



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: Gilles Perron

Heard: January 8, 2021 by electronic hearing in Campbellton, New Brunswick

Decision: January 8, 2021

Reasons for Decision: May 20, 2021

REASONS FOR DECISION

Hearing Panel of the Atlantic Regional Council:

Thomas J. Lockwood, QC
Patrick Galarneau
Danielle Tétrault

Chair
Industry Representative
Industry Representative

Appearances:

Francis Roy)	Senior Enforcement Counsel for the Mutual
)	Fund Dealers Association of Canada
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)	
Stéphanie Luce)	Counsel for the Respondent
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)	
Gilles Perron)	Respondent
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I. INTRODUCTION

1. By Notice of Settlement Hearing, dated August 11, 2020, the Mutual Fund Dealers Association of Canada (“MFDA”) gave notice that an electronic hearing would be held before a hearing panel of the Atlantic Regional Council of the MFDA (“Hearing Panel”) on January 8, 2021, to consider whether, pursuant to Section 24.4 of MFDA By-law No. 1, the Hearing Panel should accept the settlement agreement (“Settlement Agreement”) entered into between Staff of the MFDA and Gilles Perron (“Respondent”).
2. Due to the existence of COVID-19, and with the consent of the parties, the Settlement Hearing was conducted by way of electronic hearing on January 8, 2021.
3. At the commencement of the Settlement Hearing, the Hearing Panel granted the joint request of the parties to move the proceedings “*in camera*” so that the Settlement Agreement could be considered in the absence of the public. This procedure is consistent with Rule 15.2(2) of the *MFDA Rules of Procedure*.
4. The Hearing Panel then considered the provisions of the Settlement Agreement. After hearing submissions both as to the applicable law and as to why this particular Settlement Agreement met the appropriate criteria, the Hearing Panel retired to consider whether we were in a position to accept the Settlement Agreement on the basis of the material before us.
5. After carefully considering the Settlement Agreement and the submissions of the parties, the Hearing Panel unanimously accepted the Settlement Agreement. We made an Order to this effect on January 8, 2021. At that time, we advised that written Reasons would follow. These are those Reasons.

II. SETTLEMENT AGREEMENT

6. The salient portions of the Settlement Agreement are as follows:

“4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the Mutual Fund Dealers Association of Canada (“MFDA”):

- a) between May 2012 and June 2019, the Respondent obtained, possessed and, in some instances, used to process transactions, 77 pre-signed account forms for 27 clients, contrary to MFDA Rule 2.1.1; and
- b) between December 2013 and June 2019, the Respondent altered and used to process transactions, 24 account forms in respect of 17 clients by altering information on the

account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.

5. Staff and the Respondent agree and consent to the following terms of settlement:
 - a) the Respondent shall pay a fine in the amount of \$20,000 upon acceptance of this Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
 - b) the Respondent shall pay the costs incurred by the MFDA in the amount of \$2,500 in certified funds upon acceptance of this Settlement Agreement, pursuant to s. 24.2 of MFDA 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, on the date set for the Settlement Hearing.
6. Staff and the Respondent agree to the settlement on the basis of the facts set out in Part III herein and consent to the making of an Order in the form attached as Schedule A.

III. AGREED FACTS

Registration History

7. Since September 2003, the Respondent has been registered in the mutual fund industry.
8. Since September 28, 2009, the Respondent has been registered in New Brunswick and in Quebec as a mutual fund salesperson (now known as a Dealing Representative) with Investia Services Financiers Inc. (the "Member"), a Member of the MFDA.
9. At all material times, the Respondent conducted business in the Campbellton, New Brunswick area.

Pre-signed Account Forms

10. At all material times, the Member had policies and procedures that prohibited its authorized persons from obtaining or using pre-signed account forms.
11. Between May 2012 and June 2019, the Respondent obtained, possessed and, in some instances used to process transactions, 77 pre-signed account forms in respect of 27 clients.
12. The pre-signed account forms included:
 - a) 76 investment instruction forms; and
 - b) 1 Know Your Client form.

Altered Account Forms

13. At all material times, the Member had policies and procedures requiring, among other things, that its authorized persons, including the Respondent:

- a) ask clients to initial any errors or alterations made to documents or account forms; and
 - b) not use liquid paper or correction fluid to modify or correct errors on documents or account forms.
14. Between December 2013 and June 2019, the Respondent altered and used to process transactions, 24 account forms in respect of 17 clients by altering information on the account forms (using correction fluid or other means) without having the clients initial the alterations.
15. The altered account forms included:
- a) 18 investment instruction forms;
 - b) 5 systematic trade instruction forms; and
 - c) 1 account transfer form.
16. Some of the non-initialed alterations made by the Respondent included account numbers, the names and codes of mutual funds to be traded by clients, and mutual funds amounts to be bought or sold or traded by clients.

