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: Peter Anthony Varteresian

Heard: December 1, 2016, in Halifax, Nova Scotia
Reasons for Decision: January 13, 2017

REASONS FOR DECISION

Hearing Panel of the Atlantic Regional Council:

Thomas J. Lockwood, Q.C.	Chair
Ann C. Etter	Industry Representative
Susan Nixon	Industry Representative

Appearances:

Paul Blasiak	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
Suzanne Kittell	)	Counsel for the Respondent
	)	
	)	

A. NOTICE OF SETTLEMENT HEARING

1. On August 24, 2016, the Mutual Fund Dealers Association of Canada ("MFDA") announced that it had issued a Notice of Settlement Hearing ("Notice") with respect to a proposed settlement agreement (the "Settlement Agreement") which had been entered into between the Staff of the MFDA and Peter Anthony Varteresian ("Respondent").

2. The Notice advised that the Settlement Hearing would take place on December 1, 2016, at a stipulated time and venue in Halifax, Nova Scotia.

3. The Notice complied in all respects with Rule 15.2(1) of the MFDA's Rules of Procedure.

B. THE SETTLEMENT HEARING

4. At the commencement of the Settlement Hearing, on December 1, 2016, the Hearing Panel granted a joint Motion by Counsel for Staff and the Respondent to move the proceedings "in camera" while we considered the Settlement Agreement, as well as the written and oral submissions of Staff and the oral submissions of Counsel for the Respondent.

5. After a detailed review of the Settlement Agreement, as well as a consideration of the submissions of the parties, we unanimously concluded that it was in the public interest that the Settlement Agreement be accepted.

6. On December 1, 2016, the Hearing Panel executed an Order giving effect to the terms of the Settlement Agreement. At that time, we advised that we would provide Reasons for our Decision. These are those Reasons.

C. THE SETTLEMENT AGREEMENT

7. The salient portions of the Settlement Agreement are as follows:

"I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and Peter Anthony Varteresian (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 MFDA:

a) between January 2015 and February 2015, the Respondent, or his assistant for whom he was responsible, altered, and used to process transactions, 5 account forms in respect of 1 client by altering information on the account forms without having the client initial the changes, contrary to MFDA Rule 2.1.1; and

b) between January 2014 and April 2015, the Respondent, or his assistant for whom he was responsible, obtained, possessed, and in 12 instances, used to process transactions, 14 pre-signed account forms in respect of 4 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 $8,500 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 pursuant to s. 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 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. The Respondent was registered in the securities industry commencing in 1999.

8. The Respondent has been registered as a mutual fund salesperson (now known as a dealing representative) with Sun Life Financial Investment Services (Canada) Inc. ("Sun Life"), a Member of the MFDA, in Nova Scotia since January 2014, and in British Columbia since May 2014.

9. At all material times, the Respondent conducted business in the Halifax, Nova Scotia area.

Altered Account Forms

10. Between January 2015 and February 2015, the Respondent, or his assistant for whom he was responsible, altered, and used to process transactions, 5 account forms in respect of 1 client by altering information on the account forms without having the client initial the changes. The alterations included changes to the client's account number, net worth, investment objectives, contact information, and redemption instructions. The alterations were made to forms consisting

of 2 automatic withdrawal forms, 1 know-your-client form, 1 transfer authorization form, and 1 account application form.

Pre-Signed Account Forms

11. At all material times, Sun Life's policies and procedures prohibited its Approved Persons, including the Respondent, from using pre-signed account forms.

12. Between January 2014 and April 2015, the Respondent, or his assistant for whom he was responsible, obtained, possessed, and in 12 instances, used to process transactions, 14 pre-signed account forms in respect of 4 clients. The forms consisted of 3 limited trade authorization forms, 4 account application forms, 4 transfer authorization forms, 2 automatic withdrawal forms, and 1 application to withdraw funds form.

13. With regard to 12 of the pre-signed account forms, the Respondent's assistant only provided the signature pages to the clients without providing the other pages of the forms with completed information. The clients signed but did not date the signature pages and returned them to the Respondent's assistant, who then attached the signature pages she received from the clients to the other pages of the forms that she had completed, added client signature dates on the forms, and then submitted the complete forms to Sun Life for processing. In all 12 instances, the Respondent's assistant dated the forms subsequent to when the clients had signed the forms.

