



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: Aparna Nandkumar Prabhune

Heard: November 18, 2020 by electronic hearing in Toronto, Ontario

Decision: November 18, 2020

Reasons for Decision: December 18, 2020

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Emily Cole
Linda J. Anderson
Jeffrey Page

Chair
Industry Representative
Industry Representative

Appearances:

Maria Abate)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Rafal Szymanski)	Counsel for the Respondent
)	
)	
Aparna Nandkumar Prabhune)	Respondent
)	
)	

I. INTRODUCTION

1. This was a hearing pursuant to section 24.4 of By-Law No.1 of the Mutual Fund Dealers Association of Canada (“MFDA”) to consider a settlement agreement dated August 7, 2020 (“Settlement Agreement”) between Staff of the MFDA (“Staff”) and Aparna Nandkumar Prabhune (the “Respondent”).

2. After reviewing the Settlement Agreement and the material filed by Staff and hearing the submissions of counsel for Staff, the Hearing Panel accepted the Settlement Agreement attached and signed an order reflecting our approval. These are the reasons for our decision:

II. CONTRAVENTIONS

3. 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 2010 and December 2018, the Respondent obtained and possessed 10 pre-signed account forms in respect of 7 clients, contrary to MFDA Rule 2.1.1; and
- b) between September 2013 and August 2016, the Respondent altered and used to process transactions, 16 account forms in respect of 11 clients, by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

III. PROPOSED SANCTIONS

4. Staff and the Respondent agree and consent to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$8,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No.1;
- 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;
- c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and

- d) the Respondent will attend in person or by teleconference on the date set for the Settlement Hearing.

IV. AGREED FACTS

Registration History

5. Since 2004, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative). Since 2008, the Respondent has been registered with Canfin Magellan Investments Inc. (the “Member”), a Member of the MFDA.

6. At all material times, the Respondent conducted business in the Oakville, Ontario area.

Pre-Signed Account Forms

7. At all material times, the Member’s policies and procedures prohibited its Approved Persons from using pre-signed account forms.

8. Between 2010 and December 2018, the Respondent obtained and possessed 10 pre-signed account forms in respect of 7 clients.

9. The pre-signed account forms included order forms and new account application forms.

Altered Account Forms

10. Between September 2013 and August 2016, the Respondent altered and used to process transactions, 16 account forms in respect of 11 clients, by altering information on the account forms without having the client initial the alterations.

11. The altered account forms included order forms and new account application forms.

12. The information the Respondent altered on the account forms included fund names and fund codes.

The Member’s Investigation

13. On December 3, 2018, during a routine branch review, the Member identified some of the account forms that are the subject of this Settlement Agreement. As a result of this review, the

Member reviewed all files for clients serviced by the Respondent and identified the remainder of the account forms.

14. The Member placed the Respondent on close supervision between December 21, 2018 and January 3, 2020 and imposed a reduced commission rate on the Respondent resulting in a reduction of commission of approximately \$7,000 for the period.

15. The Member also required that the Respondent successfully complete the Conduct and Practices Handbook course offered by the Canadian Securities Institute, a condition the Respondent has satisfied.

16. Between January 24, 2019 and February 4, 2019, the Member called clients in whose accounts the pre-signed and altered account forms were identified to confirm whether the clients had authorized the transactions in their accounts. The clients who the Member reached confirmed the transactions in their account were authorized.

17. Between February 27, 2019 and August 15, 2019, the Member also sent audit letters to all clients in whose accounts the pre-signed and altered forms were identified. Where the Member had previously spoken with the client by telephone, the letter requested the clients to contact the Member if they had further questions or wished to receive a copy of account documentation. Where the Member had not been able to speak to the client, the letter asked the client to contact the Member to discuss the client's account and to confirm the authorization of transactions in the account. No clients raised concerns to the Member in their responses.

Additional Factors

18. There is no evidence that the Respondent received any financial 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.

19. There is no evidence of client loss or lack of authorization for the underlying transactions.

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

21. 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.

V. ANALYSIS

A. Jurisdiction and Role of the Panel

22. A Hearing Panel is authorized to either accept or reject a settlement agreement.

Section 24.4.3 of MFDA By-law No. 1

23. The role of a Hearing Panel in reviewing a settlement agreement is to determine whether the proposed penalties agreed to by Staff and the Respondent fall within a reasonable range of appropriateness – not to determine what is, in its view, the correct penalty. A Hearing 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." *Milewski (Re)*, [1999] I.D.A.C.D. No. 17.