Investigation of the Member

17. During a branch audit on or around November 14 and 15, 2018, the Member reviewed all client files processed by the Respondent and detected the pre-signed and altered account forms that are the subject of this Settlement Agreement.
18. From February 4, 2019 to July 25, 2019, the Member placed the Respondent under strict supervision. During this time, all transactions processed by the Respondent, including purchases, sales, trades and transfers, were reviewed and approved by the Investment Compliance Supervisor before being processed.
19. On July 25, 2019, the Member sent the Respondent a letter of reprimand for the pre-signed and altered forms.
20. On July 26, 2019, the Member sent a letter including a three-year summary of transactions to all clients served by the Respondent. The Member asked clients to review their transaction summaries to ensure that all transactions were in accordance with the instructions they gave the Respondent, and to report any inconsistencies to the Member. No clients reported any issues.

Additional Factors

21. 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.
22. There is no evidence of any loss to clients served by the Respondent or evidence that the

underlying 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.”

III. THE LAW

7. MFDA Rule 2.1.1 states, in part, as follows:

“2.1.1 Standard of Conduct.

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; . . .”

Pre-Signed Account Forms are Not Permissible

8. “Pre-signed account forms” is a generic term which applies to a variety of situations where an Approved Person seeks to rely on a client’s signature on a document when the signature was not provided by the client at the time the document was completed. Most commonly, an Approved Person obtains a client’s signature on a partially or completely blank account form, completes the form, then uses the form to process transactions in the client’s account.

9. The MFDA has been warning Approved Persons against the use of pre-signed account forms for a number of years.

Staff Notice #MSN-0035 dated December 10, 2004.

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

MFDA Bulletin #0661-E dated October 2, 2015.

10. Hearing Panels have consistently held that obtaining or using pre-signed account forms is a contravention of the standard of conduct under MFDA Rule 2.1.1.

Byce (Re), [2013] Hearing Panel of the Ontario Regional Council, MFDA File No. 201311, Panel Decision dated September 4, 2013.

Price (Re), [2011] Hearing Panel of the Ontario Regional Council, MFDA File No. 200814, Panel Decision dated April 18, 2011.

11. The use of pre-signed account 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. 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.

Price (Re), supra, at paras. 122-124.

12. 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.

Byce (Re), supra.

Price (Re), supra.

13. In the case before us, the Respondent admitted that, over a 7 year period, he obtained, possessed and, in some instances, used to process transactions, 77 pre-signed account forms for 27 clients.

Altering Forms is Not Permissible

14. As with “pre-signed forms”, the MFDA previously warned Approved Persons against altering account forms without having the client initial the form to show that they are aware of the change.

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

MFDA Bulletin #0661-E dated October 2, 2015.

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

See, for example, *Duffey (Re)*, [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201686, Panel Decision dated March 27, 2017.

16. The above reasoning in *Price*, as to why pre-signed forms affect the integrity and reliability of account documents, also applies to altered forms. Unlike pre-signed account forms, where the client knows he or she is signing an incomplete form to be used in some way, in the case of a form altered by the Approved Person, the possibility exists that the client is unaware of the Approved Person's actions.

17. In both MFDA Bulletin #0661-E, dated October 2, 2015, and Staff Notice #MSN-0066, updated on January 26, 2017, Approved Persons were advised that Staff would be seeking enhanced penalties for conduct which occurred after October 2, 2015.

18. Hearing Panels have accepted that conduct occurring post-Bulletin is an aggravating factor:

“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.”

Owen (Re), [2017] Hearing Panel of the Prairie Regional Council, MFDA File No. 201784, Panel Decision dated December 7, 2017, at para. 44.

19. In the case before us, the Respondent admitted that he altered 24 account forms in respect of 17 clients between December 2013 and June 2019.

IV. PRINCIPLES REGARDING THE ACCEPTANCE OF SETTLEMENT AGREEMENTS

20. Investor protection is the primary goal of securities regulation. Settlements play an important and necessary role in meeting this objective.

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

21. In our view, the role of a Hearing Panel in a Settlement Hearing is not the same as its role in making a penalty determination after a contested Hearing. In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

22. Previous MFDA Hearing Panels have determined the factors which should be considered in determining whether a Settlement Agreement should be accepted. These include the following:

- i. Whether acceptance of the Settlement Agreement would be in the public interest and whether the penalty imposed will protect investors;
- ii. Whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
- iii. Whether the Settlement Agreement addresses the issues of both specific and general deterrence;
- iv. Whether the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
- v. Whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets;
- vi. Whether the Settlement Agreement will foster confidence in the integrity of the MFDA;
- vii. Whether the Settlement Agreement will foster confidence in the regulatory process itself.

Jacobson (Re), [2007], Hearing Panel of the Prairie Regional Council, MFDA
File No. 200712, Reasons for Decision, dated July 13, 2007, at para. 70.

