Re Rana

IN THE MATTER OF:

A Settlement Hearing Pursuant to Mutual Fund Dealer Rule 7.4.4.3

and

Baljit Bassi Rana

2023 CIRO 40

Canadian Investment Regulatory Organization
Hearing Panel of the Pacific District Hearing Committee

Heard: May 25, 2023, by electronic hearing in Vancouver, British Columbia
Decision: May 25, 2023
Reasons for Decision: November 21, 2023

Hearing Panel
Nils Preshaw, Chair
Barbara Fraser, Industry Representative
Susan Monk, Industry Representative
Appearances:
Jennifer Galarneau, Enforcement Counsel for the Mutual Fund Dealers Association of Canada (now Canadian Investment Regulatory Organization)
Hunter Parsons, Counsel for the Respondent
Baljit Bassi Rana, Respondent

REASONS FOR DECISION ON ACCEPTANCE OF SETTLEMENT

BACKGROUND

¶ 1 On May 25, 2023, a Hearing Panel ("Panel") approved a Settlement Agreement between the New Self-Regulatory Organization of Canada ("New SRO") and Ms. Baljit Bassi Rana (the "Respondent").

¶ 2 The Respondent appeared at the hearing electronically and was represented by counsel.

¶ 3 Following submissions from both counsel for the New SRO and from the Respondent, the Panel accepted the Settlement Agreement with these reasons to follow.

¶ 4 The Settlement Agreement is attached as Schedule "1" to these Reasons.

¶ 5 The Order of the Panel is attached at Schedule "2".

The New SRO

¶ 6 The New SRO is the national self-regulatory organization that oversees all investment dealers, mutual fund dealers and trading activity on Canada's debt and equity marketplaces. It is a consolidation of the Investment Industry Regulatory Organization of Canada ("IIROC") and the Mutual Fund Dealers Association of Canada ("MFDA").

¶ 7 The relevant rules, procedures, and bylaw applicable to this matter are:

a. the Mutual Fund Dealer Rules (the "Rules");

b. the Mutual Fund Dealer Rules of Procedure (the "Rules of Procedure"); and

c. By-Law No. 1, being a General By-Law of the New SRO (the "Bylaw").

¶ 8 Following the hearing on June 1, 2023, the New SRO changed its name the Canadian Investment Regulatory Organization ("CIRO"). Despite this change, these Reasons refer to the New SRO throughout.

PRELIMINARY ISSUES

¶ 9 Generally speaking, the only issue to be determined by a Hearing Panel at a settlement hearing is whether to accept or reject a settlement agreement pursuant to Rule 7.4.4.3.

¶ 10 However, two preliminary concerns arose in this matter:

a. the first was a motion to proceed with the settlement hearing despite the fact that 10 days had not passed since a Notice of Hearing had been published as required by Rule of Procedure 15.2(1); and

b. the second was a motion to proceed *in camera* at least until such time that the Panel accepted or rejected the Settlement Agreement.

LAW ON PRELIMINARY ISSUES

Abridging time

¶ 11 Rule of Procedure 15.2, entitled "Notice and Public Access", does not allow a Hearing Panel to consider a settlement agreement unless at least 10 days notice has been given. A notice of hearing must indicate the date, time and place of the settlement hearing and also contain sufficient information identifying the person or member involved and the general nature of the allegations which are the subject of settlement.

¶ 12 Despite this requirement, Rule of Procedure 2.2 allows a Hearing Panel to abridge the performance of any obligation on terms it considers appropriate.

Proceeding *in camera*

¶ 13 The Supreme Court of Canada has provided guidance on what is commonly known as the "Open Court Principle". Cases include *Dagenais v. Canadian Broadcasting Corp.*, 1994 CanLII 39 (SCC), *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 (CanLII) and *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII) at paragraphs 1-3.

¶ 14 Rule 7.3.5, "*Open to the Public*" appears to recognise the Open Court Principle:

> *A hearing pursuant to Rule 7.3 shall be open to the public except where the Hearing Panel is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing which are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, in which case the Hearing Panel may hold the hearing in camera.*

¶ 15 Rule of Procedure 1.8 also mentions the concept that New SRO hearings should be open to the public:

1.8 Hearings Open to the Public

(1) Subject to sub-Rules (2) and (3), all hearings shall be open to the public unless the Panel orders otherwise.

(2) A Panel may order that all or part of a hearing be heard in the absence of the public where the Panel is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing which are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the

public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

(3) An electronic hearing shall be open to the public unless the Panel makes an order under sub-Rule (2) or the Panel is of the opinion that it is not practical to hold the electronic hearing in a manner that is open to the public.

