Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A DISCIPLINARY HEARING**
**PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF**
**THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

## Re: Derek Jarod Targerson

Heard: September 1, 2021 in Swift Current, Saskatchewan
Decision: September 1, 2021
Reasons for Decision: April 12, 2022

# REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

| | |
|---|---|
| Sherri Walsh | Chair |
| Birju Shah | Industry Representative |
| Annette Stephens | Industry Representative |

Appearances:

| | | |
|---|---|---|
| Sakeb Nazim | ) | Enforcement Counsel for the Mutual Fund Dealers Association of Canada |
| Derek Jarod Targerson | ) | Respondent |

## I. INTRODUCTION

1. By Notice of Hearing dated January 4, 2021, the Mutual Fund Dealers Association of Canada (the "MFDA") commenced disciplinary proceedings against Derek Jarod Targerson (the "Respondent") pursuant to ss. 20 and 24 of MFDA By-law No. 1, alleging:

> **Allegation #1:** On or about August 29, 2017, the Respondent signed a client's signature on 2 account forms and submitted the forms to the Member for processing, contrary to MFDA Rule 2.1.1.
>
> **Allegation #2:** On or about August 29, 2017, the Respondent created a meeting note that falsely stated that the Respondent had met with and obtained the signatures of a client on account forms, when the Respondent had not meet with the client, contrary to MFDA Rule 2.1.1.

2. On April 11, 2021, the Respondent and Staff of the MFDA ("Staff") entered into an Agreed Statement of Facts ("ASF") pursuant to which the Respondent admitted that the facts contained in Part IV of that document constitute misconduct for which he may be penalized on the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

3. Staff and the Respondent jointly requested that the Hearing Panel (the "Panel") determine the appropriate penalty to impose on the Respondent, based on the terms and provisions of the ASF.

4. The hearing to determine the penalty in this matter was held on September 1, 2021 (the "Hearing").

5. The Respondent attended the Hearing and was self-represented.

6. Staff provided the Panel with written submissions, in advance of the Hearing.

**Additional Evidence not contained in the ASF**

7. Pursuant to the terms of the ASF, Staff and the Respondent had agreed that subject to other terms of the ASF, their submissions with respect to the appropriate penalty, would be based only on the facts contained in Part IV of the ASF and not on any other facts or documents.

8. Both Staff and the Respondent made oral submissions at the Hearing. During his oral submission, the Respondent referred to facts that were not set out in the ASF.

9. Staff submitted that the Panel should disregard that additional information, not only because it was not contained in the ASF but also because, to the extent that the information related

to the Respondent's intention surrounding the misconduct to which he had admitted, the information was not relevant. Staff cited authorities in support of their position.

10. The Panel agrees with Staff's submission that the Respondent's intention at the time of the misconduct was not relevant.

11. With respect to seeking other facts, however, the Panel noted that the authorities on which Staff relied, said that the seriousness of the falsification of a client's signature or initials varies by the type or nature of the document involved. Because of this, the Panel believed that it would be helpful to have more information about the nature of the forms that were the subject of the Respondent's misconduct.

> See: *Barnai*, MFDA File No. 201325, Hearing Panel of the Central Regional Council, Decision and Reasons dated March 17, 2015 at para. 10

12. Paragraph 6 of the ASF stated that:

> 6. In the event that the Hearing Panel advises one or both of Staff and the Respondent of any additional facts that it considers necessary in order to determine the issues before it,
>
> …
>
> (c) if the parties are both present at the hearing and are not in agreement about the additional facts requested by the Hearing Panel, the parties will be given a reasonable opportunity to lead evidence concerning the additional facts. In circumstances where a party leads evidence concerning additional facts requested by the Hearing Panel, the opposing party may cross-examine any witness tendered to lead such evidence and shall be given a reasonable opportunity to lead responding evidence if they wish to do so.

13. Accordingly, the Panel had the Respondent sworn in to ask him questions about the nature of the forms which were the subject of his misconduct. Staff then cross-examined the Respondent on his answers.

14. Prior to pursuing this line of inquiry, the Panel confirmed with Staff that they did not have any questions about or objections to the process we planned to follow in this regard.

