



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: Sergio Salina

Heard: July 25, 2022 by electronic hearing in Vancouver, British Columbia

Decision: July 25, 2022

Reasons for Decision: August 30, 2022

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Michael Carroll, Q.C.
Barbara Fraser
Jared Webb

Chair
Industry Representative
Industry Representative

Appearances:

Alan Melamud)	Senior Enforcement Counsel for the Mutual
)	Fund Dealers Association of Canada
)	
Robert Cooper)	Counsel for Respondent
)	
)	
Sergio Salina)	Respondent

I. INTRODUCTION

1. Between February 6, 1991 and May 23, 2018, Sergio Salina (the “Respondent”) was registered as a dealing representative in British Columbia with Investors Group Financial Services Inc. (the “Member”). At various times between 2004 and 2018 the Respondent was also registered with the Member in other Territories and Provinces in Canada. On May 23, 2018 the Respondent’s registration was terminated by the Member.

2. On December 20, 2021 the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a disciplinary proceeding against the Respondent alleging that he:

- a) In July 2014 recommended for the account of a 95 year old client (“the Client”) a switch of approximately \$498,511.00 from a no-load mutual fund to the same mutual fund which was subject to a 7 year deferred sales charge schedule, without ensuring that the recommendation was suitable having regard to the Know Your Client, factors contrary to the Member’s policies and procedures and MFDA Rules 2.2.1, 2.5.1, 1.1.2, 2.1.1, or 2.1.4.
- b) Between March and November 2016, failed to immediately disclose to the Member that he had been named a beneficiary in a deceased client’s will and continued to act as an Approved Person responsible for servicing the estate’s account, thereby failing to disclose a conflict or potential conflict of interest to the Member, or otherwise ensure that it was addressed by the exercise of responsible business judgement influenced only by the best interests of the client, contrary to the Member’s policies and procedures and MFDA Rules 2.1.4, 2.1.1, 1.1.2, and 2.5.1.
- c) Between 2010 and 2018, obtained and possessed 24 pre-signed account forms in respect of 13 clients and altered 1 account form without obtaining the client’s initials, contrary to the Member’s policies and procedures and MFDA Rule 2.1.1.

3. A first appearance took place on February 22, 2022 and a hearing on the merits was scheduled for 3 days commencing July 25, 2022.

4. On July 12, 2022 a settlement agreement (the “Settlement Agreement”) was made between the MFDA and the Respondent and the matter now comes before this panel as a Settlement Hearing in which we are required to approve or reject the Settlement Agreement. The Settlement

Agreement is attached hereto as Schedule “1”. The relevant facts are set out in Part IV of the Settlement Agreement.

II. CONTRAVENTION

5. The Respondent admits that he recommended for the account of the Client a switch of \$498,511 from a no-load mutual fund to the same mutual fund, but which was subject to a 7 year deferred sales charge schedule as a result of the switch, generating a commission of \$18,943 to the Respondent to which he would not otherwise have been entitled. This gave rise to a conflict or potential conflict of interest that the Respondent did not address by the exercise of responsible business judgement influenced only by the best interests of the client. By failing to address this conflict or potential conflict of interest the Respondent admits he failed to act in accordance with the Member’s policies and procedures, contrary to MFDA Rules 2.1.4, 2.1.1, 1.1.2, and 2.5.1.

6. The Respondent also admits that between March and November 2016 he failed to disclose to the Member that he had been named a beneficiary in the Client’s will, thereby also failing to disclose a conflict or potential conflict of interest to the Member contrary to the Member’s policies and procedures and the same Rules as described in paragraph 5 hereof.

7. Finally the Respondent admits that between 2010 and 2018, he obtained and possessed 24 pre-signed account forms in respect of 13 clients, contrary to the Member’s policies and procedures and MFDA Rule 2.1.1.

