



**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: Timothy Donald Warr**

Heard: August 13, 2020 by electronic hearing in St. John’s, Newfoundland

Decision: August 13, 2020

Reasons for Decision: September 25, 2020

**REASONS FOR DECISION**

Hearing Panel of the Atlantic Regional Council:

Thomas J. Lockwood, QC  
Jason P. Downey  
Guenter W.K. Kleberg

Chair  
Industry Representative  
Industry Representative

Appearances:

Justin Dunphy	)	Senior Enforcement Counsel for the Mutual
	)	Fund Dealers Association of Canada
	)	
	)	
Ruth E. Trask	)	Counsel for the Respondent
	)	
	)	
Timothy Donald Warr	)	Respondent
	)	
	)	

## **I. INTRODUCTION**

1. By Notice of Settlement Hearing, dated July 15, 2020, the Mutual Fund Dealers Association of Canada (“MFDA”) gave notice that an electronic hearing would be held before a hearing panel of the Atlantic Regional Council of the MFDA (“Hearing Panel”) on August 13, 2020, to consider whether, pursuant to Section 24.4 of MFDA By-law No. 1, the Hearing Panel should accept the settlement agreement (“Settlement Agreement”) entered into between Staff of the MFDA and Timothy Donald Warr (“Respondent”).

2. Due to the existence of COVID-19, and with the consent of the parties, the Settlement Hearing was conducted by way of video conference on August 13, 2020.

3. At the commencement of the Settlement Hearing, the Hearing Panel granted the joint request of the parties to move the proceedings “in camera” so that the Settlement Agreement could be considered in the absence of the public. This procedure is consistent with Rule 15.2(2) of the *MFDA Rules of Procedure*.

4. The Hearing Panel then considered the provisions of the Settlement Agreement. After hearing submissions both as to the applicable law and as to why this particular Settlement Agreement met the appropriate criteria, the Hearing Panel retired to consider whether we were in a position to accept the Settlement Agreement on the basis of the material before us.

5. After carefully considering the Settlement Agreement and the submissions of the parties, the Hearing Panel unanimously accepted the Settlement Agreement. We made an Order to this effect on August 13, 2020. At that time, we advised that written Reasons would follow. These are those Reasons.

## **II. THE SETTLEMENT AGREEMENT**

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

“4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:

- a) between January 2018 and September 2018, the Respondent altered and used to process transactions, 4 account forms in respect of 4 clients by altering information

- on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1; and
- b) between December 2017 and October 2018, the Respondent obtained, possessed, and used to process transactions, 26 pre-signed account forms in respect of 16 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 \$14,000 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 Rule 2.1.1; and
- d) the Respondent will attend in person or via video-conference, on the date set for the Settlement Hearing.

### **III. AGREED FACTS**

#### **Registration History**

7. Since August 1998, the Respondent has been registered in the securities industry.
8. Since December 2017, the Respondent has been registered in Newfoundland and Labrador as a mutual fund salesperson (now known as a dealing representative) with Peak Investment Services Ltd. (the "Member"), a Member of the MFDA. The Respondent is also currently registered as a dealing representative in Alberta, New Brunswick, and Ontario.
9. From October 2000 until December 2017, the Respondent was registered as a mutual fund salesperson with a different member of the MFDA (the "Prior Member"). The Respondent states that he transferred approximately 300 client accounts from the Prior Member to the Member.
10. At all material times, the Respondent conducted business in the St. John's, Newfoundland and Labrador area.

#### **Altered Account Forms**

11. Between January 2018 and September 2018, the Respondent altered and used to process transactions, 4 account forms in respect of 4 clients by altering information on the account forms without having the clients initial the alterations.
12. The altered account forms consisted of Know Your Client ("KYC") forms, and the alterations the Respondent made to the account forms included alterations to clients' risk tolerance, net worth, and employment information.

13. The Respondent states that three of the four altered account forms related to clients serviced by the Respondent at the Prior Member, and they were prepared in the context of the transfer of client accounts to the Member.

### **Pre-Signed Account Forms**

14. At all material times, the Member's policies and procedures prohibited its Approved Persons from obtaining, holding, or using blank signed account forms.

15. Between December 2017 and October 2018, the Respondent obtained, possessed, and used to process transactions, 26 pre-signed account forms in respect of 16 clients.

16. The pre-signed account forms consisted of:

- a) 18 KYC forms;
- b) 6 new account application forms ("NAAFs"); and
- c) 2 dealer representative change forms.

17. The Respondent states that all of the pre-signed account forms related to clients serviced by the Respondent at the Prior Member, and they were prepared in the context of the transfer of client accounts to the Member.

