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 Wayne Nichol

Heard: April 5, 2022 by electronic hearing in Winnipeg, Manitoba
Decision: April 5, 2022
Reasons for Decision: July 6, 2022

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Sherri Walsh	Chair
Howard R. Mix	Industry Representative
Danielle Tétrault	Industry Representative

Appearances:

Brendan Forbes	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Jonathan C. Preece	)	Counsel for Respondent
David Wayne Nichol	)	Respondent

I. INTRODUCTION

1. The Mutual Fund Dealers Association of Canada (the "MFDA") commenced disciplinary proceedings in respect of David Wayne Nichol (the "Respondent") by Notice of Hearing dated June 25, 2021 ("Notice of Hearing").

2. On February 18, 2022 the Respondent entered into a Settlement Agreement with Staff of the MFDA ("Staff") in which the Respondent agreed to a proposed settlement of matters for which he could be disciplined pursuant to sections 20 and 24.1 of MFDA By-law No. 1 (the "Settlement Agreement").

3. On April 5, 2022 a Settlement Hearing (the "Hearing") was held by videoconference before a Hearing Panel of the MFDA Prairie Regional Council (the "Panel"). The Respondent attended and was represented by counsel.

4. At the outset of the Hearing, the Panel granted Staff's motion to move the proceedings *in camera*. The Panel then considered the provisions of the Settlement Agreement and the written and oral submissions by Staff and counsel for the Respondent.

5. 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

6. In the Settlement Agreement, the Respondent admitted to having committed the following violations of the MFDA's By-laws, Rules or Policies:

> a) Between October 2014 and January 2019 the Respondent obtained, possessed, and in some instances, used to process transactions, 121 pre-signed account forms in respect of 53 clients, contrary to MFDA Rule 2.1.1; and
>
> b) In or around March 2015, the Respondent contributed to a client's account at the Member using his own monies, thereby engaging in personal financial dealings with a client that gave rise to a conflict or potential conflict of interest, which the Respondent failed to disclose to the Member or otherwise address by the exercise of reasonable business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.5.1, 1.1.2 and 2.1.1.

III. TERMS OF SETTLEMENT

7. Staff and the Respondent agreed on the following terms of settlement:

a) The Respondent shall be suspended from conducting securities related business in any capacity while in the employ or associated with any Member of the MFDA for a period of one month commencing on the third business day after the acceptance of this Settlement Agreement, pursuant to section 24.1.1(c) of MFDA By-law No. 1;

b) 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;

c) The Respondent shall pay costs in the amount of $5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of By-law No. 1;

d) The Respondent shall in the future comply with MFDA Rules 2.1.1, 2.1.4, 2.5.1 and 1.1.2; and

e) The Respondent will attend the Settlement Hearing in person or via videoconference.

IV. AGREED FACTS

8. Staff and the Respondent agreed to the Terms of Settlement on the basis of the agreed facts that were set out at paragraphs 7 through 24, inclusive of Part III of the Settlement Agreement. Those facts are as follows:

III. AGREED FACTS

Registration History

7. Since April 2007, the Respondent has been registered in British Columbia, Manitoba, Saskatchewan and Ontario as a dealing representative with Fundex Investments Inc. (the "Member"), a Member of the MFDA.

8. Since March 2019, the Respondent has been registered in Alberta as a dealing representative with the Member.

9. At all material times, the Respondent carried on business in the Winnipeg, Manitoba area.

Pre-Signed Account Forms

10. At all material times, the Member's policies and procedures prohibited its Approved Persons from holding, obtaining, or using pre-signed account forms.

11. Between October 2014 and January 2019, the Respondent obtained, possessed, and in some instances, used to process transactions, 121 pre-signed account forms in respect of 53 clients.

12. The pre-signed account forms consisted of Order Entry, Systemic Instruction, Transfer Authorization, Withdrawal Request, New Account Application, and Know-Your-Client ("KYC") Update forms.

Personal Financial Dealings With a Client

13. At all material times, the Member's policies and procedures prohibited its Approved Persons from lending money or extending credit to clients.

