



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: Zanecia Ramjohn

Heard: May 21, 2021 by electronic hearing in Toronto, Ontario

Decision: May 21, 2021

Reasons for Decision: October 22, 2021

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

John Lorn McDougall, Q.C.
Selwyn Kossuth
Joseph Yassi

Chair
Industry Representative
Industry Representative

Appearances:

Maria Abate)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Zanecia Ramjohn)	Respondent
)	
)	

I. INTRODUCTION

1. This case is a recent occurrence of a type of breach which has plagued the MFDA for a number of years. Despite repeated attempts to curb the practices of falsifying client signatures and using pre-signed forms, even though often, as it is the case in this instance, it was not done for personal gain, the breaches continue.

II. THE ALLEGATIONS

2. By Notice of Hearing dated December 2, 2020, the Mutual Fund Dealers Association of Canada (“MFDA”) gave notice of a Hearing to be held before the Hearing Panel of the Central Regional Council (“Hearing Panel”). By subsequent agreement and with the appropriate public notices, this Hearing Panel was convened on May 21, 2021 to hear this matter.

3. The Notice of Hearing sets out the following two allegations that the Respondent Zanezia Ramjohn (“the Respondent”) violated the By-laws, Rules or Policies of the MFDA.

Allegation #1: Between December 10, 2015 and November 8, 2018, the Respondent obtained, possessed, and used to process transactions, 9 pre-signed account forms in respect of 6 clients, contrary to MFDA Rule 2.1.1.

Allegation #2: Between September 9, 2015 and October 28, 2018, the Respondent altered and used to process transactions 43 account forms in respect of 20 clients, by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.

III. THE SETTLEMENT AGREEMENT

4. The parties entered into a settlement agreement dated April 25, 2021 (“Settlement Agreement”) which is now before the Hearing Panel to consider whether it should be accepted.

5. The Settlement Agreement, which is appended to these Reasons for Decision, paragraph 5 under the heading II Joint Settlement Recommendation, provides as follows:

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

- a) the Respondent shall pay a fine in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of MFDA By-law No.1;
- b) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA for a period of 3 months from the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to section 24.1.1(e) of MFDA By-law No.1;
- c) the Respondent shall successfully complete the IFSE Ethics and Professional Conduct (EPC) course offered by The Investment Funds

Institute of Canada within one year from the date of the acceptance of the Settlement Agreement by the Hearing Panel, pursuant to section 24.1.1(f) of MFDA By-law No. 1;

- d) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of MFDA By-law No.1;
- e) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- f) the Respondent will attend in person or by videoconference, on the date set for the Settlement Hearing.

6. The parties agreed to the following facts recited in the Settlement Agreement:

7. From January 8, 2015 to April 29, 2019, the Respondent was registered in Ontario as a Dealing Representative with Sun Life Financial Investment Services (Canada) Inc. (the “Member”), a Member of the MFDA.

8. The Respondent is not currently registered in the securities industry in any capacity.

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

Pre-signed Account Forms

10. At all material times, the Member’s policies and procedures prohibited its Approved Persons from obtaining pre-signed blank forms. The Member’s Approved Persons were only permitted to use a form after it had been duly executed by a client and after the information on the form has been properly completed.

11. Between December 10, 2015 and November 8, 2018, the Respondent obtained, possessed, and used to process transactions, 9 pre-signed account forms in respect of 6 clients.

12. The account forms consisted of a Know Your Client (“KYC”) form; a Tax Free Savings Account (“TFSA”) Application form; Pre-Authorized Account Contribution (“PAC”) forms; a transfer authorization form and a Locked-In Retirement Account or Life Income Fund transfer form.

Altered Account Forms

13. Between September 9, 2015 and October 28, 2018, the Respondent altered and used to process transactions, 43 account forms in respect of 20 clients, by altering information on the account forms without having the client initial the alterations.

14. The altered account forms consisted of Registered Education Savings Plan Application forms; fund company investment application forms; direct transfer and transfer authorization forms; KYC forms; a New Client Application Form; TFSA Application forms; a PAC form and a Limited Trading Authorization (“LTA”) form. In some instances, the Respondent used liquid correction fluid to alter information on the account forms.

15. The Respondent altered information on the account forms such as account numbers; receiving institution information; investment instructions; fund codes and names; KYC information; beneficiary designations; purchase start and payment dates; purchase instructions and the client name on an LTA.

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Additional Factors

22. There is no evidence that the Respondent received any financial benefit from the misconduct described above beyond the commissions or fees she would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

23. There is no evidence of client complaints, client loss or lack of authorization for the underlying transactions.

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

25. 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.

26. The Respondent states that she has limited financial means, and as a result, she is unable to pay a monetary penalty that is greater than the total of the fine and costs amounts set out in this Settlement Agreement. MFDA Staff have received evidence which corroborates the Respondent's statement.

IV. ANALYSIS AND REASONS

7. MFDA Rule 2.1.1 prescribes the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires that each Member and Approved Person deal fairly, honestly, and in good with faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

MFDA Rule 2.1.1

8. In this case the Respondent

- a) admitted to obtaining and possessing pre-signed account forms; and
- b) admitted that she altered information on account forms without having clients initial all the alterations.

9. "Pre-signed account forms" is a generic term which is applied 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. 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. A pre-signed form may also include a form with a photocopied client signature.

10. Hearing Panels of the MFDA have consistently found that obtaining or using pre-signed account forms or altering information on account forms contravenes the standard of conduct set out in MFDA Rule 2.1.1.

