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: Sonia Padilla

Heard: May 30, 2019 in Toronto, Ontario
Decision: May 30, 2019
Reasons for Decision: June 18, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. Robert P. Armstrong, QC	Chair
Guenther W. K. Kleberg	Industry Representative
Jeff Page	Industry Representative

Appearances:

Jacklyn Neborak	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Maureen Doherty	)	Counsel for the Respondent
Sonia Padilla	)	Respondent, in person

I. INTRODUCTION

1. The Respondent is charged with the following infractions of MFDA Rule 2.1.1:

a) Between June 2012 and July 2017, the Respondent altered, and used to process transactions, 21 account forms in respect of 13 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and

b) On or about February 26, 2013, the Respondent photocopied the signed client signature page from a previously completed account form, attached it to a new account form, and used the form to process a transaction, contrary to MFDA Rule 2.1.1.

2. Rule 2.1.1 is the Standard of Conduct Rule and provides:

> 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.

3. Ms. Padilla entered into a Settlement Agreement with the MFDA dated April 9, 2019 whereby she admitted that she had breached the rule as alleged in the notice of settlement hearing. The Respondent also agreed with the proposed penalty set out in the Settlement Agreement which is provided below.

4. On May 30, 2019, a settlement hearing was held in Toronto. The Respondent attended the hearing and was represented by counsel.

II. THE FACTS

5. The Settlement Agreement contained a statement of the agreed facts in paragraphs 7 to 20 as follows:

> **Registration History**
>
> (7) Since January 1999, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Sun Life Financial Investment Services (Canada) Inc. ("Sun Life"), a Member of the MFDA.
>
> (8) At all material times, the Respondent conducted business in the Markham, Ontario area.
>
> **Altered Forms**
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> (9) Between June 2012 and July 2017, the Respondent altered and used to process transactions, 21 account forms in respect of 13 clients by altering information on the account forms without having the client initial the alterations.
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> (10) The altered account forms consisted of Know-Your-Client ("KYC"), DSC Switch Authorization, Investment Application, Order Ticket, New Account Application, Transfer Authorization, Limited Trade Authorization, Home Buyer's Plan Withdrawal Request, and Pre-Authorized Chequing ("PAC") forms.
>
> **Re-using a Client Signature**
>
> (11) At all material times, client GR was a client of Sun Life whose accounts were serviced by the Respondent.
>
> (12) On or about February 26, 2013, the Respondent photocopied the signed client signature page from a previously completed KYC account form signed by client GR, attached it to a new PAC account form, and used the form to process a transaction.
>
> (13) On July 21, 2017, Sun Life identified the account forms that are the subject of the Settlement Agreement, as a result of a routine branch audit. As part of its investigation, Sun Life reviewed all of the client files serviced by the Respondent.
>
> (14) Effective July 21, 2017, Sun Life placed the Respondent under close supervision for a period of at least six months.

(15) On September 12, 2017, Sun Life sent audit letters to all of the clients serviced by the Respondent in order to inform the clients of the Respondent's activities and confirm whether the clients had authorized the transactions in their accounts. No clients raised any concerns in response to the letters.

(16) On November 15, 2017, Sun Life issued a warning letter to the Respondent and imposed on the Respondent a continued period of close supervision for one year.

Additional Factors

(17) There is no evidence that the Respondent received any benefit from the conduct set out above beyond the commissions or fees she would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

(18) There is no evidence of client loss or lack of authorization for the underlying transactions.

(19) The Respondent has not previously been the subject of MFDA disciplinary proceedings.