Action Taken by the Member

14. Sun Life detected the conduct that is the subject of this settlement agreement during a client file review it conducted of all client files maintained by the Respondent.

15. As part of its investigation, Sun Life sent letters to all clients serviced by the Respondent to determine whether the Respondent had engaged in any unauthorized trading activity in the clients' accounts. None of the clients reported any concerns to Sun Life.

16. On June 10, 2015, Sun Life placed the Respondent on close supervision for a period of 12 months, and on September 30, 2015, Sun Life sent a warning letter to the Respondent regarding the conduct described above.

Additional Factors

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

18. There is no evidence of client harm or lack of client authorization.

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

20. The Respondent has expressed remorse for his conduct.

21. 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."

D. APPLICABLE RULE

8. Rule 2.1.1 provides, in part, as follows:

> "Each . . . Approved Person of a Member shall:
> (a) deal fairly, honestly and in good faith with [his] clients;
> (b) observe high standards of ethics and conduct in the transaction of business;
> (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.

9. Rule 2.1.1 is a rule of general application to all registrants in the mutual fund industry.

i. Pre-Signed Forms

10. In the Settlement Agreement, the Respondent admitted that he, or his assistant for whom he is responsible, obtained, possessed, and in 12 instances, used to process transactions, 14 pre-signed account forms with respect to 4 clients.

11. "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 after the document was completed.

12. In October of 2007, MFDA Staff issued a Notice warning against the use of pre-signed forms. This Notice was updated in March of 2013.

13. MFDA Hearing Panels have held that obtaining or using pre-signed forms is a contravention of Rule 2.1.1.

> *Gibson Re*, [2016] Hearing Panel of the Pacific Regional Council, MFDA File No. 201620, Panel Decision dated May 2, 2016.
>
> *Smith Re*, [2016] Hearing Panel of the Atlantic Regional Council, MFDA File No. 201614, Panel Decision dated November 8, 2016.
>
> *Price (Re),* [2011] Hearing Panel of the Central Regional Council, MFDA File No. 200814, Panel Decision (Misconduct) dated April 18, 2011.

14. As was stated by the Hearing Panel 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.

15. The prohibition on the use of pre-signed forms applies regardless of whether the client was aware, or authorized the use, of the pre-signed forms.

ii. Altered Forms

16. In the Settlement Agreement, the Respondent admitted that he, or his assistant for whom he was responsible, altered, and used to process transactions, 5 account forms in respect of one client by altering information on the account form without having the client initial the changes.

17. MFDA Hearing Panels have held that altering forms is a contravention of the standard of conduct under Rule 2.1.1.

Gibson Re, supra.
Smith Re, supra.

18. The MFDA Staff Notice, referred to in paragraph 12 hereof, warned Approved Persons against altering forms.

19. Like pre-signed forms, the creation or use of altered forms is considered by this Hearing Panel to be serious misconduct. The reasoning given in *Price*, outlined in paragraph 14 above, for why pre-signed account forms affect the integrity and reliability of account documents also applies to altered forms.

iii. Supervision of Assistants

20. In the case before us, there is evidence that it was the Respondent's assistant who altered some of the account forms and obtained and used some of the pre-signed account forms.

21. In our view, in terms of culpability, that is irrelevant. The Respondent, as the Approved Person on the client accounts in question, is responsible for the actions of his assistant.

22. Assistants are often employed to provide administrative and other support to Approved Persons. Regardless of how the Approved Person utilizes the Assistant, he remains responsible for his or her actions. This is consistent with the view of the Hearing Panel in *Barak (Re).*

> *Barak (Re),* [2016] Hearing Panel of the Central Regional Council, MFDA File No. 201635, Panel Decision dated September 9, 2016.

E. THE LAW RELATING TO SETTLEMENT AGREEMENTS

23. Section 24.4.3 of MFDA By-law No. 1 provides the Hearing Panel with only two options when considering a Settlement Agreement. The Panel must either accept or reject the Settlement Agreement. It does not have the power to modify or vary any part of it.

24. The role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As the Hearing Panel stated in *Professional Investments (Kingston) Inc.*:

> "In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness."

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

25. Settlements do assist the MFDA in fulfilling its regulatory objective of protecting the public. They advance this objective by proscribing activities which are harmful to the public, while enabling the parties to reach a flexible remedy to address the interests of both the regulator and the Respondent.

