Re Sonne

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Patricia May Sonne

2023 CIRO 33

Canadian Investment Regulatory Organization
Hearing Panel of the Ontario District

Heard: March 9 and 10 and May 18, 2023
Decision and Reasons: December 4, 2023

Hearing Panel:
Joan Smart, Chair
Guenther Kleberg, Industry Representative
Casimir Litwin, Industry Representative
Appearances:
Molly McCarthy, Enforcement Counsel for CIRO
Brendan Forbes, Enforcement Counsel for CIRO
Brenda McGinty, Counsel for the Respondent
Patricia May Sonne, Respondent

DECISION AND REASONS

I. INTRODUCTION

¶ 1 By Notice of Hearing dated May 3, 2022, the Mutual Fund Dealers Association of Canada (the "MFDA") commenced a disciplinary proceeding against Patricia May Sonne (the "Respondent") pursuant to ss. 20 and 24 of MFDA By-law No. 1 [1].

¶ 2 The Notice of Hearing alleged that, between October 13, 2015 and September 24, 2019, the Respondent obtained, possessed, and in some instances used to process transactions, 31 pre-signed account forms in respect of 7 clients, contrary to MFDA Rule 2.1.1.[2]

¶ 3 A first Appearance was held on July 21, 2022, at which time the Hearing on the Merits was scheduled to take place by electronic hearing on January 30-31, 2023.

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[1]On January 1, 2023, the Investment Industry Association of Canada ("IIROC") and the Mutual Find Dealers Association of Canada (the "MFDA") were consolidated into a single self-regulatory organization, the Canadian Investment Organization ("CIRO"), recognized under applicable securities legislation. CIRO adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies of the MFDA (the "Interim Rules"), which include, among others, the Mutual Fund Dealer Rules. Pursuant to Rule 1A(5) of the Mutual Dealer Rules of CIRO, this proceeding continued to be conducted in accordance with MFDA By-law No. 1.

[2] Pursuant to Rule 1(A)(1) of the Mutual Fund Dealer Rules of CIRO and s. 14.6 of By-Law No.1 of CIRO, the MFDA Rules applicable to the Respondent while she was subject to the MFDA's jurisdiction continued to apply. The wording of Mutual Fund Dealer Rule 2.1.1 is the same as former MFDA Rule 2.1.1.

¶ 4 Prior to commencement of the hearing on January 30, 2023, the Respondent made a request for an adjournment. Staff of the Canadian Investment Regulatory Organization ("CIRO"), formerly MFDA Staff, ("Staff") consented to the motion but reserved the right to pursue cost consequences arising from the last minute adjournment request. The Hearing Panel granted the adjournment and directed that the Hearing on the Merits be held electronically by videoconference on March 9-10, 2023.

II. PRELIMINARY MOTION

¶ 5 At the commencement of the proceeding on March 9, 2023, counsel for the Respondent brought a preliminary motion requesting that the Hearing on the Merits be held in the absence of the public.

¶ 6 In essence, counsel for the Respondent raised concerns about: the potential for public attendees at the hearing sharing evidence they might hear with the Respondent's former employer who was to be called as a witness; and intimate personal and financial information about the Respondent being disclosed.

¶ 7 Staff opposed the motion. They noted the confidentiality order that is typically made restricting access by non-parties to exhibits in a proceeding that contain personal information. They also directed us to the tests for determining if a hearing should be held in the absence of the public as set out in the cases of *Hudbay Minerals Inc. (Re)*, 2009 LNONOSC 350 and *Sierra Club of Canada v. Canada (Minister of Finance),* [2002] 2 SCR 522.

¶ 8 The Hearing Panel decided that the Hearing should proceed in public. In our view, the concerns raised by the Respondent did not override the public interest in having self-regulatory hearings open and accessible to the public.

¶ 9 The Hearing Panel did, however, ask that the one public participant who was present identify himself and cautioned him against sharing any evidence presented with potential witnesses.

¶ 10 In the Agreed Statement of Facts subsequently reached by the parties, they agreed that the matter should be heard in public pursuant to Rule 1.8 of the MFDA Rules of Procedure.

III. ISSUE TO BE DETERMINED

¶ 11 At the conclusion of the opening statements by Staff and the Respondent's counsel, they jointly requested that they be given time to attempt to negotiate resolution of some matters, which the Hearing Panel granted.

¶ 12 The following morning the parties advised that they had reached an Agreed Statement of Facts ("ASF").

¶ 13 The ASF stated that, "... submissions made with respect to the appropriate penalty are based on the agreed facts in Part IV of this Agreed Statement of Facts and no other information, facts or documents", subject to a limited exception where the Hearing Panel requests additional facts.

¶ 14 The Respondent admitted that the facts set out in the ASF constitute misconduct for which she may be penalized on the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

¶ 15 Staff and the Respondent jointly requested that the Hearing Panel determine, on the basis of the ASF, the appropriate penalty to impose on the Respondent.

IV. ISSUES ARISING FROM WRITTEN PENALTY AND COSTS SUBMISSIONS

¶ 16 At the conclusion of the oral submissions as to penalty and costs on March 10, 2023, Staff indicated they would like to file written submissions as to penalty and costs, which they subsequently did on March 27, 2023 ("Staff's Submissions"), as did counsel for the Respondent on April 10, 2023 (the "Respondent's Submissions"). However, Staff took issue with certain of the statements made in the Respondent's Submissions. As a result, a further appearance was held on May 18, 2023, to hear argument from the parties on those issues.