15. Ultimately, the Panel determined that the information set out in the ASF concerning the nature of the forms at issue was sufficient for the purposes of our decision and we did not rely on the further evidence about the forms that was given at the Hearing itself.

16. In addition to the facts set out in the ASF, there was one other piece of evidence upon which the Panel relied in making its determination.

17. This was a letter dated July 18, 2021 addressed to Enforcement Counsel, sent from the Chief Wealth Officer for the Member with whom the Respondent was registered when he committed the misconduct which is the subject of these proceedings.

18. The letter read as follows:

> *RE: Disciplinary Hearing for Derek J Targerson*
>
> *To whom it may concern,*
>
> *As Chief Wealth Officer at Innovation Credit Union I performed the daily supervisory activities for the Derek Targerson during his tenure with Innovation Credit Union/Credential Financial. I was also the person responsible for relieving Mr. Targerson of his position, so have strong understanding of the situation. While the circumstances around his infraction are very unfortunate, I feel it is pertinent that I restate the following on his behalf:*
>
> *• The acts were not performed with ill intent nor with negligence towards client well being*
>
> *• There is no evidence of any client complaints against Mr. Targerson*
>
> *• Mr. Targerson received no financial benefit from the infraction*
>
> *• In his financial career Mr. Targerson has not been the subject of any other investigations.*
>
> *While these factors do not absolve him of the infractions, I believe his loss of employment and likelihood of future employment in the financial industry are satisfactory punishment and do not believe further financial penalties are necessary nor sensible.*
>
> *Innovation Credit Union does not wish to see Mr. Targerson placed into financial difficulty as a result of his actions, but rather would ask the MFDA to recognize his losses to date as sufficient.*
>
> *Thank you for considering this letter in rendering your decision.*

19. Staff did not object to having this letter marked as an exhibit and entered into evidence at the Hearing. They submitted, however, that the Panel should give the letter very little weight because the author of the letter was not called to testify and, therefore, Staff was not able to cross-examine them.

20. Staff acknowledged, however, in response to the Panel's question, that if Staff had wanted, they could have asked for the letter's author to be called to testify.

21. In any event, Staff submitted that the contents of the letter did not differ from the facts which were set out in the ASF.

## II. FACTS

22. As set out above, the Panel's decision on penalty was based on the following facts contained in the ASF:

> **Registration History**
>
> 8. Commencing in January 2013, the Respondent was registered in the securities industry.
>
> 9. From January 2017 to March 2018, the Respondent was registered in Saskatchewan as a dealing representative with Credential Asset Management Inc. (the "Member").
>
> 10. From March 2018 to June 2019, the Respondent was registered in Saskatchewan and Alberta as a dealing representative of the Investment Industry Regulatory Organization of Canada with, Credential Qtrade Securities Inc., an affiliate of the Member.
>
> 11. On June 24, 2019, Credential Qtrade Securities Inc. terminated the Respondent for the conduct described herein, and he is not currently registered in the securities industry in any capacity.
>
> 12. At all material times, the Respondent carried on business in the Swift Current, Saskatchewan area.
>
> **Signing a Client's Signature**
>
> 13. At all material times, the policies and procedures of the Member prohibited Approved Persons from signing a client's name on account forms regardless of the circumstances.
>
> 14. At all material times, client LB maintained accounts at the Member, including a Tax Free Savings Account (the "TFSA account"), which were serviced by the Respondent.
>
> 15. On or about August 29, 2017, the Respondent signed client LB's signatures on two account forms and submitted them to the Member for processing.
>
> 16. The Respondent signed client LB's signatures on electronic transfer authorization forms that were used to transfer proceeds from client LB's TFSA account at the Member to client LB's account at another financial institution.
>
> 17. The Member confirmed with client LB that she had authorized the redemptions from her TFSA account at the Member, and that the redemptions from that account were deposited to her account at another financial institution.
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> **False Notes of a Client Meeting**
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> 18. On or around August 29, 2017, the Respondent created a meeting note in the client file of client LB that falsely stated that the Respondent had met with and obtained the signature of client LB on the account forms described above in paragraph 16, when the Respondent had not met with the client or obtained the client's signature on the account forms.
>
> **Additional Factors**
>
> 19. On October 19, 2017, the Respondent completed the Member's Annual Declaration in which he confirmed his understanding of the Member's policies and procedures against signature falsification.
>
> 20. There is no evidence of client complaints, loss, or that underlying transactions were unauthorized.