26. Past MFDA Hearing Panels have set out a number of considerations which should be taken into account when determining whether a proposed settlement should be accepted. These include:

(a) whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
(b) whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
(c) whether the settlement agreement addresses the issues of both specific and general deterrence;
(d) whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
(e) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
(f) whether the settlement agreement will foster confidence in the integrity of the MFDA; and
(g) whether the settlement agreement will foster confidence in the regulatory process itself.

Investors Group Financial Services [2005] MFDA Ontario Regional Council, File No. 200401, Hearing Panel Decision dated October 16, 2004 at pp. 2-3.

27. The primary goal of securities regulation is the protection of the investor.

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

28. Past MFDA Hearing Panels have also delineated a number of factors which should be considered when determining whether a proposed penalty is appropriate. These include:

(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 activities;

(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 in the jurisdiction;

(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 activities to those who are permitted to participate in the capital markets; and

(k) previous decisions made in similar circumstances.

Headley (Re), 2006 LNCMFDA 3, at para. 85.

29. The MFDA Penalty Guidelines, while not mandatory, are an additional source which Hearing Panels can refer to in determining the appropriateness of the proposed penalties.

30. Where an Approved Person fails to adhere to the standard of conduct, set out in Rule 2.1.1, the Penalty Guidelines recommend one or more of the following: a minimum fine of $5,000; writing or re-writing an appropriate industry course; suspension; a permanent prohibition in egregious cases.

F. CONSIDERATIONS IN THE PRESENT CASE

(a) Nature of the Misconduct

31. The Respondent engaged in serious misconduct. In the case of pre-signed forms, the misconduct occurred over approximately a 16 month period.

(b) Client Harm

32. There is no evidence of client harm.

33. As part of its investigation into the Respondent's conduct, the Member sent letters to all clients serviced by him to determine whether he had engaged in any unauthorized trading in the clients' accounts. No client reported any concern to the Member.

(c) Benefits Received by the Respondent

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

(d) The Respondent's Experience and Level of Activity in the Capital Markets

35. The Respondent has been registered in the mutual fund industry since 1999. Consequently, he ought to have known and respected the compliance requirements of both the MFDA and his Member.

(e) Deterrence

36. We accept Staff's submission that the proposed penalties will act as a general deterrent and reinforce the message that pre-signed and altered account forms are not tolerated by the MFDA and the mutual fund industry.

37. We have confidence that the proposed penalties, coupled with the experience of being involved in the current enforcement proceedings, being placed on close supervision for a period of 12 months by the Member and receiving a warning letter regarding the conduct in question, will act as a specific deterrent to the Respondent engaging in misconduct in the future.

(f) The Respondent's Past Conduct Including Prior Sanctions

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

(g) The Respondent's Recognition of the Seriousness of the Misconduct

39. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and has saved the MFDA the time, resources and expense associated with conducting a full disciplinary proceeding.

40. We were also advised that the Respondent has made arrangements for immediate payment of both the fine and costs should the Settlement Agreement be accepted by this Hearing Panel.

(h) Penalty Guidelines

41. The proposed penalties are consistent with the MFDA Penalty Guidelines.

(i) Previous Decisions Made in Similar Circumstances

42. Staff provided the Hearing Panel with previous Decisions made in similar circumstances to demonstrate that the proposed resolution was within the reasonable ranges of appropriateness. These Decisions included:

(a) *Gibson (Re), supra*.
(b) *Smith (Re), supra.*

G. DECISION

43. Sanctions are intended to be preventative, protective and prospective in nature. An appropriate sanction is one which will protect the public interest and prevent future conduct

detrimental to the integrity of the capital markets. We believe that, in the particular circumstances of this case, the proposed penalties accomplish these goals although, as we explained to the parties during the course of the proceedings, at the lower end of the acceptable range.

H. PENALTIES IMPOSED

44. As a result of the acceptance of the Settlement Agreement, the following penalties were imposed upon the Respondent:

(a) The Respondent shall pay a fine in the amount of $8,500 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 pursuant to s.24.2 of MFDA By-law No. 1;

(c) The Respondent shall in the future comply with MFDA Rule 2.1.1; and

(d) 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 13th day of January, 2017.

"Thomas J. Lockwood"

Thomas J. Lockwood, QC
Chair

"Ann C. Etter"

Ann C. Etter
Industry Representative

"Susan Nixon"

Susan Nixon
Industry Representative

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