(4) A Panel may impose such terms as it considers appropriate for the conduct of a hearing held in the absence of the public.

(5) Exhibits, documents and transcripts relating to that part of a hearing that is held in the absence of the public shall be marked "Confidential" and shall be kept separate from the public record, and access to this material shall only be by order of the Panel.

¶ 16 Settlement Hearings necessarily involve consideration by a Hearing Panel of a Rule 7.4.4.2 written settlement agreement that must contain, among other things, admissions to facts, a waiver by a Respondent of any and all right of appeal, and agreement on a proposed penalty and costs.

¶ 17 Rule 7.4.4.4 states that a settlement agreement only becomes binding on a Respondent once it has been accepted by a Hearing Panel:

> *A settlement agreement shall only become binding in accordance with its terms upon such acceptance and, in such event, the Member or person shall be deemed to have been penalized by a Hearing Panel for the purpose of giving notice thereof.*

¶ 18 Rule of Procedure 15.2(2) allows a Hearing Panel to proceed *in camera*:

> *A Hearing Panel may, on its own initiative or at the request of a party, order that all or part of the settlement hearing be held in the absence of the public, having regard to the principles set out in Rule 1.8.*

¶ 19 Rule of Procedure 15.2(4) gives a Hearing Panel the authority to keep all or a part of the court record confidential:

> *Where a Settlement Agreement is not accepted, the Hearing Panel may provide on its own initiative, and shall provide at the request of a party, reasons for its decision and the Hearing Panel may order that all or part of the reasons and the record of the settlement hearing should not be made available to the public, having regard to the principles set out in Rule 1.8.*

¶ 20 Also instructive is Rule 8305(5)(i) from the recent Corporation Investment Dealer and Partially Consolidated Rules dated May 15, 2023, which explains that a hearing under Rule 8200 must be open to the public unless it is a settlement hearing, in which case it will be opened to the public only after a settlement agreement has been accepted by the hearing panel.

¶ 21 None of the Rules, Bylaw or the Rules of Procedure appear to give Hearing Panels the authority to issue a publication ban.

Settlement Privilege

¶ 22 As a part of submissions on the motion to proceed *in camera*, counsel for the New SRO argued orally that doing so was necessary to protect settlement privilege.

¶ 23 In *Sable Offshore Energy Inc.* v. *Ameron International Corp.*, 2013 SCC 37 (CanLII), the SCC explained that settlement privilege is a class privilege that attracts a presumption of inadmissibility regarding communications during negotiations of a litigious dispute. In order to be protected by settlement privilege a document must have been made in confidence without the intention that it be disclosed to a third party.

¶ 24 The Supreme Court in *Sable* made the following points about settlement privilege:

a. communications do not need to expressly state that they are "without prejudice," for settlement

privilege to apply. Any communication, oral or written, made in confidence with the intent of trying to resolve a dispute is protected;

b. settlement privilege applies to both civil and criminal matters;

c. settlement agreements negotiated by the parties and meant to be held in confidence are themselves privileged. The privilege also applies to communications in the course of unsuccessful negotiations;

d. disclosure of part of a settlement agreement does not necessarily entail waiver over the entire settlement agreement. In *Sable*, settlement privilege continued to protect settlement amounts despite all other terms of the settlement agreement being disclosed; and

e. exceptions to settlement privilege exist. Disclosure can be required to avoid overcompensating a plaintiff or, for example, where there are allegations that the settlement negotiations involved misrepresentation, fraud or undue influence. However, the Court in *Sable* rejected the argument that an exception to settlement privilege should apply simply on the basis that it would facilitate further settlements.

¶ 25 In *Union Carbide Canada Inc. v. Bombardier Inc.*, 2014 SCC 35, at paras. 35 and 54, the SCC further explained that parties may waive settlement privilege and that protected communications may be admissible to the extent necessary to prove the existence or scope of a settlement agreement.

¶ 26 Waiver of privilege can occur by disclosure to a third party or by pleading or otherwise relying on a privileged communication or agreement as part of a substantive position taken in the legal proceedings. See paras. 74-100 in Guelph (City) v. Super Blue Box Recycling Corp., 2004 CanLII 34954 (ON SC).