14. In March 2015, client DM advised the Respondent that he wished to make a contribution to his Tax Free Saving Account ("TFSA") prior to the expiry of a deadline specified by client DM's employer's benefit plan. Client DM was traveling at the time and was not able to meet the deadline to contribute to his TFSA. The Respondent issued a cheque payable to the client for $810 using his own money and deposited it to client DM's TFSA so that the contribution could be made to the client's account by the deadline.

15. In or about March 2015, client DM reimbursed the Respondent for the $810 he deposited into client DM's account.

16. The Respondent did not advise the Member that he deposited his own monies to client DM's account until the Member discovered a cheque from client DM to the Respondent during a review of the Respondent's branch as described below.

Member's Investigation

17. In February 2019, during an onsite branch review, the Member discovered the account forms that are the subject of this Settlement Agreement in client files maintained by the Respondent. The Member also discovered a personal cheque for $810 from client DM payable to the Respondent that client DM had provided to the Respondent as repayment for the amounts the Respondent deposited into his account.

18. In May 2019, the Member sent audit letters to all of the clients whose accounts the Respondent serviced that asked the client to review and verify the accuracy of all trading activities executed in their accounts over the previous three years. For clients identified as having deficient forms containing KYC information, the Member also provided the client with their KYC information and asked the clients to review and verify the accuracy of the KYC information. No clients reported any concern to the Member.

19. On April 16, 2019, the Member placed the Respondent under close supervision for a period of five months.

20. On September 12, 2019, the Member issued a warning letter to the Respondent concerning the conduct described above.

Additional Factors

21. There is no evidence that the Respondent received any financial benefit from using the pre-signed account forms 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.

22. There is no evidence of any client loss, complaints, or that the transactions were unauthorized.

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

24. 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

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

10. 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

11. 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

12. MFDA Panels have confirmed that a Hearing Panel should not interfere lightly in a negotiated settlement as long as the penalties agreed upon are within a reasonable range of appropriateness having regard to the conduct of the Respondent.

Jacobson Re, 2007 Hearing Panel of the Prairie Regional Council, MFDA File No. 200712, Panel Decision dated July 13, 2007, [2007] CarswellNat 6405 at p. 7

13. Hearing Panels have acknowledged that the reason why settlement agreements which have been worked out by the parties should be respected is because 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

14. 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

15. 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

16. MFDA Hearing Panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

a) Whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;

b) Whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;

c) Whether the settlement agreement addresses the issues of both specific and general deterrence;

d) Whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;

e) Whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;

f) Whether the settlement agreement will foster confidence in the integrity of the MFDA; and

g) Whether the settlement agreement will foster confidence in the regulatory process itself.

Jacobson (Re), *supra*, at p. 7

17. 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

18. 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

19. In determining the appropriateness of a proposed penalty, Hearing Panels frequently cite the decision in *Breckenridge (Re)*, where the 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

20. The Panel in *Breckenridge (Re)* set out the following additional factors which a 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

21. 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.

22. 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."
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> MFDA Sanction Guidelines p.1

Application in the Present Case

Nature of the Misconduct: Pre-Signed Forms

23. The Respondent in this matter has admitted that between October 2014 and January 2019, he obtained, possessed and in some instances, used to process transactions, 121 pre-signed account forms in respect of 53 clients.

24. The term "pre-signed forms" is a generic term that applies to account forms that were incomplete at the time they were signed. Members and Approved Persons are only permitted to obtain, use and rely upon forms that are executed by the client after all information on the form has been properly completed.

25. MFDA Rule 2.1.1 sets the standard of conduct to be followed by all Approved Persons. The Rule is designed to protect the public interest by requiring Approved Persons to adhere to a high standard of ethical conduct. It has been interpreted and applied in a purposive manner in a wide range of circumstances. As the Hearing Panel in *Breckenridge Re*, stated:

> "The Rule articulates the most fundamental obligations of all registrants in the securities industry."
>
> *Breckenridge (Re)*, *supra*, at para. 71
>
> See as well: *Price (Re)*, MFDA File No. 200814, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 18, 2011 at paras. 118-121

26. The Rule requires, among other things, 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.

> MFDA Rule 2.1.1

27. Starting as early as October 31, 2007, the MFDA has made it clear to Approved Persons that possessing and using pre-signed forms is contrary to the obligations imposed by Rule 2.1.1.

MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017)

MFDA Bulletin #0661-E dated October 2, 2015

28. Hearing Panels of the MFDA, IIROC and Provincial Securities Commissions have also confirmed that the possession and use of pre-signed forms is prohibited.

Price (Re), [2011] Hearing Panel of the Central Regional Council, MFDA File No. 200814, Reasons for Decision (Misconduct) dated April 18, 2011 at para. 135

Satchithanantham (Re), [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202141, Reasons for Decision dated January 20, 2022

Hare (Re), [2021] Hearing Panel of the Central Regional Council, MFDA File No. 202141, Reasons for Decision dated September 17, 2021

29. In the Bulletin and Notices the MFDA issued, cited above, warning Approved Persons against the use of pre-signed forms, it explained that the use of pre-signed forms adversely effects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on the Member's ability to handle complaints and has the potential for misuse in the form of unauthorized trading, fraud and misappropriation.

30. As the Hearing Panel explained in *Price (Re)*:

> Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading….At its worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client… Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. 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.
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> *Price Re, supra*, at paras. 122-124

31. The prohibition on the use of pre-signed account forms applies regardless of whether:

a) the client was aware, or authorized the use, of the pre-signed account forms; and

b) the forms were used by the Approved Person for discretionary trading or other improper purposes.

32. On the basis of the foregoing, the Panel finds that by obtaining and using pre-signed forms as described in Part III of the Settlement Agreement, the Respondent engaged in misconduct in violation of Rule 2.1.1, that should be regarded as serious.

Nature of the Misconduct: Engaging in Personal Financial Dealings – Conflicts of Interest

33. MFDA Rule 2.1.4 requires that Approved Persons disclose any potential or actual conflicts of interest to their Member and address such conflicts with the exercise of responsible business judgment influenced only by the best interest of the client.

34. The Rule prescribes the duties incumbent upon Approved Persons and Members when conflicts or potential conflicts of interest arise between an Approved Person or a Member and a client. The Rule which was in effect at the relevant time required, among other things, that:

a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.

b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d).

c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall immediately be disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or the Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.

MFDA Rule 2.1.4(a) – (c)[1]

35. MFDA Hearing Panels have consistently found that when an Approved Person lends money to a client such conduct gives rise to a potential conflict of interest.

Shaw (Re), [2017] Hearing Panel of the Prairie Regional Council, MFDA File No. 201749, Reasons for Decision dated June 28, 2017 at para. 55

Rahman (Re), [2021] Hearing Panel of the Central Regional Council, MFDA File No. 202074, Reasons for Decision dated June 10, 2021 at paras. 54-55

[1] On June 30, 2021, amendments to MFDA Rule 2.1.4 came into effect. As the conduct addressed in this proceeding pre-dated the amendment to the Rule, the version of MFDA Rule 2.1.4 that is addressed in these proceedings is the version that was in effect between February 27, 2006 and June 30, 2021.

36. When conflicts or potential conflicts of interest arise between an Approved Person and a client, the Approved Person is required to disclose the conflict or potential conflict to the Member and ensure that it is addressed in compliance with the requirements set out in Rule 2.1.4. Where conflicts of interest are not addressed in accordance with Rule 2.1.4, they can result in client harm, expose the Member to liability, and undermine trust in the mutual fund industry. As stated by the Hearing Panel in *Sarang*:

> Financial dealings with a client create a conflict of interest and are permitted in limited situations and only where appropriate safeguards are in place. Even though the loan was repaid after demand was made, and the client suffered no loss, conflicts of interest seriously undermine public confidence in the integrity of the market and its regulation.
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> *Sarang (Re)*, *supra*, at para. 11
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> See as well: *Shaw (Re)*, *supra*, at para. 55

37. MFDA Hearing panels have repeatedly held that lending money to a client gives rise to a conflict of interest under MFDA Rule 2.1.4.

