



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: Sean William Pindar

Heard: January 20, 2022 by electronic hearing in Halifax, Nova Scotia

Decision: January 20, 2022

Reasons for Decision: February 28, 2022

REASONS FOR DECISION

Hearing Panel of the Atlantic Regional Council:

R. Scott Peacock
Darrell Bing
Ann C. Etter

Chair
Industry Representative
Industry Representative

Appearances:

Paul Blasiak)	Senior Enforcement Counsel for the Mutual
)	Fund Dealers Association of Canada
)	
Rory Rogers)	Counsel for Respondent
)	
)	
Sean William Pindar)	Respondent
)	
)	

1. By Notice of Settlement Hearing dated November 12, 2021, which had been served upon the Respondent and entered as evidence at the hearing as Exhibit Number 1, the MFDA alleged that the Respondent had violated the Rules of the MFDA. In the settlement agreement dated November 15, 2021 (“Settlement Agreement”), entered as evidence at the Hearing as Exhibit Number 2, the Respondent’s admission that:

“Between October 11, 2017, and December 5, 2018, the Respondent completed the payee, amount, dates and signed the signature of NJ on 3 cheques; and completed the payee, amount, and date on 2 pre-signed cheques, to make the cheques payable to the Respondent personally, contrary to MFDA Rule 2.1.1.”

2. In considering the Settlement Agreement, the issue before the Panel to decide was whether the Settlement Agreement should be accepted. The proposed settlement recommended a fine in the amount of \$ 20,000, costs of \$ 5,000 and a requirement to comply in the future with MFDA Rule 2.1.1.

3. Enforcement Counsel for the MFDA filed written submissions and a book of authorities for the Panel’s consideration. In oral submissions he argued that the Panel had but two choices in the matter before it; accept or reject the proposed settlement in accordance with section 24.4.3 of MFDA By-law No. 1 without modification.

4. The facts in this matter for the Panel’s consideration are limited to those set out in the Settlement Agreement, without additions except by consent as provided for in Rule 15.3 of the MFDA Rules of Procedure. The facts considered by the Panel were:

“AGREED FACTS

Registration History

7. From July 2016 to October 3, 2019, the Respondent has been registered in Nova Scotia as a dealing representative with Investia Financial Services Inc. (the “Member”), a Member of the MFDA.

8. On October 3, 2019, the Respondent resigned from the Member and is not currently registered in the securities industry in any capacity.

9. At all material times, the Respondent conducted business in the Bedford, Nova Scotia area.

Signed the Signature of NJ on Cheques and Completed Cheque Details

10. At all material times, NJ was registered as a dealing representative with the Member and operated from a sub-branch with the Respondent. NJ was also a client of the Member and a family member of the Respondent. On May 4, 2017, the Respondent acquired NJ’s book of business and he and NJ began using a

joint representative code. By acquiring his book of business, the Respondent also became the Approved Person responsible for servicing NJ's accounts at the Member.

11. At all material times, NJ maintained a line of credit to pay for unexpected business expenses associated with the operation of the sub-branch.

12. Without NJ's prior knowledge:

- a) on October 11, 2017, August 12, 2018, December 5, 2018, the Respondent completed the amount, date, and added himself as payee, and signed the signature of NJ on 3 cheques, totaling \$9,100, and deposited the 3 cheques into the Respondent's bank account, and used the monies for his personal expenses: and
- b) on November 2 and 8, 2017, the Respondent completed the amount and date, and added himself as payee on 2 cheques in the total amount of \$34,000, which he states were blank pre-signed cheques to be used to access the line of credit in the event of unexpected expenses.

13. The Respondent states that he believed that he could borrow the monies from the line of credit for unanticipated personal expenses with the understanding that the Respondent would then be responsible for the line of credit payments.

14. The Respondent states that he was provided with the monthly line of credit statements and made certain payments directly to the financial institution where NJ held the line of credit. Between October 27, 2017, and July 25, 2019, the Respondent repaid NJ approximately \$25,863, and on October 31, 2019, he entered into an agreement with NJ pursuant to which NJ re-purchased the book of business in an amount that addressed the remaining amount owing on the line of credit by the Respondent to NJ.

Additional Factors

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

16. 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.”

5. Enforcement Counsel reviewed the agreed facts and argued before the Panel that the proposed settlement met the requirements of general and specific deterrence; were reasonable upon the facts of the case, and notwithstanding the seriousness of forging cheques on the operating line of credit; in the public interest. It was further submitted that consideration should be given to the acknowledgment of misconduct by the Respondent, the fact that NJ had not suffered any economic loss and that the funds in question were not client funds.

6. Respondent's Counsel's oral submissions were that the facts had been reasonably presented by Enforcement Counsel and reiterated that the misconduct had arisen in a family and business relationship. He encouraged the Panel to accept the proposed settlement.

7. The submissions of Counsel for the parties and the Settlement Agreement raised two primary concerns for the Panel. The first of these was that the misconduct included the forging of

NJ's signature on negotiable instruments and the completion of the payee and amounts on three cheques which the Respondent deposited in his personal account. Was a period of suspension warranted on the circumstances?

8. Enforcement Counsel addressed these concerns raised by the Panel. His response was that the Respondent had resigned from the MFDA and had been out of the industry for two years, the matter had been resolved to NJ's satisfaction, and that a significant monetary penalty was proposed.

9. The second issue of concern to the Panel was the proposed costs provision of \$5,000. The concern being that the costs of enforcement proceedings are eventually reflected in the fees charged by the dealers to their investors. In response to questions from the Panel, Enforcement Counsel acknowledged that costs were greater than the proposed costs provisions. He argued that in a negotiated settlement the parties arrive at an agreed figure recognizing the facts of the matter, the financial resources of the Respondent and the impact on the settlement process.