¶ 27 In *Association de médiation familiale du Québec v. Bouvier, 2021 SCC 54 (CanLII)*, the SCC provided its most recent comments on settlement privilege:

> [95] Settlement privilege is a rule of evidence that protects the confidentiality of communications and information exchanged for the purpose of settling a dispute (*Union Carbide*, at paras. 1 and 31; *Globe and Mail v. Canada (Attorney General)*, 2010 SCC 41, [2010] 2 S.C.R. 592, at para. 80; Lafond and Thériault, at No. 3-9). It is recognized as fundamental to the making of an agreement between parties (*Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37, [2013] 2 S.C.R. 623; *Union Carbide*, at para. 1) because it promotes honest and frank discussions, which can make it easier to reach a settlement in all types of mediation (*Union Carbide*, at para. 31). ...
>
> [96] Settlement privilege is not absolute, however. For one thing, the parties can change its scope by contract (*Union Carbide*, at paras. 39, 54 and 58), as long as they do not deprive a court of its supervisory jurisdiction over matters of public order. There are also some exceptions developed by the courts or established by law that allow confidentiality to be lifted on an exceptional basis, for example where there is fraud or professional misconduct by a mediator (*Sable Offshore*, at para. 19; *Union Carbide*, at paras. 34 and 49; art. 606 *N.C.C.P.*; 2016 *Guide*, at p. 11).
>
> [97] In *Union Carbide*, this Court reiterated the importance of another exception developed by the courts, the settlement exception, which is central to this appeal. This exception allows protected communications to be disclosed in order to prove the existence or scope of a settlement arising from mediation (*Union Carbide*, at paras. 35-36; Roberge (2017), at p. 104). It applies even where an agreement is not entered into until after mediation (*Union Carbide*, at para. 34). In keeping with its purpose, the exception applies only to what is necessary to prove the existence or scope of the settlement (*ibid.*, at para. 35).
>
> [98] In *Union Carbide*, Wagner J., as he then was, explained that the settlement exception serves the same public interest as the privilege itself, that is, the promotion of settlements: "Once the parties have agreed on a settlement, the general interest of promoting settlements requires that they be

> able to prove the terms of their agreement" (para. 35). It is in this sense, as Wagner J. observed, that disclosure to prove the terms of an agreement promotes settlements generally. It follows that the exception in no way weakens the principle of privilege in mediation. As noted by Paul M. Perell (now a justice of the Ontario Superior Court), "where the without prejudice settlement offer has been accepted, there is no longer any public policy reason to exclude the evidence, the goal of the policy having been achieved" ("The Problems of Without Prejudice" (1992), 71 *Can. Bar Rev.* 223, at p. 234). Within the limits of public order, this logic applies, in my view, both in family mediation and in civil and commercial mediation when parties opt for confidentiality to serve their primary objective of reaching a settlement. As the trial judge wrote: [TRANSLATION] "Prohibiting the submission of such evidence based on the principle of confidentiality would make it impossible to homologate such an agreement once its existence is contested, which would make little sense" (para. 41).

¶ 28 In supplemental written submissions, counsel for the New SRO provided two cases regarding settlement privilege:

a. *R. v. Pabani*, 1994 CanLII 8723 (ONCA), a murder case which dealt with the admissibility of statements made by Pabani to his wife before her murder and whether those statements were protected by a common-law privilege protecting statements between spouses; and

b. *Pirie* v. *Wyld*, (1886), 11 OR 422, a historical case that shows Canadian courts have long recognized there is a public interest in treating settlement discussions between parties, in both civil and criminal proceedings, as privileged.

¶ 29 The Panel notes that the New SRO process is not alone in requiring approval of settlement agreements. In British Columbia, proposed settlements involving minors worth over $50,000 have to be approved by the court pursuant to s.40(5) of the *Infants Act*, R.S.B.C. 1996, c.223. Proposed class action settlements also need court approval (see for example, *Aps v. Flight Centre Travel Group*, 2020 ONSC 6779 (CanLII)).

Natural Justice and procedural and administrative fairness

¶ 30 Whatever legislation, rules or regulations are followed, the process itself must be fair.

¶ 31 The leading Canadian case relating to fairness in administrative proceedings is *Baker v. Canada (Minister of Citizenship & Immigration)* 1999 CanLII 699 (SCC), where, at para. 21, the court held that the values underlying the duty of procedural fairness relate to the principle that an affected individual should have the opportunity to present their case fully and fairly, and have decision affecting their rights, interests, or privileges made using a fair, impartial and open process, appropriate to the statutory, institutional and social context of the decisions.

