



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: Khoa Anh Nguyen

Heard: September 15, 2021 by electronic hearing in Fort McMurray, Alberta

Decision: September 15, 2021

Reasons for Decision: February 11, 2022

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Sherri Walsh
Birju Shah
Sean Shore

Chair
Industry Representative
Industry Representative

Appearances:

Sakeb Nazim)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
Zachary Pringle)	Counsel for Respondent
)	
)	
Khoa Anh Nguyen)	Respondent
)	
)	

I. INTRODUCTION

1. On June 11, 2021 the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing pursuant to Sections 20 and 24 of MFDA By-law No. 1 in respect of Khoa Anh Nguyen (the “Respondent”).
2. On September 7, 2021 the Respondent and MFDA Staff (“Staff”) entered into a Settlement Agreement (the “Settlement Agreement”) pursuant to which the Respondent agreed to a proposed settlement of matters for which he could be disciplined under Sections 20 and 24 of MFDA By-law No. 1.
3. On September 15, 2021 a Settlement Hearing (the “Hearing”) was held by videoconference before a Hearing Panel of the MFDA Prairie Regional Council (the “Panel”). It was attended by both the Respondent and his legal counsel.
4. At the conclusion of the Hearing, the Panel accepted the Settlement Agreement and issued an Order to that effect. These are the Panel’s reasons for that decision.

II. CONTRAVENTIONS

5. In the Settlement Agreement, the Respondent admitted to having committed the following violations of the MFDA’s By-laws, Rules or Policies:
 - a) Between January 2017 and August 2018, the Respondent photocopied signature pages from account forms that had been previously signed by clients and re-used the signature pages to complete 21 additional forms in respect of 4 clients, contrary to MFDA Rule 2.1.1; and
 - b) Between January 2017 and June 2018, the Respondent obtained and possessed 10 pre-signed account forms in respect of 3 clients, contrary to MFDA Rule 2.1.1.

III. TERMS OF SETTLEMENT

6. Staff and the Respondent agreed on the following terms of settlement:
 - a) The Respondent shall pay a fine in the amount of \$25,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of 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 section 24.2 of By-law No. 1;
- c) The Respondent shall in the future comply with MFDA Rule 2.1.1; and
- d) The Respondent will attend in person or via teleconference, on the date set for the Hearing.

IV. AGREED FACTS

7. Staff and the Respondent agreed to the settlement on the basis of the agreed facts that were set out at paragraph 7 through 21 inclusive of the Settlement Agreement as follows:

III. AGREED FACTS

Registration History

- 7. Since February 2008, the Respondent was registered in the securities industry.
- 8. From September 2008 to December 2018, the Respondent was registered in Alberta as a dealing representative with Royal Mutual Funds Inc. (the "Member"), a Member of the MFDA. On December 20, 2018, the Respondent resigned from the Member.
- 9. Since June 2019, the Respondent has been registered in Alberta as a dealing representative with Raymond James Ltd, a dealer member of the Investment Industry Regulatory Organization of Canada.
- 10. At all material times, the Respondent carried on business in the Fort McMurray, Alberta area.

Re-Using Client Signatures

- 11. Between January 2017 and August 2018, the Respondent photocopied signature pages from account forms that had been previously signed by clients and re-used the signature pages to complete 21 additional forms in respect of 4 clients.
- 12. The account forms consisted of Contribution Acknowledgement, Switch/Consolidation and Know-Your-Client forms.
- 13. The Respondent submitted 17 of the account forms to the Member for processing.

Pre-Signed Account Forms

- 14. At all material times, the Member's policies and procedures prohibited its Approved Persons from holding, obtaining, or using pre-signed account forms.
- 15. Between January 2017 and June 2018, the Respondent obtained, possessed, and in some instances, used to process transactions, 10 pre-signed account forms in respect of 3 clients.
- 16. The pre-signed account forms consisted of Transfer Authorization for Registered Plans, Switch/Consolidation, and Withdrawal forms.

Member's Investigation

- 17. In December 2018, the Member commenced a review of the client files maintained by the Respondent and identified the account forms that are the subject of this Settlement Agreement.
- 18. The Member conducted an investigation to determine whether the transactions were authorized by the clients, including by reviewing client meeting notes, and confirmed that the transactions were authorized and that there was no financial harm to clients.

Additional Factors

19. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

20. There is no evidence of any client loss or that the transactions were unauthorized.

21. 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

Role of the Panel

8. The role a Hearing Panel performs at a Settlement Hearing is fundamentally different from the role it performs at a Contested Hearing.