Proposed Sanctions should Settlement Agreement be Approved

8. The Respondent has agreed to the following sanctions for his misconduct upon approval of the Settlement Agreement by the panel:

- a) He shall pay a fine of \$30,000 in certified funds pursuant to section 24.1.1(b) of MFDA By-Law No.1, and
- b) He shall pay costs in the amount of \$5,000 in certified funds pursuant to section 24.2 of MFDA By-Law No.1.

III. ISSUES

9. Counsel for the MFDA submits and the panel agrees that there are 2 issues to determine;

- a) Do the facts admitted by the Respondent constitute misconduct in contravention of the MFDA By-Laws, Rules or Policies or provincial securities legislation?
- b) Do the sanctions contained in the Settlement Agreement fall within the reasonable range of appropriateness, bearing in mind the nature and extent of the misconduct and all of the circumstances?

General Principles Regarding Settlement Hearings

10. Section 24.4.3 of MFDA By-Law No. 1 provides that hearing panels may only accept or reject a Settlement Agreement in its entirety. We are not to determine the correct sanction but only to ascertain whether the proposed sanction falls within the reasonable range of appropriateness

Professional Investments (Kingston) Inc. (Re), 2009 LNCMFDA 9 at para. 13

Ho (Re), 2018 LNCMFDA 21 at paras. 24-26

11. Some of the factors considered by hearing panels in determining whether to approve a Settlement Agreements are;

- a) whether its approval would be in the public interest and whether the proposed sanction will protect investors;
- b) whether it is reasonable and proportionate having regard to the conduct of the Respondent;
- c) whether it addresses the issues of both specific and general deterrence;
- d) whether it will prevent the type of conduct described from occurring again ;
- e) whether it will foster confidence in the integrity of the Canadian capital markets;
- f) whether it will foster confidence in the MFDA; and
- g) whether it will foster confidence in the regulatory process itself.

Sterling Mutual Funds Inc. (Re), 2016 LNCMFDA 77 at para. 13

IV. RESPONDENT'S MISCONDUCT

A. Switch to Deferred Sales Charge Mutual Fund

12. There can be no doubt that the facts admitted by the Respondent constitute misconduct.

13. He admits that by switching the Client from a no load mutual fund to the deferred charge series he earned commission of \$18,943 which he would not have otherwise earned. His

explanation was that she wished for her intended beneficiaries to remain clients of the Member serviced by him and that he believed changing to the deferred charge series would discourage the beneficiaries from redeeming the fund. He also stated that based on his review of her finances he believed she would not require the monies invested in the deferred charge series to pay for her living expenses during her lifetime.

14. However, the Respondent now admits that switching the Client from a no load to a deferred charge series mutual fund was not an appropriate way to have her beneficiaries become clients of the Member. In fact, it would result in a penalty in the form of deferred sales charges to her beneficiaries on any redemptions by them or to her should she require the monies during her lifetime.

15. MFDA Rule 2.1.4 requires Approved Persons be aware of any actual or potential conflicts of interest and disclose them to the Member and to address any conflicts of interest with the Member by the exercise of responsible business judgement influenced only by the best interests of the client.

16. A previous hearing panel has held that a conflict of interest occurred

When one party to a matter advances, uses or pursues his own interests in dealing with another person, to whom he has an obligation of dealing fairly, to the detriment of that other person or to his own advantage rather than the person to whom he owes the duty of fairness.

Gaunt (Re), 2013 LNCMFDA at para. 47

17. The Respondent did not inform the Member of his recommendation to switch funds and failed to address the conflict of interest by the exercise of reasonable business judgement influenced only by the best interests of the Client. On the contrary the recommendation was to the Respondent's benefit and her detriment. She died approximately 18 months after the switch and her estate redeemed the mutual fund resulting in a penalty of \$24,380 for which the Member ultimately compensated the estate. Since the Respondent failed to inform the Member of the conflict, it was unable to intercede at the appropriate time to satisfy its obligation to guard against the conflict and resolve it.

18. By making an inappropriate recommendation and failing to address the conflict of interest the Respondent contravened MFDA Rule 2.1.1 which requires inter alia that an Approved Person deal fairly, honestly and in good faith with clients and refrain from any business conduct or practice

which is unbecoming or detrimental to the public interest. We find that the switch contravened MFDA Rules 2.1.4 and 2.1.1.