> *Shaw, supra*, at paras. 53-55
>
> *Rahman (Re), supra*, at paras. 54-55

38. As noted in *Shaw (Re)*, negative consequences can flow from instances where Approved Persons loan money to clients. For example:

a) an Approved Person who is owed money from a client may be hesitant to execute trades in mutual funds at all, or to execute trades in higher risk funds, even if suitable, due to a fear that the Approved Person would not be repaid;
b) an Approved Person may persuade a client to sell Deferred Sales Charge load mutual funds early, despite the fees associated with it, in order to use the proceeds to repay the Approved Person; or
c) an Approved Person may persuade a client to buy mutual funds that attract higher commissions for the Approved Person as part of a proposal to repay the Approved Person.

> *Shaw, supra*, at paras. 53-55

39. Furthermore, as stated by the Panel in *Yalkezian (Re)*:

> "The failure of an Approved Person to remain vigilant to potential or actual conflicts of interests with clients is an abdication of one of his or her most important responsibilities. When an actual or potential conflict of

> interest is present, it must be reported to the Member and resolved with only the best interests of the client in mind. Failure to keep client interests first and foremost in mind is a failure of the Approved Person to deal fairly, honestly and in good faith with clients, contrary to Rule 2.1.4 and the standard of conduct demanded by Rule 2.1.1."
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> *Yalkezian (Re)*, [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202164, Reasons for Decision dated March 3, 2022 at para. 13

40. The MFDA has also released Staff Notice MSN-0047 which addresses conflicts of interest. According to MSN-0047, the exercise of responsible business judgment requires the prohibition of certain arrangements, such as borrowing from and lending to clients.

> MFDA Member Staff Notice 0047, dated October 3, 2005

41. In the present case, the Respondent contributed $810 to client DM's investment account to facilitate client DM's contribution to their tax free savings account prior to the annual contribution deadline. Client DM subsequently reimbursed the Respondent for the loan.

> Settlement Agreement, paras. 14-15

42. The Respondent did not advise the Member that he loaned monies to client DM until the Member discovered a cheque from client DM to the Respondent during a review of the Respondent's branch.

> Settlement Agreement, para. 16

43. The Panel agrees with Staff's submission that while client DM repaid the Respondent shortly after the money was advanced, the Respondent's loan to client DM gave rise to a conflict or potential conflict of interest that was not addressed in compliance with the requirements set out in MFDA Rule 2.1.4.

Policies and Procedures

44. MFDA Rule 2.5.1 requires Members to establish, implement and maintain policies and procedures to ensure that the handling of their business is done in accordance with MFDA By-laws, Rules and Policies.

> MFDA Rule 2.5.1

45. MFDA Rule 1.1.2 places a corresponding obligation on Approved Persons to comply with the policies and procedures established and implemented by the Member in order to facilitate the Member's compliance with its regulatory obligations, and to enable the Member to supervise the conduct of its Approved Persons.

MFDA Rule 1.1.2

46. In this matter, the policies and procedures of the Member prohibited Approved Persons from "lending money or extending credit to clients."

Settlement Agreement, para. 13

47. The Panel notes that the Member's policies and procedures also prohibited Approved Persons from holding, obtaining, or using pre-signed forms.

Settlement Agreement at para 10

48. As held by the Panel in *Franco (Re)*:

> "[t]he obligation of Approved Persons to comply with the policies and procedures of the Members that they are registered with is a cornerstone of the self-regulatory system. MFDA Members are expected to be aware of their regulatory obligations and to implement policies and procedures to ensure compliance. When Approved Persons disregard those obligations, the Member's ability to supervise the conduct of such Approved Persons and protect the interests of clients and the public is undermined."

Franco (Re), [2011] Hearing Panel of the Prairie Regional Council, MFDA File No. 201016, Reasons for Decision dated May 6, 2011 at para. 38

49. Prior MFDA Hearing Panels have held that when an Approved Person engages in conflicts of interest with clients without meeting the requirements of Rule 2.1.4, and in turn contravenes the Member's policies and procedures, the Approved Person contravenes MFDA Rules 1.1.2 and 2.5.1.

Luong Dao (Re), [2021] Hearing Panel of the Central Regional Council, MFDA File No 201971, Reasons for Decision dated April 9, 2021 at para. 22

Wemple (Re), [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201654, Reasons for Decision dated June 9, 2017 at para. 38

50. Prior MFDA Hearing Panels have also held that when an Approved Person obtains or uses pre-signed forms in contravention of the Member's policies and procedures, the Approved Person contravenes MFDA Rules 1.1.2 and 2.5.1.

