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: Alex Khodorkovski

Heard: October 23, 2012 in Edmonton, Alberta
Reasons for Decision: November 20, 2012

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Daniel Ish, Q.C.	Chair
Patricia Kloepfer	Industry Representative
Barbara Shourounis	Industry Representative

Appearances:

Shari L. Boyd	)	For the Mutual Fund Dealers Association of Canada
Alex Khodorkovski	)	Self-Represented

A. THE ALLEGATIONS

1. The Mutual Fund Dealers Association of Canada ("MFDA") alleged a violation of an MFDA Rule by Mr. Khodorkovski (the "Respondent"). The allegation was set out in a Notice of Hearing dated June 29, 2012 as follows:

> Allegation #1: In April 2011, the Respondent failed to observe high standards of ethics and conduct in the transaction of business by falsifying signatures of 3 clients on 5 account documents, contrary to MFDA Rule 2.1.1 (b).

B. AGREED FACTS AND POSITIONS

2. At the outset of the hearing the parties provided the Panel with an Agreed Statement of Facts that was jointly signed. In addition to setting out the facts that were agreed upon, the Respondent in the document admitted that his actions constituted misconduct and were a breach of Rule 2.1.1(b). Also, he indicated that he did not oppose the penalty recommended by the MFDA staff.

3. The pertinent portions of the agreed statement of facts are the following:

III. ADMISSIONS AND ISSUES TO BE DETERMINED

4. The Respondent has reviewed this Agreed Statement of Facts and admits the facts set out in Part IV herein. The Respondent admits that the facts in Part IV constitute misconduct for which the Respondent may be penalized on the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

5. Subject to the determination of the Hearing Panel, Staff submits, and the Respondent does not oppose, that the appropriate penalty to impose on the Respondent is:

- A prohibition from conducting securities related business while in the employ of, or associated with, any MFDA Member for 12 months from the date of the final order in this matter, pursuant to s. 24.1.1(e) of MFDA By-law No. 1; and

- A cost award in the amount of $2,500 pursuant to section 24.2 of MFDA By-law No. 1.

6. The Respondent claims to be impecunious and unable to pay any amount towards either a fine or costs.

IV. AGREED FACTS

7. Staff and the Respondent agree that submissions made with respect to the appropriate penalty are based only on the agreed facts in Part IV and no other facts or documents. In the event the Hearing Panel advises one or both of Staff and the Respondent of any additional facts it considers necessary to determine the issues before it, Staff and the Respondent agree that such additional facts shall be provided to the Hearing Panel only with the consent of both Staff and the Respondent. If the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel.

8. Nothing in this Part IV is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

Registration History

9. The Respondent was registered in Alberta as a mutual fund salesperson with BMO Investments Inc. ("BMO") from October 29, 2009 until May 3, 2011, at which time the Respondent resigned as a result of the events herein described.

10. The Respondent is not currently registered in the securities industry in any capacity.

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

Facts

Allegation #1 – Falsification of Client Signatures

CLIENT AR

12. At all material times, AR was a client of BMO whose account was serviced by the Respondent.

13. On March 24, 2011, the Respondent opened an RESP account for client AR and submitted the required account opening documents for approval.

14. On March 24, 2011, the Respondent's Branch Manager returned the file for client AR's RESP account application to the Respondent because the Alberta Centennial Education Saving Grant (the "ACESG") application form was not signed by AR and the mutual fund holdings in the account were not in accordance with the documented risk tolerance on client AR's Know-Your-Client ("KYC") form.

15. On April 27, 2011, the Respondent re-submitted client AR's RESP account application for approval, including a signed ACESG form, an updated

KYC form, and a Canada Savings Education Grant and Canada Learning Bond (the "CESG") application form.

16. On April 27, 2011, the Branch Manager contacted client AR by telephone and confirmed that client AR had not attended the branch since March 24, 2011 when the RESP account was opened.

17. On April 27, 2011, the Branch Manager questioned the Respondent regarding when client AR signed the updated KYC form, which was dated April 26, 2011. The Respondent initially asserted that client AR had attended at the branch to sign the KYC form at some point prior to April 26, 2011 and that he (the Respondent) had inserted the April 26, 2011 date on the form. When the Branch Manager pointed out to the Respondent that the KYC form had been printed on April 26, 2011, the Respondent admitted that client AR had not attended at the branch since March 24, 2011 and that the Respondent had falsified client AR's signature on the KYC form.

CLIENT JLC

18. At all material times, JLC was a client of BMO whose account was serviced by the Respondent.

19. On April 28, 2011, the Respondent's Assistant Branch Manager forwarded the file for client JLC to the Branch Manager. The file had previously been reviewed and returned to the Respondent to correct deficiencies. The Assistant Branch Manager reviewed the file after the deficiencies had purportedly been addressed by the Respondent and notice that the signature of client JLC on the KYC form appeared irregular.

