



**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: Phillip Pattison**

Heard: March 31, 2017, in Calgary, Alberta  
Reasons for Decision: April 18, 2017

**REASONS FOR DECISION**

Hearing Panel of the Prairie Regional Council:

Graham Price, Q.C.  
Nada Israeli  
Richard Sydenham

Chair  
Industry Representative  
Industry Representative

Appearances:

Justin Dunphy	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
Justin Papazian	)	Counsel for the Respondent
	)	
	)	

## **INTRODUCTION**

1. By Notice of Settlement Hearing dated February 21, 2017, and duly served upon Phillip Pattison (“Respondent”) by the Mutual Fund Dealers Association of Canada (“MFDA”), a Settlement Hearing was heard in Calgary, Alberta on March 31, 2017.
2. The relevant facts, the joint settlement recommendations and counsel’s submissions are as follows.
  - a) Agreed Facts set out in the Settlement Agreement dated February 21, 2017 and as given by the Respondent at the hearing.

### **Registration History**

7. The Respondent has been registered as a mutual fund salesperson (now known as a Dealing Representative) in Alberta since August 7, 1984, in British Columbia since May 11, 2005, and in Newfoundland and Labrador since October 14, 2010, with Investors Group Financial Services Inc. (“Investors Group”), a member of the MFDA.
8. At all material times, the Respondent conducted business in the Red Deer, Alberta area.

### **Falsification of Client Signature**

9. At all material times, Investors Group’s policies and procedures prohibited its representatives, including the Respondent, from falsifying client signatures.
10. At all material times, client GJ was a client of Investors Group whose accounts were serviced by the Respondent.
11. On August 31, 2015, the Respondent met with client GJ for the purpose of transferring his defined contribution plan into a Locked in Retirement Account (the “LIRA”) with Investors Group. During this meeting, client GJ signed an account application form (the “LIRA Form”).
12. On September 16, 2015, when the proceeds of client GJ’s defined contribution plan were delivered to IG, a branch administrator (“BA”) at the Respondent’s branch observed

that the Respondent had not submitted an addendum form (the “Addendum”) that was required to process the transfer. The BA requested that the Respondent provide a completed Addendum.

13. The Respondent falsified client GJ’s signature on the Addendum, and within approximately half an hour of the BA’s request, the Respondent provided the BA with the Addendum.

### **Misleading the Member**

14. On September 16, 2015, prior to processing the transfer of client GJ’s defined contribution plan to the LIRA, the BA and the Respondent’s branch manager observed that the client signature on the LIRA and the Addendum provided by the Respondent did not match.

15. On September 21, 2015, the branch manager met with the Respondent and discussed the Addendum, including why the signature on the Addendum did not match with the signature on the LIRA Form, and how the Respondent was able to provide the Addendum within approximately half an hour of the BA’s request.

16. During his conversation with the branch manager, the Respondent did not advise that the signature on the Addendum had been falsified on September 16, 2015. The Respondent told the branch manager:

- a) that he found the Addendum in client GJ’s file; and
- b) that he had no answer as to why the signature of client GJ on the Addendum and the LIRA Form did not match.

17. On September 22, 2015, Investors Group placed the Respondent on close supervision, and requested that he obtain a new Addendum to complete the transfer of client GJ’s defined contribution plan to the LIRA.

18. On October 3, 2015, the Respondent met with client GJ and obtained a new signed Addendum.

19. On November 16, 2015, Investors Group’s compliance department requested that the Respondent provide a written response to explain why the signatures of client GJ on the LIRA and Addendum did not match.

20. On November 17, 2015, the Respondent provided a written response to Investors Group, where he admitted that he falsified client GJ's signature on the Addendum he submitted to the BA on September 16, 2015.

### **Investors Group's Investigation**

21. In December 2015, Investors Group's compliance department reviewed 30 client files serviced by the Respondent and did not detect any other instances where the Respondent falsified client signatures.

22. On February 1, 2016, Investors Group issued a warning letter to the Respondent for falsifying client GJ's signature, and placed him on close supervision for a period of 6 months.

### **Additional Factors**

23. There is no evidence of client harm or lack of client authorization.

24. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above.

25. The Respondent has expressed remorse for his actions.

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

27. 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.

**b) Joint Settlement Recommendation and Respondent's agreement with Staff's Submissions.**

3. Staff and the Respondent jointly recommended the Hearing Panel accept the Settlement Agreement. Further, the Respondent, through his Counsel, agreed with Staff's written and oral submissions to the Panel.