B. Failure to Disclose Being Named a Beneficiary

19. Previous hearing panels have found that being named a beneficiary of a client's will or account gives rise to a conflict or potential conflict of interest under MFDA Rule 2.1.4.

Sukman (Re), 2016 LNCMFDA 48

Karasik (Re), 2015 LNCMFDA 64

Taylor (Re), 2019 LNCMFDA 134

20. The Respondent first learned on March 9, 2016 that the Client had bequeathed a share of her estate to him in the amount of \$185,000 following her death. Attached to her will was a letter which stated:

I have decided to leave my friend [the Respondent] part of my estate. I have left him a bequest of one quarter of the residue of my estate in my will. I want anyone who may be concerned about this to know that I am doing this of my own free will and without any encouragement or coercion from [the Respondent]. To the contrary, he would be cross with me if he knew I have done this and I have instructed my solicitor not to tell him until after my death.

I am writing this letter in the hope that [the Respondent] will be free to accept this bequest without any negative consequences.

21. After receiving and reviewing the Client's will the Respondent continued to act as the Approved Person responsible for servicing the accounts of the estate at the Member. He was aware of his obligation to disclose to the Member that he had been named a beneficiary in the Client's will but chose instead to inquire outside the Member whether he could accept the bequest. It was not until November 2016 during an internal audit that he informed the Member of the bequest.

Settlement Agreement, paras. 33-40

22. Although the Respondent did not know he had been named a beneficiary in the Client's will until after her death he was still the Approved Person servicing the accounts of the estate at the Member and he was clearly subject to the provisions of MFDA Rule 2.1.4. In *Sukman (Re)* *Supra*, the Respondent had transferred the accounts to another firm before he became the beneficiary but the hearing panel still found a conflict of interest and a contravention of MFDA Rules 2.1.4 and 2.1.1.

23. Furthermore the letter from the Client attached to the will confirming the Client was acting of her own free will does not absolve the Respondent. Indeed, in cases involving conflicts of interest clients are often not mislead and act willingly. In *Karasik (Re)*, the Client willingly made the Approved Person a beneficiary of her account at the Member and did so with the involvement of her own legal counsel. Nevertheless, the hearing panel found a contravention of MFDA Rules 2.1.4 and 2.1.1.

24. The Respondent did eventually verbally disclose the bequest to the Member approximately 8 months after learning of it and then only during an internal audit. He also disclaimed the benefit at the Member's direction and thereby did not benefit from it. However, this does not cure his failure to act in accordance with MFDA Rules 2.1.4 and 2.1.1. The panel has noted and considered as a mitigating factor, that upon receiving a copy of the will the Respondent provided a copy to the Member's Estate Department. However, he did not apparently speak to anyone in the Estate Department to draw their attention to the conflict or potential conflict, or to anyone else at the Member until the internal audit.

C. Pre- Signed Account Forms

25. The Respondent admits that he obtained and possessed 24 pre-signed account forms in respect of 13 clients. Hearing panels have frequently held that obtaining and possessing pre-signed account forms even if not used is a contravention of MFDA Rule 2.1.1.

Baksh (Re), 2019 LNCMFDA 130 at paras. 11-2, 22

Milne (Re), 2022 LNCMFDA 44 at para. 17

Wong (Re), 2021 LNCMFDA 23 at paras. 22-23

26. The Member's policies and procedures also prohibited its Approved Persons from obtaining or possessing pre-signed account forms. By doing so the Respondent contravened the provisions of MFDA Rule 2.1.1.

V. **POLICIES AND PROCEDURES**

27. The Member's policies and procedures at all material times required that its Approved Persons :

- a) Report any conflict or potential conflict of interest to their branch manager;

- b) Not permit a client to name them as a beneficiary of the client's estate; and
- c) Not receive a gift (other than a non-monetary gift of token value from a client).