Jaswal (Re), [2020] Hearing Panel of the Pacific Regional Council, MFDA File No. 201967, Reasons for Decision dated October 13, 2020

Clairmont (Re), [2019] Hearing Panel of the Central Regional Council, MFDA File No. 2018109, Reasons for Decision dated February 11, 2019

51. By lending money to client DM in contravention of the Member's policies and procedures, therefore, the Respondent contravened MFDA Rules 1.1.2 and 2.5.1.

52. MFDA Hearing Panels have consistently held that lending money to clients is also a contravention of MFDA Rule 2.1.1.

53. Accordingly, the Panel agrees with Staff's submission that the Respondent's conduct with respect to lending money to a client constitutes serious misconduct.

The Respondent's Recognition of the Seriousness of the Misconduct

54. The Respondent has acknowledged that his conduct constitutes a serious contravention of MFDA Rules. By entering into the Settlement Agreement he has accepted responsibility for his actions and has saved the MFDA the time, resources and expenses associated with a full, contested disciplinary hearing.

The Respondent's Past Conduct Including Prior Sanctions

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

Harm Suffered by Investors

56. There was no evidence of client complaints, client loss; nor lack of authorization for the underlying transactions. It was important for the Panel that this was the case.

Benefits Received by the Respondent

57. Similarly, there was no evidence that the Respondent received any financial benefit from his misconduct beyond the commissions and fees to which he would ordinarily have been entitled had the transactions been carried out in the proper manner.

Deterrence

58. 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

59. Deterrence is intended to capture both specific deterrence of the wrongdoer and general deterrence of other participants in the markets, in order to protect investors. As the Supreme Court of Canada stated:

> The Oxford English Dictionary (2nd ed. 1989), vol. XII, defines "preventive" as "[t]hat anticipates in order to ward against; precautionary; that keeps from coming or taking place; that acts as a hindrance or obstacle". A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction under s. 162. The respective importance of general deterrence as a factor will vary according to the breach of the Act and the circumstances of the person charged with breaching the Act.
>
> *Cartaway Resources Corp. (Re)*, *supra*, at para. 61

60. 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. It will ensure specific deterrence to the Respondent and general deterrence to others in the mutual fund industry, from engaging in similar activity to that described in the Settlement Agreement.

Previous Decisions in Similar Cases

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

Case:	Contraventions:	Penalty:	Other Factors:
Hare, *supra*,	• Respondent obtained, possessed and used to process transactions, 120 pre-signed account forms • Respondent altered and used to process transactions, 45 account forms	• 30 days suspension • Fine of $28,500 • Costs of $2,500	No evidence of financial benefit to the Respondent. No evidence of client complaints, loss, or lack of authorization. No prior disciplinary history. The Respondent paid $3,700 to the Member for costs related to the Member's close supervision.

Case:	Contraventions:	Penalty:	Other Factors:
Ledingham, (Re), [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202151, Reasons for Decision dated January 10, 2022	• Respondent obtained, possessed, and in some instances used to process transactions, 67 pre-signed account forms • Respondent altered and used to process transactions, 57 account forms • Respondent photocopied signature pages from account forms signed by clients and re-used the signature pages to complete 8 additional forms	• 1 month suspension • Fine of $21,000 • Costs of $2,500	No evidence of financial benefit to the Respondent. No evidence of client complaints, loss, or lack of authorization. No prior disciplinary history. The Respondent paid $8,400 to the Member for costs related to the Member's close supervision.
Satchithanantham, *supra*	• Respondent obtained, possessed and used to process transactions, 80 pre-signed account forms • Respondent altered and used to process transactions 18 account forms • Respondent photocopied signature pages from the account forms signed by clients and re-used the signature pages to complete 8 additional forms	• 1 month suspension • Fine of $20,000 • Costs of $5,000 • Completion of ethics or professional conduct course	No evidence of financial benefit to the Respondent. No evidence of client complaints, loss, or lack of authorization. No prior disciplinary history.
Farrell (Re), [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202068, Reasons for Decision dated March 23, 2022	• Respondent obtained, possessed and used to process transactions, 172 pre-signed account forms • Respondent altered and used to process transactions, 66 account forms	• 60 day suspension • Fine of $20,000 • Costs of $2,500	No evidence of financial benefit to the Respondent. No evidence of client complaints, loss, or lack of authorization. No prior disciplinary history. The Respondent paid $16,232 to the Member for costs related to the Member's close supervision.

