



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: Pravinchandra Shah

Heard: June 6, 2019 in Toronto, Ontario
Decision: June 6, 2019
Reasons for Decision: July 22, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W Chenoweth
Jeffery Page
Tim Pryor

Chair
Industry Representative
Industry Representative

Appearances:

| | | |
|--------------------|---|---|
| Jacklyn Neborak |) | Enforcement Counsel for the Mutual Fund |
| |) | Dealers Association of Canada |
| |) | |
| |) | |
| Pravinchandra Shah |) | Respondent, in person |
| |) | |
| |) | |

I. BACKGROUND

1. By Notice of Hearing and News Release, a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened to consider whether, pursuant to s. 24.4 of By-law No. 1 of the MFDA, the Panel should accept a settlement agreement dated April 24, 2019, (“Settlement Agreement”) entered into by the Staff of the MFDA (“Staff”) and Pravinchandra Shah (“Respondent”).

2. At the outset of the proceeding, the Panel considered a joint motion by Staff and the Respondent to move the proceedings “in camera”. The Panel granted the motion. The Panel then considered the provisions of the Settlement Agreement, aided by submissions as to the applicable law, which should guide the Panel in determining whether or not to accept or reject the Settlement Agreement. The Panel unanimously accepted the Settlement Agreement and issued an Order accordingly. These are the Panel’s reasons for doing so. The Panel also made an Order at the end of the hearing, declaring the hearing open to the public.

The Contraventions

3. In the Settlement Agreement, the Respondent admits that:

- a) between July 2004 and July 2016, the Respondent obtained, possessed, and in some instances, used to process transactions, 12 pre-signed account forms in respect of 8 clients, contrary to MFDA Rule 2.1.1; and
- b) between March 2010 and May 2016, the Respondent altered, and used to process transactions, 20 account forms in respect of 22 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

The Facts

4. In the Settlement Agreement, Staff of the MFDA and the Respondent agreed to a series of facts, which are set out in Part III of the said Settlement Agreement. The Settlement Agreement is attached as Appendix “A” to these Reasons.

5. As set out in the Settlement Agreement, the Respondent had been registered in the mutual fund industry since March 1998. From July 2003 to June 2017, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Investia Financial Services Inc. (“Investia”), a member of the MFDA. At all material times, the Respondent conducted business in the Scarborough, Ontario area. The Respondent is no longer registered in the securities industry in any capacity.

Discussion

6. The Hearing Panel was aware that prior to accepting a Settlement Agreement, a Hearing Panel must be satisfied that:

- a) The facts admitted by the Respondent constitute misconduct in contravention of
 - i. the By-laws, MFDA Rules or policies, or provincial securities legislation;and
- b) The penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness, bearing in mind the nature and extent of the misconduct and all the circumstances.

7. The Panel accepted that the role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, citing the I.D.A. Ontario District Council in *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 Mutual Inc. (Re), MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at para. 37.

Milewski (Re), [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999.

Pre-Signed Forms

8. Pre-signed forms” is a generic term which applies 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. Most commonly, an Approved Person obtains a client’s signature on a partially or completely blank account form, completes the form, and then uses the form to process transactions in the client’s account.

9. The MFDA has previously warned Approved Persons against the use of pre-signed forms.

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

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

10. MFDA Hearing Panels have held that obtaining or using pre-signed forms is a contravention of the standard of conduct under MFDA Rule 2.1.1.

Ryan (Re), 2019 LNCMFDA 44 at para 16.

Oh (Re), 2018 LNCMFDA 252 at para 8.

11. The prohibition on the issue of pre-signed forms applies regardless of whether

- a) The client was aware, or authorized the use, of the pre-signed forms; or
- b) The forms were actually used by the Approved Person for discretionary trading or other improper purposes.

Oh (Re), supra at para 8.

12. In the present case, the Respondent admits that he obtained, possessed, and in some instances used to process transactions, 12 pre-signed account forms in respect of 8 clients, contrary to MFDA Rule 2.1.1.

Altered Forms

13. When an Approved Person alters information on an account form without having the client initial the form to show that the change was authorized, the Approved Person engages in conduct that is contrary to MFDA Rule 2.1.1.

Ryan (Re), supra at para 16.

Oh (Re), supra at para 9.

14. The MFDA has previously warned Approved Persons against altering forms.

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

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

15. Like pre-signed account forms, the creation or use of altered forms is considered serious misconduct.

Ryan (Re), supra at paras. 16-17.

Owen (Re), 2017 LNCMFDA 287 at paras. 31-34.

Lewis (Re), 2018 LNCMFDA 59 at para 29.

16. In the present case, the Respondent admits that he engaged in conduct contrary to MFDA Rule 2.1.1 by altering information on 20 account forms in respect of 22 clients without having the clients initial the alterations.

Penalty

17. The Panel then proceeded to consider the appropriateness of the proposed penalty as set out in the Settlement Agreement. In doing so, the Panel considered the submissions of Staff and the Respondent, the MFDA Sanction Guidelines and the substantial case law to which it was referred.

