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: Leslie William Trevor

Heard: May 11, 2020 in Edmonton, Alberta by video conference
Decision: May 11, 2020
Reasons for Decision: June 30, 2020

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Sherri Walsh	Chair
Adam Dudley	Industry Representative
Diane Jaspers	Industry Representative

Appearances:

Sakeb Nazim	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Leslie William Trevor	)	Respondent, by videoconference
Galan Lund	)	Counsel for the Respondent, by videoconference

I. INTRODUCTION

1. On March 30, 2020, Leslie William Trevor ("Respondent") entered into a Settlement Agreement with Staff of the Mutual Fund Dealers Association of Canada ("MFDA"), (the "Settlement Agreement") pursuant to which the Respondent agreed to be disciplined under sections 20 and 24.4.1 of MFDA By-law No. 1.

2. A Notice of Settlement Hearing was issued by the MFDA on March 31, 2020, giving notice that an electronic hearing was to be held before a Hearing Panel of the Prairie Regional Council of the MFDA (the "Panel") to consider whether, pursuant to section 24.4 of MFDA By-law No. 1, the Panel should accept the Settlement Agreement.

3. The Settlement Hearing took place by way of a video conference, on May 11, 2020.

4. The Respondent attended the hearing as did his counsel.

5. At the conclusion of the hearing, the Panel accepted the Settlement Agreement and issued an Order to that effect. The Reasons for the Panel's acceptance are set out below.

II. CONTRAVENTIONS

6. In the Settlement Agreement, the Respondent admitted to the following violations of the By-laws, Rules or Policies of the MFDA:

a) Between October 2015 and June 2018, the Respondent obtained, possessed and used to process transactions, 45 pre-signed accounts forms in respect of 20 clients, contrary to MFDA Rule 2.1.1.; and

b) Between May 2016 and March 2017, the Respondent altered and used to process transactions, eight account forms in respect of six clients, by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.

III. TERMS OF SETTLEMENT

7. Staff and the Respondent agreed on the following terms of settlement:

a) the Respondent shall pay a fine in the amount of $5,500 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 $2,500.00 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 Rule 2.1.1; and

d) the Respondent will attend the Settlement Hearing in person.

IV. AGREED FACTS

8. The agreed facts are set out at paragraphs 7 through 23 of the Settlement Agreement as follows:

> 7. Commencing February 1990, the Respondent has been registered as a mutual fund salesperson (now known as a dealing representative).
>
> 8. From July 2011 to September 2019, the Respondent was registered in Alberta as a dealing representative with IPC Investment Corporation ("The Member"), a Member of the MFDA.
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> 9. On September 22, 2019, the Member terminated the Respondent's registration, and he is not currently registered in the securities industry in any capacity.
>
> 10. At all material times, the Respondent carried on business in the Red Deer, Alberta area.
>
> **Pre-Signed Account Forms**
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> 11. At all material times, the Member's policies and procedures prohibited its Approved Persons from holding, obtaining, or using pre-signed account forms.
>
> 12. Between October 2015 and June 2018, the Respondent obtained, possessed, and used to process transactions, 45 pre-signed account forms in respect of 20 clients.
>
> 13. The pre-signed account forms consisted of Order Entry, Transfer Authorization, Know-Your-Client and Pre-authorized Debit Agreement forms.
>
> **Altered Account Forms**

14. Between May 2016 and March 2017, the Respondent altered and used to process transactions, 8 account forms in respect of 6 clients, by altering information on the account forms without having the clients initial the alterations.

15. The altered forms consisted of Order Entry and Know-Your-Client forms.

16. The alterations made by the Respondent consist of changes to purchase amounts, investment objectives and fund names.

Member's Investigation

17. In June 2018, the Member identified some of the forms that are the subject of this Settlement Agreement during an onsite branch review. The Member subsequently commenced a review of all of the client files serviced by the Respondent and identified the remaining pre-signed and altered account forms that are the subject of this Settlement Agreement.

18. On June 25, 2018, the Member placed the Respondent under close supervision and required him to pay a 5% close supervision fee on commissions earned. The Respondent paid a total of $13,980 to the Member between June 2018 and September 2019, at which time the Member terminated the Respondent's registration.

19. In November 2018, the Member sent audit letters to all of the clients whose accounts the Respondent serviced, provided them with Account Transaction History and Know-Your-Client information, and asked them to contact the Member if they identify unauthorized transactions in their accounts. No client reported any concern to the Member.

Additional Factors

20. The Respondent has not previously been the subject of a MFDA disciplinary proceeding.

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. There is no evidence of any client loss or that the transactions were unauthorized.

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

V. ANALYSIS

Role of the Panel

9. The role of a Hearing Panel at a Settlement Hearing is fundamentally different from the role the Hearing Panel performs at a Contested Hearing.