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

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

## III. PENALTY IMPOSED

23. Staff proposed that the following penalties be imposed against the Respondent:

a) A fine in the amount of $12,000 – 15,000; and

b) Costs in the amount of $2,500.

24. In addition to providing the Panel with a Written Submission and Book of Authorities, Staff submitted a draft Bill of Costs which showed costs in the amount of $3,618.

25. At the conclusion of the Hearing, the Panel recessed to deliberate. After carefully considering the evidence – consisting of the facts set out in the ASF and the letter from the Member dated July 18, 2021, and the parties' submissions – both written and oral, the Panel imposed the following sanction on the Respondent:

a) A fine in the amount of $7,500;

b) Costs in the amount of $2,500; and

c) The fine and costs to be paid on a time schedule to be worked out by the parties.

26. With respect to this last point, the Panel advised that if the parties could not reach an agreement with respect to a time schedule for making payments, they could come back before the Panel.

27. These are the Reasons for our decision.

## IV. ANALYSIS

### Factors Concerning the Appropriateness of a Penalty

28. The primary goal of securities regulation is protection of the investor and the public.

> *Pezim* v. *British Columbia (Superintendent of Brokers)*, [1994] 2 SCR 557 (SCC) at paras. 59 and 69

29. In addition to protection of the public, the goals of securities regulation include fostering public confidence in the Markets and the securities industry.

30. As the Hearing Panel in *Popovich* stated:

> The most important objective in arriving at an appropriate penalty is protection of the investing public. The penalty imposed must serve to prevent and discourage future misconduct by the Respondent (specific deterrence) as well as by others (general deterrence.) The penalty should serve to improve industry compliance with applicable By-laws, Rules and Policies. It should also promote respect for and confidence in the securities industry and its participants, the integrity of securities markets, and the regulatory system. At the same time, the penalty must be proportionate to the misconduct, and take into consideration any extenuating or mitigating circumstances, all within the overall context of ensuring that the public is protected.
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> *Popovich*, MFDA File No. 201240, Central Regional Council, Reasons for Decision (Penalty) dated May 27, 2015, at para. 4

31. When determining whether a penalty is appropriate, a hearing panel should therefore consider:

a) Protection of the investing public;
b) Integrity of the security market;
c) Specific and general deterrence;
d) Protection of the MFDA's membership; and
e) Protection of the integrity of the MFDA's enforcement process.

*Tonnies (Re)*, 2005 LNCMFDA7 at para. 46

32. Hearing panels also frequently consider the following factors when determining the appropriateness of a proposed penalty:

a) The seriousness of the allegations proved against the Respondent;
b) The Respondent's experience in the Market;
c) The level of the Respondent's activity in the Market;
d) The harm suffered by investors as a result of the Respondent's activity;
e) The benefits received by the Respondent as a result of the improper activity;
f) The risk to investors and the Markets in the jurisdiction, were the Respondent to continue to operate in Markets in the jurisdiction;
g) The damage caused to the integrity of the Markets in the jurisdiction by the Respondent's improper activity;
h) The need to deter not only those involved in the case being considered, but also any others who participate in the Markets, from engaging in similar improper activities;

i) The need to alert others to the consequences of inappropriate activities to those who are permitted to participated in the Markets; and

j) Previous decisions made in similar circumstances.

> *Breckenridge (Re),* MFDA File No. 200708, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para. 77
>
> MFDA Sanction Guidelines

33. On November 15, 2018, the MFDA issued Sanction Guidelines to assist Staff and Respondents in conducting disciplinary proceedings and negotiating settlement agreements as well as to assist Hearing Panels in imposing fair and efficient sanctions in settled or contested disciplinary proceedings.

34. The Sanction Guidelines are not mandatory but as their name suggests, provide guidance to a hearing panel in determining an appropriate penalty.