28. While there is no evidence the Respondent knew the Client was going to name him as a beneficiary before he saw the will, he had an obligation to report this as a conflict of interest or potential conflict of interest as soon as he found out. By failing to specifically report this for 8 months he contravened the Member's policies and procedures outlined in paragraphs 27. a and c above.

29. Approved persons have an obligation to comply with the policies and procedures of a Member pursuant to MFDA Rule 1.1.2. The Respondent was in breach of that Rule.

Are the Penalties Proposed in the Settlement Agreement Appropriate?

30. Hearing panels have taken into account a number of factors when considering whether the penalties proposed should be accepted including:

- a) The seriousness of the contraventions admitted by or proved against a Respondent;
- b) The Respondent's past conduct including prior sanctions;
- c) The harm suffered by investors as a result of the Respondent's activities;
- d) The benefits received by the Respondent as a result of the impugned activities;
- e) 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;
- f) Whether the Respondent recognizes the seriousness of the improper activity;
- g) Previous decisions made in similar circumstances.

Sterling Mutuals Inc., (Re), supra at para. 14

31. The panel has considered the following factors to be the most pertinent to this case.

Seriousness of the Misconduct

32. The failure to disclose and properly address conflicts or potential conflicts is serious misconduct. Such conflicts can result in harm to the client, expose the member to liability, and undermine trust in the mutual fund industry. As stated by the hearing panel in *Haylock (Re)* "it is

always a serious matter when there is a conflict of interest between an Approved Person and her client”.

Haylock (Re), 2013 LNCMFDA 37 at para. 7

33. Obtaining and possessing pre-signed account forms has also been held to constitute serious misconduct. In the present case the misconduct is aggravated since the Respondent obtained some of the pre-signed forms after the MFDA issued MFDA Bulletin #0661-E, on October 2, 2015 (the “Bulletin”).

Milne (Re), *supra* at para. 17

34. In the Bulletin, MFDA Staff reminded Members and Approved Persons that “signature falsification” is not permissible under MFDA Rules. This term includes obtaining pre-signed account forms. In the Bulletin and in MFDA Staff Notice # MSN-0066 updated on January 26, 2017, Staff advised Members and Approved Persons that Staff would be seeking enhanced sanctions at MFDA disciplinary proceedings for conduct that occurred after publication of the Bulletin on October 2, 2015.

Past Conduct

35. The Respondent has not previously been the subject of an MFDA disciplinary proceeding.

Benefits Received by the Respondent and Harm Suffered by the Client

36. As a result of the switch from a no load mutual fund to the deferred sales charge fund the Respondent earned a commission of \$18,943. The Client’s estate also incurred deferred sales commissions of \$24,380 when it redeemed the mutual funds. However, the Member subsequently clawed back the Respondent’s sales commission and compensated the estate for the deferred sales charges.

37. As stated earlier the Respondent was also bequeathed a share in the Client’s estate amounting to \$185,000 but ultimately disclaimed it as a result of the Member’s direction.

38. As a result of the foregoing the Respondent received no benefit from the enhanced sales commission of \$18,943 or the bequest of \$185,000. The Client’s estate did not suffer harm since it was compensated for the deferred sales charges.

39. There is no evidence the Respondent received any financial benefit from the pre-signed account forms and there is no evidence of client complaints or loss as a result of providing pre-signed account forms to the Respondent.

Deterrence

40. The Respondent has agreed to a fine of \$30,000 despite having received no personal benefit from his improper activities, and despite the fact that the Client's will contained a letter stating that the Respondent was unaware of the bequest of \$185,000 and that it had been made of her own free will. The panel is satisfied that under all of these circumstances and despite some mitigating factors, the penalties agreed upon will reinforce the message that the type of misconduct engaged in by the Respondent will not be tolerated by the MFDA and the mutual fund industry.

Respondent's Recognition of the Seriousness of his Misconduct

41. By entering into the Settlement Agreement the Respondent has accepted responsibility for his actions and avoided the time and expense of a contested hearing.