10. When considering a Settlement Agreement, a Hearing Panel has only two options: either to accept or reject the Settlement Agreement.

> ***MFDA By-law No. 1, s.24.4.3***

11. As stated by the Hearing Panel in *Sterling Mutuals Inc. (Re)* citing the I.D.A. Ontario District Council in *Milewski (Re)*:

> …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." [1999] I.D.A.C.D. No. 17 at page 12.
>
> ***Sterling Mutuals Inc. (Re), MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 3, 2008, at page 9***

12. Hearing Panels have acknowledged that settlement agreements which have been worked out by the parties should be respected, because Hearing Panels do not know what led to the settlement, or what was given up by the parties during the course of their negotiations. The presence of experienced legal counsel during the negotiation of a settlement agreement, as was the case in this matter, is also a factor for the Hearing Panel to consider.

> ***Fike (Re), MFDA File No. 2017102, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 7, 2017, at paras.22 and 23***

13. The rationale for respecting settlements of the nature found in the Settlement Agreement in this case, was further articulated by the British Columbia Court of Appeal:

> "Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation. Enforcement is rarely a concern because

> the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing. Or, they can settle some matters, and direct their resources to the matters that are in dispute, and therefore to be resolved by way of a hearing."
>
> ***British Columbia (Securities Commission) v Seifert, 2007 BCCA 484, para.31***

14. Although the *Seifert* decision dealt with an agreement that was before the British Columbia Securities Commission, the case has been frequently cited by Hearing Panels in MFDA Settlement Hearings.

Factors Concerning Acceptance of a Settlement Agreement

Appropriateness of the Proposed Penalty

15. Hearing Panels have repeatedly expressed the view that generally, settlement agreements should be accepted bearing in mind the following criteria:

a) That it is in the public interest to do so and that the penalties proposed will be sufficient to protect investors;
b) That the agreement is reasonable and proportionate, having regard to the conduct of the Respondent;
c) That the agreement addresses the issues of both specific and general deterrence;
d) That the agreement is likely to prevent the type of conduct set out in the facts;
e) That the agreement will foster confidence in the integrity of the Canadian capital markets;
f) That the agreement will foster confidence in the integrity of the MFDA; and
g) That the agreement will foster confidence in the regulatory process itself.

Sterling Mutuals Inc. (Re), supra, at para.36

16. The primary goal of all securities regulation is investor protection.

Pezim v British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557, at paras.59 & 68

17. In addition to investor protection, the goals of securities regulation include fostering public confidence in the capital markets and in the securities industry, as a whole.

Pezim v British Columbia (Superintendent of Brokers), supra, at paras.59 & 68

18. In determining the appropriateness of a proposed penalty, Hearing Panels frequently cite the decision in *Breckenridge (Re)*, where the Panel stated that sanctions "… should be preventative, protective and prospective in nature …" taking into account the following considerations:

a) the protection of the investing public;
b) the integrity of the securities markets;
c) specific and general deterrence;
d) the protection of the MFDA's membership; and
e) protection of the integrity of the MFDA's enforcement processes.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, 2007 LNCMFDA 38, at paras. 75 &76

19. The Panel in *Breckenridge (Re)* set out the following additional factors which a Panel should consider, having regard to the specific circumstances of the case:

a) the seriousness of the allegations proved against the respondent;
b) the respondent's experience in the capital markets;
c) the level of the respondent's activity in the capital markets;
d) the harm suffered by investors as a result of the respondent's activities;
e) the benefits received by the respondent as a result of the improper activity;
f) the risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;
g) the damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;
h) 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;
i) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
j) previous decisions made in similar circumstances.

Breckenridge (Re), supra, at para.77

MFDA Sanction Guidelines

20. On November 15, 2018, the MFDA issued Sanction Guidelines to assist Staff and Respondents in conducting disciplinary proceedings and negotiating settlement agreements and to assist Hearing Panels in determining the fair and efficient disposition of settled and contested disciplinary proceedings, having regard to the imposition of appropriate sanctions.

21. The MFDA Sanction Guidelines, as their name suggests, are not mandatory. The Sanction Guidelines state, under the heading "Purpose of the Sanction Guidelines":

> "… The determination of the appropriate sanction in any given case is discretionary and a fact specific process. The appropriate sanction depends on the facts of a particular case and the circumstances of the conduct. The Sanction Guidelines are intended to provide a summary of the key factors upon which discretion may be exercised consistently and fairly in like circumstances, but are not binding on Hearing Panels. The list of key factors in the Sanction Guidelines is not exhaustive, and Hearing Panels may consider other aggravating and mitigating factors as appropriate.
> Hearing Panels should always exercise judgement and discretion, and consider appropriate aggravating and mitigating factors in determining appropriate sanctions in every case. In addition, Hearing Panels should identify the basis for the sanctions imposed in the Reasons for Decision."

