

Decision (Misconduct) and Reasons

File No. 201943



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: Sylvia Suk Fan Wong

Heard: January 26-29, 2021 in Vancouver, British Columbia
Decision (Misconduct) and Reasons: February 22, 2021

DECISION (MISCONDUCT) AND REASONS

Hearing Panel of the Pacific Regional Council:

Hon. Ian H. Pitfield
Sean Shore
Richard Sydenham

Chair
Industry Representative
Industry Representative

Appearances:

Sakeb Nazim)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
Patricia Taylor)	Counsel for the Respondent
)	
)	
Sylvia Suk Fan Wong)	Respondent
)	
)	

1. The Mutual Fund Dealers Association of Canada (“MFDA”) alleges that Sylvia Suk Fan Wong (“Respondent”), registered as a mutual fund salesperson (now a dealing representative) from March 1994 to July 27, 2018, with Investia Financial Services Inc. and an approved person for MFDA purposes, engaged in the following misconduct:

Allegation #1: Between April 2012 and May 2017, the Respondent altered and used to process transactions, 26 account forms in respect of 17 clients by altering information on the account forms without having the clients initial the alterations, contrary to the Member’s policies and procedures, and MFDA Rules 2.1.1, 1.1.2 and 2.5; and

Allegation #2: Between January 2012 and January 2016, the Respondent obtained, possessed, and used to process transactions, 12 pre-signed account forms in respect of 6 clients, contrary to the Member’s policies and procedures, and MFDA Rules 2.1.1, 1.1.2 and 2.5.

2. The hearing proceeded over the course of four days. Counsel for the MFDA had provided a full written submission to the Panel and the Respondent prior to the commencement of the hearing. As a consequence, at the close of the hearing, the Respondent was accorded the opportunity to supplement oral submissions with written submissions and the MFDA was accorded the opportunity to reply. The hearing and submissions are now complete.

3. The MFDA allegations are straightforward. The Respondent is alleged to have contravened MFDA Rules and a Member’s Policies and Procedures by obtaining and using pre-signed forms or by altering forms, or by using forms that were both altered and pre-signed. The MFDA alleges that the use of pre-signed forms, altered forms, or altered and pre-signed forms on which changes or the insertion of information have not been initialled by a client contravenes the MFDA rules and the Member’s policies and procedures.

4. The Respondent claims that there are procedural deficiencies in the pre-hearing and hearing processes with the result that the claims should be dismissed. With regard to the merits, the Respondent says that all clients consented to and approved of all information contained in pre-signed forms; and that all clients consented to and approved alterations made to forms notwithstanding the absence of a client’s initials on any pre-signed or altered form.

5. Briefly stated, this is another instance in which the MFDA alleges that the Respondent has improperly used pre-signed forms and has improperly altered forms from time to time over an extended period of time.

6. For the reasons that follow, the Panel is unanimous in its determination that the allegations against the Respondent have been proved on a balance of probabilities.

Procedural Issues

7. The Respondent claims that the affidavit of Ms. Indira Nadarajan (“Nadarajan affidavit”), a MFDA manager of investigations, tendered as evidence at the hearing, was not provided to the Respondent until January 19, 2012 which was outside the time limit fixed by Rule 11.1 of the *MFDA Rules of Procedure*.

8. The Respondent also claims that the MFDA materially changed the allegations in the initial Notice of Hearing by increasing the number of allegedly pre-signed forms from 12 to 21, and that she was not fully aware of the allegations against her until receipt of the Nadarajan affidavit.

9. The Panel dismisses each of the objections.

10. Rule 11.1 provides as follows:

11.1 Provision of Witness Lists and Statements

(1) Subject to Rule 12, a party to a proceeding shall provide every other party with:

(a) a list of the witnesses the party intends to call at the hearing of the proceeding on its merits; and

(b) in respect of each witness named on the list, other than a Respondent who has already provided a statement recorded by the Corporation, either:

- (i) a witness statement signed by the witness; or
- (ii) a transcript of a recorded statement made by the witness; or
- (iii) if no signed witness statement or transcript referred to in sub-Rules (i) and (ii) is available, a summary of the evidence that the witness is expected to give at the hearing.