Case:	Contraventions:	Penalty:	Other Factors:
Tamera Williams (Re), [2018] Hearing Panel of the Prairie Regional Council, MFDA File No. 201864, Reasons for Decision dated August 30, 2018	• Respondent obtained, possessed and in some instances used to process transactions, 164 pre-signed account forms • Respondent altered and used to process transactions, 11 account forms	• 2 month suspension • Fine of $20,000 • Costs of $2,500	No evidence of financial benefit to the Respondent. No evidence of client complaints, loss, or lack of authorization. No prior disciplinary history.
Raza (Re), [2021] Hearing Panel of the Central Regional Council, MFDA File No. 202065, Reasons for Decision dated April 14, 2021	• In or around April 2018, the Respondent borrowed $2,500 from a client thereby giving rise to a conflict or potential conflict of interest • The Respondent repaid the loan by late 2018.	• Fine of $2,500 • Costs of $2,500	No prior disciplinary history. Inability to pay advanced by the Respondent.
Haylock (Re), [2013] Hearing Panel of the Central Regional Council, MFDA File No. 201243, Reasons for Decision dated July 5, 2013	• Between February 17, 2010 and November 25, 2011, the Respondent borrowed $2,200 from a client thereby giving rise to a conflict or potential conflict of interest	• Fine of $3,000 • Costs of $2,000	No prior disciplinary history.

62. At the Hearing, Staff took the time to review the above referenced decisions with the Panel, pointing out how they were relevant to the Panel's decision in this matter. The Panel was grateful for that analysis and assistance.

63. The Panel agrees with Staff's acknowledgment set out in their written submission, that despite the seriousness of the contraventions, the amount loaned by the Respondent to client DM was small and is therefore less egregious than other instances of personal financial dealings with clients.

64. After considering Staff's submission with respect to these decisions, the Panel agreed that the proposed settlement falls within the range of appropriateness consistent with penalties imposed by MFDA Hearing Panels in similar cases.

Aggravating Factors

65. Although Enforcement Counsel did not specifically raise this consideration at the hearing, the Panel notes that MFDA Bulletin #0661-E cited above, advised Members and Approved

Persons that Staff would be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of that bulletin on October 2, 2015.

66. As the facts in the Settlement Agreement indicate, some of the misconduct relating to pre-signed forms occurred after that date.

67. Previous Hearing Panels have held that such "post-bulletin conduct" should be treated as an aggravating factor.

> *Techer (Re)*, MFDA File No. 201662, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated December 5, 2016 at para. 44
>
> *Owen (Re)*, MFDA File No. 201784, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated December 7, 2017 at para. 35

68. The Panel also notes that although the Respondent had not previously been the subject of MFDA disciplinary proceedings, as an experienced Approved Person he ought to have understood and complied with the obligations imposed by the MFDA Rules and By-laws.

Mitigating Factors

69. The Panel took into account the following mitigating factors:

- no clients were harmed as a result of the Respondent's misconduct;
- there was no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue;
- nor had he previously been the subject of MFDA disciplinary proceedings; and
- by entering into the Settlement Agreement, he accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary proceedings.

VI. CONCLUSION

70. Having reviewed the Settlement Agreement and having considered the submissions both written and oral from both Staff and counsel for the Respondent, the Panel is satisfied that the penalty proposed 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.

71. We are satisfied that this penalty is in the public interest, is reasonable and proportionate, achieves the goals of specific and general deterrence and will foster public confidence in the integrity of the Canadian markets and the mutual fund industry.

72. For all of the above reasons, at the conclusion of the Hearing, the Panel accepted the Settlement Agreement and signed an Order dated April 5, 2022, to that effect.

DATED this 6th day of July, 2022.

"Sherri Walsh"
Sherri Walsh
Chair

"Howard R. Mix"
Howard R. Mix
Industry Representative

"Danielle Tétrault"
Danielle Tétrault
Industry Representative

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