



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: Kosal Vibhav Sunkara

Heard: September 17 and 20, 2021 by electronic hearing in Vancouver, British Columbia

Decision: September 20, 2021

Reasons for Decision: November 10, 2021

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Michael Carroll
Nova Aitchison
Darryl Gossen

Chair
Industry Representative
Industry Representative

Appearances:

Zaid Sayeed)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Tracey M. Cohen)	Counsel for the Respondent
)	
)	
Kosal Vibhav Sunkara)	Respondent
)	

I. INTRODUCTION

1. This matter comes before us as a result of a Notice of Settlement Hearing issued by the Mutual Fund Dealers Association of Canada (the “MFDA”) pursuant to section 24.4 of MFDA By-law No.1 in respect of the Respondent Kosal Vibhav Sunkara (the “Respondent”).
2. The parties initially appeared before the Panel on September 17, 2021 for approval of a Settlement Agreement dated August 20, 2021. After hearing submissions from counsel the Panel advised that it was not prepared to accept the Settlement Agreement as proposed and that it would be obliged to reject it. As set out in section 24.3 of MFDA By-Law No.1 Hearing Panels must either accept or reject Settlement Agreements. They have no jurisdiction to change their terms. With this in mind the Panel offered the parties the opportunity to consider alternate terms before reaching a final decision.
3. As a result, counsel for the parties requested an adjournment until September 20, 2021, which was granted.
4. On September 20, 2021, the parties requested that the Panel approve a Settlement Agreement reached on that day (the “September 20, 2021 Settlement Agreement”). A copy of the September 20, 2021 Settlement Agreement is attached hereto as Schedule “A”.

II. CONTRAVENTIONS

5. The Respondent admits that:
 - a) On or about February 20, 2019, he opened an account for a client and processed transactions in the client’s account without obtaining the client’s authorization, and recorded the client’s Know-Your-Client (“KYC”) information without communicating with the client, contrary to the Member’s policies and procedures and MFDA Rules 2.1.1, 2.2.1, 2.2.2(b), 1.1.2 and 2.5.1;
 - b) Since March 12, 2018, he has been registered in British Columbia as a dealing representative with Scotia Securities Inc. (the “Member”); and
 - c) At all material times, he conducted business in the Vernon British Columbia area.

III. FACTS

6. At all material times, client LL and KL were spouses and clients of the Member whose accounts were serviced by the Respondent.

7. On January 31, 2019, the Respondent discussed with LL the opportunity to open a Tax Free Savings Account (“TFSA”). Arrangements were made for LL and KL to attend at the branch to meet the Respondent and discuss the opening of a TFSA for each of them.

8. On February 20, 2019, KL met with the Respondent at the branch where the Respondent worked. KL advised the Respondent that LL was unable to attend. KL and the Respondent then discussed opening a TFSA for herself and her husband LL.

9. At the meeting on February 20, 2019, the Respondent opened a TFSA for LL. He obtained KYC information relating to LL from KL, including LL’s risk tolerance, time horizon, and investment objectives. He also processed an initial trade for the \$500 purchase of a mutual fund in LL’s TFSA and set up a monthly pre-authorized contribution (“PAC”) of \$1,000 in LL’s TFSA.

10. The Respondent did not obtain LL’s authorization to open a TFSA, purchase a mutual fund, or set up a PAC on his behalf. However, the Respondent states that it was his understanding that LL would come to the branch the next morning to sign the documents required to authorize the account opening and transactions. That never happened.

11. The Respondent was required to obtain LL’s signature on the TFSA application, a Scotia Investment Selector Form, and an Investment Directions Form before opening his TFSA account and processing the above noted transactions. In failing to do so he contravened the Member’s policies and procedures contrary to MFDA Rules 2.5.1 and 1.1.2 and the standard of conduct set out in Rule 2.1.1.

Roche (Re) [2014] Hearing Panel of the Prairie Regional Council, MFDA File No. 201420 Decision dated November 17, 2014

Scott (Re) [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201647, Decision dated April 12, 2017

12. On March 13 and 16, 2019, LL contacted the Member and complained that he had not authorized the opening of the TFSA, the \$500 trade, or the setting up of the PAC.

13. On March 21, 2019, the Member reversed the \$500 trade and cancelled the PAC. On March 31, 2019, the Member closed LL’s TFSA account as instructed by LL and on June 13, 2019, the Member issued a warning letter to the Respondent and placed him under close supervision.