¶ 17 Staff submitted that the Respondent should be required to remove or amend a number of paragraphs in the Respondent's Submissions on the basis that they either: referred to facts that were not set out in the ASF; or referred to without prejudice communications between the parties that were exchanged for the purpose of negotiating a potential settlement agreement or an ASF and thereby subject to settlement privilege and not

part of the record.

¶ 18 Similarly, the Respondent submitted that Staff's Submissions as to penalty and costs contained facts outside the ASF. By signing the ASF both parties agreed to forgo the opportunity to present their own entire version of the facts at a hearing in order to avoid the costs, time and risk of a fully contested hearing. In this case both parties were represented by experienced counsel when they entered into the ASF.

¶ 19 From a regulatory perspective, we note that ASFs serve the purpose of increasing the efficiency of the hearing process.

¶ 20 We agree with Staff that a number of the paragraphs in the Respondent's Submissions as to penalty and costs contained facts that were not incorporated into the ASF and in some instances contradicted the facts contained in the ASF. If the Respondent had wanted to prove those facts, she had the opportunity to do so in a contested Hearing on the Merits but chose not to do so.

¶ 21 We also found that several paragraphs in Staff's Submissions contained facts not contained in the ASF.

¶ 22 On May 24, 2023, Staff filed written submissions in response to the Respondent's Submissions ("Staff's Reply Submissions"). Among other things, Staff's Reply Submissions contained reference to the without prejudice communications between Staff and the Respondent prior to the hearing, in response to the Respondent's submissions relating to those communications.

¶ 23 The Hearing Panel had a concern about the extensive resources that had been applied to this case, at the expense of both the MFDA and the Respondent, in what would normally be a relatively straight forward case. In light of that, and the Hearing Panel's view that the matters at issue with respect to the parties' written submissions (which submissions numbered over 80 pages) would not materially impact our final decision, the Hearing Panel believed the case should be resolved as expeditiously as possible, without requiring that the parties provide amended submissions as to penalty and costs. Rather, in reaching our final decision in this matter, we have only considered: the facts as set out in the ASF and described below, without regard to additional facts included in the written submissions of the parties; and additional information provided upon the request of the Hearing Panel and with the consent of both parties.

¶ 24 We have not considered the statements in the written submissions of the Respondent and Staff referring to the without prejudice communications between the parties, particularly in relation to our assessment of costs. We do believe, however, that it is reasonable for us to assume that, as in most cases, Staff and the Respondent made some attempts to resolve the matter, in whole or in part, prior to the scheduled Hearing on the Merits.

¶ 25 We noted Rule 1.3 of the MFDA Rules of Procedure which states that, "These Rules of Procedure shall be liberally construed to secure the most expeditious and cost effective determination of each proceeding on its merits consistent with the requirements of fairness."

¶ 26 We also noted that in *Vickers Re,* the Ontario Securities Commission stated,

> In my view the case law is clear. As stated by the Ontario Superior Court of Justice in *McGarrigle,* when parties to a disciplinary proceeding have entered into an agreed statement of facts, those are the only facts regarding the alleged improper conduct of the respondent that the panel is allowed to consider. This is entirely appropriate as respondents must know the case they have to meet. Hearing panels, including the Panel, are bound by and limited to the facts set out in agreed statements of facts which are intended to simplify proceedings by obviating the need for additional evidence.
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> *Vickers (Re)*, 2015 ONSEC 13 at para. 58

¶ 27 While the *Vickers* case refers to fairness to respondents, similarly, where the parties have negotiated an ASF, Staff should be entitled to rely on the agreement and accordingly need not prepare to present evidence to prove or oppose factual assertions that were not included in the ASF.

V. AGREED FACTS

Registration and Employment History

¶ 28 From September 29, 2009 until September 24, 2019, the Respondent was registered in Ontario as a dealing representative with Quadrus Investment Services Ltd. (the "Dealer Member").

¶ 29 By submitting her application to register with the Dealer Member, the Respondent agreed to be subject to the by-laws, regulations, rules, rulings and policies of the MFDA. This included an agreement to be bound by the jurisdiction of any tribunals or proceedings that relate to her activities as an Approved Person under MFDA rules.

¶ 30 On September 24, 2019, the Dealer Member terminated the Respondent's registration with the Dealer Member after becoming aware of the conduct described herein. The Respondent is not currently registered in the securities industry in any capacity.

¶ 31 At all material times, the Respondent was the licensed assistant of Maurice Gary Mailloux ("Mr. Mailloux"), who was registered as a dealing representative and Approved Person of the Dealer Member. The Respondent did not directly service client accounts on behalf of the Dealer Member and, instead, assisted Mr. Mailloux to service the accounts of clients that had been assigned to him.

¶ 32 The Respondent stated that, as principal Approved Person, Mr. Mailloux provided investment advice and obtained instructions from clients concerning account changes to be made and trading to be processed in client accounts and the Respondent would prepare the documentation required to implement the instructions Mr. Mailloux received from clients.

¶ 33 The Respondent stated that she was not present at meetings and did not participate in phone calls during which Mr. Mailloux obtained client instructions concerning account activity that she later prepared paperwork to execute.

Dealer Member's Policy on Pre-Signed Account Forms

¶ 34 At all material times, the Dealer Member's policies and procedures for Approved Persons stated:

> The use of pre-signed forms is prohibited. Investment representatives must complete transaction forms at the time the order is being made and only at such time should a client be signing and providing approval for such investment decisions...