Past practise

¶ 32 The New SRO's supplemental written submissions also included a number of past decisions by Hearing *Panels that had proceeded in camera such as:*

a. *Moro (Re)*, 2007 CanLII 80234 (CA MFDAC), a short decision where the Hearing Panel commented at para. 3, that:

> At the request of counsel, it was ordered that the hearing take place in the absence of the public (Rule of Procedure 1.8(2)). The purpose of the hearing was to determine whether the settlement agreement (Exhibit 4) should be accepted or rejected. If the settlement agreement were to be rejected, its contents would, in general, remain confidential. On the other hand, if the agreement were to be accepted, the contents would then be made public. In these circumstances, the Panel was of the view that the hearing should be held in camera. Indeed, it is difficult to think of a circumstance where a settlement hearing ought not to be held in camera. (emphasis in the original)

b. *Sullivan (Re)*, 2008 CanLII 87758 (CA MFDAC), a short decision that notes, at para. 3, that there had been a joint motion to go *in camera* and, at page 4, that following acceptance of a settlement agreement the *in camera* hearing order had been vacated. As in *Moro (Re)* there was no in-depth discussion of why of Hearing Panel did so;

c. *Lau (Re)*, 2014 CanLII 2648 (CA MFDAC), where, at para. 2, the Hearing Panel noted that they agreed to a motion to go *in camera* without further analysis;

d. *Will (Re)*, 2018 CanLII 11781 (CA MFDAC), where the Hearing Panel commented, at para. 3, that: "Settlement hearings generally proceed *in camera* in order to protect the integrity of the process in the event that the Settlement Agreement is not accepted by the Panel"; and

e. *Russell (Re)*, 2022 CanLII 50807 (CA MFDAC), where, at para. 3, the Hearing Panel explained that they granted a joint request to go *in camera* and that "This procedure is consistent with Rule 15.2(2) of the MFDA Rules of Procedure".

Waiver of right to appeal

¶ 33 Rule 7.4.4.2(e) requires that a settlement agreement must contain a waiver by the respondent of any and all right of appeal.

¶ 34 In criminal law, in order for a waiver to be effective it must be voluntary, unequivocal and informed.

Korponay v. Attorney General of Canada 1982 CanLII 12 (SCC)

¶ 35 Those same principles have been held to hold true in disciplinary proceedings. Any waiver of procedural rights must be voluntary, unequivocal and informed, in the sense that the party waiving those rights understands the consequences of the waiver.

Law Society of Ontario v. Goldfinger, 2019 ONLSTA 10 (CanLII) at para. 30

¶ 36 In Response to questions from the Chair, counsel for the Respondent confirmed:

a. that the Respondent had entered into the Settlement Agreement, that included a waiver to any procedural right to appeal, voluntarily, unequivocally and that she had been fully informed of the consequences of agreeing to the settlement agreement prior to signature;

b. his view that the proposed fine and costs were within a reasonable range when compared with past settlement hearing decisions; and

c. that the Respondent understood the payment plan contained within the Settlement Agreement and the consequences of failing to make payments on the deadlines indicated.

ANALYSIS OF PRELIMINARY ISSUES

Abridging time

¶ 37 The Notice of Hearing (at Schedule 3) was published on the New SRO website on March 20, 2023. It contained extensive details of the allegations against the Respondent thereby complying with Rule of Procedure 15.2 but failed to indicate a date for a settlement hearing (presumably because the parties had not yet come to an agreement on settlement).

¶ 38 The Panel was also made aware of a May 24, 2023, New SRO News Release regarding the Respondent announcing that a settlement hearing would be held the following day. The News Release was not published at least 10 days before the settlement hearing, nor did it sufficiently explain the nature of the allegations faced by the Respondent.

¶ 39 Although the motion to abridge the 10-day notice period was made by counsel for the New SRO, it was supported by Respondent's counsel.

Motion to proceed *in camera*

¶ 40 The Supreme Court of Canada has been resolute in recognizing that the public should be able to attend hearings and consult court files. As a result, there is a strong presumption in favour of open courts in order to allow public scrutiny. While this open court principle can be a source of embarrassment to some, their discomfort is not generally enough to overturn the strong presumption that the public should be able to attend hearings and that court files can be consulted and reported upon by the free press.

¶ 41 Rule 7.3.5 and Rule of Procedure 1.8 both reflect the Open Court Principle by explaining that New SRO hearings should be open to the public.

¶ 42 However, New SRO Rule 7.35 and Rule of Procedure 1.8(2) and 1.8(3) provide Hearing Panels with the authority to deviate from the Open Court Principle in the context of New SRO Settlement Hearings where intimate, financial, personal, or other matters, such as a Respondent's detailed admissions of fact and agreement to fine/cost amounts, may be disclosed.

¶ 43 As indicated above, in order for a Respondent to resolve allegations made against them by the New SRO (outside of conducting a contested hearing) they must, pursuant to Rule 7.4.4.2, enter into a written settlement agreement that contains, at a minimum, admissions of fact, a waiver of any and all rights of appeal, and a joint position on a fine amount and costs.

¶ 44 Critically, Rule 7.4.4.4 directs that a settlement agreement only becomes binding upon a Respondent after acceptance by a Hearing Panel.