20. On April 28, 2011, the Branch Manager questioned the Respondent regarding the apparent irregularity in client JLC's signature on the KYC form. The Respondent admitted to falsifying the client's signature on the KYC form.

MEMBER REVIEW AND INVESTIGATION

21. On April 28, 2011, BMO suspended the Respondent with pay pending its review of the matter.

22. On May 3, 2011, BMO Corporate Security interviewed the Respondent regarding the irregular client signatures on the account documents for AR and JLC. During the interview the Respondent was shown and admitted to falsifying the client signatures on the following documents:

- Client AR: KYC form and ACESG form; and
- Client JLC: KYC form.

23. On May 3, 2011, the Respondent submitted his resignation after the interview with BMO Corporate Security.

24. On May 24, 2011, the Respondent provided a written statement to MFDA Staff in which he acknowledged falsifying the clients' signatures on the account documents. The Respondent stated that he had not falsified client signatures on any other occasions.

25. BMO contacted clients AR and JLC to have the documents properly executed. MFDA Staff determined that the documents on which the Respondent falsified the clients' signatures contained the same information as the documents that were later executed by the clients. The client did not suffer any financial loss as a result of the Respondent's conduct. None of the clients have complained that there is no evidence of unauthorized or discretionary trading in the clients' accounts.

Misconduct Admitted

26. By engaging in the conduct described above, the Respondent admits that he:

(a) In April 2011, failed to observe high standards of ethics and conduct in the transaction of business by falsifying the signatures of 2 clients on 4 account documents, contrary to MFDA Rule 2.1.1(b).

C. THE PARTIES' SUBMISSIONS

4. The Agreed Statement of Facts indicates that the parties agreed both on liability with respect to breach of MFDA Rule 2.1.1(b) and on appropriate penalty. In addition, the parties made submissions to the Panel. The MFDA submissions were both written and oral and the Respondent's submissions were only oral.

5. The MFDA submitted that the falsification of a client's signature on documents must always be considered serious. Reference was made to *Re Peters*, MFDA File No. 201120 (March 28, 2012) where the Panel said at paragraph 20:

> Once having taken a step of "dishonesty" in a seemingly innocuous matter…it becomes easier to continue this kind of activity, inevitably involving matters which do have consequences to the clients….

6. The MFDA also made reference to *Re Mason*, MFDA File No. 201138 (April 20, 2012) where at paragraph 28 the Panel said:

> Before concluding the Panel wishes to make it clear that such acts of signing another person's name constitutes forgery, a very serious offence, with potentially

> harmful consequences to oneself, to clients, to the Member firm and the securities industry as a whole. It shows the lack of honesty required of a professional in the securities industry.

7. The MFDA focused on paragraph (b) of Rule 2.1.1 which refers to the obligation of each Member and Approved Person to "observe high standards of ethics and conduct in the transaction of business". This provision, it was submitted, encompasses "the most fundamental obligations of all registrants in the securities industry." (*Re Breckenridge*, MFDA File No. 200718 (November 14, 2007), at page 20). It was submitted that where an Approved Person has falsified a client's signature on documents, as was done by the Respondent in this case and acknowledged by him, the required standard of conduct has not been met and therefore such conduct clearly constitutes a contravention of MFDA Rule 2.1.1.

8. The MFDA proposed that the appropriate penalty for the breach by the Respondent was a prohibition from conducting securities related business for a period of 12 months and an order to pay costs in the amount of $2,500. The proposed penalty did not include a fine.

9. In support of its penalty proposal the MFDA referred to numerous previous court decisions and decisions of tribunals dealing with breaches of rules and regulations of regulatory bodies, including the MFDA. Reference was made to the decision of the Supreme Court of Canada in *Pezim v. British Columbia* (Superintendent of Brokers), [1994] 2 S.C.R. 557. In the *Pezim* decision the Court underscored that the primary goal of securities regulation is the protection of the investing public, in addition to ensuring market efficiency and maintaining public confidence in the system as a whole. Reference was made to *Re Arnold Tonnies*, MFDA File No. 200503 (June 27, 2005) where the Panel said:

> …[S]anctions imposed in the securities regulatory context should be protective and preventative, intended to be exercised to prevent likely future harm to the capital markets. (at p. 21)

Reference was also made to *Cartaway Resources Corp*., [2004] 1 S.C.R. 672 where the Supreme Court of Canada discussed in some detail the role of general and specific deterrence in determining an appropriate sanction for infraction of securities regulations.

10. The MFDA also made reference to the penalties imposed by hearing panels in previous

MFDA decisions where the facts were similar to the ones before us. We will address these decisions below.