9. When considering a Settlement Agreement, a Hearing Panel has only two options: either to accept or reject the Settlement Agreement.

MFDA By-law No. 1, s. 24.4.3

10. As stated by the Hearing Panel in *Sterling Mutuals Inc. (Re)* citing the I.D.A. Ontario District Council in *Milewski (Re)*:

...while 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." [1999] I.D.A.C.D. No. 17 at page 12

Sterling Mutuals Inc. (Re), MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 3, 2008, at para 35

11. Hearing Panels have acknowledged that settlement agreements which have been worked out by the parties should be respected because Hearing Panels do not know what led to the settlement, or what was given up by the parties during the course of their negotiations.

Fike (Re), MFDA File No. 2017102, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 7, 2017, at paras 22 and 23

12. The rationale for respecting settlements of the nature found in the Settlement Agreement in this case, was further articulated by the British Columbia Court of Appeal:

"Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is

tailored to address the interests of both the Commission and the person under investigation. Enforcement is rarely a concern because the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing. Or, they can settle some matters, and direct their resources to the matters that are in dispute, and therefore to be resolved by way of a hearing."

British Columbia (Securities Commission) v Seifert, 2007 BCCA 484, para 31

13. Although the Seifert decision dealt with an agreement that was before the British Columbia Securities Commission, the case has been frequently cited by Hearing Panels in MFDA Settlement Hearings.

Factors Concerning Acceptance of a Settlement Agreement

14. Hearing Panels have repeatedly expressed the view that generally, settlement agreements should be accepted bearing in mind the following criteria:

- a) That it is in the public interest to do so and that the penalties proposed will be sufficient to protect investors;
- b) That the agreement is reasonable and proportionate, having regard to the conduct of the Respondent;
- c) That the agreement addresses the issues of both specific and general deterrence;
- d) That the agreement is likely to prevent the type of conduct set out in the facts;
- e) That the agreement will foster confidence in the integrity of the Canadian capital markets;
- f) That the agreement will foster confidence in the integrity of the MFDA; and
- g) That the agreement will foster confidence in the regulatory process itself.

Sterling Mutuals Inc. (Re), *supra*, at para 34

15. The primary goal of all securities regulation is investor protection.

Pezim v British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557, at paras 59 & 68

16. In addition to investor protection, the goals of securities regulation include fostering public confidence in the capital markets and in the securities industry, as a whole.

Pezim v British Columbia (Superintendent of Brokers), *supra*, at paras 59 & 68

17. In determining the appropriateness of a proposed penalty, Hearing Panels frequently cite the decision in *Breckenridge (Re)*, where the Hearing Panel stated that sanctions "... should be

preventative, protective and prospective in nature ...” taking into account the following considerations:

- a) The protection of the investing public;
- b) The integrity of the securities markets;
- c) Specific and general deterrence;
- d) The protection of the MFDA’s membership; and
- e) Protection of the integrity of the MFDA’s enforcement processes.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, 2007 LNCMFDA 38, at paras 75 &76

18. The Hearing Panel in *Breckenridge (Re)* set out the following additional factors which a Hearing Panel should consider, having regard to the specific circumstances of the case:

- a) The seriousness of the allegations proved against the respondent;
- b) The respondent’s experience in the capital markets;
- c) The level of the respondent’s activity in the capital markets;
- d) The harm suffered by investors as a result of the respondent’s activities;
- e) The benefits received by the respondent as a result of the improper activity;
- f) The risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;
- g) The damage caused to the integrity of the capital markets in the jurisdiction by the respondent’s improper activities;
- h) The need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- i) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
- j) Previous decisions made in similar circumstances.

Breckenridge (Re), *supra*, at para 77

MFDA Sanction Guidelines

19. On November 15, 2018 the MFDA issued Sanction Guidelines (the “Guidelines”) to assist Staff and Respondents in conducting disciplinary proceedings and negotiating settlement

agreements and to assist Hearing Panels in determining the fair and efficient disposition of settled and contested disciplinary proceedings.

20. The Guidelines, as their name suggests, are not mandatory. They state, under the heading: “Purpose of the Sanction Guidelines”:

“... The determination of the appropriate sanction in any given case is discretionary and a fact specific process. The appropriate sanction depends on the facts of a particular case and the circumstances of the conduct. The Sanction Guidelines are intended to provide a summary of the key factors upon which discretion may be exercised consistently and fairly in like circumstances, but are not binding on Hearing Panels. The list of key factors in the Sanction Guidelines is not exhaustive, and Hearing Panels may consider other aggravating and mitigating factors as appropriate.