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

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

11. In its Bulletin #0661-E dated October 2, 2015, the MFDA provided examples of the negative consequences that can arise when an Approved Person engages in Signature Falsification (a term that includes conduct like pre-signed account forms, altered account forms and the falsification of a client signature):

- there is an adverse effect on the integrity and reliability of the documents
- the audit trail is destroyed
- the Approved Person's ability to produce valid documentation to support transactions that come into question is impacted
- the client is prejudiced by making it appear as if the client has executed a particular document when this is not the case
- the Member's supervisory personnel are misled as to the circumstances as to how the document was obtained
- the Approved Person's credibility is negatively affected
- Member complaint handling is negatively affected
- The Approved Person uses the forms to facilitate further misconduct like unauthorized trading, fraud and misappropriation of monies

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

12. In summary, 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.

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

13. As is made very clear in By-law No. 1 of the MFDA, 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. [Emphasis added.]

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

Milewski (Re), [1999] I.D.A.C.D. No. 17 at p. 11, Ontario District Council, Decision dated July 28, 1999.

14. 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, as long as the result falls within a reasonable range of what is appropriate.

British Columbia Securities Commission v. Seifert, [2007] BCCA 484 at para. 31

15. The primary goal of securities regulations is protection of the investor. It is axiomatic that by acting to enforce its By-laws, Rules and Regulations, the MFDA is thereby acting in the public interest. The role of this Hearing Panel is to ensure that the Settlement Agreement is in the public interest when deciding to accept or reject it, the only two options open to it.

16. 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) [2007] MFDA Hearing Panel of the Prairie Regional Council, Reasons for Decision dated July 13, 2007, MFDA File No. 200712, at para. 68.

17. 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) [2006] MFDA Hearing Panel of the Central Regional Council, Reasons for Decision dated February 21, 2006, MFDA File No. 200509, at para. 85.

18. The Hearing Panel has taken the factors set out above into account in reaching its conclusion in this case. However, set out below are those factors which the Hearing Panel found particularly relevant to its appraisal of the acceptability of this Settlement Agreement.

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

19. It also needs to be stressed that as there was no evidence of client complaints, client loss or lack of authorization for the underlying transactions. It was very important for the Hearing Panel that this was the case.

20. There was also no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding.

21. The agreed penalty is significant for this particular Respondent. Staff submitted and the Hearing Panel agrees that it helps the MFDA send a message to the Respondent and others in the capital markets about the seriousness of the misconduct at issue and their inability to avoid disciplinary action and penalty if they engaged in similar misconduct. Approved Persons have significant responsibilities that they must meet if investors are to be protected and those Approved Persons who choose to act in ways that are incompatible with MFDA By-Laws, Rules and Policies should have the expectation that they will be held accountable through enforcement action.

MFDA Sanction Guidelines, Part 1

22. In the present case, the Respondent advised Staff that she has limited financial means, and as a result, would be unable to pay a monetary penalty that is greater than the total of the fine and costs amounts agreed to in the Settlement Agreement. MFDA Staff have received evidence which corroborates the Respondent's statement.

23. While MFDA Sanction Guidelines are not mandatory in their application, they do provide useful guidance when a Hearing Panel is asked to consider the appropriateness of a proposed settlement agreement where arguments of limited financial means are presented. A Respondent's ability to pay is listed as one of fourteen factors that can be considered when a Hearing Panel is assessing a proposed monetary sanction. The MFDA Sanction Guidelines also explicitly state that the burden is on the Respondent to raise the issue and to provide evidence of inability to pay, stating the following:

The burden is on the Respondent to raise the issue and to provide evidence of inability to pay, such as tax returns or audited financial statements. Evidence of a *bona fide* inability to pay may result in the reduction or waiver of a fine, or in the imposition of an installment payment plan. In cases in which Hearing Panels impose a lesser monetary sanction based on a *bona fide* inability to pay, the Reasons for Decision should so indicate."

MFDA Sanction Guidelines

24. The Respondent has met this burden and this is an appropriate case to consider the "ability to pay" factor when assessing the proposed penalty. This is not a case that involves misappropriation, conflict of interest or other gross misconduct where the ability to pay factor should be given a diminished weight or no weight at all. We agree with Staff's Submission that the proposed penalty considers the Respondent's limited financial means and still meets the competing general deterrence principle by conveying to other Approved Persons that arguments of limited means will not necessarily permit one to completely escape a monetary penalty (or other significant sanction such as suspension or prohibition) for the use of pre-signed or altered account forms.

25. It was also important for the Hearing Panel that:

- a) The Respondent has not previously been subject to MFDA disciplinary proceedings; and
- b) The Respondent recognized the seriousness of her misconduct.

26. By entering into this Settlement Agreement, the Respondent has accepted responsibility for her misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing. Such savings are in themselves in the public interest.

27. After considering Staff's Submissions with respect to decisions made in previous, similar cases, the Hearing Panel agreed that the proposed settlement would, if accepted, fall within the range of appropriateness as is demonstrated by such decisions.

28. A particular concern to us was the issue of whether the suspension was necessary in this case. After due consideration we concluded that it was both necessary and appropriate in that it provided the needed deterrence in this much abused area.

V. DECISION

29. It was for the foregoing reasons that the Hearing Panel accepted the Settlement Agreement and signed the Order dated on May 21, 2021 to that effect.

DATED this 22nd day of October, 2021.

"John Lorn McDougall"

John Lorn McDougall, Q.C.
Chair

"Selwyn Kossuth"

Selwyn Kossuth
Industry Representative

"Joseph Yassi"

Joseph Yassi
Industry Representative

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