¶ 35 In her employment agreement with the Dealer Member, the Respondent agreed to be bound by the policies and procedures of the Dealer Member applicable to Approved Persons. The Respondent acknowledged that the misconduct described herein contravened the policies and procedures of the Member prohibiting the use of pre-signed forms.

MFDA Staff Notice MSN-0066 / MFDA Enforcement Bulletin #0661-E – Signature Falsification

¶ 36 On October 31, 2007, the MFDA published Staff Notice MSN-0066 – Pre-Signed Forms ("MSN-0066") informing the mutual fund industry that MFDA Staff takes the view that forms may only be used if the forms are duly executed by the client after information on the form has been properly completed. An Approved Person's involvement with pre-signed account forms contravenes regulatory requirements and may result in referrals to the MFDA Enforcement Department.

¶ 37 On March 4, 2013, the MFDA updated MSN-0066 to notify Approved Persons that MFDA Staff considers it a contravention of the standard of conduct set out in MFDA Rule 2.1.1 to obtain pre-signed account forms from clients.

¶ 38 On October 2, 2015, the MFDA issued Bulletin #0661-E – Signature Falsification ("Bulletin #0661-E") which informed Approved Persons that the MFDA was continuing to encounter situations where Approved Persons had created, possessed or used documents such as Know-Your-Client forms, trade forms and cheques which had been pre-signed or on which client signatures had been falsified though other means. The Bulletin stated that the MFDA had been and would continue seeking increased penalties in upcoming cases involving such conduct. All 31 of the subject forms in this case are dated after the publication of the Bulletin.

¶ 39 On January 26, 2017, the MFDA updated and re-issued MFDA Staff Notice MSN-0066 – Signature

Falsification. It provided examples of signature falsification that had been identified in Hearing Panel decisions including "having a client sign a form which is blank or only partially completed (a "Pre-Signed Form"); having a client sign multiple forms for use in future trading; [and]. . . photocopying . . . to "re-use" a previous signature.". It also stated that MFDA staff would seek enhanced penalties for conduct that occurred after the release of MFDA Bulletin #0661-E.

The Respondent Obtained, Possessed, and Used to Process Transactions Pre-Signed Account Forms

¶ 40 Between October 13, 2015 and September 24, 2019, the Respondent obtained, possessed, and in some instances used to process transactions, 31 pre-signed account forms in respect of 7 clients. All of the pre-signed account forms were Switch or Conversion Forms (the "Forms") used to transfer a client's investment from one mutual fund to a different mutual fund.

¶ 41 Specifically, the Respondent received the Forms which were signed by clients, but at the time of client signature were incomplete to the extent that, in some cases, the Forms did not specify the amounts to be switched and the mutual funds that were to be subject to switches, and in additional cases the date when the switches were to be processed. In 23 instances, upon instructions from Mr. Mailloux, the Respondent added information to Forms, after the Forms were signed by the client, and submitted the Forms to the Dealer Member for processing. In 8 instances, the Respondent knew or ought to have known that client files contained photocopied Forms that were incomplete and undated but had been signed by the clients. The 8 incomplete photocopied Forms were not submitted to the Dealer Member for processing. Some of the 23 Forms described above to which information was added to facilitate the processing of switches in client accounts were also photocopied Forms that had been pre-signed by clients and were identical to the 8 incomplete photocopied Forms. The Respondent stated she did not obtain client signatures on or photocopy any of the Forms.

The Dealer Member's Investigation

¶ 42 On or about September 17, 2019, Mr. Mailloux reported to the Dealer Member that he had discovered pre-signed and altered account forms in the files of client accounts he serviced. He initially indicated he had no involvement in the subject forms and attributed responsibility for that misconduct solely to the Respondent on the basis that he had assigned her responsibility for the content and management of documents in the client files and she had been the Approved Person who had added information to the pre-signed account forms to complete them and, in some instances, submitted those forms to process switches in client accounts.

¶ 43 On or about October 31, 2019, the Dealer Member reported to the MFDA that Mr. Mailloux had reported that the Respondent had created and possessed pre-signed account forms and, in some cases, altered the content of signed account forms.

¶ 44 Subsequently, the Dealer Member commenced an investigation during which it reviewed all of the client files associated with accounts serviced by Mr. Mailloux. The Forms that were obtained, possessed or used by the Respondent, as described above, were identified during the review.

¶ 45 As part of its investigation, starting in November 2019, the Dealer Member sent a letter to each client serviced by Mr. Mailloux along with the client's portfolio summary in order to determine whether the account holdings were accurate, and to confirm that all transactions processed in the accounts had been authorized by the client. No clients reported any concerns to the Dealer Member in response to these letters.

The Disciplinary Proceeding Against Mr. Mailloux

¶ 46 When the Dealer Member reported to the MFDA that pre-signed account forms were found in client files of accounts serviced by Mr. Mailloux, MFDA Staff commenced an investigation.

¶ 47 During the MFDA investigation, Staff interviewed Mr. Mailloux who admitted he had obtained client signatures on account forms which were not fully completed when the client signed the forms.

¶ 48 On April 29, 2022, Mr. Mailloux entered into a settlement agreement with Staff (MFDA Hearing No. 202217) wherein he admitted to obtaining, possessing and in some instances using to process transactions, 27 pre-signed account forms in respect of 8 clients and agreed to pay a fine of $15,000 and costs of $5,000. Many of the pre-signed forms that Mr. Mailloux accepted responsibility for obtaining, possessing and in some

instances using to process transactions are among the 31 forms associated with the Respondent's contravention in this proceeding.