IV. MITIGATING FACTORS

14. There is no evidence that the Respondent received any financial benefit from engaging in the conduct described above.

15. As a result of the actions taken by the Member, LL has not incurred any kind of financial harm resulting from the Respondent's conduct.

16. At the time of the transactions described above the Respondent was 25 years old and had not been the subject of any previous MFDA disciplinary proceedings.

V. APPLICABLE RULES AND PROVISIONS

17. MFDA Rule 1.1.2 requires each Approved Person who participates in any securities related business in respect of a Member to comply with MFDA By-Laws and Rules as they relate to the Member or Approved Person.

18. Previous Hearing Panels have held that an Approved Person's failure to comply with a Member's policies and procedures is conduct contrary to MFDA Rules 2.5.1 and 1.1.2 and the standard of conduct set out in Rule 2.1.1 (see paragraph 11 above).

19. The Respondent contravened MFDA Rules and Member policies by opening a TFSA account for LL and processing a transaction in that account without obtaining his authorization and by recording his KYC information without communicating with him.

20. Previous MFDA Hearing Panels have also held that where an Approved Person opens a client account, updates the client's KYC information and/or processes trades in the client's account without communicating directly with the client, the Approved person has contravened the KYC obligation in Rule 2.2.1 and the standard of conduct in Rule 2.1.1.

Badasha (Re) [2015] Hearing Panel of the Pacific Regional Council, MFDA File No. 201424, Decision dated June 9, 2015

Wray (Re) [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201661, Decision dated June 8, 2017

21. As stated in *Badasha*, supra, obtaining KYC information from a spouse who is not a joint account holder and who has not been formally granted authority to provide instructions with respect to the account does not satisfy the obligations imposed by Rule 2.2.1 and is inconsistent with the standard of conduct required by the mutual fund industry.

22. Similarly in several previous cases MFDA Hearing Panels have held that an Approved Person is not permitted to accept trade instructions for a client account from a third party if that party does not have formal trading authority or a power of attorney to act on behalf of the client. Such conduct has been found to contravene MFDA Rule 2.1.1 and 2.3.1. See inter alia

Wray, supra

Griffith (Re) [2014] Hearing Panel of the Central Regional Council, MFDA File No. 201329, Decision dated August 19, 2014 at para. 7

Wallace (Re) [2017] Hearing Panel of the Atlantic Regional Council, MFDA File No. 201683, Decision dated January 13, 2017

23. The prohibition on unauthorized trading advances investor protection and guards against potential abuses by ensuring that an Approved Person always obtains instructions from a client or a formally authorized individual before processing transactions in a client's account.

VI. TERMS OF THE SETTLEMENT AGREEMENT

24. The September 20, 2021 Settlement Agreement proposes the following penalties;

- a) Payment of a fine in the amount of \$7,500 in certified funds upon acceptance of the Settlement Agreement; and
- b) Payment of costs in certified funds in the amount of \$2,500 upon acceptance of the Settlement Agreement;
- c) Undertaking by the Respondent to comply in the future with MFDA Rules 2.1.1, 2.2.1, 2.2.2(b), 1.1.2 and 2.5.1.

VII. FACTORS CONCERNING THE APPROPRIATENESS OF THE PENALTY

25. Included in the factors that Hearing Panels frequently consider in determining whether a penalty is appropriate include:

- a) the seriousness of the allegations proved or admitted;
- b) the Respondent's past conduct, including prior sanctions;
- c) the level of experience and activity in the capital markets;
- d) the harm suffered by the investor as a result of the Respondent's activities;
- e) the benefits received by the Respondent as a result of an improper activity;

- f) the risk to investors and the capital markets were the Respondent to continue such improper activity or continue in the capital markets in the jurisdiction where the improper activity occurred;
- g) 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; and
- f) previous decisions made in similar circumstances.

VIII. NATURE OF RESPONDENT'S MISCONDUCT

26. The KYC Rule is a fundamental obligation of a registrant that is often referred to as the cardinal rule in the securities industry and failure to comply with it is serious misconduct.

Badasha, supra, para. 47

27. Processing a trade without authorization from the client is also serious misconduct as it undermines the ability of clients to make decisions for and control of their accounts and allows for the victimization of clients as a result of the investment decisions of Approved Persons in their accounts. However, in the present case only one client was affected by the Respondent's conduct and only one unauthorized trade occurred. The fact that the conduct was isolated and limited to one client is a mitigating factor as is the fact that the client did previously discuss the opening of a TFSA for himself and his wife with the Respondent.