35. In cases involving the type of misconduct that occurred in the present case, the following factors from the Sanction Guidelines are relevant to the Panel's decision:

a) General and specific deterrence;

b) Public confidence;

c) The seriousness of the allegations proved against the Respondent;

d) Whether the Respondent recognizes the seriousness of the misconduct;

e) The benefits received by the Respondent as a result of the misconduct;

f) The harm suffered by investors as a result of the Respondent's misconduct;

g) The Respondent's past conduct;

h) The Respondent's ability to pay; and

i) Previous decisions made in similar circumstances.

**Application to the Present Case**

**Nature of the Misconduct: Falsified Client Signatures**

36. MFDA Rule 2.1.1 sets the standard of conduct to be followed by all Approved Persons. The Rule is designed to protect the public interest by requiring Approved Persons to adhere to a high standard of ethical conduct.

37. The Rule requires that each Member and Approved Person deal fairly, honestly, and in good faith with clients, observe high standards of ethics and conduct in the transaction of business, and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

38. As stated by the MFDA Hearing Panel in *Breckenridge*: "The Rule articulates the most fundamental obligations of all registrants in the securities industry." The Rule has been interpreted and applied in a purposive manner in a wide range of circumstances.

> *Breckenridge, supra* at para. 71

39. Part of the misconduct in this case involved the Respondent signing a client's signature onto account forms which he then submitted to the Member for processing.

40. Hearing Panels have held that altering or falsifying forms is a contravention of the standard of conduct required by MFDA Rule 2.1.1.

> *Byce,* MFDA File No. 201311, Hearing Panel of the Central Regional Council, Decisions and Reasons dated September 4, 2013

41. Falsification of a client's signature or initials is serious misconduct. In *Barnai*, *supra*, the Hearing Panel, citing earlier decisions, summarized the principles which apply to falsifying client signatures:

> 6. Falsifying client signatures or initials is serious misconduct. Signature falsification (like the use of pre-signed forms) adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud and misappropriation.
>
> 7. As a Hearing Panel of the Investment Dealers Association (now IIROC) stated in *Bell (Re):*
>
> > "Forgery is always serious. It is unequivocally condemned because it is fundamentally dishonest and dangerous. Any act of forgery is a step onto a steep and slippery slope of deception that is always potentially harmful to clients and actually harmful to the Member firm and the securities industry as a whole."
> >
> > *Bell (Re)*, [2005] LD.A.C.D. No. 15, Alberta District Council, Panel Decision dated March 21, 2005, at para. 35.
>
> *Barnai, supra,* at paras. 6 and 7

42. Accordingly, in this case, the Panel finds that by falsifying a client's signature on account forms the Respondent engaged in misconduct which should be regarded as serious.

43. The Panel agrees, however, with the comments of the Hearing Panel in *Barnai*, when it said that with respect to conduct which amounts to falsification, some acts of falsification will be considered to be less serious than others:

> 9. Acts of falsification which are performed without the knowledge of the client, or resulted in loss or disadvantage to the client or Member, will be treated as more serious forms of misconduct. Conversely, falsification which occurs with the knowledge or approval of the client, and can be shown to have given effect to the client's instructions, will generally be considered to be less serious misconduct.
>
> 10. The seriousness of the falsification of a client signature or initials also varies by the type or nature of the document involved. Falsification of a client's signature or initials on trade-related documents and Know-Your-Client ("KYC") forms will generally be treated more seriously than similar conduct carried out in relation to non-transaction oriented documents because of the greater risk of client harm. (emphasis added)
>
> *Barnai, supra,* at paras. 9-10

44. The Hearing Panel in *Barnai* concluded that*:*

> 18. Signature falsification is always serious misconduct. However, signature falsification which can be shown to have given effect to the client's instructions (as is the case here) will generally be considered to be *less* serious. *Bell (Re); Lamontagne (Re*).
>
> *Barnai, supra,* at para. 18

45. Similarly, having regard to the facts of this case, the Panel notes that the Respondent's conduct was authorized and gave effect to the client's instructions. Further, unlike the situation in *Barnai*, where the forms involved KYC documents, the forms which were the subject of the conduct in this case were electronic transfer authorization forms (ETF) that were used to transfer proceeds from the client's TFSA account at the Member to their account at another financial institution.