¶ 45 Given the New SRO's rules and procedures, it is apparent that if a settlement agreement was discussed/filed in open court and ended up being rejected, any member of the public (which, for example, could include a member of the press) that happened to be in attendance would be free to report on the admissions made by the Respondent regarding facts, fines and costs even though the Respondent ended up not being bound by the settlement agreement.

¶ 46 Given caselaw such as *Guelph (City)*, it may be that parties waive privilege over settlement agreements when they provide them to New SRO Hearing Panels.

¶ 47 However, allowing a settlement agreement to be heard in open court could violate basic fairness and natural justice. If the settlement agreement was rejected by a Hearing Panel Respondents would not bound to very public admissions that they had been forced to make in the course of trying to resolve their dispute with the New SRO.

¶ 48 It is therefore evident from the New SRO's rules and procedures, basic fairness and natural justice that at the outset of any settlement hearing:

a. counsel should bring a motion to proceed *in camera* pursuant to Rule 7.3.5 and Rules of Procedure 1.8(2) and/or 1.8(3) [electronic hearings];

b. Hearing Panels should accede to that motion pursuant to Rule of Procedure 15.2(2), basic fairness and natural justice;

c. once the Hearing Panel determines, *in camera*, whether to accept or reject the settlement agreement pursuant to Rule 7.4.4.3, it should go back on the record and inform counsel for the New SRO and the Respondent of its decision in open court;

d. if a settlement agreement is accepted then it should be filed as an exhibit and the admissions contained therein referenced by the Hearing Panel in their Reasons; however

e. where a settlement agreement is rejected, the Hearing Panel should order that it not be made available to the public pursuant to Rule of Procedure 15.2(4) and avoid mentioning the contents of the settlement agreement in open court or in their Reasons.

Rulings on Preliminary Issues

¶ 49 Following submissions, the Panel stood down to deliberate the preliminary motions.

¶ 50 After considering the above, and particularly the supporting position of the Respondent, the Panel determined that it was appropriate, given the specific circumstances in this matter, to abridge the 10-day notice requirement stipulated in Rule of Procedure 15.2(1) (at least 10 days notice between publication of a Notice of Hearing and a settlement hearing) by relying on the authority granted to Hearing Panels by Rule of Procedure 2.2(1)(a).

¶ 51 After considering the motion to go *in camera*, and particularly Rule 7.3.5 and Rules of Procedure 1.8 and 15.2(2), basic fairness and natural justice, the Panel determined that it was appropriate to proceed *in camera*.

¶ 52 Counsel for the New SRO and the Respondent made their submissions regarding both the facts in this matter and the reasonableness of the proposed fine and court costs. The Panel stood down once again to deliberate and decided to accept the Settlement Agreement pursuant to Rule 7.4.4.3.

FACTS

¶ 53 The Respondent has been registered in the securities industry from July 12, 2007 to September 4, 2007, and since April 11, 2011, onwards. Since April 11, 2011, the Respondent has been registered in British Columbia as a dealing representative with Sun Life Financial Investment Services (Canada) Inc. (the "Member'). At all material times, the Respondent carried on business in and around Golden, B.C.

¶ 54 On February 16, 2019, the Respondent photocopied the signature pages from account forms previously signed by two clients, reused the signature pages on four account forms and then submitted those forms to the Member for processing.

¶ 55 Between March 22, 2018, and June 2, 2020, the Respondent altered and used seven account forms without having the client initial the alterations.

¶ 56 The account forms consist of:

a. one "Mutual Fund Investment Application" form;

b. one "Know Your Client Update" form;

c. two "Order Tickets";

d. one "Pre-Authorized Chequing/Automatic Withdrawal" form; and

e. one "Know Your Client" form.

¶ 57 The alterations to the account forms included changes to client withdrawal amounts, investment objectives, time horizon, investment instructions, net worth and fund code/name.

¶ 58 Between November 28, 2016, and January 13, 2021, the Respondent obtained, possessed and in some instances used, eleven pre-signed account forms in respect of nine clients.

¶ 59 The account forms consist of:

a. three "Mutual Fund Investment Application" forms;

b. one "Nominee Fee-Based Agreement";

c. one "New Account Application Form (Investment Application)";

d. one "Client Consent to Electronic Delivery of Documents (MFA)";

e. four "Pre-Authorized Chequing/Automatic Withdrawal" form; and

f. one "Order Ticket".

¶ 60 On March 21, 2021, while conducting daily trade reviews the Member identified one of the altered account forms described above.

¶ 61 The Member completed a review of client files maintained by the Respondent and identified the

remaining account forms described above.