18. The Panel was mindful that the primary goal of securities regulation is the protection of the investor. The Panel was further mindful that in addition to protection of the public, the goals

of securities regulation also include fostering public confidence in the capital markets and the securities industry.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para. 71.

19. The Panel also accepted the submissions of Staff that the following factors are frequently considered by Hearing Panels when determining whether a penalty is appropriate:

- 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 activity;
- 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;
- 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 activity in the capital markets; and
- k) Previous decisions made in similar circumstances. \

Breckenridge, supra.

20. In respect of the factors considered in this particular case, the Panel considered that:

- a) The use of pre-signed and altered forms is serious misconduct. Altered forms constitute a more serious contravention, in that with a pre-signed form the client knows it is blank when he or she signs the form, an alteration may be done without the client's knowledge or consent.

Ryan (Re), supra at para 16.

Owen (Re), supra at paras 33-34.

Tochor (Re), 2019 LNCMFDA 12 at para 28.

- b) It was a further aggravating factor that the Respondent had a history of using pre-signed forms and that he obtained 8 pre-signed forms that are the subject of the Settlement Agreement after being provided a warning from the Member in October 2013 advising him that the use of pre-signed forms was prohibited.

MFDA Sanction Guidelines, p. 3.

Ewart (Re), 2015 LNCMFDA 89 at paras 24(b), 27.

Settlement Agreement at para 18.

- c) There was no evidence of client loss or lack of authorization.

Settlement Agreement at para 25.

- d) There was no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding, beyond any commissions and fee that he would ordinarily be entitled to receive had the transaction been carried out in the proper manner.

Settlement Agreement at para 24.

- e) The Respondent had not previously been the subject of MFDA disciplinary proceedings.

Settlement Agreement at para 26.

- f) The Panel was satisfied that the Respondent recognized the seriousness of his misconduct. By entering into the Settlement Agreement, the Respondent had accepted responsibility for his actions and avoided the time and expense of a full discipline hearing.
- g) The Panel was further satisfied that the object of both specific and general deterrence were satisfied by the Penalty imposed.

Result

21. For all the above reasons, the Panel concluded that the Settlement Agreement was reasonable and proportionate. Accordingly, the following penalties were imposed upon the Respondent:

- a) The Respondent shall pay a fine in the amount of \$10,000, pursuant to MFDA By-law No. 1 in instalments as follows:
 - i) \$2,500 in certified funds, upon acceptance of this Settlement Hearing Panel; and
 - ii) \$1,250, in certified funds on or before July 31, 2019;
 - iii) \$1,250, in certified funds on or before August 30, 2019;
 - iv) \$1,250, in certified funds on or before September 30, 2019;
 - v) \$1,250, in certified funds on or before October 31, 2019;
 - vi) \$1,250, in certified funds on or before November 29, 2019;
 - vii) \$1,250, in certified funds on or before December 31, 2019
- b) The Respondent shall pay costs in the amount of \$2,500, in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
- c) The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with a Member of the MFDA for a period of two months, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- d) The Respondent shall in the future comply with MFDA Rule 2.1.1; and

- e) If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the *MFDA Rules of Procedure*.

DATED this 22nd day of July, 2019.

“Frederick W Chenoweth”

Frederick W Chenoweth
Chair

“Jeffery Page”

Jeffery Page
Industry Representative

“Tim Pryor”

Tim Pryor
Industry Representative



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: Pravinchandra Shah

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Pravinchandra Shah (the "Respondent"), consent and agree to settlement of this matter by way of this agreement (the "Settlement Agreement").

2. Staff conducted an investigation of the Respondent's activities which disclosed activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No.1.

II. JOINT SETTLEMENT RECOMMENDATION

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

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

- a) between March 2010 and May 2016, the Respondent altered, and used to process transactions, 20 account forms in respect of 22 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and
 - b) between July 2004 and July 2016, the Respondent obtained, possessed, and in some instances, used to process transactions, 12 pre-signed account forms in respect of 8 clients, contrary to MFDA Rule 2.1.1.
5. Staff and the Respondent agree and consent to the following terms of settlement:
- a) the Respondent shall pay a fine in the amount of \$10,000 pursuant to section 24.1.1(b) of MFDA By-law No. 1, in instalments as follows:
 - i) \$2,500, in certified funds, upon acceptance of this Settlement Agreement by the Hearing Panel;
 - i) \$1,250, in certified funds, on or before the last business day of the first month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - ii) \$1,250, in certified funds, on or before the last business day of the second month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - iii) \$1,250, in certified funds, on or before the last business day of the third month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - iv) \$1,250, in certified funds, on or before the last business day of the fourth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - v) \$1,250, in certified funds, on or before the last business day of the fifth month following the acceptance of the Settlement Agreement by the Hearing Panel;

- vi) \$1,250, in certified funds, on or before the last business day of the sixth month following the acceptance of the Settlement Agreement by the Hearing Panel.
 - b) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No.1;
 - c) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with a Member of the MFDA for a period of two months, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
 - d) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
 - e) the Respondent will attend in person, on the date set for the Settlement Hearing.
6. Staff and the Respondent agree to the settlement on the basis of the facts set out in Part III herein and consent to the making of an Order in the form attached as Schedule “A”.