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

III. THE PROPOSED PENALTY

6. The Settlement Agreement sets out the proposed penalty as follows:

a) the Respondent shall pay a fine in the amount of $15,000 pursuant to section 24.1.1(b) of MFDA By-law No. 1, in instalments as follows:

i. $10,000, in certified funds, upon acceptance of this Settlement Agreement by the Hearing Panel;

ii. $1,000 in certified funds, on or before the last business day of the first month following the acceptance of the Settlement Agreement by the Hearing Panel;

iii. $1,000 in certified funds, on or before the last business day of the second month following the acceptance of the Settlement Agreement by the Hearing Panel;

iv. $1,000, in certified funds, on or before the last business day of the third month following the acceptance of the Settlement Agreement by the Hearing Panel:

v. $1,000, in certified funds, on or before the last business day of the fourth month following the acceptance of the Settlement Agreement by the Hearing Panel;

vi. $1,000, in certified funds, on or before the last business day of the fifth month following the acceptance of the Settlement Agreement by the Hearing Panel.

b) the Respondent shall pay costs in the amount of $2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1.

IV. ANALYSIS

The facts admitted constitute misconduct

7. In our view, the admitted facts constitute misconduct. Altering account forms by an Approved Person such as the Respondent and using the signature of a client from a previously completed account constitute contraventions of MFDA Rule 2.1.1. See *Price (Re)* 2011 CanLII 72458, paragraphs 115-138 (MFDA); *Symes (Re*), 2017 LNCMFDA, 104 at paragraphs 15-16. Such conduct represents a serious breach of the MFDA rules and is conduct, which unfortunately has potential to lead to more serious consequences than resulted in this particular case.

8. By way of an MFDA Bulletin #0661-E dated October 2, 2015, Staff reminded Members and Approved Persons that signature falsification is not permitted under MFDA rules. The bulletin explained that such conduct includes pre-signed account forms, altered account forms and re-used account forms. In the aforesaid bulletin and in an MFDA staff notice #MSN-0066 updated on January 26, 2017, Staff advised Members and Approved Persons that Staff will be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin on October 2, 2015.

9. In this case, 11 of the account forms were obtained after MFDA issued the above bulletin. This represents an aggravating factor in the present case and has been referred to in other decisions. See *Cruz (Re*), 2019 LNCMFDA 46 at para 31 and *Ackerman (Re*), 2017 LNCMFDA 179 at para 29. In *Owen* (*Re*), 2017 LNCMFDA 287 at para 44, the panel stated:

> In the view of this Hearing Panel, the amount of the fine in this instance together with the extent of the suspension are appropriate, taking into account the nature of the conduct, as well as the aggravating factor of its occurrence subsequent to the issuance of MFDA Bulletin #0661-E on October 2, 2015, the contents of which, the Respondent was, or should have been, well aware.

Does the proposed penalty fall within a reasonable range of appropriateness?

10. It is the responsibility of this panel to review the Settlement Agreement and determine whether the proposed penalty falls within a reasonable range of appropriateness. Counsel for the MFDA submits that the following considerations should be taken into account in deciding whether the proposed penalty is within a reasonable range:

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.

See *Sterling Mutuals Inc. (Re*) 2016 LNCMFDA 77 at para. 13.

11. In our view, the prior conduct of the Respondent is also a material consideration in concluding whether the proposed penalty is within a reasonable range. The fact that the Respondent has cooperated with the investigation is also a significant factor in determining whether the proposed penalty is reasonable. As noted above, the Respondent has had no prior record of contraventions of the MFDA rules. These are all mitigating factors in respect of the issue of penalty.

V. CONCLUSION

12. The proposed penalty is significant and, in our view, will send a message to the Respondent and others in the mutual fund industry that conduct of this nature is simply not acceptable under any circumstances. Taking into account all the factors in this case, including the mitigating factors, we are satisfied that the proposed penalty falls within a reasonable range of appropriateness.

13. In the result, this Panel accepts the Settlement Agreement dated April 9, 2019.

DATED this 18th day of June, 2019.

"Robert P. Armstrong"
The Hon. Robert P. Armstrong, QC
Chair

"Guenther W. K. Kleberg"
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Industry Representative

"Jeff Page"
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Industry Representative

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