Excerpts from the MFDA Sanction Guidelines

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

a) the seriousness of the allegations proved against the Respondent;
b) the Respondent's experience in the industry;
c) the Respondent's recognition of the seriousness of the misconduct;
d) client harm; benefits received by the Respondent;
e) general and specific deterrence;
f) previous decisions made in similar circumstances; and
g) whether a sanction was imposed on the Respondent for the same conduct by the Member.

Application in the Present Case

Seriousness of the Allegations

(i) Nature of the Misconduct: Pre-signed account forms

23. The Respondent has admitted that he obtained, possessed, and used to process transactions, 45 pre-signed account forms.

24. MFDA Rule 2.1.1 is a broad rule that sets the standard of conduct to be followed by all Approved Persons. It is designed to protect the public interest by requiring Approved Persons to adhere to a high standard of ethical conduct. The Rule has been interpreted and applied in a purposive manner in a wide range of circumstances. As stated by the Hearing Panel in *Breckenridge (Re)*:

> The Rule articulates the most fundamental obligations of all registrants in the securities industry.
>
> ***Breckenridge (Re), supra, at page 20***

25. Rule 2.1.1 requires that an Approved Person, among other things:

a) deal fairly, honestly, and in good faith with clients;
b) observe high standards of ethics and conduct in the transaction of business; and
c) not engage in any business, conduct or practice which is unbecoming or detrimental to the public interest.

26. Although the terms: "business, conduct or practice which is unbecoming"; "good faith"; and "high standards of ethics" are not defined in the MFDA Rules, the Courts have held that these are concepts which fall within a Hearing Panel's specialized knowledge. As stated by Cory, J. (as he then was) in *Re Milstein and Ontario College of Pharmacy et al (No. 2)*:

> One of the essential indicia of a self-governing profession is the power of self-discipline. That authority is embodied in the legislation pertaining to the profession. The power of self-discipline perpetuated in the enabling legislation must be based on the principle that members of the profession are uniquely and best qualified to establish the standards of professional conduct. Members of the profession can best determine whether the conduct of a fellow member has fallen below the requisite standards and determine the consequences. The peers of the professional person are

> deemed to have and, indeed, they must have special knowledge, training and skill that particularly adapts them to formulate their own professional standards and to judge the conduct of a member of their profession. No other body could appreciate as well the problems and frustrations that beset a fellow member.
>
> ***Re Milstein and Ontario College of Pharmacy et al. (No. 2) (1977), 13 O.R. (2d) 700 (Ont. Div. Ct.) at page 7 (Quicklaw), varied on other grounds 20 O.R. (2d) 283 (C.A.), leave to appeal to the SCC dismissed, [1992] SCCA No. 85***

27. Further, as Roscoe J. stated in *Ripley v Investment Dealers Association (Business Conduct Committee)*:

> . . to require that evidence be given in proof of such issues of basic ethics and honesty would be an affront to the common sense, experience and intelligence of the members of every professional Disciplinary Committee.
>
> ***Ripley v Investment Dealers Association (Business Conduct Committee), [1990] NSJ No. 295 (NSSC) at page 16 (Quicklaw), affirmed [1991] NSJ No. 452 (NSCA)***

28. Since October 31, 2007, the MFDA has made clear to Approved Persons in its Staff Notices and Bulletins, that possessing and using pre-signed and altered account forms is contrary to the obligations imposed by Rule 2.1.1.

> Member Staff Notice 0066: Pre-Signed Forms, dated October 31, 2007 (updated March 4, 2013)
>
> MFDA Bulletin #0661-E: Signature Falsification, dated October 2, 2015

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

> ***Byce (Re), MFDA File No. 201311, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 4, 2013***
>
> ***Price (Re), MFDA No. 200814, Hearing Panel of the Central Regional Council, decision and reasons dated April 8, 2011***

30. Hearing Panels of the MFDA, the Investment Industry Regulatory Organization of Canada ("IIROC") and provincial securities commissions have also confirmed that the possession and use of pre-signed forms is prohibited.

> ***Price (Re), supra, at para.135***

31. 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. As the Hearing Panel explained in *Price (Re)*:

> Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading …. At its worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client…Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. The presence of the client's signature on a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the Member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account.
>
> ***Price (Re), supra at paras 122-124***

32. The prohibition on the use of pre-signed forms applies regardless of whether:

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

b) the forms were actually used by the Approved Person for discretionary trading or other improper purposes.