¶ 62 The Member sent a letter to all the Respondent's clients requesting that they review their statements for accuracy, confirm they had authorized account transactions and review their "Know Your Client" information. None of the clients responded to the Member with any concerns.

¶ 63 On November 4, 2021, the Member issued a warning letter to the Respondent. The Member also imposed a period of close supervision on the Respondent that continued up until the Settlement Hearing. We understand that the Member required the Respondent to pay a fee of $400 per month in relation to this close supervision and that, as of the date of the settlement hearing, the Respondent had paid the Member $7,200 in close supervision fees plus an additional $2,500 fine arising from the conduct described above.

¶ 64 The Respondent has admitted that:

a. on February 16, 2019, acting in her capacity as a dealing representative with the Member, the Respondent photocopied the signature pages from account forms previously signed by two clients and reused the signature pages on four account forms and submitted the forms to the Member for processing;

b. between March 22, 2018, and June 2, 2020, acting in her capacity as a dealing representative with the Member, the Respondent altered and used to process transactions seven account forms in respect of seven clients, by altering information on the account forms without having the client initial the alterations; and

c. between November 28, 2016 and January 13, 2021, the Respondent obtained, possessed, and in some instances used to process transactions, 11 pre-signed account forms in respect of 9 clients.

¶ 65 The above were contraventions of Mutual Fund Dealer Rule 2.1.1 which holds that persons such as the Respondent must abide by a standard of conduct requiring Approved Persons to:

a. deal fairly, honestly and in good faith with their 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; and

d. be of such character and business repute and have such experience and training as is consistent with the standards described in Mutual Fund Dealer Rule 2.1.1, or as may be prescribed.

¶ 66 There was no evidence before the Panel as to whether the Respondent received any financial benefit as a result of her misconduct beyond the commissions or fees she would ordinarily be entitled to receive.

¶ 67 The Respondent has not previously been the subject of MFDA or New SRO disciplinary proceedings.

Role of Panel at a Settlement Hearing

¶ 68 In determining whether a proposed penalty falls within a reasonable range, a Panel should consider the seriousness of the misconduct, aggravating and mitigating factors and the sentencing principles of general and specific deterrence.

Badasha (Re), 2015 CanLII 39872 (CA MFDAC) at para. 44

Arena (Re), 2020 CanLII 113316 (CA MFDAC) at paras. 32-33

Mutual Fund Dealer Rules

¶ 69 Section 1 of the Rules defines:

a. an "Approved" Person" as being an individual who is a partner, director, officer, compliance officer, branch manager, or alternate branch manager, employee or agent of the Member who (i) is registered or permitted, where required by applicable securities legislation, by the securities

commission having jurisdiction, or (ii) submits to the jurisdiction of the Corporation;

b. a “Corporation" as being “[Name of New SRO]”; and

c. a “Member" as a Dealer Member that is registered as a mutual fund dealer in accordance with securities legislation and is not also registered as an investment dealer.

¶ 70 Section 7.4.1.1(b)(i) of the Rules empowers a Panel to impose, among other things, a fine of up to $5,000,000 for each offence.

¶ 71 Section 7.4.2 of the Rules gives a Panel the discretion to require a Member or Approved Person to pay costs.

¶ 72 The Rules also include the following relevant sections:

1.1.2 Compliance by Members and Approved Persons

...

(b) Each Approved Person who conducts or participates in any securities related business in respect of a Member in accordance with Rule 1.1.1(c)(i) or (ii) shall comply with:

(i) the Bylaws,

(ii) the Rules, and

(iii) applicable securities legislation relating to:

(A.) the operations, standards of practice and business conduct of each Member; and

(B.) such Approved Person’s operations, standards of practice and business conduct.

...

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; and

(d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

...

2.5.1 Member Responsibilities

Each Member is responsible for establishing, implementing and maintaining policies and procedures to ensure the handling of its business is in accordance with the By-laws, Rules and Policies and with applicable securities legislation.

Reusing Client Signatures

¶ 73 Previous hearing Panels have described conduct similar to reusing a signature from a previously signed account form and applying the signature to a new account form as conduct that violates Rule 2.1.1.

Lewis (Re), 2018 CanLII 43822 (CA MFDAC) at paras. 30-32

Singh (Re), 2017 CanLII 89034 (CA MFDAC)

Barnai (Re), 2014 CanLII 85682 (CA MFDAC) at paras. 6-8

¶ 74 The MFDA repeatedly warned Approved Persons against reusing or photocopying a client signature from a previously signed account form and applying the signature to a new account form.