46. Staff submitted that an ETF can still expose a client to serious harm, for example, if it were a genuine case of fraud.

47. The Panel considered this submission but noted that there is no issue of fraud here. As per the facts contained in the ASF, the Member confirmed with the client that she had authorized the redemptions from her TFSA account and that the redemptions from that account were deposited to her account at another financial institution - all as per her instructions.

48. Considering this fact, together with the nature of the forms in question, while the Respondent's misconduct was serious and constitutes a breach of Rule 2.1.1, we find the conduct is at the less serious end of the spectrum, in all the circumstances of this case.

**Nature of the Misconduct: Creating False Meeting Notes**

49. The Respondent has admitted that he also created a meeting note in the client file that falsely stated that he had met with the client and obtained her signature on the account forms when he had not done so in fact.

50. Staff submitted that by entering false or misleading notes, the Respondent concealed his misconduct from the Member, thereby interfering with the Member's supervisory function and its ability to protect clients - noting that false or misleading notes destroy the integrity of the audit trail for clients' accounts.

51. Citing the decision of the MFDA Hearing Panel in *Garries*, Staff submitted that such conduct is clearly not in keeping with the expectation of high standards of conduct and ethics in the transactions of business expected of the Respondent, under MFDA Rule 2.1.1.

> *Garries,* MFDA File No. 201605, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated November 14, 2016

52. The Panel agrees.

53. In this regard, the Panel notes the guidance contained in MFDA Staff Notice MSN-0035 which was published on December 10, 2004 (updated March 4, 2013) entitled: *Recording and Maintaining Evidence of Client Trade Instructions* (the "Notice").

54. The Notice reminds the industry about the importance of maintaining adequate records of client instructions and that such records are "an important internal control, which provides an audit trail for Members to confirm transactions and assists in verifying trade details in the event of a dispute."

> MFDA Staff Notice MSN-0035 at p. 2

55. The Panel agrees that the falsification of client meeting records completely undermines the reliability of the audit trail because the existence of a note which purports to record a client interaction no longer constitutes a reliable, contemporaneous record of client interaction.

56. Members rely on the records that are created by Approved Persons in order to conduct supervision, fairly adjudicate complaints, and demonstrate compliance with their regulatory obligations.

57. The creation of false records undermines all of these objectives and is contrary to the obligation imposed on Members and Approved Persons to protect the interests of their clients.

58. Staff pointed the Panel to a number of decisions where MFDA Hearing Panels have found that creating false records has been regarded as serious misconduct although they acknowledged that the creation of the false records in those decisions was done to evade detection of fraud which, the Panel notes, is not the case in this matter.

> *Jain,* MFDA File No. 201130, Hearing Panel of the Central Regional Council, Reasons for Decision dated March 14, 2012
>
> *Maxwell,* MFDA File No. 201764, Hearing Panel of the Central Regional Council, Reasons for Decision dated April 16, 2018
>
> *Avhad,* MFDA File No. 201832, Hearing Panel of the Prairie Regional Council, Reasons for Decision dated July 13, 2018

59. Nonetheless, the Panel agrees that the Respondent's conduct in creating false records of client interaction is serious misconduct and constitutes a breach of MFDA Rule 2.1.1.

**Post-Bulletin Misconduct**

60. Staff submitted that an aggravating factor the Panel should consider is the fact that the conduct in this matter was what is referred to as "post-bulletin misconduct".

61. On October 2, 2015, the MFDA issued MFDA Bulletin #0661-E, dealing with signature falsifications and the use of pre-signed forms. In the Bulletin, Staff advised that they would be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the Bulletin's publication. When the conduct at issue has occurred after October 2, 2015, MFDA Hearing Panels have considered this an aggravating factor.

> *Techer,* MFDA File No. 201662, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated December 5, 2016 at para. 44
>
> *Ackerman,* MFDA File No. 201734, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated September 13, 2017 at para. 28

62. The Panel has, therefore, considered the fact that the conduct in this case was post-bulletin, to be an aggravating factor.