IX. PREVIOUS DECISIONS

28. Counsel referred us to the following decisions

Badasha, supra

Tobac (Re), Manitoba Securities Commission, December 21, 2018

Gill (Re) [2018] Hearing Panel of the Central Regional Council, MFDA File No. 2017124, Decision dated April 16, 2018

Mahendran (Re) [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201911, Decision dated June 20, 2019

Wray, supra

29. In *Badasha*, the Respondent had been in the securities industry for 15 years at the time he opened new accounts for 16 separate individuals whom he had never met or spoken to. He was also a branch manager of the Member. He also obtained and used 7 pre-signed account forms and

secured client signatures on account documentation for 8 clients by sending only the signature pages to the clients. He also altered 2 account forms. A Settlement Agreement was approved by the Hearing Panel which assessed a 2 year prohibition, a \$5,000 fine, and costs of \$3,500. However, at the time, the Respondent was no longer registered in the securities industry and had been terminated by the Member.

30. In *Mahendran*, a colleague of the Respondent requested him to redeem investments in the account of the Respondent's client who was the colleague's father. The colleague told the Respondent that he needed the funds urgently to pay his school tuition and that his father had agreed. The Respondent subsequently processed trades in the father's account resulting in four redemptions for a total of \$20,000 leaving a nominal balance in the father's RRSP account. In addition, withholding taxes of \$2,000 were assessed. The Respondent did not discuss the implications of the withholding taxes with the father. The Respondent did provide her colleague with trade documentation specifying details of the trades and asked him to obtain his father's signature on the documents. A signature was provided which was later deemed a forgery and not resembling the father's signature on other records signed by him. It was later learned that the monies redeemed were used to pay personal debts of the colleague and not his tuition.

31. The Hearing Panel approved a Settlement Agreement of \$10,000 and costs of \$2,500. A mitigating factor similar to the present case was that the Respondent was only 22 years of age and had no prior disciplinary history with the MFDA.

32. In *Tobac*, an appellate Hearing Panel of the Manitoba Securities Commission reduced a fine imposed by an MFDA Hearing Panel from \$20,000 to \$10,000. The facts as reported in the decision of the appellate Hearing Panel are limited save to say that the Respondent apparently redeemed securities in the client's account based on instructions from a third party. Similar to the present case there was no gain by the Respondent and no previous history of disciplinary hearings.

33. The Panel has concluded that the penalties proposed in the September 20, 2021 Settlement Agreement are within the range outlined in the above cases. We have also considered the other factors outlined in paragraph 25 above. We have noted in particular the Respondent's undertaking to comply in the future with MFDA Rules 2.1.1, 2.2.1, 2.2.2(b), 1.1.2 and 2.5.1. As a result we approve the September 20, 2021 Settlement Agreement.

DATED this 10th day of November, 2021.

“Michael Carroll”

Michael Carroll
Chair

“Nova Aitchison”

Nova Aitchison
Industry Representative

“Darryl Gossen”

Darryl Gossen
Industry Representative



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**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: Kosal Vibhav Sunkara

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Kosal Vibhav Sunkara (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. Staff and the Respondent agree with the facts set out in Part III herein for the purposes of this Settlement Agreement only.
5. The Respondent admits to the following violations of the By-laws, Rules or Policies of the Mutual Fund Dealers Association of Canada ("MFDA"):

On or about February 20, 2019, the Respondent opened an account for a client and processed transactions in the client's account without obtaining the client's authorization, and recorded the client's Know-Your-Client information without communicating with the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.1, 2.2.1., 2.2.2(b), 1.1.2, and 2.5.1.

6. Staff and the Respondent agree and consent to the following terms of settlement:
 - a) The Respondent shall pay a fine in the amount of \$7,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
 - b) The Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
 - c) The Respondent shall in the future comply with MFDA Rules 2.1.1, 2.2.1., 2.2.2(b), 1.1.2, and 2.5.1; and
 - d) The Respondent will attend in person on the date set for the Settlement Hearing.
7. 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

8. Since March 12, 2018, the Respondent has been registered in British Columbia as a dealing representative with Scotia Securities Inc. (the "Member"), a Member of the MFDA.
9. At all material times, the Respondent conducted business in the Vernon, British Columbia area.