Previous Decisions in Similar Cases

42. Counsel referred us to the following decisions of previous MFDA panels involving improper recommendations to clients and unreported conflicts of interest.

Davidson (Re), supra

Lumbers (Re), (2019) MFDA File No. 201825

Sukman (Re), supra

Karasick (Re), supra

43. We were also referred to the following decisions concerning wrongfully obtaining or possessing pre-signed account forms.

Baksh (Re), supra

Rosborough (Re), 2018 LNCMFDA 163

Simard (Re), 2018 LNCMFDA 91

44. After a review of these decisions we find that the penalties outlined in the Settlement Agreement are appropriate and we approve it.

DATED this 30th day of August, 2022.

“Michael Carroll”

Michael Carroll, Q.C.
Chair

“Barbara Fraser”

Barbara Fraser
Industry Representative

“Jared Webb”

Jared Webb
Industry Representative

Schedule “1”

Settlement Agreement

File No. 202081



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: Sergio Salina

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Mutual Fund Dealers Association of Canada (the “MFDA”) will announce that it proposes to hold a hearing (the “Settlement Hearing”) to consider whether, pursuant to section 24.4 of MFDA By-law No. 1, a hearing panel of the Pacific Regional Council (the “Hearing Panel”) of the MFDA should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Sergio Salina (the “Respondent”).

2. Staff and the Respondent consent and agree to the terms of this Settlement Agreement.

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

II. CONTRAVENTIONS

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

- a) in July 2014, the Respondent recommended for the account of a 95 year old client a switch of approximately \$498,511 from a no-load mutual fund to the same mutual fund which was subject to a seven year deferred sales charge schedule, generating a commission for the Respondent to which he would not otherwise have been entitled, thereby giving rise to a conflict or potential conflict of interest that the Respondent did not address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 1.1.2, and 2.5.1;
- b) between March 2016 and November 2016, the Respondent failed to disclose to the Member that he had been named a beneficiary in a deceased client's will, thereby failing to disclose a conflict or potential conflict of interest to the Member, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 1.1.2, and 2.5.1; and
- c) between 2010 and 2018, the Respondent obtained and possessed 24 pre-signed account forms in respect of 13 clients, contrary to the Member's policies and procedures and MFDA Rule 2.1.1.

III. TERMS OF SETTLEMENT

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 \$30,000 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 pay costs in the amount of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rules 2.1.4, 2.1.1, 1.1.2, and 2.5.1; and
- d) the Respondent will attend in person or by videoconference, on the date set for the Settlement Hearing.

¹ On June 30, 2021, MFDA Rule 2.1.4 was amended to conform with client focused reform amendments to National Instrument 31-103 that came into effect on the same day. As the conduct addressed in this Settlement Agreement pre-dated the amendment to this Rule, all contraventions in this Settlement Agreement that make reference to that Rule concern the version of the Rule that was in effect between February 27, 2006 and June 30, 2021.

6. Staff and the Respondent agree to the settlement on the basis of the facts set out in this Settlement Agreement herein and consent to the making of an Order in the form attached as Schedule “A”.

IV. AGREED FACTS

Registration History

7. Between February 6, 1991 and May 23, 2018, the Respondent was registered as a dealing representative in British Columbia with Investors Group Financial Services Inc. (the “Member”), a Member of the MFDA.

8. The Respondent was also registered in other provinces and territories with the Member as follows:

- a) between June 1, 2004 and May 23, 2018 in Nunavut;
- b) between October 10, 2006 and May 23, 2018 in New Brunswick;
- c) between September 10, 2007 and May 23, 2018 in Ontario; and
- d) between April 12, 2010 and May 23, 2018 in Alberta,

9. On May 23, 2018, the Respondent’s registration was terminated by the Member.

10. Since January 2, 2019, the Respondent has been registered in British Columbia, Alberta, New Brunswick, Nunavut, and Ontario as a Registered Representative with Echelon Wealth Partners Inc., a Member of the Investment Industry Regulatory Organization of Canada. The Respondent has also been registered in Saskatchewan and in the Yukon Territory since June 2019.