Hearing Panels should always exercise judgement and discretion, and consider appropriate aggravating and mitigating factors in determining appropriate sanctions in every case. In addition, Hearing Panels should identify the basis for the sanctions imposed in the Reasons for Decision.”

MFDA Sanction Guidelines, p. 1

21. In cases involving the type of misconduct in the present case, Staff submitted that the following factors set out in the Guidelines are relevant to the Panel’s decision:

- a) General and specific deterrence;
- b) Public confidence;
- c) Seriousness of the allegations proved against the Respondent;
- d) The Respondent’s past conduct, including prior sanctions;
- e) The Respondent’s recognition of the seriousness of the misconduct; and
- f) Previous decisions made in similar circumstances.

Application in the present case

Nature of the misconduct – re-used client signatures – use of pre-signed account forms

22. The Respondent photocopied signature pages from account forms that had been previously signed by clients and then reused them to complete 21 additional forms in respect of 4 clients.

23. The account forms consisted of Contribution Acknowledgement, Switch/Consolidation, and Know-Your-Client forms.

24. The Respondent submitted 17 of those accounts forms to the Member for processing.

25. The Respondent also obtained, possessed, and used to process transactions, 10 pre-signed account forms in respect of 3 clients.
26. The pre-signed account forms consisted of Transfer Authorization for Registered Plans, Switch/Consolidation, and Withdrawal forms.
27. As discussed below, the two contraventions which are the subject of these proceedings – re-use of client signatures also known as "signature falsification" and – use of pre-signed forms – involve similar types of misconduct which MFDA Hearing Panels have determined expose clients to similar types of risk and is conduct which is prohibited under the MFDA's By-laws, Rules and Policies.

MFDA Rule 2.1.1 – high standard of ethics

28. MFDA Rule 2.1.1 prescribes the standard of conduct applicable to all registrants in the mutual fund industry. It requires that each Member and Approved Person: deal fairly, honestly, and in good faith with clients, observe high standards of ethics and conduct in the transaction of business and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.
29. The Rule has been interpreted and applied in a purposeful manner in a wide range of circumstances. As stated by the MFDA Hearing Panel in *Breckenridge (Re)*:

The Rule articulates the most fundamental obligations of all registrants in the securities industry.

Breckenridge (Re), supra, at para 71

30. MFDA Hearing Panels have consistently held that conduct which involves reusing signature pages or obtaining and/or using pre-signed forms is contrary to the standard of conduct required by Rule 2.1.1.

Techer, MFDA File No. 201662, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated December 5, 2016, at para 44

Price, MFDA File No. 200814, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 18, 2011, at para 135

Leung, MFDA File No. 201555, Hearing Panel of the Central Regional Council, Decision and Reasons dated January 25, 2016

31. Both types of misconduct have been the subject of notices and bulletins published by MFDA Staff:

- a) Staff Notice #MSN-0066 published October 31, 2007 and updated March 4, 2013; and
- b) Bulletin #0661-E updated October 2, 2015.

32. MFDA Staff notices are: “intended to assist Members and their Approved Persons in the interpretation, application of and compliance with requirements under MFDA By-laws and Rules. Notices make reference to these requirements and set out MFDA Staff’s interpretation of how to comply with these requirements. Notices may also include best practices or guidance.”

MFDA Notice MSN-0066 dated October 31, 2007

33. The purpose of Notice MSN-0066 was to emphasize that obtaining pre-signed forms from clients by Members and Approved Persons is contrary to the latter's obligation under MFDA Rule 2.1.1 to deal fairly, honestly and in good faith with their clients and observe high standards of ethics and conduct in the transaction of business.

34. The Notice clearly stated:

Members may only use forms that are duly executed by the client after information on the form has been properly completed.

35. The Notice gave examples of pre-signed forms which included:

... blank trade order forms, cheques or account application forms pre-signed by clients, or blank pre-signed forms indicating branch manager or head office approval that have no other information filled in.

... information on legitimately completed and signed forms may be subsequently altered or removed, or signatures may be physically cut from other documents and then used to create photocopied forms that appear to have been signed by the client.

