11 additional forms in respect of 4 clients.

## **III. PROPOSED SETTLEMENT**

4. Staff and the Respondent agreed to the following terms of settlement that require that the Respondent:

- a) pay a fine of \$27,000 upon acceptance of the Settlement Agreement by the Hearing Panel, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

- b) successfully complete the Ethics and Professional Conduct Course offered by the IFSE Institute, or an industry course acceptable to the MFDA, within 12 months of acceptance of the Settlement Agreement, pursuant to s. 24.1.1(f) of MFDA By-Law No. 1;
- c) pay costs of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1; and
- d) in the future comply with MFDA Rule 2.1.1.

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

##### **Registration**

5. Commencing in March 1988, the Respondent has been registered in the securities industry, and since July 5, 2012 has been registered in Ontario as a dealing representative with Investia Financial Services Inc. (the “Member”), a Member of the MFDA. She was an Approved Person.

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

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

7. Between January 21, 2013 and May 14, 2019, the Respondent obtained, possessed, and in some instances used to process transactions, 88 pre-signed account forms in respect of 36 clients.

8. The pre-signed account forms included: 28 Know Your Client (KYC) Update Forms, 40 Order Instruction Forms, 1 Representative Change Form, 3 Mutual Fund Trade Tickets, 2 New Account Application Forms, 3 Outside Activity Disclosure Forms, 6 Transfer Authorization for Registered Investments Forms, 1 RESP Educational Assistance Payment Form and 4 Automatic Conversion of Free Units Forms.

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

9. Between January 7, 2014 and January 12, 2018, the Respondent altered and used to process transactions, 8 account forms in respect of 7 clients, by altering information on the account forms without having the clients initial the alterations.

10. The altered account forms consisted of 6 Order Entry Forms and 2 KYC Update Forms.

## **Re-Used Client Signatures**

11. Between February 25, 2015 and April 8, 2016, the Respondent photocopied signature pages from account forms that had been signed by clients and re-used the signature pages to complete 11 additional forms in respect of 4 clients and submitted the forms to the Member for processing.
12. The forms consisted of 7 Order Instruction Forms and 4 Mutual Fund Trade Tickets.

## **The Member's Investigation**

13. During a branch audit, the Member identified several of the account forms that are the subject of the Settlement Agreement and in August 2019, completed a full review of the client files serviced by the Respondent, in which it identified the remaining subject account forms.
14. The Member commenced an investigation into the Respondent's conduct, which included sending letters to clients that provided the clients' KYC information on record and asked the clients to review the information to ensure it was recorded accurately. The Member also provided a summary of the clients' investments to determine whether the trading was executed according to the clients' instructions. No clients raised any concerns in response to the Member's letters.
15. On October 31, 2019, the Member issued a warning letter to the Respondent in respect of the subject account forms and on November 4, 2019, the Respondent signed a Letter of Undertaking acknowledging the Warning Letter and agreeing to adhere to the Member's guidelines, policies and procedures.

## **V. CONSIDERATIONS**

### **Role of the Hearing Panel**

16. Section 24.4.3 of MFDA By-law No. 1 provides that hearing panels may only accept or reject a settlement agreement.
17. It is generally accepted that a hearing panel will not lightly interfere with a settlement agreement reached between Staff and a respondent and will not reject it unless it views the penalty as clearly falling outside a reasonable range of appropriateness. See, for example, *Sterling Mutuals Inc. (Re)*, LNCMFDA 16 at para. 37.
18. In determining whether to accept the Settlement Agreement, the Hearing Panel considered primarily: whether it was proportionate and fell within a reasonable range of appropriateness,

having regard to the Respondent's misconduct and previous MFDA cases; whether it would serve as a specific and general deterrent; and whether it was aligned with the MFDA's objectives to protect investors and strengthen public confidence in the mutual fund industry.

### **Misconduct**

19. MFDA Rule 2.1.1 requires, among other things, that Approved Persons deal fairly, honestly and in good faith with their clients, observe high standards of ethics and conduct in the transaction of business and not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.

20. We found that, as admitted by the Respondent, she contravened MFDA Rule 2.1.1 when she: obtained, possessed, and in some instances used, pre-signed account forms; altered information on account forms without having the clients initial the changes and used those forms; and photocopied signatures pages from previously signed account forms and re-used them on additional forms.