¶ 49 As a result of the pre-signed account forms found in his files, the Dealer Member placed Mr. Mailloux under close supervision for one year and charged him $2,400 in respect of costs associated with his supervision.

Additional Factors

¶ 50 On June 13, 2018, the Dealer Member conducted a branch review of the branch where the Respondent and Mr. Mailloux were located. During this branch review, the Dealer Member discovered pre-signed and altered account forms in the client files maintained by Brian Sonne and Moe Mailloux Jr[3], two other Approved Persons who worked in the branch. The Respondent served as the licensed assistant to Brian Sonne. Both Brian Sonne (MFDA Hearing No. 202013) and Moe Mailloux Jr. (MFDA Hearing No. 201955) entered into settlement agreements with Staff in respect of the pre-signed and altered account forms discovered in the client files they maintained. At the conclusion of the branch review, the Dealer Member cautioned the Respondent about the importance of complying with the Dealer Member's prohibition against possessing or using pre-signed and altered account forms.

¶ 51 One of the 23 Forms described in paragraph 42 above that was used to process a switch in a client account was completed by the Respondent and submitted for processing after the Dealer Member had cautioned her about the prohibition on the use of pre-signed forms on June 13, 2018. In addition, the 8 incomplete photocopied Forms that were not used to process transactions remained in client files that the Respondent maintained more than 16 months after she was cautioned about the prohibition on the use and possession of pre-signed forms in June 2018.

¶ 52 There is no evidence that the Respondent received any financial benefit from the conduct described herein.

¶ 53 There is no evidence of client loss, client complaints, or lack of authorization.

¶ 54 The Respondent has not previously been the subject of MFDA or CIRO disciplinary proceedings.

¶ 55 The Respondent stated that she is not currently employed and her only source of income is CPP benefits and OAS benefits. The Respondent also stated that she has very limited assets (while the Hearing Panel was advised of the number, it is not included here for privacy reasons). The Respondent stated that, as a result, she is limited in her ability to pay a fine or costs in this matter.

¶ 56 Staff has received documents which corroborate the Respondent's assertions about the amount of her income and assets.

Misconduct Admitted

¶ 57 By engaging in the conduct described above, the Respondent admitted that, between October 13, 2015 and September 24, 2019, she obtained, possessed, and in some instances used to process transactions, 31 pre-signed account forms in respect of 7 clients, contrary to MFDA Rule 2.1.1.

VI. MISCONDUCT

¶ 58 MFDA Rule 2.1.1 requires that Approved Persons deal fairly, honestly and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.

¶ 59 The MFDA, as indicated in its guidance to the industry, has consistently taken the position that Approved Persons are not permitted to obtain, possess or use pre-signed account forms. Furthermore, prior MFDA Hearing Panels have routinely held that obtaining, possessing or using pre-signed account forms is a contravention of MFDA Rule 2.1.1.

Harry (Re), [2021] Hearing Panel of the Central Regional Council, MFDA File No. 202035, Reasons for

[3] Moe Mailloux Jr. is the son of Mr. Mailloux.

Decision dated January 11, 2021, at para 45

McTavish, (Re), [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202223, Reasons for Decision dated October 12, 2022, at para 6

¶ 60 We found, as admitted by the Respondent in the ASF, that between October 13, 2015 and September 24, 2019, she contravened MFDA Rule 2.1.1 and the Dealer Member's policies and procedures when she obtained, possessed and in some instances used to process transactions 31 pre-signed account forms in respect of 7 clients.

VII. SANCTION

1. Proposal of Parties

¶ 61 Staff proposed that a fine of at least $10,000 and costs of $8,500 be imposed on the Respondent. Staff advised that, given the nature and extent of the conduct, they would normally have requested a fine of at least $23,000 and costs of at least $15,000, but had taken into account the Respondent's financial circumstances in proposing the reduced amounts.

¶ 62 The Respondent's counsel asked the Hearing Panel to consider other remedial actions in lieu of a fine, such as a reprimand, and in her written submissions suggested that the Hearing Panel might order a permanent prohibition.

2. Role of the Hearing Panel

¶ 63 In our view, the role of the Hearing Panel was to determine an appropriate penalty, having regard to the facts and contraventions contained in the ASF and the additional evidence submitted relating to the Respondent's financial circumstances.

3. Factors to Consider

¶ 64 The Supreme Court of Canada in the case of *Pezim v. British Columbia Superintendent of Brokers,* [1994] 2 S.C.R. 557 at para. 59 held that, with respect to securities regulation, "its primary goal is the protection of the investor" and other goals included "ensuring confidence in the system".

¶ 65 As has been stated by Hearing Panels in a number of previous MFDA cases, in determining the appropriate sanction, the Hearing Panel should take into account, inter alia, 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 (now CIRO's) membership; and

(e) the protection of the integrity of the MFDA's (now CIRO's) enforcement processes.

See for example, *Tonnies (Re),* [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Reasons for Decision dated June 27, 2005, at p. 22

¶ 66 Previous Hearing Panels have set out a number of additional factors which should be considered when determining an appropriate penalty, including:

(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 improper activity;

(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 the 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 the capital markets; and

(l) previous decisions made in similar circumstances.