36. The Enforcement Bulletin Staff issued on October 2, 2015 regarding “Signature Falsification” was a reminder that Hearing Panels of the MFDA Regional Councils have consistently ruled that falsification of client signatures is not permissible under MFDA Rules.

37. It repeated the wording from the Staff Notice #MSN-0066 that Members and Approved Persons:

... may only use forms that are properly executed by the client after information on the form has been properly completed.

38. The Bulletin identified the following examples of signature falsification:

- having a client sign a form which is blank or only partially completed (pre-signed form);
- signing a client's name to a document;
- cutting and pasting, photocopying or using correction fluid on a document to reuse a previous signature;
- altering any information on a signed document, without the client initialing the document to show the change was approved.

39. Both the Notice and the Bulletin not only identified the types of conduct which are prohibited they also identified the reason why the conduct was prohibited.

40. For example, Staff Notice #MSN-0066 stated that:

The existence of pre-signed trade order forms in client files may be evidence that an Approved Person is engaging in discretionary trading. Under securities legislation and MFDA Rules, Members and Approved Persons are not permitted to accept discretionary trading from a client.

41. It went on to say that even in cases where there is no evidence of intent to use a pre-signed form for the purpose of discretionary trading:

... the use of such forms destroys the integrity of the audit trail for activity in the relevant client's account.

42. Bulletin No. 0661-E warned that the improper use of forms can:

- adversely affect the integrity and reliability of documents;
- destroy the audit trail;
- impact the ability of APs to produce valid documentation to support transactions that come into question;
- prejudice a client by making it appear that they have executed a particular document when they have not;
- mislead Members' supervisory personnel;

- negatively affect the credibility of the AP;
- negatively affect Member complaint handling; and
- be used to facilitate other misconduct such as unauthorized trading, fraud and misappropriation of funds.

43. It further stated that any falsification is unacceptable whether or not:

- it is done for the purposes of client convenience;
- the client instructs or otherwise consents the AP falsifying the document;
- the client complains or there is financial harm to the client;
- it was the AP's intention to deceive a client or other person; and
- the document is used to commit a further breach of the rules.

44. As the Notices and Bulletin make clear, whether described as “signature falsification”, “re-using signatures” or “use of pre-signed forms”, the conduct is prohibited.

45. The Notices and Bulletin show that the MFDA has been warning Approved Persons not to use falsified or pre-signed forms, for a number of years.

46. Hearing Panels of the MFDA, Investment Industry Regulatory Organization of Canada (“IIROC”) and Provincial Securities Commissions have confirmed that the possession and use of pre-signed forms is prohibited.

Price, supra, at para 135

47. The Hearing Panel in *Price* described the dangers posed by pre-signed forms which can be summarized as follows:

- a) They present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading;
- b) At its worst they create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct toward a client; and,
- c) They subvert the ability of a Member to properly supervise trading activity.

Price, supra, at paras 122-124

48. With respect to this last point, the Hearing Panel in *Price* pointed out that the reason that pre-signed forms interfere with the Member's ability to properly supervise trading activity is because they destroy the audit trail. The Hearing Panel noted:

The presence of the client's signature on a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account.

Price, supra, at para 124

49. Hearing Panels have confirmed that the prohibition on the use of pre-signed account forms applies regardless of whether the client was aware, or authorized the use of the pre-signed forms and whether the forms were actually used by the Approved Person for discretionary trading or other improper purposes.

Wellman, MFDA File No. 201529, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 21, 2015, at para 10

50. Like pre-signed account forms, the prohibition against falsifying forms exists regardless of the existence of client authorization or the motive behind the use of the form.

Techer, supra, at para 34

51. Although both types of misconduct – the use of pre-signed forms and falsification of client signatures – are similar in terms of the nature of the risks associated with the conduct and why the conduct breaches MFDA Rule 2.1.1, in the Panel's view the falsification of a client's signature is particularly serious misconduct.

52. As the Hearing Panel in *Techer* noted, unlike with pre-signed account forms, where the client knows that they are signing an incomplete form to be used in some way, in the case of a form which has been falsified by the Approved Person, the possibility exists that the client is unaware of the Approved Person's actions.

Techer, supra, at para 38

53. In this regard, the Panel agrees with Staff's written submission that the authenticity of client signatures is one of the foundations upon which client trust is established and client instructions are carried out.

54. For all of the above reasons, the Panel finds that the Respondent engaged in misconduct that must be regarded as serious.