Sterling Mutuals Inc. (Re), 2008 LNCMFDA 16 at para 37

24. Settlements are to be encouraged. They make a significant contribution to meeting the primary objective of investor protection by providing a practical and efficient way of addressing misconduct in the securities industry. Where the Respondent takes responsibility and admits her misconduct and the parties can agree upon appropriate sanctions, settlements can save time and conserve the regulator's limited resources. Settlements also provide certainty and are likely to result in greater compliance with the sanctions imposed.

British Columbia (Securities Commission v. Seifert), [2006] B.C.J. No 225 at paras. 48-49 (S.C.), aff'd [2007 B.C.J. No 2186 at para. 31 (C.A.)

The Seriousness of the Misconduct

25. The Respondent admitted two contraventions involving pre-signed account forms and altering and using account forms. The pre-signed and altered forms included account forms and new account application forms.

26. Each of these contraventions are violations of the standard of conduct prescribed by MFDA Rule 2.1.1 and constitute serious misconduct.

Dias Pereira (Re), [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201652, Reasons for Decision dated September 18, 2017

Baksh (Re), [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201939, Reasons for Decision dated September 20, 2019

27. The seriousness of this misconduct is underscored by the fact some of it occurred after multiple warnings in Staff Notices and a Bulletin issued by the MFDA against obtaining or using pre-signed account forms. The Respondent is responsible for understanding her responsibilities contained in the relevant Notices and the Bulletin listed below.

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

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

MFDA Bulletin #0661-E dated October 2, 2015

28. The Respondent's conduct 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. In *Price* the hearing panel explained:

Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading. As will be discussed more fully infra, the Respondent, in this case, did not have the proper authority to engage in discretionary trading of any nature or kind on behalf of his clients.

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. While there is absolutely no suggestion that the Respondent engaged in any of these activities, the rationale for the prohibition on pre-signed forms becomes clear.

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

29. We have considered the following aggravating and mitigating factors in reaching our conclusion that the proposed sanctions are appropriate:

Aggravating Factors

30. Obtaining and using pre-signed forms is serious misconduct which the MFDA has warned against for many years.

31. The MFDA has explicitly advised its members that enhanced penalties will be sought where approved persons persist in engaging in this misconduct post Bulletin.

32. The Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative) for 16 years. She ought to have known and respected the compliance requirements of both her Member and the MFDA. In particular, she ought to have been aware of the Bulletin.

Mitigating Factors

33. There is no evidence of client harm or lack of authorization for the underlying transactions.

34. The Respondent did not receive any financial benefit from engaging in the misconduct at issue.

35. The Respondent has not been the subject of any prior disciplinary proceedings.

36. The Respondent has saved the MFDA time and money by entering into this Settlement Agreement.

Disciplinary Measures Imposed by the Member

37. We also considered the disciplinary measures imposed upon the Respondent by the Member:

- a) A year of close supervision;
- b) A reduced commission rate for a period of one year which resulted in a reduction of commission of approximately \$7,000; and

- c) Completion of the Conduct and Practices Handbook course offered by the Canadian Securities Institute at the Respondent's expense

VI. COSTS

38. We found the Costs award is appropriate and consistent with previous MFDA decisions.

VII. CONCLUSION

39. We are satisfied that the proposed sanctions, including the \$8,500 fine and \$2,500 in costs in conjunction with the disciplinary measures imposed by the Member will serve as specific deterrence to the Respondent and general deterrence to others in the industry who may contemplate engaging in similar misconduct in the future.

40. Staff provided five MFDA decisions which addressed similar misconduct pre and post Bulletin. Based on the number of forms, a review of these cases and taking into consideration the factors discussed above we are satisfied the proposed sanctions fall within a reasonable range of appropriateness.

41. We therefore accepted the Settlement Agreement and made an order reflecting the agreed upon sanctions against the Respondent.

DATED this 18th day of December, 2020.

"Emily Cole"

Emily Cole
Chair

"Linda J. Anderson"

Linda J. Anderson
Industry Representative

"Jeffrey Page"

Jeffrey Page
Industry Representative