(2) Where a Respondent intends to testify to matters which were not disclosed by the Respondent in any prior recorded statements provided to the Corporation, the Respondent shall provide every other party with a signed witness statement in respect of the additional matters.

(3) The parties shall comply with the requirements of sub-Rules (1) and (2) at least (1) 14 days prior to the commencement of the hearing.

11. MFDA counsel provided the Respondent with statements of expected evidence on March 13, 2020, and again on December 18, 2020. MFDA counsel examined the Respondent on June 20, 2018, at which time the Respondent was examined on each of the documents tendered as evidence at the hearing. The index of exhibits at the examination could be easily matched to the exhibits annexed to the Nadarajan affidavit. The Panel rejects the claim that the Respondent was prejudiced by the delivery of the Nadarajan affidavit on January 19, 2021.

12. It is also noteworthy that Ms. Nadarajan appeared as a witness at the hearing and was cross-examined by Respondent's counsel. The Respondent did not make any objection to the admissibility of the Nadarajan affidavit or the examination or cross examination of the witness. The objection was first made in the written submissions that the Panel had accorded the Respondent the opportunity to provide.

13. The Respondent raised a second procedural objection in written submissions claiming that the number of instances in which forms had been improperly obtained or used was increased at the hearing from the number of forms identified in the original Notice of Hearing dated July 4, 2019.

14. The Notice of Hearing alleged the improper alteration of 26 account forms in respect of 17 clients, and the improper use or possession of 12 pre-signed account forms in respect of 6 clients. The Respondent claims that the number of pre-signed forms alleged at the hearing was increased from 12 to 21.

15. The Panel concludes that the second objection arises because of the Respondent's miscomprehension of the evidence, and in particular paragraph 16 of the Nadarajan affidavit. That paragraph identified and described 38 forms to which the MFDA allegations pertained. The total number of forms is the same as that identified in the Notice of Hearing. The Nadarajan affidavit describes 12 of the forms as "pre-signed". It describes 17 forms as "altered", and it describes 9 of the 38 forms as "altered/pre-signed". Those 9 forms, in conjunction with the 17, make up the complement of 26 forms to which the allegation of improper alteration pertains. The fact that those 9 forms may also have been pre-signed is not relevant in the context of the Notice of Hearing as framed. The MFDA position is that the principal problem in relation to the 9 forms that may also have been pre-signed is that they were improperly altered.

16. The Respondent's objection that the number and kind of forms placed in issue at the hearing differs from the number and kind identified in the Notice of Hearing cannot be sustained.

Pre-signed and Altered Forms

17. The prohibition against the use of pre-signed and improperly altered forms has been widely publicized by the MFDA to all of its members and dealing representatives. The use of such forms has been held to be a contravention of MFDA Rule 2.1.1 which requires dealing representatives not to engage in any business conduct or practice which is unbecoming or detrimental to the public interest.

18. The introductory paragraph to MFDA Staff Notice #MSN-0066 dated October 31, 2007 stated that "members may only use forms that are duly executed by the client *after* information on the form has been properly completed." [emphasis added].

19. In MFDA Staff Bulletin #0661-E dated October 2, 2015 in reference to signature falsification stated the following:

Members and [approved persons] may only use forms that are properly executed by the client *after* information on the form has been properly completed. Examples of signature falsification include, but are not limited to:

having a client sign a form which is blank or only partially completed ("pre-signed form");

...

altering any information on a signed document, without the client initialing the document to show the change was approved.

...

Any falsification is unacceptable whether or not:

it is done for the purposes of client convenience;

the client instructs or otherwise consents to the [approved person] falsifying the document

....

20. From time to time, members and approved persons have claimed that the prohibition regarding pre-signed forms only has application in the event a signed form containing no information is found in an approved person's client file. Such is not the case as is readily apparent

from the directive that an approved person may only use a form that has been properly executed by the client after all information required on the form has been properly inserted.

21. The Panel considers this an appropriate occasion to repeat and emphasize the rules regarding pre-signed and altered forms as they have been settled by case law:

22. A *pre-signed* form is any form required in connection with a client's affairs that has been signed in any manner by the client before *all* of the information required by the form has been inserted in it. In the simplest of terms, a client may only affix his or her signature to a form that is complete in every detail. The use of pre-signed forms of any kind for any purpose related to a transaction is prohibited.