See for example, *Tonnies (Re), supra* at p. 23

¶ 67 The MFDA Sanction Guidelines set out several other factors to consider in determining a sanction, which are relevant to this case, including;

(a) whether a sanction was imposed on the Respondent for the same misconduct by the Member; and

(b) ability to pay when imposing a monetary sanction.

4. **Consideration of Factors in This Case**

Seriousness of the Allegations

¶ 68 Obtaining, possessing and using pre-signed forms is serious misconduct as it can, among other things, negatively impact the integrity of account documents, destroy the audit trail, impede a Member's ability to supervise accounts and respond to client complaints and potentially facilitate misuse such as unauthorized trading and misappropriation.

¶ 69 In this case, the Respondent entered critical information on Switch or Conversion Forms, including the amounts to be switched, the mutual funds subject to the switches and, in some cases the date when the switches were to be processed.

¶ 70 In determining an appropriate penalty, we considered as aggravating factors that;

(a) the misconduct occurred after the MFDA had issued Bulletin #0661-E warning the mutual fund industry that the MFDA would be seeking increased penalties in the future for, among other things, pre-signed forms;

(b) the Respondent had been registered for approximately six years before the subject misconduct commenced and ought to have been aware of regulatory rules and firm policies applicable to her activities;

(c) after the Respondent was cautioned by the Dealer Member in June 2018 about pre-signed forms, one further pre-signed form was completed and submitted for processing; and

(d) this case did not involve an isolated error in judgement, but rather a pattern of conduct that involved a significant number of Forms and occurred over a period of several years.

¶ 71 In considering the seriousness of the misconduct, the Respondent's counsel asked that we consider whether the misconduct was intentional, negligent, manipulative or deceptive and she submitted it was not. While we agree those would be aggravating factors if they existed, there was limited evidence before us on those factors.

¶ 72 The Respondent's counsel also submitted that the seriousness of the Respondent's conduct should be assessed in light of her level of activity as a licensed sales assistant and the nature, extent and gravity of her

conduct, compared to that of Mr. Mailloux. The Respondent's counsel argued that the Respondent's conduct was on the lowest end of gravity. In her view, Staff's proposed fine of $10,000 was disproportionate as compared to the fine of $15,000 imposed on Mr. Mailloux for more serious misconduct.

¶ 73 We do not agree that the Respondent's conduct was at the lowest end of gravity. However, we agree it is appropriate for the Hearing Panel to consider the facts and fines in similar cases. While some aspects of Mr. Mailloux's case may arguably have been more serious and he did not have his employment with the Dealer Member terminated as a result of his misconduct, we note that the fine imposed on him was in the context of a settlement which typically results in a fine lower than a fine imposed in the context of a contested hearing.

¶ 74 As a licensed sales assistant, the Respondent was an Approved Person and subject to all of the MFDA's Rules and the Dealer Member's policies and procedures applicable to Approved Persons. Her limited role at the Dealer Member did not impact her regulatory obligations and did not excuse her breaching those obligations.

¶ 75 However, we have given some, albeit limited, consideration to her role at the Dealer Member and her employee-employer relationship with Mr. Mailloux in assessing an appropriate sanction. We have taken note of the facts that; she was an assistant rather than a salesperson and we expect would have been compensated accordingly; she was acting on the instructions of her employer, Mr. Mailloux, and following what apparently was the practice, albeit improper, of several salespersons in the office when she added information to the pre-signed forms; she stated that she did not meet with clients to obtain their signatures on the subject forms or photocopy blank pages containing their signatures; and the clients and files were Mr. Mailloux's.

The Respondent's Past Conduct

¶ 76 The Respondent had not had any prior disciplinary proceedings taken against her.

The Respondent's Experience and Activity in the Capital Markets

¶ 77 As a licensed sales assistant with the Member Dealer, the Respondent's activities were quite limited by the firm. In particular, she did not directly service client accounts and only assisted Mr. Mailloux in servicing the accounts.

Harm Suffered by Investors

¶ 78 There was no evidence of client loss, client complaints or lack of authorization.

Benefits Received by the Respondent

¶ 79 There was no evidence that the Respondent received any financial benefit from the misconduct.

The Respondent's Recognition of the Seriousness of the Misconduct

¶ 80 In entering into the ASF and admitting to the misconduct, the Respondent recognized the seriousness of her improper activity.

¶ 81 However, we were somewhat concerned that in the written submissions of counsel for the Respondent she tended to deflect responsibility to Mr. Mailloux rather than the Respondent accepting responsibility for her own misconduct.

Sanction Imposed by the Dealer Member

¶ 82 The Dealer Member terminated the Respondent's employment and revoked her registration as a result of Mr. Mailloux reporting to the firm that she was solely responsible for the subject improper forms (he subsequently admitted responsibility for many of the forms but did not have his employment terminated). That was a significant penalty having serious financial and reputational consequences for the Respondent. She has not obtained employment in the mutual fund industry since that time. We considered this to be a significant factor in our decision as to an appropriate penalty.

Reasonable Reliance on Supervisory Advice

¶ 83 The Respondent's counsel submitted that her "reasonable reliance" on her supervisor, Mr. Mailloux, should be considered as a mitigating factor in assessing an appropriate penalty.

¶ 84 While the MFDA's Sanction Guidelines note that "a respondent's reasonable reliance on competent supervisory, legal or accounting advice may be considered by Hearing Panels as a mitigating factor", we believe that "supervisory advice" is more likely intended to relate to advice from a person in a supervisor role, such as a branch manager, and not from another registered salesperson.