11. At all material times, the Respondent conducted business in the Victoria, British Columbia area.

Member’s Policies and Procedures

12. At all material times, the Member’s policies and procedures:

- a) required its Approved Persons to report any conflict or potential conflict of interest to their branch manager;
- b) required that its Approved Persons not permit a client to name them as a beneficiary of the client’s estate; and

- c) prohibited its Approved Persons from receiving a gift (other than a non-monetary gift of token value) from a client.

13. At all material times, the Member's policies and procedure prohibited its Approved Persons from obtaining or possessing pre-signed account forms.

Conflict of Interest – DSC Trade

14. From 1994 to January 25, 2016, when she passed away at age 97, client FD was a client of the Member. At all material times, client FD's investment account with the Member was serviced by the Respondent.

15. At all material times, client FD was a vulnerable client by virtue of her age, employment status (retired), and her lack of investment knowledge.

16. On or about January 7, 2014, the Respondent met with client FD at her home. During this meeting, client FD advised the Respondent that she wished to sell her home and move into a retirement residence. The Respondent also recorded notes of the meeting, which among other things, included the following:

Main concern for client is if she has enough money. Assured her that with the proceeds of her home there should be more than enough funds to cover housing and care expenses for the remainder of her life.

17. In April 2014, client FD moved into a retirement residence.

18. On May 15, 2014, client FD sold her home for approximately \$483,866 (the "House Sale Proceeds"). At the time of sale, the House Sale Proceeds represented a significant portion of client FD's net worth.²

19. On May 20, 2014, client FD deposited the House Sale Proceeds into her non-registered account. On the same day, client FD used the entirety of the House Sale Proceeds to purchase the Investor Dividend Fund B (no load) mutual fund.

² Client FD held additional investments totaling approximately \$250,000.

20. The Respondent states that in or about July 2014, client FD advised him that she wished to encourage an intended beneficiary of her estate to become a client of the Member and keep the inheritance invested with the Member after client FD passed away.³

21. The Respondent states that in response, he recommended that client FD switch her investment in the Investor Dividend Fund B (no load) to the deferred sales charge (“DSC”) series of the same fund, Investor Dividend Fund A (DSC), in order to discourage client FD’s future beneficiary from redeeming the mutual fund prior to the expiry of the 7-year DSC schedule.

22. The Respondent was aware that the switch from a no load to a DSC mutual fund would generate a commission that the Respondent would not otherwise be entitled to receive.

23. On or around July 9, 2014, the Respondent requested and helped client FD write a letter, stating the following:

[...] Based on my desired approach for disbursement of the funds to my beneficiaries, [the Respondent] has created an investment strategy as per my wishes. He has fully explained the Investors Group DSC fee structure and time frame and I am familiar with all of the implications for fees, taxes and liabilities of this strategy; specifically that the fees incurred would be 5.5% in the first two years and decrease thereafter as per the chart provided by [the Respondent] and IG. I am comfortable investing these funds with a long-term view.

I recognize my estate may be liable for fees in the near future should I pass away. However, I believe that this is the appropriate investment approach as I wish to encourage and motivate my heirs to keep their inheritances at Investors Group, and to remain clients so they are able to continue enjoying the financial planning advice and guidance of [the Respondent]. I also specifically instructed him to proceed in this way as I wish [the Respondent] to be compensated for his work. [...]

24. The Respondent did not inform the Member about his recommendation to client FD to switch her holdings into a DSC version of the mutual fund that she had already purchased with the House Sale Proceeds, and he did not produce a copy of the letter from client FD to the Member prior to the death of client FD.

25. On July 14, 2014, the Respondent facilitated the processing of a switch of approximately \$498,511 in client FD’s non-registered account held in the Investors Dividend Fund B no load

³ While client FD spoke to the Respondent about a single beneficiary, there were additional beneficiaries named in her will.

mutual fund to Investors Dividend Fund A (DSC) that was subject to a 7 year DSC schedule (the “Switch”).