## **Contraventions**

4. The Respondent has admitted that:
  - a) on or about September 16, 2015, he falsified a client's signature on 1 account form, contrary to MFDA Rule 2.1.1; and
  - b) on or about September 21, 2015, he misled the Member during its investigation into his conduct by failing to advise that he had falsified a client signature on an account form , and by falsely representing to the Member that the client had previously signed the account form, contrary to MFDA Rule 2.1.1.

## **Terms of Settlement**

5. The Respondent has agreed to the following terms of settlement:
  - a) shall pay a fine of \$13,500 pursuant to s 24.1.1(b) of MFDA By-law No. 1;
  - b) shall pay costs of \$2,500 pursuant to s 24.2 of MFDA By-law No. 1;
  - c) shall in the future comply with MFDA Rule 2.1.1; and
  - d) if at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

## Law

### Applicable Provisions

5. The relevant MFDA provisions in this matter are:

MFDA Rule 2.1.1	Standard of Conduct
Sections 20, 24.1.1, 24.1.4, 24.2, 24.4 of MFDA By-law No. 1	Power of Hearing Panels To Discipline Approved Persons and order the payment of costs
Rules 14 and 15 of the MFDA Rules of Procedure	Rules relevant to MFDA Settlement Hearings
MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013),	Notice regarding Signature Falsification
MFDA Bulletin #0661-E dated October 2, 2015	Bulletin regarding Signature Falsification

### General Principles Regarding the Acceptance of Settlement Agreements

6. Pursuant to s. 24.4.3 of MFDA By-law No. 1, a Hearing Panel has two options with respect to a settlement agreement. It may either accept the settlement agreement or reject it

*Excerpts of the MFDA Rules, Policies and By-law No. 1, MFDA Staff's Book of Authorities, Tab 2*

7. The role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As was stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, quoting the reasoning in the I.D.A matter of *Milewski (Re)*:

We also note that 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.

*Sterling Mutuals Inc. (Re)*, 2008 MFDA 16, at para 37, MFDA Staff's Book of Authorities, Tab 6.

*Milewski (Re)*, [1999] IDACD No. 17 at p. 11, Ontario District Council Decision dated July 28, 1999, MFDA Staff's Book of Authorities, Tab 7.

8. The principle that a Hearing Panel will not reject a settlement agreement unless the proposed penalty clearly falls outside the reasonable range of appropriateness assists the MFDA to fulfill its regulatory objective of protecting the public. Settlements advance this regulatory objective by proscribing activities that are harmful to the public, while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent.

9. In *Seifert*, the court cites the following from *R. v. 974649 Ontario Inc.*, 2001 SCC 81, in its analysis at para 31:

[49] 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 at para. 31, MFDA Staff's Book of Authorities, Tab 8.

### **General Considerations Concerning the Acceptance of a Settlement Agreement**

10. The primary goal of securities regulation is the protection of the investor.

*Pezim v British Columbia (Superintendent of Brokers)*, [1994] 2 SCR 557 (SCC) at paras. 59, 68, MFDA Staff's Book of Authorities, Tab 9.

*Breckenridge (Re)*, MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007, MFDA Staff's Book of Authorities, Tab 10.

11. 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)*, MFDA File No. 200712, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated July 13, 2007 at page 9, MFDA Staff's Book of Authorities, Tab 11

12. 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)*, supra at page 10, MFDA Staff's Book of Authorities, Tab 11.

## Specific Factors Concerning the Appropriateness of the Penalty

13. Factors that Hearing Panels frequently consider when determining whether a penalty is appropriate include the following:

- a) the seriousness of the allegations proved against the Respondent;
- b) the Respondent's past conduct, including prior sanctions;
- c) the Respondent's experience and level of activity in the capital markets;
- d) whether the Respondent recognizes the seriousness of the improper activity;
- e) the harm suffered by investors as a result of the Respondent's activities;
- f) the benefits received by the Respondent as a result of the improper activity;
- g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- i) 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;
- j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- k) previous decisions made in similar circumstances.

*Headley (Re)*, MFDA File No. 200509, Hearing Panel of the Ontario Regional Council, Decisions and Reasons dated February 21, 2006 at pages 25-26, MFDA Staff's Book of Authorities, Tab 12.

*Breckenridge (Re)*, *supra*, at para. 77 and the decisions cited therein, MFDA Staff's Book of Authorities, Tab 10.