10. Notwithstanding the concerns of the Panel, it must consider its role in the enforcement process where there is a proposed settlement between the parties. The settlement process provides a significant assistance in the attainment of the regulatory objectives of the public interest, and preservation of fair and effective capital markets, and confidence in market participants.

11. This issue has been considered in several cases. In Re: Sterling Mutuals Inc.¹ for instance

“37. 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” (in Milewski [1999] IDACD No. 17)”

12. The Panel also considered the MFDA Sanction Guidelines, which although not directory, provide guidance to the parties to a settlement negotiation providing a framework to illuminate the settlement process. The factors considered by the Panel include:

- a) General and specific deterrence

¹ 2008 LNCMFDA 16 at para. 37

- b) Public confidence in capital markets
- c) The seriousness of the offence
- d) Recognition of misconduct by the Respondent
- e) How did the Respondent benefit from the misconduct?
- f) Did investors suffer any harm?
- g) The record and history of the Respondent
- h) Precedents on similar facts
- i) The totality of all facts and circumstances.

The Panel considered all these factors and the evidence before it in the Settlement Agreement. Notwithstanding that the Panel might otherwise have imposed a different penalty it deemed correct; it does not conclude that the proposed settlement is unreasonable. The proposed settlement is approved, and the Order attached to the Settlement Agreement in Schedule “1” will issue.

DATED this 28th of February, 2022.

“R. Scott Peacock”

R. Scott Peacock
Chair

“Darrell Bing”

Darrell Bing
Industry Representative

“Ann C. Etter”

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Re: Sean William Pindar

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Sean William Pindar (the "Respondent"), consent and agree to settlement of this matter by way of this agreement (the "Settlement Agreement").
2. Staff conducted an investigation of the Respondent's activities which disclosed activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No.1.

II. JOINT SETTLEMENT RECOMMENDATION

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.
4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the Mutual Fund Dealers Association of Canada ("MFDA"):

Between October 11, 2017 and December 5, 2018, the Respondent completed the payee, amount, dates, and signed the signature of NJ on 3 cheques; and completed the payee,

amount, and date on 2 pre-signed cheques, to make the cheques payable to the Respondent personally, 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 in certified funds pursuant to section 24.1.1(b) of By-law No. 1, upon acceptance of this Settlement Agreement;
- b) the Respondent shall pay costs in the amount of \$5,000 in certified funds pursuant to section 24.2 of By-law No. 1, upon acceptance of this Settlement Agreement;
- c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- d) the Respondent will attend the Settlement Hearing in person (via videoconference);

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. From July 2016 to October 3, 2019, the Respondent has been registered in Nova Scotia as a dealing representative with Investia Financial Services Inc. (the “Member”), a Member of the MFDA.

8. On October 3, 2019, the Respondent resigned from the Member and is not currently registered in the securities industry in any capacity.

9. At all material times, the Respondent conducted business in the Bedford, Nova Scotia area.

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10. At all material times, NJ was registered as a dealing representative with the Member, and operated from a sub-branch with the Respondent. NJ was also a client of the Member and a family member of the Respondent. On May 4, 2017, the Respondent acquired NJ’s book of business and he and NJ began using a joint representative code. By acquiring his book of business the Respondent also became the Approved Person responsible for servicing NJ’s accounts at the Member.

11. At all material times, NJ maintained a line of credit to pay for unexpected business expenses associated with the operation of the sub-branch.

12. Without NJ's prior knowledge:

- a) on October 11, 2017, August 12, 2018, December 5, 2018, the Respondent completed the amount, date, and added himself as payee, and signed the signature of NJ on 3 cheques, totaling \$9,100, and deposited the 3 cheques into the Respondent's bank account, and used the monies for his personal expenses; and
- b) on November 2 and 8, 2017, the Respondent completed the amount and date, and added himself as payee on 2 cheques in the total amount of \$34,000, which he states were blank pre-signed cheques to be used to access the line of credit in the event of unexpected expenses.

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Additional Factors

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

16. 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.

IV. ADDITIONAL TERMS OF SETTLEMENT

17. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.

18. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (the “Settlement Hearing”). At, or following the conclusion of, the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

19. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.

20. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

- a) the Settlement Agreement will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter;
- b) the Respondent agrees to waive any rights to a full hearing, a review hearing or appeal before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction;
- c) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts and contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in this Settlement Agreement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;
- d) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1; and

- e) neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against the Respondent.

21. If, for any reason, this Settlement Agreement is not accepted by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by the Settlement Agreement or the settlement negotiations.

22. Staff and the Respondent agree that the terms of the Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

23. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile copy of any signature shall be effective as an original signature.

DATED this 15th day of November, 2021.

“Sean William Pindar”

Sean William Pindar

“AP”

Witness – Signature

AP

Witness – Print Name

“Charles Toth”

Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement



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Re: Sean William Pindar

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of MFDA By-law No. 1 in respect of Sean William Pindar (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of MFDA By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that the Respondent:

- a) Between October 11, 2017 and December 5, 2018, the Respondent completed the payee, amount, dates, and signed the signature of NJ on 3 cheques; and completed the payee, amount, and date on 2 pre-signed cheques, to make the cheques payable to the Respondent personally, contrary to MFDA Rule 2.1.1.

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. The Respondent shall pay a fine in the amount of \$20,000 in certified funds pursuant to section 24.1.1(b) of By-law No. 1;
2. The Respondent shall pay costs in the amount of \$5,000 in certified funds pursuant to section 24.2 of By-law No. 1, upon acceptance of this Settlement Agreement;
3. The Respondent shall in the future comply with MFDA Rule 2.1.1; and
4. 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*.

DATED this [day] day of [month], 20[].

Name,
Chair

Name,
Industry Representative

Name,
Industry Representative

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