26. Client FD was 95 years old at the time of the Switch.

27. The Respondent states that he recommended the Switch as a result of client FD’s wish to have her beneficiary remain a client of the Member, and his belief that client FD did not require the monies to support her living expenses.

28. The Respondent earned approximately \$18,943 in commission from the Switch, which he would not otherwise have received if the House Sale Proceeds had remained invested in the no load mutual fund.

29. The Respondent’s conduct gave rise to a conflict of interest by advancing a financial benefit to the Respondent and imposing a DSC schedule on the client.

30. On January 25, 2016, client FD passed away (approximately 18 months after client FD’s purchase of the mutual fund subject to a 7-year DSC schedule).

31. Client FD’s will did not contain any provision requiring the executor to maintain the investments held in client FD’s account or to transfer those investments in kind to the beneficiaries.

32. On April 16, 2017, client FD’s estate redeemed the investments held at its account at the Member, which resulted in DSC fees of approximately \$24,380.

Conflict of Interest – Failure to Disclose Being Named a Beneficiary

33. On or about March 7, 2016, the Respondent completed an annual attestation on which he declared that he had not been named a beneficiary of a client’s estate.

34. On March 9, 2016, after the death of client FD, the Respondent received a copy of client FD’s will.

35. Upon review of client FD’s will, the Respondent learned that he had been named a beneficiary in her will and had been bequeathed a share of her estate. The share that the Respondent was bequeathed had a value of approximately \$185,000.

36. Attached to the will was also a letter signed by client FD, which stated:

I have decided to leave my friend, [the Respondent], a bequest in my will of one quarter of the residue of my estate. [The Respondent] does not know that I have done this and he has on several occasions told me that it is improper for me to leave him any money.

...

I do not want to die without leaving [the Respondent] part of my estate. I have left him a bequest of one quarter of the residue of my estate in my will. I want anyone who may be concerned about this to know that I am doing this of my own free will and without any encouragement or coercion from [the Respondent]. To the contrary, he would be cross with me if he knew I have done this and I have instructed my solicitor not to tell him until after my death.

I am writing this letter in the hope that [the Respondent] will be free to accept this bequest without any negative consequences.

37. After receiving and reviewing client FD's will, the Respondent continued to act as the Approved Person responsible for servicing the accounts of client FD's estate at the Member.

38. Following the Respondent's receipt of client FD's will, he forwarded a copy to the Member's Estate Department. The Respondent did not identify or advise the Estate Department or anyone else at the Member that he had been named a beneficiary of the deceased client's estate.

39. The Respondent was aware of his obligation to disclose to the Member that he had been named a beneficiary in a client's will, but chose to instead inquire outside the Member whether he could accept the bequest that he stood to receive in accordance with client FD's will.

40. In November 2016, during an internal audit, the Respondent was asked whether he had been named a beneficiary in a client's will. In response, the Respondent disclosed that he had been named a beneficiary in client FD's will.

41. At the direction of the Member, the Respondent disclaimed the benefit that he stood to receive under client FD's will.

Pre-Signed Account Forms

42. Between 2010 and 2018, the Respondent obtained and possessed 24 pre-signed account forms in respect of 13 clients.

43. The pre-signed account forms consisted of investor profile questionnaires, Tax Free Savings Account client application forms, non-registered client application forms, transfer authorizations, pre-authorized contribution agreements, and RSP client application forms.

Other Factors

44. The Respondent states that while he appreciated that the switch from a no load to a DSC mutual fund would generate a commission for him, his principal intention was to facilitate client FD's stated wish to have her beneficiary remain a client of the Member.

45. The Respondent further states that he believed based on his review of client FD's finances that she would not require the monies invested in the DSC fund to pay for her living expenses during her lifetime.

46. The Respondent acknowledges that he now realizes that the switch from a no load to a DSC mutual fund was not an appropriate recommendation by which to have client FD's beneficiaries become clients of the Member. At 95 years old, client FD was likely to pass away prior to the expiry of the 7 year DSC schedule. The investment in the DSC fund would not ensure that client FD's beneficiaries would remain clients of the Member, but would subject any redemptions of client FD's estate to a penalty. Finally, the recommendation exposed client FD's investment to a potential penalty if she required those monies during her lifetime.