¶ 85 In our view, where a registrant relies on the advice of another registered salesperson, even where that reliance, as in this case, may be understandable in light of the other's seniority, he or she does so at their own risk and will not be excused for resulting misconduct. Furthermore, the Respondent ought to have known herself that obtaining, possessing and using pre-signed forms was prohibited, in light of Staff guidance in multiple Staff Notices and Bulletins and the Dealer Member's policies and procedures, and ought not to have relied on any advice to the contrary.

¶ 86 However, while we have not considered the Respondent's employer-employee relationship with Mr. Mailloux in relation to her non-compliance in completing the pre-signed forms, as noted previously, we have considered it to a limited extent in determining an appropriate sanction.

Deterrence

¶ 87 Deterrence is key to protecting the investing public in the future. While both specific and general deterrence must be addressed, we believe there should be an appropriate balance between the need for deterrence and other factors specific to the case at hand.

Specific Deterrence

¶ 88 We do not believe that it is necessary for this Hearing Panel to impose a significant monetary sanction on the Respondent to deter her from engaging in similar misconduct in the future. Having been terminated by the Dealer Member and prosecuted by the MFDA, we expect she has learned that pre-signed forms are not acceptable. Furthermore, it is questionable whether she will be able to secure a job in the securities industry in the future in light of the reputational damage resulting from the termination of her employment, the fact she has now been out of the industry for over three years and the further prohibition that is being imposed herein by the Hearing Panel.

General Deterrence

¶ 89 The Supreme Court of Canada in *Cartaway Resources* stated,

> 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 under s. 162. The respective importance of general deterrence will vary according to the breach of the act and the circumstances of the person charged with breaching the act.
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> *Cartaway Resources Corp. (Re),* [2004] 1 SCR 672 at para 61

¶ 90 It is important to impose a sanction that will discourage others in the securities industry from engaging in similar conduct in the future. In particular, it should send a clear message to other licensed sales assistants that pre-signed forms are not acceptable. Given the relative rarity of prosecutions of sales assistants, some may not previously have considered the extent of their liability.

¶ 91 Counsel for the Respondent submitted that the vigorous prosecution of the Respondent in this case, together with a permanent prohibition, should serve as a general deterrent to other sales assistants.

¶ 92 The possession and use of pre-signed forms continues to be an issue in the mutual fund industry, notwithstanding repeated guidance by Staff and increasing sanctions imposed in previous enforcement proceedings. As a result, we are of the view that general deterrence is a very important factor to consider in cases such as the one at hand.

¶ 93 In determining an appropriate sanction, we have given serious consideration to the need for general deterrence, and balanced it against the other factors and circumstances surrounding the Respondent and the subject breach.

Ability to Pay

¶ 94 Under the MFDA's Sanction Guidelines, the Respondent's ability to pay may be a consideration in determining an appropriate monetary sanction to impose. The Guidelines indicate that evidence of a bona fide inability to pay may result in the reduction or waiver of a fine or the imposition of an instalment payment plan.

¶ 95 The Respondent provided evidence that established a very limited ability to pay a fine. We also took note of the fact that her employment at the Dealer Member was terminated over three years ago and she has not been employed in the industry since that time.

¶ 96 Staff advised that they would normally have asked for a fine greater than $10,000, but they took into consideration the Respondent's financial circumstances in determining the proposed amount.

¶ 97 We appreciate that the inability to pay must be balanced against the seriousness of the misconduct and the need for deterrence. While the Respondent's misconduct in this case was serious, it was not akin to a case of, for example, misappropriation or conflict of interest in which an inability to pay would be given very little relative weight.

¶ 98 We considered the Respondent's limited resources as a significant factor in deciding on an appropriate monetary penalty and the time to pay the fine and costs.

Previous Cases

¶ 99 Staff presented to us a number of cases involving similar facts, summarized below, in support of their position as to an appropriate fine to impose. All of the cases related to conduct that occurred after Bulletin #0661-E had been released by the MFDA. That Bulletin put the industry on notice that the MFDA would be seeking increased penalties in future cases involving, among other things, pre-signed forms, and indeed Hearing Panels have increasingly been imposing higher sanctions in such cases since 2015.

CASE	MISCONDUCT	PENALTIES	OTHER FACTORS
Perrault (Re), [2023] Hearing Panel of the Central Regional Council, MFDA File No. 202254, Reasons for Decision February 13, 2023	The Respondent: • altered 30 account forms in respect of 22 clients; and • obtained 2 pre-signed forms in respect of 2 clients.	**Settlement:** • $22,00 fine • $2,500 costs	
McTavish (Re), [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202233, Reasons for Decision dated October 12, 2022	The Respondent: • obtained 8 pre-signed account forms in respect of 8 clients; and • altered 21 account forms in respect of 16 clients.	**Settlement** • $22,000 fine • $2,500 costs	