14. The MFDA Penalty Guidelines are an additional source of factors to be taken into account with regards to penalty. The MFDA Penalty Guidelines are not binding or mandatory but are intended to assist Hearing Panels, MFDA Staff and Respondents in considering the appropriate penalties in MFDA disciplinary proceedings.

*Excerpts from the MFDA Penalty Guidelines, MFDA Staff's Book of Authorities, Tab 13*

### **Considerations in the Present Case**

15. The Hearing Panel has taken the factors set out above into account in accepting the Settlement Agreement. Set out below are a number of factors particularly relevant to the Settlement Agreement.

### **Nature of the Misconduct**

#### Falsification of Client Signatures

16. In the present case, the Respondent admits that he falsified a client signature on an account form, contrary to MFDA Rule 2.1.1.

17. The prohibition against falsifying forms exists regardless of the existence of client authorization or the motive behind the use of the form, and, similar to pre-signed account forms, the MFDA has been warning Approved Persons against falsifying forms for a number of years.

*MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013), MFDA Staff's Book of Authorities, Tab 4*

*MFDA Bulletin #0661-E dated October 2, 2015, MFDA Staff's Book of Authorities, Tab 5*

18. Hearing Panels have held that falsifying forms is a contravention of the standard of conduct as set out in MFDA Rule 2.1.1.

*Ewart (Re), MFDA File No. 201528, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 11, 2015, MFDA Staff's Book of Authorities, Tab 14.*

19. The falsification of a client signature or initials is particularly serious. In the MFDA matter of *Barnai (Re)*, the Hearing Panel, citing earlier decisions, summarized the principles with respect to falsifying client signatures (emphasis added):

6 Falsifying client signatures or initials is serious misconduct. Signature falsification (like the use of pre-signed forms) adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud and misappropriation.

7 As a Hearing Panel of the Investment Dealers Association (now IIROC) stated in *Bell (Re)*:

**“Forgery is always serious. It is unequivocally condemned because it is fundamentally dishonest and dangerous. Any act of forgery is a step onto a steep and slippery slope of deception that is always potentially harmful to clients and actually harmful to the Member firm and the securities industry as a whole.”**

[...]

8 Lamontagne (Re) reiterated the principle set out in Bell (Re), but went on to state that, where warranted, hearing panels may distinguish between serious and less egregious instances of falsification:

**“Forgery is always a serious regulatory matter because it shows that the Respondent lacks the honesty required of a professional in the securities industry. . .forgery often attracts severe sanctions. While there is no such thing as a “minor case” of forgery, hearing panels may distinguish between more and less egregious examples of forgery.”**

[...]

*Barnai (Re)*, MFDA File No 201325, Hearing Panel of the Central Regional Council, Decision and Reasons dated March 17, 2015, MFDA Staff’s Book of Authorities, Tab 15.

### Misleading the Member

20. In the present matter, the Respondent, on September 21, 2015, misled the Member by failing to advise that he had falsified a client signature on an account form and falsely

represented to the Member that the client had previously signed the account form, contrary to MFDA Rule 2.1.1.

21. An Approved Person misleading a Member as to their activities should always be treated as serious misconduct. In addition to the fact that such conduct is in violation of the standard of conduct expected of an Approved Person, the misleading of a Member keeps that Member from effectively supervising an Approved Person.

22. MFDA hearing panels have made clear that misleading a Member is serious misconduct that is worthy of significant sanction.

*Davis (Re)*, MFDA File No. 201615, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated November 15, 2016, MFDA Staff's Book of Authorities, Tab 16.

*Shaw (Re)*, MFDA File No. 201359, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 3, 2014 at para 41, MFDA Staff's Book of Authorities, Tab 17.

### **Client Harm**

23. There is no evidence of client harm.

*Settlement Agreement*, para 23.

### **Deterrence**

24. The Hearing Panel finds that a fine of \$13,500 and a costs award of \$2,500 is necessary to achieve both specific and general deterrence.

### **Respondent's Past Conduct**

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

*Settlement Agreement, para 26.*

### **Respondent’s Recognition of the Seriousness of His Misconduct**

26. The Respondent has co-operated with the MFDA’s investigation and admitted to the misconduct as set out in the Settlement Agreement.

*Settlement Agreement, para 27.*

### **Penalty Guidelines**

27. The MFDA Penalty Guidelines are an additional resource that a Hearing Panel may consult when determining the appropriateness of the penalty to be imposed pursuant to a settlement agreement. The penalty types and ranges stated in the Penalty Guidelines are not mandatory or binding. However, they are intended to provide a basis upon which a Hearing Panel’s discretion can be exercised consistently in like circumstances.