### **The Member's Investigation**

18. In December 2018, MFDA staff identified pre-signed account forms in client files that were serviced by the Respondent as a result of a MFDA compliance examination. MFDA Staff subsequently commenced a review of all of the client files maintained by the Respondent and identified the remaining altered and pre-signed account forms that are the subject of this Settlement Agreement. MFDA Staff subsequently reported their findings to the Member.

19. On or about January 29, 2019, the Member conducted a branch audit of the Respondent's branch, and did not identify any additional altered or pre-signed account forms in the client files maintained by the Respondent.

20. Commencing in May 2019, the Member required the Respondent to meet with all clients whose accounts he serviced, including those clients where the Respondent used altered and pre-signed account forms, in order to complete new KYC forms. The Member also required the Respondent to complete investment profile questionnaires for each client to ensure the accuracy of the KYC information. The Member conducted periodic reviews, including reviewing updated KYC forms, to ensure the forms were being completed properly.

21. The Respondent states that commencing in January 2019, the Respondent updated the KYC documentation for all of the clients he serviced, including those clients identified by the audit findings, as described above in paragraph 18. The Member subsequently conducted reviews of the updated KYC documentation completed by the Respondent with the clients, and did not identify any additional altered and pre-signed account forms.

22. On or about September 5, 2019, the Member conducted a follow up inspection of the Respondent's practice and did not identify any additional altered or pre-signed account forms, or other deficiencies with respect to KYC forms.

23. On or about September 11, 2019, the Member issued a warning letter to the Respondent for the conduct that is the subject of this Settlement Agreement.

### **Additional Factors**

24. 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.

25. There is no evidence of any client loss, complaints, or that any transactions were unauthorized.

26. The Respondent states that he has changed his business practices going forward and no longer obtains, possesses, or uses altered or pre-signed account forms.

27. The Respondent has not been the subject of prior MFDA disciplinary proceedings.

28. 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.”

### **III. THE LAW**

7. MFDA Rule 2.1.1 states, in part, as follows:

“2.1.1 **Standard of Conduct.** Each Member and each Approved Person of a Member shall:

- a) deal fairly, honestly and in good faith with its 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; . . .”

8. This Rule prescribes the standard of conduct applicable to all registrants and is central to the MFDA's mandate of enhancing investor protection and strengthening public confidence in the Canadian mutual fund industry.

9. The MFDA has made clear to Approved Persons since October 31, 2007, in both MFDA Staff Notices and Bulletins, that possessing and using pre-signed and altered account forms is contrary to the obligations of Rule 2.1.1.

Member Staff Notice 0066: Pre-Signed Forms, dated October 31, 2007 (updated January 26, 2017).

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

10. MFDA Bulletin #0661-E reminded Members and Approved Persons that “Signature Falsification” is not permissible under MFDA Rules. This term includes conduct like pre-signed account forms, altered account forms and the falsification of a client signature. The Bulletin advised that Staff would be seeking enhanced penalties at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin on October 2, 2015. In the case before us, all 30 account forms were obtained after October 2, 2015.

11. The MFDA Hearing Panel in *Price (Re)* identified the dangers posed by pre-signed account forms, which can be summarized as follows:

- a) pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading;
- b) at 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; and
- c) pre-signed forms subvert the ability of a Member to properly supervise trading activity.

*Price (Re)*, MFDA File No. 200814, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 18, 2011, paras. 122-124.

12. The reasoning in *Price (Re)* is equally applicable to the use of altered account forms, with the additional concern that there also exists the possibility that the changes are made to the forms without the clients’ knowledge or consent.

13. It is clear that, by obtaining and using pre-signed and altered account forms, as described in the Settlement Agreement, the Respondent engaged in conduct prohibited by MFDA Rule 2.1.1.

#### **IV. PRINCIPLES REGARDING THE ACCEPTANCE OF SETTLEMENT AGREEMENTS**

14. In our view, the role of a Hearing Panel in a Settlement Hearing is not the same as its role in making a penalty determination after a contested Hearing. 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.

15. Previous MFDA Hearing Panels have determined the factors which should be considered in determining whether a Settlement Agreement should be accepted. These include the following:

- i. Whether acceptance of the Settlement Agreement would be in the public interest and whether the penalty imposed will protect investors;
- ii. Whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
- iii. Whether the Settlement Agreement addresses the issues of both specific and general deterrence;
- iv. Whether the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
- v. Whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets;
- vi. Whether the Settlement Agreement will foster confidence in the integrity of the MFDA;
- vii. Whether the Settlement Agreement will foster confidence in the regulatory process itself.

*Jacobson (Re)*, 2007 LNCMFDA 27.