47. The Member approved the Switch at both Tier 1 and Tier 2 review. On May 1, 2019, the Member entered into a settlement agreement with Staff that addressed, among other things, its failure to query the Switch (MFDA File No. 201927).

48. The Member compensated client FD's estate for the DSCs incurred and clawed back the commission earned by the Respondent for the trade.

49. On March 24, 2017, the Member sent audit letters to all of the Respondent's clients advising of prohibited conflict of interest situations, including an Approved Person being named a beneficiary of a client's estate. No clients reported any concerns in response to the audit letters.

50. On June 13, 2017, the Member issued the Respondent a warning letter in connection with the DSC Trade and the Respondent's failure to immediately disclose to the Member that he had been named a beneficiary under a client's will.

51. There is no evidence that the Respondent received any financial benefit from the pre-signed account forms beyond the commissions or fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

52. There is no evidence of client complaints, client loss, or lack of authorization in connection with the pre-signed account forms.

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

54. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time and expense of a contested disciplinary hearing.

V. ADDITIONAL TERMS OF SETTLEMENT

55. 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.

56. The Settlement Agreement is subject to acceptance by the Hearing Panel. 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.

57. 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.

58. 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 at the settlement hearing, subject to rule 15.3 of the MFDA Rules of Procedure;
- 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) except for any proceedings commenced to address an alleged failure to comply with this Settlement Agreement, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in this Settlement Agreement, whether known or unknown at the time of settlement. 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. 24.1.1 of MFDA By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of MFDA 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.

59. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in this Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

60. 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 MFDA By-law No. 1, unaffected by the Settlement Agreement or the settlement negotiations.

61. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law. The terms of the Settlement Agreement, including the attached Schedule "A", will be released to the public if and when the Settlement Agreement is accepted by the Hearing Panel.

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

DATED this 12th day of July, 2022.

"Sergio Salina"

Sergio Salina

"LE"

Witness – Signature

LE

Witness – Print name

"Charles Toth"

Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement



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: Sergio Salina

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") provided notice to the public of a Settlement Hearing in respect of Sergio Salina (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 based upon the admissions of the Respondent, the Hearing Panel is of the opinion that the Respondent:

- a) in July 2014, recommended for the account of a 95 year old client a switch of approximately \$498,511 from a no-load mutual fund to the same mutual fund which was subject to a seven year deferred sales charge schedule, generating a commission for the Respondent to which he would not otherwise have been entitled, thereby giving rise to a conflict or potential conflict of interest that the Respondent did not address by the exercise of responsible business judgment

influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4,⁴ 2.1.1, 1.1.2, and 2.5.1;

- b) between March 2016 and November 2016, failed to disclose to the Member that he had been named a beneficiary in a deceased client's will, thereby failing to disclose a conflict or potential conflict of interest to the Member, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 1.1.2, and 2.5.1; and
- c) between 2010 and 2018, obtained and possessed 24 pre-signed account forms in respect of 13 clients, contrary to the Member's policies and procedures and 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 \$30,000 in certified funds on the date of this Order, pursuant to section 24.1.1(b) of MFDA By-law No. 1.
2. The Respondent shall pay costs in the amount of \$5,000 in certified funds on the date of this Order, pursuant to section 24.2 of MFDA By-law No. 1.
3. The Respondent shall in the future comply with MFDA Rules 2.1.4, 2.1.1, 1.1.2, and 2.5.1.
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*.

⁴ On June 30, 2021, MFDA Rule 2.1.4 was amended to conform with client focused reform amendments to National Instrument 31-103 that came into effect on the same day. As the conduct addressed in this disciplinary proceeding pre-dated the amendment to this Rule, all contraventions addressed in this proceeding that make reference to that Rule concern the version of the Rule that was in effect between February 27, 2006 and June 30, 2021.

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

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

DM 895663