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

MFDA Bulletin #0661-E, October 2, 2015

¶ 75 Reusing a client signature has been held to be particularly serious conduct. In the MFDA matter *Barnai (Re)*, at paragraph 6, that Hearing Panel, citing earlier decisions, summarized the principles regarding to falsified client signatures:

> *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.*

Altered Forms

¶ 76 Altering information on an account form without having the client initial the form to show he or she has authorized the change has been held to violate Rule 2.1.1.

Perron (Re), 2021 CanLII 49737 (CA MFDAC) at paras. 10 and 26

Wong (Re), 2018 CanLII 77304 (CA MFDAC)

¶ 77 As indicated above, the MFDA has warned Approved Persons to not alter account forms without having client initials.

MFDA Notice #MSN-0066

MFDA Bulletin #0661-E

Pre-Signed Forms

¶ 78 "Pre-Signed Forms" is a generic term that applies to a variety of situations in which an Approved Person obtains a client's signature on a document before all of the material information on the document has been completed. Most commonly, an Approved Person obtains a client's signature on a partially or completely blank account form. Members and Approved Persons are only permitted to obtain, use and process forms that are executed by the client after all material information on the form has been properly completed.

¶ 79 Obtaining or using a document signed by a client before all material information has been added/completed has come to be known as a "pre-signed form" issue.

Lewis (Re), 2018

Perron (Re), 2021

¶ 80 As indicated above, the MFDA has warned Approved Persons regarding the use of pre-signed forms.

MFDA Notice #MSN-0066

MFDA Bulletin #0661-E

ANALYSIS

Jurisdiction

¶ 81 Pursuant to the definitions at section 1.2 of the Rules of Procedure, a Hearing Panel includes a panel of three representatives of a District Hearing Committee appointed to preside over a proceeding.

¶ 82 The definitions at Article 1, section 1.1. of the Bylaw defines "District" as a geographic area in Canada designated as a district of the Corporation and a "District Hearing Committee" as a hearing committee created in accordance with Article 11 of the Bylaw.

¶ 83 Section 11.1(j) of the Bylaw allows for the creation of a Pacific District which is composed of British Columbia and the Yukon.

¶ 84 Section 11.2 of the Bylaw mentions District Hearing Committees and that there shall be a hearing committee in each District and that each District Hearing Committee shall have the duties, shall operate in accordance with the procedures and shall exercise its powers as set out in the Rules, including its powers with respect to the conduct of hearings.

¶ 85 Rule 7.4 provides Hearing Panels with the power to discipline Approved Persons such as the Respondent and impose a fine per section 7.4.1.1(b) not exceeding $5,000,000 per offence and section 7.4.2 of the Rules gives a Hearing Panel the discretion to require an Approved Person such as the Respondent to pay costs.

Approved Person

¶ 86 As mentioned above, Hearing Panels are empowered to impose penalties on Approved Persons.

¶ 87 The definitions contained in the Rules, specifically at Rule 1A, defines an "Approved Person" as an individual who is a partner, director, officer, compliance officer, branch manager, or alternate branch manager, employee or agent of the Member who (i) is registered or permitted, where required by applicable securities legislation, by the securities commission having jurisdiction, or (ii) submits to the jurisdiction of the Corporation.

¶ 88 The Respondent is an Approved Person since she has been registered as a dealing representative in British Columbia since as early as July 2007 and has been a dealing representative with the Member since April 2011.

¶ 89 At all relevant times the Respondent was an employee or agent of the Member, has submitted to the jurisdiction of the Corporation and is an Approved Person.

Reusing Client Signatures

¶ 90 Having reviewed the submissions of counsel for the New SRO and caselaw such as *Lewis (Re)*, *Singh (Re)* and *Barnai (Re)*, the Panel agrees that the Respondent's photocopying of signature pages from previously signed account forms was a violation of Rule 2.1.1.

Altered Forms

¶ 91 Having reviewed the submissions of counsel for the New SRO and caselaw such as *Perron (Re)* and *Wong (Re)*, the Panel agrees that the Respondent's alteration and use of account forms without having client initials of any alterations was a violation of Rule 2.1.1.

Pre-Signed Forms

¶ 92 Having reviewed the submissions of counsel for the New SRO and caselaw such as *Lewis (Re)* and *Perron (Re)*, the Panel agrees that by obtaining, possessing, and in some instances using, pre-signed account forms to process transactions the Respondent violated Rule 2.1.1.

¶ 93 The Panel notes that the prohibition on the use of pre-signed account forms applies even if:

a. the client was aware of and authorized the use, of the pre-signed account forms; or

b. the forms were not actually used by the Approved Person to facilitate discretionary or unauthorized trading or for other improper purposes.