28. The MFDA Penalty Guidelines provide as follows with respect to a violation of MFDA Rule 2.1.1:

<b>BREACH</b>	<b>PENALTY TYPE &amp; RANGE</b>	<b>SPECIFIC FACTORS TO CONSIDER</b>
<b>Standard of Conduct</b> (Rule 2.1.1) (Guidelines, p. 27)	<ul style="list-style-type: none"><li>• Fine (AP): Minimum of \$5,000</li><li>• Write or rewrite an appropriate industry course (e.g. IFIC Officers’, Partners’ and Directors’ Course or Canadian Investment Funds Course)</li><li>• Suspension</li><li>• Permanent prohibition in egregious cases</li></ul>	<ul style="list-style-type: none"><li>• Nature of the circumstances and conduct</li><li>• Number of individuals affected</li><li>• Whether the conduct is likely to bring the individual, the Member or the mutual fund industry into disrepute</li></ul>

*Excerpts from the MFDA Penalty Guidelines, MFDA Staff’s Book of Authorities, Tab 13.*

28. The Hearing Panel has granted a fine that is greater than the minimum \$5,000 provided by the Penalty Guidelines for an Approved Person’s breach of Rule 2.1.1. This is due to the

number of separate violations of Rule 2.1.1 and the severity of the misconduct in misleading the Member.

### Comparator Cases

29. The following are similar cases that MFDA Hearing Panels have ruled on:

<b>Case:</b>	<b>Facts:</b>	<b>Penalties:</b>
<i>Barnai (Re)</i> , <i>supra</i> , Tab 15	<ul style="list-style-type: none"> <li>The Respondent falsified the signatures of two clients on trading and KYC account forms.</li> </ul>	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> <li>A 9 month suspension</li> <li>Costs of \$1,500</li> </ul>
<i>Li (Re)</i> , MFDA File No. 201557, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 11, 2015, MFDA Staff's Book of Authorities, Tab 18.	<ul style="list-style-type: none"> <li>The Respondent submitted a single falsified form with a falsified client signature and misled the Member regarding the form when it was noticed that the signatures did not match.</li> </ul>	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> <li>4 month suspension</li> </ul>
<i>Wise (Re)</i> , MFDA File No. 201213, Hearing Panel of the Central Regional Council, Decision and Reasons dated October 16, 2012, MFDA Staff's Book of Authorities, Tab 19.	<ul style="list-style-type: none"> <li>The Respondent falsified the signature of one client on an account form.</li> <li>The Respondent immediately admitted to the falsification when confronted.</li> </ul>	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> <li>6 month suspension</li> <li>Costs of \$2,500</li> </ul>
<i>Foley (Re)</i> , MFDA File No. 201547, Hearing Panel of the Central Regional Council, Decision and Reasons dated February 19, 2016, MFDA Staff's Book of Authorities, Tab 20.	<ul style="list-style-type: none"> <li>The Respondent falsified two client signatures on two KYC forms.</li> </ul>	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> <li>Fine of \$6,000</li> <li>Costs of \$2,500</li> </ul>

### Costs

30. The Hearing Panel agrees that because of the Respondent's co-operation in the investigation and settlement process, costs of \$2,500 are appropriate.

### Conclusion

31. Based on the foregoing factors, the Panel concludes the penalties proposed in the Settlement Agreement are reasonable and proportionate and will deter the Respondent and other

Approved Persons from engaging in similar conduct. Accordingly acceptance of this Settlement Agreement will advance the public interest and the objective of the MDFA to enhance investor protection and ensure high standards of conduct in the industry.

32. The Panel observes the MDFA industry is based on trust. Using that as its benchmark, the Panel takes the view this forgery and misleading are serious breaches of conduct. Though the proper execution of the Addendum might, by some but not by this Panel, be viewed as “a bit of paper work”, these acts of forgery and misleading are not trivial in nature. Short cuts motivated by “foolish expediency” are not acceptable at any time.

33. The Panel urges the MDFA to widely circulate these Reasons for Decision so as to impress upon the industry forgeries are not acceptable and cannot be justified for any reason. To be otherwise will lead to a decline in the trust so essential to the proper functioning of the mutual fund investment industry.

34. The Settlement Agreement is accepted.

**DATED** this 18<sup>th</sup> day of April, 2017.

“Graham Price”

Graham Price, Q.C.  
Chair

“Nada Israeli”

Nada Israeli  
Industry Representative

“Richard Sydenham”

Richard Sydenham  
Industry Representative