Policies and Procedures

10. At all material times, the Member's policies and procedures required:
 - a) Approved Persons to meet with clients in person at a branch when opening accounts and when collecting Know Your Client ("KYC") information when opening new accounts; and

- b) for new accounts opened at the branch, that clients sign the following documents: Account Application form, Scotia Investment Selector forms, and, if the account set up included initial investments, Investment Directions forms.

Conduct

11. At all material times, client LL and client KL were spouses and clients of the Member whose accounts were serviced by the Respondent.

12. The Respondent states that, on January 31, 2019, the Respondent discussed with LL the opportunity to open a Tax-Free Savings Account. Arrangements were made for LL and KL to come in to the branch to meet with the Respondent to discuss that opportunity for both of them.

13. On February 20, 2019, client KL met with the Respondent at the Respondent's branch. KL advised the Respondent that LL was not able to make the appointment. During that meeting, the Respondent and client KL discussed opening a Tax-Free Savings Account ("TFSA") for herself and for her spouse, client LL, who was not present at the meeting.

14. On February 20, 2019, when meeting with client KL, the Respondent:

- a) opened a TFSA account for client LL;
- b) obtained, from client KL, KYC information relating to client LL, including client LL's risk tolerance, time horizon, and investment objectives; and
- c) processed an initial trade for the \$500 purchase of a mutual fund in client LL's TFSA, and set-up a monthly pre-authorized contribution ("PAC") of \$1,000 in client LL's TFSA.

15. The Respondent did not obtain client LL's authorization to open a TFSA, purchase a mutual fund, or set-up a PAC on his behalf. The Respondent states that it was his understanding that LL would come into the branch the next morning to sign the documents required to authorize the account opening and transactions.

16. The Respondent recorded Know-Your-Client information for client LL on the Member's back office system that he obtained from client KL, without having communicated with client LL. The Respondent thereby failed to use due diligence to learn the essential facts relative to client LL and to each order or account accepted.

17. As described above, in order to open the TFSA account and process the transactions described above, the Respondent was required to obtain the signature of client LL on the following documents: TFSA Application, Scotia Investment Selector Form, and the Investment Directions Form. The Respondent failed to obtain client LL's signature on these forms when processing the opening of the TFSA or the transactions described above at paragraph 14, contrary to the Member's policies and procedures.

18. By failing to obtain the signature of client LL on the TFSA Application to open a new account for client LL at the Member, the Respondent engaged in conduct that was contrary to MFDA Rule 2.2.2(b).

19. On March 13 and 16, 2019, client LL contacted the Member and complained that he had not authorized the opening of the TFSA account, the \$500 trade, or the setting up of the PAC.

20. On March 21, 2019, the Member reversed the \$500 trade and cancelled the PAC that the Respondent had set up in client LL's account. On March 31, 2019, the Member closed client LL's TFSA account as instructed by client LL.

21. On or about June 13, 2019, the Member issued a warning letter to the Respondent for the conduct described above and placed him under close supervision. .

Additional Factors

22. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described in this Settlement Agreement.

23. As a result of the actions taken by the Member described in paragraph 20 above, the client has not incurred any financial harm resulting from the conduct described in this Settlement Agreement.

24. At the time of the transactions described above, the Respondent was 25 years old and had not previously been the subject of MFDA disciplinary proceedings.

25. The Respondent cooperated fully with the investigation by Staff of the MFDA.

26. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expense associated with conducting a full hearing of the allegations.

IV. ADDITIONAL TERMS OF SETTLEMENT

27. 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.

28. 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.

29. 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.

30. 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 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) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts or contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts or 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.

31. 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.

32. 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.

33. 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 20th day of September, 2021.

“Kosal Vibhav Sunkara”

 Kosal Vibhav Sunkara

“TC”

 Witness – Signature

TC

 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: Kosal Vibhav Sunkara

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 MFDA By-law No. 1 in respect of [Respondent] (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 the Hearing Panel is of the opinion that the Respondent, on or about February 20, 2019, opened an account for a client and processed transactions in the client's account without obtaining the client's authorization, and recorded the client's Know-Your-Client information without communicating with the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.1, 2.2.1., 2.2.2(b), 1.1.2, and 2.5.1;

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 \$7,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
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 in the future comply with MFDA Rules 2.1.1, 2.2.1., 2.2.2(b), 1.1.2, and 2.5.1; and
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*.

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

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

DM 852875