> ***Byce (Re), supra at para 8***
>
> ***Wellman (Re), MFDA File No. 201529, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 21, 2015 at para.10***

Post-Bulletin Misconduct

33. All of the forms which are the subject matter of these proceedings were processed after the MFDA had issued a further Bulletin on this subject - Bulletin #0661-E on October 2, 2015. Staff advised that it would be seeking enhanced penalties at MFDA discipline proceedings for conduct that occurred after the publication of that Bulletin. MFDA Panels have considered conduct which has occurred after the publication of that Bulletin to be an aggravating factor when determining the appropriateness of a penalty.

> ***Techer, MFDA File No. 201661, 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.29***

(ii) Nature of the Misconduct: Altered Account Forms

34. The Respondent also altered 8 account forms by altering information on the forms without having the clients initial those alterations.

35. Hearing Panels have consistently held that the creation, possession or use of an altered or falsified form is considered to be serious misconduct and contravenes MFDA Rule 2.1.1.

Byce (Re), supra

36. The reasoning in *Price (Re)*, discussed above, as to why pre-signed account forms affect the integrity and reliability of account documents applies equally to the harm associated with altering and falsifying forms. Plus, when forms are altered or falsified, there also exists the possibility that changes were made to the forms without the clients' knowledge or consent.

37. Therefore, by using altered account forms as described in Part III of the Settlement Agreement, the Panel finds that the Respondent engaged in conduct prohibited by MFDA Rule 2.1.1 and, therefore, engaged in misconduct that should be regarded as serious.

The Respondent's Experience in the Securities Industry

38. The Respondent has been registered as a mutual fund dealing representative since February 1990. As an experienced dealing representative, he ought to have known and complied with the requirements of both the Member and the MFDA.

The Respondent's Past Conduct

39. The Respondent has not been the subject of any prior discipline proceedings by the MFDA.

The Respondent's Recognition of the Seriousness of his Misconduct

40. As his counsel submitted, the Respondent has taken full responsibility for his conduct and has co-operated throughout this investigation on a prompt and complete basis. By entering into the Settlement Agreement, the Respondent has also saved the MFDA the time, resources and expenses associated with conducting a full hearing of the allegations.

Client Harm or Benefits Received by the Respondent

41. There is no evidence of any clients having suffered harm; nor is there evidence that the Respondent received any financial or other benefit through his conduct and, as his counsel submitted, though errors were made, none of them were done with the intention or desire to gain personal financial benefit of any kind.

Deterrence

42. Both the Supreme Court of Canada and MFDA Hearing Panels have held that it is appropriate for deterrence to be among the factors taken into account when determining the appropriateness of a penalty.

> ***Cartaway Resources Corp. (Re), [2004] 1 SCR 672 (SCC), at paras. 52 – 62***
>
> ***Tonnies (Re), 2005 LNCMFDA 7, at para. 47***

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

> A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing 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***

44. The Panel finds that when coupled with the fine of $13,980 which the Member imposed on the Respondent in the form of deducted commissions, the proposed fine in this matter of $5,500 is necessary and sufficient to achieve the goals of specific and general deterrence, having regard to the factors cited above.

Previous Decisions in Similar Cases

45. Counsel provided the Panel with cases where, for similar circumstances, fines were ordered in a range from $10,000 - $15,000.

Kehoe, MFDA File No. 2017116, Hearing Panel of the Central Regional Council, Reasons for Decisions dated February 27, 2018

Dick, MFDA File No. 201818, Hearing Panel of the Central Regional Council, Reasons for Decisions dated July20, 2018

***Allan, MFDA File No. 201957, Hearing Panel of the Pacific Regional Council, Reasons for Decisions dated* March 26, 2020**

46. In reviewing these decisions, the Panel notes that the proposed fine when considered with the commissions which the Member deducted from the Respondent as identified above, as a combined penalty, falls within the range of fines awarded by Hearing Panels for similar factual circumstances.

VI. CONCLUSION

47. Having reviewed the Settlement Agreement and having heard oral submissions from both Staff and counsel for the Respondent, the Panel is satisfied that the penalty which is set out in the Settlement Agreement falls within a reasonable range of appropriateness having regard to the nature and extent of the Respondent's misconduct and all of the circumstances of this matter.

48. The Panel believes the proposed penalty will deter the Respondent and other Approved Persons from engaging in the type of conduct that is the subject of these proceedings, will advance the public interest and the MFDA's objective to enhance investor protection and will ensure high standards of conduct in the mutual fund industry.

49. The Panel, therefore, accepts the Settlement Agreement.

DATED this 30th day of June, 2020.

"Sherri Walsh"
Sherri Walsh
Chair

"Adam Dudley"
Adam Dudley
Industry Representative

"Diane Jaspers"
Diane Jaspers
Industry Representative