III. AGREED FACTS

Registration History

- 7. Since March 1998, the Respondent has been registered in the mutual fund industry.
- 8. From July 2003 to June 2017, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Investia Financial Services Inc. (“Investia”), a Member of the MFDA.
- 9. The Respondent is no longer registered in the securities industry in any capacity.
- 10. At all material times, the Respondent conducted business in the Scarborough, Ontario area.

Altered Forms

- 11. Beginning on or about February 9, 2012, Investia’s policies and procedures required client initials on any material changes made to client documents.

12. Between March 2010 and May 2016, the Respondent altered, and used to process transactions, 20 account forms in respect of 22 clients by altering information on the account forms without having the client initial the alterations.

13. The altered account forms consisted of new account application, order instruction, transfer authorization, and Know-Your-Client (“KYC”) update forms.

Pre-Signed Account Forms

14. Beginning in December 2008, Investia’s policies and procedures prohibited its Approved Persons from using pre-signed account forms.

15. Between July 2004 and July 2016, the Respondent obtained, possessed, and in some instances, used to process transactions, 12 pre-signed account forms in respect of 8 clients.

16. The pre-signed forms consisted of new account application, new client application, order instruction, outside activity disclosure, leveraged account review, transfer authorization, and KYC update forms.

Previous Use of Pre-Signed Account Forms

17. In or about January 2013, Investia conducted an audit of files maintained by the Respondent and identified 3 pre-signed forms. Investia placed the Respondent under close supervision.

18. On October 23, 2013, Investia issued a cautionary letter to the Respondent advising him that the use of pre-signed forms was prohibited and that it was his responsibility to ensure that his conduct complies with Investia’s policies and procedures. The Respondent obtained 8 of the pre-signed forms and 5 of the altered forms that are the subject of the Settlement Agreement in the period after Investia issued the cautionary letter to the Respondent.

Investia's Investigation

19. On March 13, 2017, Investia identified the pre-signed and altered account forms that are the subject of this Settlement Agreement as a result of a routine branch audit. As part of its investigation, Investia reviewed all of the client files serviced by the Respondent.
20. On May 15, 2017, Investia issued a termination notice to the Respondent, effective June 19, 2017.
21. On May 25, 2017, Investia placed the Respondent under strict supervision.
22. On June 5, 2017, Investia sent a letter to all clients whose accounts the Respondent serviced in order to determine whether the Respondent engaged in unauthorized trading. No concerns were identified. Investia also imposed on the Respondent a \$527 fee in respect of the client mailings.
23. On June 19, 2017, the Respondent resigned from Investia.

Additional Factors

24. There is no evidence that the Respondent received any benefit from the conduct set out above beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.
25. There is no evidence of client loss or lack of authorization for the underlying transactions.
26. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
27. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

IV. ADDITIONAL TERMS OF SETTLEMENT

28. 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.

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

30. 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.

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

- a) the Settlement Agreement will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter;
- b) the Respondent waives any rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction;
- c) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the 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. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;

- d) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1; and
- e) neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against the Respondent.

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

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

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

DATED this 24th day of April, 2019.

“Pravinchandra Shah”

Pravinchandra Shah

“GS”

Witness – Signature

GS

Witness – Print Name

“Shaun Devlin”

Shaun Devlin

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President,

Member Regulation – Enforcement

Schedule “A”

Order

File No. 201907



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: Pravinchandra Shah

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Pravinchandra Shah (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 By-law No. 1;

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

- a) between March 2010 and May 2016, the Respondent altered, and used to process transactions, 20 account forms in respect of 22 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1; and

- b) between July 2004 and July 2016, the Respondent obtained, possessed, and in some instances, used to process transactions, 12 pre-signed account forms in respect of 8 clients, contrary to MFDA Rule 2.1.1.

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

1. the Respondent shall pay a fine in the amount of \$10,000 pursuant to section 24.1.1(b) of MFDA By-law No. 1, in instalments as follows:

- a) \$2,500, in certified funds, upon acceptance of this Settlement Agreement by the Hearing Panel;
- b) \$1,250, in certified funds, on or before [date];
- c) \$1,250, in certified funds, on or before [date];
- d) \$1,250, in certified funds, on or before [date];
- e) \$1,250, in certified funds, on or before [date];
- f) \$1,250, in certified funds, on or before [date];
- g) \$1,250, in certified funds, on or before [date].

2. the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No.1;

3. the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with a Member of the MFDA for a period of two months, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

4. the Respondent shall in the future comply with MFDA Rule 2.1.1; and

5. if at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the *MFDA Rules of Procedure*.

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

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

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