CASE	MISCONDUCT	PENALTIES	OTHER FACTORS
Kachur (Re), [2022] Hearing Panel of the Prairie Regional Council, MFDA File No. 202201, Reasons for Decision dated July 6, 2022	The Respondent: • altered 29 account forms in respect of 18 clients.	**Settlement:** • $18,000 fine • $5,000 costs	• Member charge of $3250
VanAmburg (Re), [2023] Hearing Panel of the Atlantic Regional Council, MFDA File No. 202253, Reasons for Decision pending	The Respondent • obtained 7 pre-signed forms in respect of 9 clients; and • altered 16 account forms in respect of 14 clients.	**Settlement:** • $17,500 fine • $2,500 costs	
Harry (Re), [2020] Hearing Panel of the Central Regional Council, MFDA File No. 202035, Reasons for Decision dated January 11, 2021	The Respondent: • obtained 14 pre-signed forms in respect of 5 clients; • altered 18 account forms in respect of 18 clients; and • actively falsified 3 client signatures in respect of 2 account forms.	**Unopposed:** • $16,000 fine • $5,000 costs	
Wong (Re), [2021] Hearing Panel of Pacific Regional Council, MFDA File No. 201943, Reasons for Decision dated May 7, 2021	The Respondent: • altered 26 account forms in respect of 17 clients; and • obtained 12 pre-signed forms in respect of 6 clients.	**Contested:** • $20,000 fine • $10,000 costs	
Satchithanantham (Re), [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202154, Reasons for Decision dated January 20, 2022	The Respondent: • re-used signature pages to complete 8 forms in respect of 6 clients; • obtained 80 pre-signed forms in respect of 47 clients; and • altered 18 account forms in respect of 13 clients without obtaining client initials.	**Settlement** • $20,000 fine • $2,500 costs	• Respondent was registered as a licensed assistant

CASE	MISCONDUCT	PENALTIES	OTHER FACTORS
Williams (Re), [2018] Hearing Panel of the Prairie Regional Council, MFDA File No. 201864, Reasons for Decision dated August 30, 2018	The Respondent: • altered one account form in respect of one client without obtaining client initials; • falsified 24 account forms in respect of 21 clients; and • obtained 14 pre-signed forms in respect of 10 clients.	**Settlement:** • $12,500 fine • $1,250 costs	• Respondent was registered as a licensed assistant
Blythe (Re), [2020], Hearing Panel of the Pacific Regional Council, MFDA File No. 201925, Reasons for Decision dated February 11, 2020	The Respondent: • submitted account forms without exercising due diligence to ensure clients were aware of and authorized changes; • processed 180 trades in client accounts without ensuring the clients had authorized all elements of the trades processed; and • created records of purported instructions received from a client that had not been received and failed to exercise due diligence to ensure records created accurately described instructions received.	**Settlement:** • $35,000 fine • $5,000 costs	• Respondent was registered as a licensed assistant
Ramjohn (Re), [2021] Hearing Panel of the Central Regional Council, MFDA File No. 202067, Reasons for Decision dated October 22, 2021	The Respondent: • obtained 9 pre-signed account forms in respect of 6 clients; and • altered 43 account forms in respect of 20 clients without having the clients initial the alterations.	**Settlement** • 3 month prohibition • $2,500 fine • $2,500 costs	• The Respondent demonstrated an inability to pay a greater fine.

CASE	MISCONDUCT	PENALTIES	OTHER FACTORS
Belskiy (Re), [2022] Hearing Panel of the Prairie Regional Council, MFDA File No. 202231, Reasons for Decision dated January 26, 2023	The Respondent: • altered 3 account forms in respect of 3 clients without having the client initial the alterations; and • obtained 26 pre-signed account forms in respect of 19 clients.	**Settlement** • 9 month prohibition • $5,000 fine • $2,500 costs	• The Respondent demonstrated an inability to pay a greater fine.
Coronel (Re), [2020] Hearing Panel of the Central Regional Council, MFDA File No. 202026, Reasons for Decision dated July 21, 2020	The Respondent: • signed the initials of clients next to alterations he made to information on client forms in 8 instances; • altered 1 account form in respect of 1 client without having the client initial the alterations; and • obtained 30 pre-signed account forms in respect of 21 clients.	**Settlement** • 9 month prohibition • $2,500 fine • $2,500 costs	• The Respondent demonstrated an inability to pay a greater fine.

¶ 100 The Respondent's counsel sought to distinguish those cases on the basis that all but three of them involved fully registered sales representatives with their own books of business. With respect to the cases involving sales assistants, she argued, among other things, that they involved more extensive and serious misconduct. We also note that in only the *Harry* and *Williams* cases were the respondents terminated from their employment as a result of the misconduct.

¶ 101 The Respondent's counsel directed us to a number of cases involving pre-signed forms, summarized below, in which Hearing Panels imposed fines against licensed mutual fund sales representatives ranging from a low of zero to a high of $2,500 and in some of the cases imposed prohibitions of varying lengths. However, those cases all involved conduct that pre-dated MFDA Bulletin 0661-E.

Case	**Misconduct**	**Penalties**	**Other Factors**
Jonathan Robert MacPherson (Re), [2016] MFDA File No. 20162, Hearing Panel of the Prairie Regional Council, Reasons for Decision dated April 6, 2017	The Respondent: • falsified a number of client signatures on documents; • failed to advise clients on deferred sales charges; • engaged in	**Settlement** • 5-year prohibition • $2500 costs	