63. The other aggravating factor that the Panel considered in reaching its decision is the fact that the Respondent had been a mutual fund dealing representative since January 2013. As such, he was experienced enough to know the significance of the misconduct in which he was engaging.

**Mitigating Factors**

64. With respect to mitigating factors, the Panel notes that this is the first time that the Respondent has engaged in any kind of misconduct and he has not faced a previous disciplinary proceeding.

65. The other significant mitigating factors which the Panel took into consideration are the fact that there was no evidence of client complaint or loss or that the underlying transactions were unauthorized. There is also no evidence that the Respondent received any financial benefit from engaging in the misconduct.

66. The final mitigating factor the Panel considered is that although he did not reach an agreement with Staff as to penalty, the Respondent admitted his misconduct both to the Member and to the MFDA and has accepted responsibility for his actions.

67. In doing so, he not only acknowledged his wrong doing but also saved the MFDA the time and costs associated with conducting a fully contested hearing.

**Deterrence**

68. Both the Supreme Court of Canada and MFDA Hearing Panels have held that deterrence is an appropriate factor to be taken into account when determining the appropriate penalty.

> *Cartaway Resources Corp. Re,* [2004] 1 SCR 672 (SCC) at paras. 52-62
>
> *Tonnies Re,* 2005 LNCMFDA 7 at para. 46

69. As the Supreme Court of Canada stated, the effect of general deterrence should advance the goal of protecting investors. The penalty levied should be sufficient to affirm public confidence in the regulatory system and ensure that the misconduct is not repeated by others in the industry:

> A penalty that is meant to generally deter is a penalty designed to keep an occurrence from happening; it discourages similar wrong doing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction … the respective importance of general deterrence as a factor will vary according to the breach of the Act and the circumstances of the person charged …
>
> *Cartaway Resources Corp. Re, supra* at para. 61

70. The Panel notes that Security Commissions have acknowledged, however, that the "pursuit of general deterrence does not warrant imposing a crushing or unfit sanction on any individual applicant."

*Walton* v. *Alberta (Securities Commission),* 2014 ABCA 273 at para. 154

71. In making our determination in this matter, the Panel considered that penalties must always be reasonable and proportionate having regard to the circumstances of the individual case.

72. In his submissions before the Panel, the Respondent talked about the impact that this one, albeit serious, instance of misconduct, has had on his life. He described that he lives and works in a small community – one where he has lived his entire life. Until these proceedings, he was an active member of the community and sat on a number of boards of not-for-profit organizations. As the result of his misconduct, however, he has lost not only his job, but his profession. He has also suffered extreme embarrassment and detriment to his mental health and wellbeing.

73. Evidence of the Respondent's loss of employment and loss of the likelihood of future employment in the financial industry was confirmed by the evidence from the Member, as set out in its letter to Staff dated July 18, 2021. The Panel relied on this evidence in reaching its determination on the appropriate penalty.

74. The unlikelihood of the Respondent obtaining comparable employment in the securities industry, combined with the effect of these proceedings on his reputation leads the Panel to determine that the penalty we have imposed satisfies the requirements of specific and general deterrence having regard to all the circumstances of this case.

**Previous Decisions Made in Similar Circumstances**

75. In its written submissions, Staff submitted that the following penalties have been imposed in similar circumstances:

| CASE | FACTS | PENALTY |
|---|---|---|
| *He*, MFDA File No. 201854, Hearing Panel of the Central Regional Council, Decision and Reasons dated July 23, 2018 | • Respondent falsified 1 client signature<br>• Respondent falsely represented to the Member that the client had signed the account form<br>• Post bulletin conduct | • Fine of $9,500<br>• Costs of $2,500 |
| *Botescu*, MFDA File No. 202008, Hearing Panel of the | • Respondent altered a client's KYC without having met or discussed the information with | • Fine of $12,000 |