Post Bulletin Conduct

55. All of the forms which were the subject matter of these proceedings were processed after the MFDA had issued Bulletin #0661-E on October 2, 2015. MFDA Hearing Panels have considered this an aggravating factor.

Techer, supra, at para 44

Ackerman, MFDA File No. 201734, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated September 13, 2017, at para 29

Respondent's Experience in the Securities Industry

56. Having been registered as a Mutual Fund Dealing Representative since September 2008 the Respondent was experienced in the securities industry and ought to have known that re-using clients' signatures or using pre-signed forms was a clear violation of his regulatory obligations.

Respondent's Past Conduct

57. The Respondent has not been previously disciplined by the MFDA.

Respondent's Recognition of the Seriousness of his Misconduct

58. As per Staff's submission, the Respondent admitted to his misconduct in the very early stages of the MFDA's investigation into this matter. By entering into the Settlement Agreement, the Respondent has saved the MFDA the time, resources and expenses associated with conducting a full hearing of the allegations.

Client Harm and Benefits Received by the Respondent

59. As the facts in the Settlement Agreement identify, the Member conducted an investigation into this matter and confirmed that in all of the transactions, the forms were authorized and there is no evidence of client harm or client complaint. There was also no evidence that the Respondent received any financial or other benefit through his conduct.

Deterrence

60. Both the Supreme Court of Canada and MFDA Hearing Panels have held that deterrence is an appropriate factor to be taken into account when determining the appropriateness of a penalty.

Cartaway Resources Corp. (Re), [2004] 1 SCR 672 (SCC), at paras 52-62

Tonnies (Re), 2005 LNC MFDA 7, at para 47

Harvey (Re), MFDA File No. 202075, Hearing Panel of the Prairie Regional Council, Reasons for Decision dated October 7, 2021, at paras 42 and 43

61. The effect of general deterrence should advance the goal of protecting investors. As a result, the penalty levied should be sufficient so as to affirm public confidence in the regulatory system and ensure that the misconduct is not repeated by others in the industry.

Cartaway Resources Corp. (Re), *supra*, at para 61

62. We find that the penalty which is proposed in the Settlement Agreement is sufficient to demonstrate that the Respondent's misconduct in all of the circumstances is serious and carries significant consequences.

63. The agreed upon fine of \$25,000 and costs of \$2,500 is necessary and sufficient to achieve the goals of both specific and general deterrence, having regard to the factors described above.

Previous Decisions and Similar Cases

64. The Panel agrees with Enforcement Counsel's submission that the following cases were sufficiently similar for us to consider in determining the appropriateness of the penalty agreed upon by the parties.

CASE	FACTS	PENALTY
<i>Heide</i> , MFDA File No. 2018122, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated April 15, 2019, Staff's Book of Authorities, Tab 14 .	<ul style="list-style-type: none">• Re-used 20 signature pages• Post bulletin conduct	<ul style="list-style-type: none">• \$15,000 fine• Costs of \$2,500
<i>Rombough</i> , MFDA File No. 201811, Hearing Panel of the X Regional Council, Decision and Reasons dated X, Staff's Book of Authorities, Tab 15 .	<ul style="list-style-type: none">• Re-used 24 signature pages• Obtained, possessed or used 6 pre-signed forms	<ul style="list-style-type: none">• \$10,000 fine• Costs of \$2,500
<i>Liu</i> , MFDA File No. 202036, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated September 29, 2020, Staff's Book of Authorities, Tab 16 .	<ul style="list-style-type: none">• Re-used 14 signature pages• Post-Bulletin Conduct	<ul style="list-style-type: none">• \$12,500 fine• Costs of \$2,500

VI. CONCLUSION

65. Having reviewed the Settlement Agreement and having considered both written and oral submissions from counsel for both parties, the Panel is satisfied that the penalty which is set out in the Settlement Agreement falls within a reasonable range of appropriateness having regard to the nature and extent of the Respondent's misconduct in all of the circumstances.

66. We believe the proposed penalty is reasonable and proportionate and will deter the Respondent and other Approved Persons from engaging in the type of misconduct that is the subject of these proceedings. It will advance the public interest and the MFDA's objective to enhance investor protection and ensure high standards of conduct in the mutual fund industry.

67. For all of the above reasons, the Panel, therefore, accepts the Settlement Agreement.

DATED this 11th day of February, 2022.

"Sherri Walsh"

Sherri Walsh
Chair

"Birju Shah"

Birju Shah
Industry Representative

"Sean Shore"

Sean Shore
Industry Representative

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