Byce (Re), 2013 CanLII 62246 (CA MFDAC) at para. 8

Similar Sanctions

¶ 94 Counsel for the New SRO provided written submissions as well as a book of authorities consisting of 41 tabs of caselaw and references to Rules, Bylaw sections, Rules of Procedure, MFDA Notices and Bulletins. Following the hearing, counsel for the New SRO provided supplemental written submissions consisting of an additional 14 tabs of caselaw and references to Rules, Rules of Procedure and the Corporation Investment

Dealer Partially Consolidated Rules.

¶ 95 Investor protection is the primary goal of all securities regulation. In addition to investor protection, the goals of securities regulation include fostering public confidence in the capital markets and in the securities industry.

Pezim v. British Columbia (Superintendent of Brokers), 1994 CanLII 103 (SCC) at paras. 59 & 68

¶ 96 In determining the appropriateness of a proposed penalty Hearing Panels frequently cite *Breckenridge (Re)*, MFDA File No. 200708, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007, where that Hearing Panel stated that sanctions "... should be preventative, protective and prospective in nature ..." taking into account the following:

a. the protection of the investing public;

b. the integrity of the securities markets;

c. specific and general deterrence;

d. the protection of the MFDA's membership; and

e. protection of the integrity of the MFDA's enforcement processes.

Breckenridge (Re), at para. 76

¶ 97 In addition to these general considerations the Panel in *Breckenridge (Re)* set out the following factors which a Panel should consider, having regard to the specific circumstances of the case:

1. The seriousness of the allegations proved against the respondent;

2. The respondent's experience in the capital markets;

3. The level of the respondent's activity in the capital markets;

4. The harm suffered by investors as a result of the respondent's activities;

5. The benefits received by the respondent as a result of the improper activity;

6. The risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;

7. The damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;

8. 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;

9. The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and

10. Previous decisions made in similar circumstances.

Breckenridge (Re), at para 77

¶ 98 The Panel reviewed cases demonstrating a range of sanctions for similar contraventions. The proposed fine and costs in this matter are within the range for this type of misconduct. For example, in *Garg (Re)*, 2022 CanLII 70888 (CA MFDAC), there was a $25,000 fine for similar conduct.

¶ 99 The Panel was also referred to *VanAmburg, (Re)* [2022] Hearing Panel of the Atlantic Council, MFDA File No. 202253, (Reasons pending) where a $17,500 fine had been imposed in similar circumstances.

¶ 100 In assessing the reasonableness of the penalty, the Panel considered the following aggravating factors:

a. the Respondent had been registered in the securities industry for approximately 8 years before the

misconduct commenced and should have been aware of the rules;

b. the Respondent's misconduct occurred over an extended period of time and involved a large number of forms;

c. some of the misconduct occurred after the MFDA had issued *MFDA Staff Notice #MSN-0066,* October 31, 2007 (updated March 4, 2013 and January 26, 2017) and Bulletin #0661-E, dated October 2, 2015, in which the MFDA warned the industry against:

i. reusing or photocopying a client signature from a previously signed account form and applying the signature to a new account form;

ii. altering account forms without having client initials; and

iii. using pre-signed forms;

in the above Notices and Bulletins the MFDA advised that it would be seeking increased penalties in such cases in the future.

¶ 101 In assessing the reasonableness of the penalty, the Panel also considered mitigating factors including that the Respondent:

a. had accepted responsibility for her misconduct;

b. had no prior disciplinary record;

c. was required to pay $7,200 in close supervision fees plus an additional $2,500 fine by the Member; and

d. had entered into the Settlement Agreement thereby saving the New SRO time, resources and the expense of a full disciplinary hearing.

CONCLUSION

¶ 102 By photocopying signature pages from previously signed account forms; by altering and using account forms without having clients initial those alterations; and by obtaining, possessing, and in some instances using, pre-signed account forms to process transactions, the Respondent:

a. did not act fairly, honestly or in good faith;

b. did not observe high standards of ethics and conduct in the transaction of business; and

c. engaged in business conduct or practice that was unbecoming and detrimental to the public interest,

collectively, the above were serious contraventions of Rule 2.1.1.

¶ 103 The Panel notes that the Respondent's actions were also contrary to the policies and procedures of the Member.

¶ 104 The $18,000 fine proposed in the Settlement Agreement is an appropriate reflection of the seriousness of this case and area of misconduct. The proposed costs of $2,500 are in line with Hearing Panel decisions referenced above.

¶ 105 Having regard to the relevant considerations including general and specific deterrence and protection of the integrity of the capital markets, the settlement is within a reasonable range and is accepted.

DATED at Vancouver this 21 day of November 2023

"Nils Preshaw"
"Barbara Fraser"

"Susan Monk"