23. Mere possession by a dealing representative of a pre-signed form, whether the form is completely blank or partially, but not fully, completed, constitutes a contravention of the MFDA rules and is subject to sanction. It matters not whether the form has been signed and left with the dealing representative for current or future use.

24. The *alteration* of any fully completed form that has been signed by a client is prohibited unless the client initials the alteration contemporaneously with the making of the alteration. An alteration includes an insertion, deletion, or amendment of any information that was in the form at the time the client's signature was first affixed to it.

25. A form may be both *pre-signed* and *altered* as will be the case when an incomplete form has been signed by the client, information has been inserted in the form by the dealing representative, and that information has been subsequently altered in any manner whatever by the dealing representative.

26. The rule relating to pre-signed forms should not be difficult to comprehend or to apply. A pre-signed form includes a form signed in blank and retained on the client file for future use, as well as a form signed in blank to which information is added after delivery of the form by the client to the approved person whether or not the client has authorized insertion of the information.

Re: Mckenzie, MFDA File No. 201508, para. 63

Re Bolt, MFDA File No. 201305, paras. 7 and 8

27. The reason for the stringency associated with the rules regarding pre-signed and altered forms is clear. Approved persons may not engage in discretionary trading. Moreover, the preparation and preservation of an audit trail is essential in the securities and mutual fund industries. An approved person must be able to support the claim that trades or transactions were based on client instructions.

28. Any departure from the required standard will result in a determination that the dealing representative has contravened the MFDA Rules and will result in penalty. Ignorance of the rule, negligence, or mere carelessness affords no defence. The breach is much like a simple speeding ticket: travelling in excess of the posted limit is an offence. No excuse exonerates the speeder. Likewise, no excuse exonerates a dealing representative who obtains a pre-signed form from a client and then completes and uses it, or who alters a properly executed form without the alteration being initialled by the client.

Findings of Fact

29. The Respondent was engaged in the mutual fund industry from March 1994 to July 26, 2018 when she resigned from Investia Financial Services Inc., the member with whom she was associated. The Respondent has not been registered in the securities industry in any capacity since her resignation.

30. Ms. Nadarajan testified that she examined 12 forms pertaining to 6 of the Respondent's clients, namely KF, CL, EL, JL, KP, and MW. The forms, or copies thereof, were entered as exhibits at the hearing. The alleged pre-signed and altered forms were variously dated as follows: nine documents were dated in 2012; thirteen, in 2013; seven, in 2014; five, in 2015; one, in 2016; and three, in 2017. While the alleged contraventions were intermittent, the alleged improper practices were persistent.

31. With respect to the single document (Exhibit J-16) dated March 3, 2014 pertaining to CL, Ms. Nadarajan testified that the client's signature appeared not to be original handwriting when compared to other handwritten information appearing in the form. In a statement to the MFDA and again during her interview on June 20, 2018, the Respondent admitted that she had sent a blank form to the client and the client had signed the form and returned that page by fax to the Respondent. Following receipt and discussions with the client, the Respondent inserted the information that was required elsewhere in the form. The Panel finds that the form was incomplete

when first signed by the client, was not re-signed or initialled in any respect by the client, and is a pre-signed form.

32. With respect to the form relating to EL (Exhibit J-25) dated January 26, 2016, the Respondent admitted in the course of her interview on June 20, 2018, that she had sent a blank form to the client, the client had signed the form and returned it by fax, and following receipt, the Respondent had inserted information in the form. The Panel finds that this document was a pre-signed form.

33. The evidence regarding a single form pertaining to JL, two forms pertaining to KP, and two documents pertaining to MW is similar. The Respondent acknowledged in the course of her interview that in each instance she had sent a blank page to the client, the client had signed the form and returned it by fax to the Respondent, and following receipt and discussions with the client, the Respondent had inserted information required to complete the form so that it could be used for the purpose for which it was intended. The Panel finds that each of the forms in question was a pre-signed form.