23. Previous Hearing Panels have also identified a number of additional factors which should be considered when determining whether the penalty sought to be imposed is appropriate. These include:

- a) The seriousness of the allegations proved against the Respondent;
- b) The Respondent's past conduct, including prior sanctions;
- c) The Respondent's experience in the capital markets;
- d) The level of the Respondent's activity in the capital markets;
- e) Whether the Respondent recognizes the seriousness of the improper activity;
- f) The harm suffered by investors as a result of the Respondent's activities;
- g) The benefits received by the Respondent as a result of the improper activity;
- h) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- i) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;

- j) 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;
- k) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
- l) Previous decisions made in similar circumstances.

Headley [Re], 2006, Hearing Panel of the Central Regional Council, MFDA File No. 200509, Reasons for Decision dated February 21, 2006 at para.85.

24. When determining whether a penalty agreed upon by the parties is appropriate, the Hearing Panel may also consider the MFDA's Sanction Guidelines ("Guidelines") which came in to effect on November 15, 2018. The Guidelines are not mandatory or binding on the Hearing Panel, but provide a summary of the key factors upon which discretion can be exercised consistently and fairly. Many of the same factors that are listed above, which have been considered in previous decisions of MFDA Hearing Panels, are also reflected and described in the Guidelines.

V. CONSIDERATIONS IN THE PRESENT CASE

25. Staff made very detailed submissions as to how these principles applied to the case before us. These submissions included the following.

(a) Nature of the Misconduct

26. We agree with the submissions of Staff that the use of pre-signed and altered forms, in the manner described in the Settlement Agreement, are serious breaches of MFDA Rule 2.1.1. We, further, agree with Staff that the fact that some of the account forms were obtained after October 2, 2015, is an aggravating factor.

(b) Respondent's Past Conduct

27. The Respondent has not previously been subject to MFDA disciplinary proceedings.

(c) Respondent's Experience and Level of Activity in the Capital Markets

28. The Respondent has been registered in the mutual fund industry since September 2003. As an experienced Dealing Representative, he ought to have known and respected the compliance requirements of the Member and the MFDA.

(d) Respondent's Recognition of the Seriousness of His Misconduct

29. By entering into this Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a lengthy disciplinary hearing.

(e) Client Harm

30. There is no evidence of financial loss suffered by clients.

(f) Benefits Received by the Respondent

31. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding beyond commissions and fees that he would ordinarily be entitled to had the transactions been carried out in the proper manner.

(g) Deterrence

32. We agree with Staff's submission that the proposed fine of \$20,000 and costs in the amount of \$2,500 will act as a general deterrent by reinforcing the message that the use of pre-signed and altered forms will not be tolerated within the mutual fund industry.

(h) Previous Decisions Made in Similar Circumstances

33. Staff provided the Hearing Panel with a detailed chart seeking to show that the proposed resolution is within the reasonable range of appropriateness with regards to other decisions made by MFDA Hearing Panels in similar circumstances.

34. The following cases were discussed:

- a) *Owen (Re)*, *supra*. [2017].
- b) *Wong (Re)*, [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201848, Panel Decision dated July 23, 2018.
- c) *Chow (Re)*, [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201815, Panel Decision dated June 8, 2018.
- d) *Mailloux (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201955, Panel Decision dated December 17, 2019.
- e) *Parlee (Re)*, [2019] Hearing Panel of the Prairie Regional Council, MFDA File No. 201964, Panel Decision dated December 6, 2019.

- f) *Mills (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 2018103, Panel Decision dated January 25, 2019.
- g) *Martin (Re)*, [2018] Hearing Panel of the Prairie Regional Council, MFDA File No. 201893, Panel Decision dated December 7, 2018.

VI. DECISION

35. After a thorough review of the factors by which we should be guided, and the facts of this case, as reflected in the Settlement Agreement, we were, unanimously, of the view that this Settlement Agreement was reasonable and in the public interest and should be accepted by the Hearing Panel. We so informed the parties at the conclusion of the Settlement Hearing.

VII. ORDER

36. After accepting the Settlement Agreement, we made the following Order:

- a) 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.
- b) The Respondent shall pay a fine in the amount of \$20,000 pursuant to section. 24.1.1(b) of MFDA By-law No. 1;
- c) The Respondent shall pay costs of this proceeding in the amount of \$2,500 pursuant to section. 24.2 of MFDA By-law No. 1; and
- d) The Respondent shall in the future comply with MFDA Rule 2.1.1.

DATED this 20th day of May, 2021.

“Thomas J. Lockwood”

Thomas J. Lockwood, QC
Chair

“Patrick Galarneau”

Patrick Galarneau
Industry Representative

“Danielle Tétrault”

Danielle Tétrault
Industry Representative

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