	unauthorized discretionary trading; and • obtained 2 pre-signed client forms		
Brenden Mernagh (Re), [2016] MFDA File No. 201612, Hearing Panel of the Central Regional Council, Reasons for Decision dated April 8, 2016	The Respondent: • falsified 13 signatures for 10 clients.	**Settlement** • 6-month prohibition • $1,000 costs	
Alex Wai Yuk Lam (Re), [2012] MFDA File No. 201202, Hearing Panel of the Central Regional Council, Reasons for Decision dated September 12, 2012	The Respondent: • obtained 28 pre-signed forms for 16 clients; and • was involved in photocopying, whiting out, cutting and pasting signatures	**Settlement** • 15-month prohibition • $2,500 Costs	
Sofela Kehinde Sowunmi (Re), [2014], MFDA File No. 201328, Hearing Panel of the Central Regional Council, Reasons for Decision dated May 20, 2014	The Respondent: • obtained 14 pre-signed forms to process 9 transactions for 4 clients	**Settlement** • $2,000 fine • $1,000 costs	
Arron John Appleton (Re), [2013] MFDA File No. 201346, Hearing Panel of the Central Regional Council, Reasons for Decision dated December 11, 2013	The Respondent: • obtained 24 pre signed forms for 8 clients	**Settlement** • 2,500 Fine • 2,500 costs	
Brian Louis Poncelet (Re), [2013] MFDA File No. 201347, Hearing Panel of the Central Regional Council, Reasons for Decision dated December 11, 2013	The Respondent: • obtained 44 pre-signed forms in respect of 18 clients • used 11 presigned or	**Settlement** • $3,500 fine • $2,500 costs	

	altered forms in respect of 6 clients		

5. **Conclusion on Penalty**

¶ 102 Having considered all of the factors outlined above, we are of the view that an appropriate sanction in this case is a fine of $2,500 and a prohibition on the authority of the Respondent to conduct securities related business in any capacity for a period of two years.

¶ 103 While a permanent prohibition, as suggested by counsel for the Respondent, might have deterrent value, we believe it would generally be considered an excessive penalty for the specific conduct involved in this case. However, the two year prohibition is higher than the prohibitions imposed in most of the precedent cases provided to the Hearing Panel and is intended to act as a deterrent to others from engaging in similar misconduct.

¶ 104 In our view, it is important to impose a financial penalty to address the serious misconduct in this case and send a message to others of limited means that they may not be able to rely on that fact to entirely avoid a financial sanction for similar conduct. However, while we would normally have imposed a significantly higher fine, we have reduced the amount in light of the Respondent's financial circumstances.

¶ 105 We have also decided to order that the fine and costs be paid in equal quarterly instalments over the next two years.

¶ 106 We believe that the penalty assessed, following termination of the Respondent's employment and a vigorous regulatory prosecution, should send a clear message to other registered sales assistants that obtaining, maintaining and using pre-signed forms, even on the instructions of an employer, is not acceptable.

VIII. COSTS

¶ 107 As set out in s. 24.2 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.2), a Hearing Panel may in its discretion require that an Approved Person pay the whole or part of the costs of the proceedings before the Hearing Panel and any investigations relating thereto.

¶ 108 Staff sought costs in the amount of $8,500, which they submitted were reasonable in light of the amount of time they expended in this case, including with respect to two motions brought by the Respondent's counsel at the last minute requiring additional Staff time.

¶ 109 Staff supported their claim for costs with a Bill of Costs on March 13, 2023, which totalled $21,275 and excluded certain administrative expenses as well as time attributable to the Case Assessment Officer and preparation of the investigation report. We also note that the Bill of Costs did not include time subsequently spent by Staff on their written submissions and the hearing on May 18, 2023, which was necessitated primarily by the Respondent's Submissions filed in April 2023.

¶ 110 Staff argued that the costs of the proceeding should be borne by the Respondent who contravened her regulatory obligations, rather than otherwise being borne by the mutual fund industry. We agree with that principle.

¶ 111 The Respondent's counsel proposed that the Hearing Panel order costs in the amount of $1,000.

¶ 112 Counsel for the Respondent suggested that the Hearing Panel should apply the guiding principles applied by courts when assessing costs against a party at the conclusion of a civil proceeding. While we do not agree that an assessment of costs in a disciplinary proceeding is akin to an assessment of costs in a civil proceeding, we agree that in both cases the costs order should be reasonable.

¶ 113 The Respondent's counsel submitted that the level of culpability of the Respondent, which she argued was low, should be considered with respect to penalty as well as costs. In our view, that is not particularly relevant to the assessment of costs and, as we noted previously, we do not believe that the Respondent's misconduct was at the lowest end of gravity.

¶ 114 Counsel for the Respondent submitted that the Respondent was not solely responsible for the matter having to come to a hearing. She argued that the case was unique on its facts and because of that they came to a point where a hearing was necessary. In fact, this case was not particularly unique. Also, as noted previously, the Respondent's counsel supported her argument with reference to without prejudice communications that we have not considered in relation to costs.

¶ 115 Counsel for the Respondent suggested that all of the work done in Staff's investigation up to the point of preparing for the hearing was completed for the discipline proceeding against Mr. Mailloux and the Respondent so that, at most, the Respondent should only be responsible for half of the costs. As indicated by Staff's Bill of Costs, at least a majority of the time included appears to relate solely to the Respondent's matter.

¶ 116 The Respondent's counsel also asked the Hearing Panel to consider the Respondent's inability to pay in connection with costs.

¶ 117 We have decided to order that the Respondent pay costs in the amount of $5,000. We would have ordered costs of $8,500, as proposed by Staff, but have further reduced that amount in light of the Respondent's financial circumstances.

Dated at Toronto, Ontario this 4 day of December 2023.

"Joan Smart"

Joan Smart, Chair

"Guenther Kleberg"

Guenther Kleberg, Industry Member

"Casimir Litwin"

Casimir Litwin, Industry Member