16. Previous Hearing Panels have also identified a number of additional factors which should be considered when determining whether the penalty sought to be imposed 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 in the capital markets;
- d) The level of the Respondent's activity in the capital markets;
- e) Whether the Respondent recognizes the seriousness of the improper activity;
- f) The harm suffered by investors as a result of the Respondent's activities;
- g) The benefits received by the Respondent as a result of the improper activity;
- h) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;

- i) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- j) 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;
- k) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
- l) Previous decisions made in similar circumstances.

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

*In the Matter of Robert Roy Parkinson* (2005), Hearing Panel of the Ontario Regional Council, Decision and Reasons dated April 29, 2005, MFDA File No. 200501, at page 22.

## **V. CONSIDERATIONS IN THE PRESENT CASE**

17. Staff made detailed submissions as to how these principles applied to the case before us. These submissions included the following:

a) Seriousness of the Misconduct

18. We agree with the submission of Staff that the Respondent engaged in serious misconduct. He altered 4 account forms and obtained and used 26 pre-signed account forms, of which the majority consisted of Know-Your-Client ("KYC") forms and new account application forms.

b) The Respondent's Experience in the Securities Industry

19. The Respondent has been registered in the Securities Industry since 1998. As an experienced Dealing Representative, the Respondent knew, or ought to have known, that possessing and using pre-signed and altered account forms is contrary to the obligations of Rule 2.1.1.

c) The Respondent's Recognition of the Seriousness of the Misconduct

20. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the additional time and expense of a full contested hearing.

21. The Respondent complied with the directions from his Member to complete new KYC forms for all clients that were serviced by him, including those clients for whom pre-signed and altered account forms were identified.

Settlement Agreement, at paras 20-22.

d) Client Harm

22. Staff submitted that there was no evidence of any client loss, complaints or that any of the transactions were unauthorized.

e) The Respondent's Past Conduct

23. The Respondent has not been the subject of prior MFDA disciplinary proceedings.

f) Benefits Received by the Respondent

24. Staff submitted that “there is no evidence to suggest that the Respondent received a financial or other benefit through his conduct.” Staff also referred to the Settlement Agreement and stated that 3 out of the 4 altered forms, as well as all the pre-signed account forms, were prepared in the context of the Respondent transferring over clients from his Prior Member to the current Member. They were not “new” clients. The transfer of approximately 300 client accounts commenced when he joined his current Member in December of 2017.

25. The Hearing Panel questioned whether the Respondent received any compensation when he transferred 300 clients to his new Member. The parties declined to answer this question, stating that it was not part of the Settlement Agreement. When the proceedings were completed, the Hearing Panel received a note from the MFDA Director of Hearings Administration, as follows:

“The Parties, by consent, state that “Mr. Warr did not receive any compensation for completing the 6 New Account Application Forms that were pre-signed, as referred to in paragraph 16(b) of the Settlement Agreement.” ”

26. The issue is whether the Respondent received compensation for bringing the 6 clients to the new Member, not whether he was compensated for completing 6 pre-signed NAAF's. That question remains unresolved.

g) Deterrence

27. Staff submitted that it considered a fine of \$14,000.00 and costs of \$2,500.00 to be a serious penalty which would be sufficient to achieve the goals of specific and general deterrence having regard to all appropriate factors.

h) Previous Decisions Made in Similar Cases

28. Staff presented the Hearing Panel with a Chart seeking to show that the proposed resolution is within the reasonable range of appropriateness with regard to other decisions made by MFDA Hearing Panels in similar circumstances.

29. The following cases were discussed:

- a) *Simard (Re)*, MFDA File No. 2017123, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated June 15, 2018.
- b) *Baksh (Re)*, MFDA File No. 201939, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 20, 2019.
- c) *Montina (Re)*, MFDA File No. 201954, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated December 11, 2019.
- d) *Nash (Re)*, MFDA File No. 2018113, Hearing Panel of the Atlantic Regional Council, Decision and Reasons dated February 7, 2019.

**VI. DECISION**

30. After a thorough review of the factors by which we should be guided, and the facts of this case, as reflected in the Settlement Agreement, we were, unanimously, of the view that this Settlement Agreement was reasonable and in the public interest and should be accepted by the Hearing Panel. We so informed the parties at the conclusion of the Settlement Hearing.

**VII. ORDER**

31. After accepting the Settlement Agreement, we made the following Order:

- a) The Respondent shall pay a fine in the amount of \$14,000.00 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 \$2,500.00 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 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 25<sup>th</sup> day of September, 2020.

“Thomas J. Lockwood”  
Thomas J. Lockwood, QC  
Chair

“Jason P. Downey”  
Jason P. Downey  
Industry Representative

“Guenther W.K. Kleberg”  
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