11. The Respondent made oral submissions to the Hearing Panel. He confirmed that he understood his acknowledgment both of the breach of Rule 2.1.1(b) and the penalty being proposed. His main concern was that he did not have the financial capacity to pay costs in the amount of $2,500.

D. ANALYSIS AND DECISION

12. The Respondent acknowledged that he did breach MFDA Rule 2.1.1(b) when he falsified the signatures of two clients on four separate documents. Independent of his acknowledgment, we find that the evidence as attested to in the Agreed Statement of Facts clearly establishes that the Respondent did not observe high standards of ethics and conduct in the transaction of business as an Approved Person. The falsification of client signatures falls well below the ethics and conduct expected of all registrants in the securities industry. Thus, it is our conclusion that the Respondent in April 2011 breached MFDA Rule 2.1.1(b).

13. The Panel has carefully considered the appropriate penalty to be imposed for the admitted breach. In agreement with numerous other decisions dealing with the falsification of documents or signatures, we are of the view that it is a serious offense even when it falls short of causing actual harm. On its face it is a dishonest act which not only diminishes the integrity of a registrant but of the securities industry as a whole. However, we do agree with the decision in *Re Bell* (2005 CarswellNat 7227) where an Investment Dealers Association panel distinguished between more and less egregious examples of falsification of documents. In some cases the seriousness of the acts is aggravated because of factors such as misappropriation of funds, or concealment of unauthorized trades or some benefit flowing to the registrant who falsifies the signatures.

14. In the present case, a careful review of the facts discloses that there are virtually no aggravating factors and that there are some factors which operate in favour of the Respondent. There was no client complaint filed and the Respondent had not previously been the subject of any MFDA disciplinary proceedings, although his time in the industry was relatively short. In

addition, he did not receive any benefit by the falsification of the signatures. However, the Panel is left with a little doubt concerning whether the Respondent accepts responsibility for his misconduct.

15. The Panel has reviewed three MFDA decisions to determine the range of penalties that have been previously ordered for similar conduct. In *Re Mason*, MFDA File No. 201138 (April 10, 2012), the Panel accepted a Settlement Agreement which required the Respondent to pay a fine of $2,500, costs of $2,500 and a six-month suspension on his authority to conduct securities related business. In *Mason* the approved person falsified the signatures of five clients on no fewer than ten documents, compared to the present situation where the signatures of two clients were falsified on four documents.

16. In *Re Peters*, MFDA File No. 201120 (March 28, 2012), the Hearing Panel accepted a settlement where the Respondent admitted to falsifying the signature of a client on an account opening document and interfered with the ability of the Member to conduct an investigation by initially providing a false response to the Member. The approved penalty was a two-year suspension on his authority to conduct securities related business and costs of $1,000. When compared to the current facts, the interference with the investigation is a serious aggravating factor that is not present before us.

17. In *Re Mammone*, MFDA File No. 201113 (March 12, 2012) the Hearing Panel accepted a settlement in which the Respondent admitted to having falsified the signature of four clients on six account documents. The Respondent was ordered to pay a fine in the amount of $5,000, costs in the amount of $1,500 and was subject to a six-month suspension. Compared to the facts before us, the number of incidents were greater, there was a fine but the costs and the suspension were less than what is being proposed.

18. It is clear that when a hearing panel considers an appropriate penalty it must take into account all elements of the penalty including any suspension, fine and costs. When past decisions are reviewed, there will be variants among these three factors, but so long as the balance of them fall within a range, they are useful for precedential value.

19. After carefully considering the facts before us, the previous authorities which outline

appropriate factors to take into account in determining penalties, and the penalties imposed in previous decisions for similar conduct, this Panel is satisfied that the penalty proposed by the MFDA, and not opposed by the Respondent, is an appropriate one.

E. SUMMARY AND CONCLUSION

20. We find that the allegation as set out in the Notice of Hearing has been proved and that the Respondent in April 2011 failed to observe high standards of ethics and conduct in the transaction of business by falsifying the signatures of two clients on four account documents, contrary to MFDA Rule 2.1.1 (b). Therefore, at the conclusion of the hearing on October 23, 2013, we ordered that:

(a) the Respondent shall be prohibited from conducting securities related business while in the employ of, or associated with, any MFDA Member for 12 months commencing October 23, 2012, pursuant to section 24.1.1(e) of MFDA By-law No. 1; and
(b) the Respondent shall pay costs in the amount of $2,500 pursuant to section 24.2 of MFDA By-law No. 1.

DATED this 20th day of November, 2012.

"Daniel Ish"
Daniel Ish, Q.C.,
Chair

"Patricia Kloepfer"
Patricia Kloepfer,
Industry Representative

"Barbara Shourounis"
Barbara Shourounis,
Industry Representative

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