34. In the course of her investigation, Ms. Nadarajan identified 26 documents in which it was readily apparent that whiteout had been used to change information previously inserted in the document whether or not that information had been inserted before or after the client signed the completed document. In each case, the evidence was substantially the same. The Respondent acknowledged that she made the changes to each of the documents following a discussion with the client. None of the changes was initialled by the client.

35. The alterations were of various kinds. The fund number or account was altered on 16 forms; the date was altered on twelve; trade instructions were altered on three; the account number or type was altered on two; the plan type was altered on one; the wire order number was altered on two; net worth was altered on one; and risk tolerance was altered on one. Some of the documents contained more than one of the listed changes. Some of the changes may be regarded as more significant than others but none is insignificant or immaterial. All information required to be inserted on any of the forms is material.

36. The Panel finds that each of the 26 documents was an altered document on which changes were not contemporaneously initialled by the client.

37. It follows that unless one of the defences advanced by the Respondent affords relief, the Respondent must be found to have contravened the MFDA Rules.

Defences Raised by the Respondent

38. The Respondent's principal defence is that she has not offended any MFDA or Investia rule regarding altered forms because any alterations were made by the client in the Respondent's presence; the alterations were not material and her member firm only required material changes to be initialled; the completed forms and changes were approved by the client before any transactions were conducted in the client account; and none of the documents was an altered document because the changes made were those ordered and or approved by the client.

39. The Respondent submits that the allegation in relation to pre-signed forms cannot stand because the case law describes pre-signed forms as documents found in a dealing representative's client file with nothing but a signature affixed thereto. No such documents were found in the Respondent's client files.

40. The Respondent called a single witness, KF, who testified to her interaction with the Respondent.

41. The Respondent and KF both testified to the fact that the Respondent sent the client a blank form asking her to sign and return it by fax. Following receipt of the document, KF and the client either met in person or discussed by telephone the nature of the information that was to be added to the form. The purport of the evidence was that KF authorized the additions required to fully complete the document and that the client was provided with a copy of the form as eventually completed by the Respondent. The Panel is mindful of the fact that there is no evidence that plausibly explains why the Respondent would send a blank form to KF for signature and return if she and KF intended to meet to discuss what was to be done with and inserted into the form. Were there actually going to be such a meeting, all of the documentation could have been prepared at the meeting and signed by the client. Alternatively, the form first signed by KF might have been used and the additions initialled by the client.

42. The pattern or practice pursued by the Respondent with regard to KF's affairs was described by the Respondent as her normal practice with respect to her clients generally. The Respondent tendered letters from a number of clients purporting to say the same thing, namely that

the Respondent acted on the client's instructions and approved of all actions taken by the Respondent on their behalf. None of the clients, other than KF, were called as a witness. The Panel regards the letters that were written long after the events complained of by the MFDA, and that appear to have had as their author someone other than the client, as self-serving and accords them no weight.

43. The Respondent submits that the member with which the Respondent was associated was lax when monitoring the activities of its dealing representatives. Shortcomings in that regard, should there be any, may be relevant in the context of sanction, but they do not afford a defence to the otherwise improper use of pre-signed forms or the improper alteration of forms.

44. Whether or not the client discussed the information eventually included in any of the forms with the Respondent, approved of the information inserted in the form, or received a copy of the form as eventually completed by the Respondent, any form signed in blank by the client and transmitted to the Respondent for completion constituted a pre-signed form that offended the MFDA's Rules.

45. The same conclusion applies in relation to the alterations made to the documents as described in the Notice of Hearing.

Conclusion on Liability

46. Having regard for the applicable principles and our findings of fact, the Panel concludes that the Respondent contravened MFDA Rules 2.1.1, 1.1.2, and 2.5 as described in Allegations #1 and #2 of the Notice of Hearing.

47. In the absence of agreement regarding penalty, the Panel invites the parties to arrange a timely continuation of the hearing for the purpose of hearing submissions regarding the appropriate sanction in this case.

DATED this 22nd day of February, 2021.

“Ian H. Pitfield”

Hon. Ian H. Pitfield
Chair

“Sean Shore”

Sean Shore
Industry Representative

“Richard Sydenham”

Richard Sydenham
Industry Representative

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