21. The Respondent's actions with respect to using pre-signed forms also contravened the Member's policies and procedures.

22. The nature of the Respondent's misconduct demonstrates in some respects a lack of honesty and is serious as it can, among other things, negatively impact the integrity of account documents, destroy the audit trail, impede the Member's ability to supervise accounts and respond to client complaints and potentially allow for misuse such as unauthorized trading and misappropriation.

### **Sanction**

23. In our opinion, the nature of the misconduct described above warranted a meaningful fine.

24. In considering the proposed sanction, we regarded the following as aggravating factors:

- a) the Respondent had been registered in the securities industry for approximately 25 years before the misconduct commenced and should have been aware of the rules;
- b) the Respondent's misconduct occurred over an extended period of time and involved a large number of forms; and
- c) some of the misconduct occurred after the MFDA had issued its Bulletin #0661-E, dated October 2, 2015, in which the MFDA warned the industry against, among

other things, using pre-signed account forms, altering account forms and photocopying and re-using client signatures, and advised that it would be seeking increased penalties in future such cases.

25. In reaching our decision on the sanction, we considered a number of mitigating factors, including that:

- a) there was no evidence that the Respondent received any financial benefit from the misconduct beyond any commissions and fees that she would ordinarily be entitled to receive had the transactions been carried out in the proper manner;
- b) there was no evidence of client loss, complaints or lack of authorization;
- c) the Respondent had not previously been the subject of MFDA disciplinary proceedings;
- d) the Member took action to address the misconduct by issuing a warning letter; and
- e) by entering into the Settlement Agreement, the Respondent accepted responsibility for her misconduct and saved the MFDA the time, resources and expenses associated with conducting a full hearing.

26. Staff advised that they did not seek a suspension in this case as the Respondent services clients together with her husband, also an Approved Person with the Member, under a joint representative code and the husband is reliant on the Respondent to assist him in servicing client accounts due to his physical disabilities.

27. At the hearing we were informed by counsel for the Respondent that the Respondent's husband had also entered into a settlement agreement that had been approved by a MFDA hearing panel relating to 40 deficient forms which overlapped with some of the forms in question in this proceeding. In that case the sanction imposed was \$12,000 plus \$2,500 in costs. While that fact was not a consideration in our decision to accept the Settlement Agreement, we note that the Respondent and her husband together are being required to pay a total of \$44,000 in connection with their misconduct.

28. In our view, the fine of \$27,000 imposed on the Respondent should deter her from engaging in similar conduct in the future. The requirement to complete an industry compliance-related course should also serve to remind the Respondent of her compliance responsibilities.

29. This kind of misconduct by Approved Persons has occurred too frequently in the past. The sanction in this case should serve the goal of general deterrence by sending a message to others in the mutual fund industry that the subject conduct will not be tolerated and that those who engage in similar conduct will face meaningful penalties. If that does not prove to be the case in the future, the MFDA may need to consider imposing even more significant sanctions in order to curtail similar misconduct in the mutual fund industry.

30. The proposed penalty was within a reasonable range of appropriateness, having regard to the two decisions provided to us made by MFDA hearing panels arising out of settlements in similar circumstances involving a significant number of pre-signed and altered forms and re-use of client signatures. The fines imposed in those cases were \$30,000 and \$20,000, with the larger fine being imposed in the case involving the larger number of deficient account forms. In each case costs of \$2,500 were imposed.

*McMillan (Re)*, [2021] Hearing Panel of the Central Regional Council, MFDA File No. 202132, Reasons for Decision dated October 22, 2021

*Lewis (Re)*, [2018] Hearing Panel of the Prairie Regional Council, MFDA File No. 2017121, Reasons for Decision dated March 26, 2018

31. While it does not excuse the Respondent's misconduct and was not a consideration in our decision to accept the Settlement Agreement, we were somewhat concerned that the misconduct had gone on for a period of over six years before it was detected by the Member.

## **VI. CONCLUSION**

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

**DATED** this 10<sup>th</sup> day of January, 2022.

“Joan Smart”

---

Joan Smart  
Chair

“Melody Potter”

---

Melody Potter  
Industry Representative

“Vasant Pachapurkar”

---

Vasant Pachapurkar  
Industry Representative

DM 862124