| CASE | FACTS | PENALTY |
|---|---|---|
| Central Regional Council, Decision and Reasons dated May 11, 2020 | the client and also signed the client's signature and initials on the account form<br>• Respondent created two meeting notes that falsely stated that the Respondent had met with the client<br>• Respondent misled the Member during the course of its investigation<br>• Post Bulletin conduct | • Costs of $2,500 |
| *Castelino*, MFDA File No. 202019, Hearing Panel of the Central Regional Council, Decision and Reasons dated June 30, 2020 | • Respondent signed the signature or initials of 4 clients on 3 account forms<br>• Respondent misled the Member during its investigation<br>• Post bulletin conduct | • Fine of $13,500<br>• Costs of $2,500 |
| *Terrill*, MFDA File No. 201909, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated March 7, 2019 | • Respondent directed his assistant, for whom he was responsible, to alter information on 2 client account forms in respect of 1 client, and sign the client's initials on the forms<br>• Respondent obtained, possessed, and used, 1 pre-signed account form<br>• Post bulletin conduct | • Fine of $7,500 to MFDA<br>• Fine of $2,000 to the Member<br>• Costs of $2,500 |

76. The Panel agrees with Staff's submission that when determining the appropriate penalty, a Panel's analysis of decisions with similar circumstances is not an "empirical science".

77. No two cases will be exactly alike. Nonetheless, in determining an appropriate penalty a Panel looks at cases with sufficiently similar circumstances to see how the level of culpability that led to the penalty in those cases, compares to the level of culpability in the case before it.

78. In this regard, the Panel notes that the *He* decision, for example, where the penalty was $9,500, involved a different type of form than was the case in this matter. In that case the Respondent signed the signature of a client on a new account application form and falsely represented to the Member that the client had signed the form.

79. Similarly, in *Botescu*, the Respondent signed a client's signature and initials on a Know-Your-Client update form.

80. Further, unlike the decisions in *Terrill* and *Castelino* the misconduct in this case involved a single client and a single transaction.

81. In this case, although Staff has asked for a penalty at the higher end of the decisions they referenced, the Panel does not believe that that is warranted. As we set out earlier in these Reasons, there are two aspects of the matter upon which we rely in making this determination.

82. First, is the statement in the *Barnai* case – a case which Staff described as being one that addressed the issues "head on" – that the seriousness of the misconduct depends on the nature of the documents involved. The Panel in that case found that falsification of a client's signature on trade related documents and Know-Your-Client forms will generally be treated more seriously than similar conduct carried out in relation to non-transaction oriented documents because of the greater risk of client harm associated with the former documents.

83. Second, as the Panel in *Barnai* also noted, signature falsification which can be shown to have given effect to the client's instructions will generally be considered to be less serious.

84. The document which is the subject of the misconduct in this matter was not a Know-Your-Client document. It was an electronic transfer form which was used to carry out an authorized redemption to facilitate transferring monies from the client's account at the Member, to her account at another financial institution, in accordance with her instructions. As stated above, in the Panel's view, these facts do not put the Respondent's misconduct at the higher end of the range of penalties found in similar cases.

85. Finally, as referenced above, based on the evidence of the impact of these proceedings on the Respondent – loss of employment and loss of likelihood of further employment in the financial industry, we find that the penalty we are imposing satisfies the requirements of both specific and general deterrence.

86. For all of the above reasons, the Panel has determined that the penalty it is imposing is reasonable and proportionate having regard to the circumstances of this case.

**Payment Schedule**

87. Unfortunately, the parties were not able to reach an agreement as to a payment schedule and they returned to seek the Panel's guidance on October 28, 2021.

88. At that time, Staff sought an order from the Panel that the penalty be paid within 6 months from the date of that appearance – April 2022.

89. The Respondent did not come up with a responsive counter proposal but simply said he was disputing the order to pay any amount, in light of his financial circumstances.

90. After taking a recess to deliberate, the Panel ordered that the Respondent pay the penalty by no later than September 1, 2022 – one year from the date of our original Order.

91. The Panel thanks the parties for their respectful participation in these proceedings.

**DATED** this 12th day of April, 2022.

"Sherri Walsh"
Sherri Walsh
Chair

"Birju Shah"
Birju Shah
Industry Representative

"Annette Stephens"
Annette Stephens
Industry Representative

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