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: Ashutosh Kumar Singh

Heard: January 20, 2014, in Toronto, Ontario
Decision and Reasons: February 14, 2014

DECISION AND REASONS

Hearing Panel of the Central Regional Council:

The Hon. Patrick T. Galligan, Q.C.	Chair
Brigitte J. Geisler	Industry Representative
Teri L. Ryan	Industry Representative

Appearances:

Shelly Feld	)	Senior Enforcement Counsel, Mutual Fund Dealers Association of Canada
Ashutosh Kumar Singh	)	Respondent, did not appear either in person or by counsel

1. By Notice of Hearing dated October 8, 2013, the Mutual Funds Dealers Association of Canada (the "MFDA") made the following allegations of violations of the By-laws, Rules or Policies of the MFDA.

Allegation #1: Between August 14, 2007 and May 24, 2012, the Respondent used approximately 250 forms bearing photocopied client signatures relating to the accounts of 85 different clients to, among other things, process trades in the clients' accounts and record and update the clients' Know-Your-Client ("KYC") information, contrary to MFDA Rule 2.1.1.

Allegation #2: Prior to August 23, 2012, the Respondent obtained and maintained approximately 12 blank pre-signed forms relating to the accounts of at least 7 different clients, contrary to MFDA Rule 2.1.1.

PRELIMINARY MATTER

2. The first appearance in this proceeding took place by telephone conference on November 18, 2013. The Respondent did not participate in the first appearance. Because the Notice of Hearing was served less than 30 days prior to the date of the first appearance, we adjourned the first appearance to December 17, 2013. At that time, we made an order for substituted service directing that the Respondent be advised of the new date in the fashion directed by the order.

3. When the first appearance was resumed on December 17, 2013 the Respondent did not participate. We were provided with evidence that satisfied us that Staff of the MFDA ("Staff") had taken all reasonable steps to bring the new date to the attention of the Respondent. Accordingly we fixed January 20, 2014 for the Hearing on the Merits.

4. The Respondent did not appear on January 20, 2014. Based upon the evidence provided to us by Staff, we concluded that the order for substituted service dated November 18, 2013 had been complied with. Accordingly we directed that the hearing proceed.

5. Enforcement Counsel for then called two witnesses. The first witness was Casmir Litwin

who had been with the Compliance Department of the Respondent's employer for a number of years. Mr. Litwin testified about the employer's investigation into the Respondent's business. He also described the findings made when the Respondent's files were examined. The second witness was Karen Mills who is a Senior Case Assessment Officer with MFDA. She testified about the Respondent's registration history and about steps taken by MFDA Staff to attempt to communicate with the Respondent.

6. The evidence of those two witnesses establishes all of the particulars set out in the Notice of Hearing. Rather than attempt to summarize the evidence of the witnesses, it is convenient to quote relevant particulars from the Notice of Hearing. The particulars which we quote constitute our findings of fact.

FACTS ESTABLISHED BY THE EVIDENCE

7. The Respondent was registered as a mutual fund salesperson with FundEX Investments Inc. ("FundEX" or the "Member"):

a) in Ontario, from May 28, 2007 to September 10, 2012;
b) in Alberta, from July 12, 2007 to December 31, 2011;
c) in Manitoba, from July 9, 2009 to December 31, 2011; and
d) in British Columbia, from July 11, 2007 to December 4, 2008.

8. The Respondent was previously registered as a mutual fund salesperson:

a) in Ontario, with Addington Financial Corporation, a Member of the MFDA, from February 13, 2007 to May 22, 2007; and
b) in Alberta, with Foresters Securities (Canada) Inc., formerly a Member of the MFDA, from June 23, 2006 to July 10, 2006.

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

10. At the material times giving rise to the events described herein, the Respondent carried on business primarily in Brampton, Ontario. His last known address was in Mississauga, Ontario.

11. On August 23, 2012, due to a concern that the Respondent may be leaving the country notwithstanding his representations to the contrary, FundEX compliance staff attended at the Respondent's office to remove client files for further review to ensure, among other things, that FundEX had adequate records in its possession relating to the client accounts serviced by the Respondent.

12. FundEX's review of the client files revealed approximately 250 forms, ranging in date from August 14, 2007 to May 24, 2012, maintained in the files of approximately 85 clients, which had photocopied client signatures on them and had been used by the Respondent to process transactions in the clients' accounts or to record or update client information. The forms bearing the photocopied client signatures included the following:

a) approximately 58 order entry forms that were used to process purchases or switches;
b) approximately 8 forms that were used to process or authorize redemptions;
c) several forms that were used to set up pre-authorized contributions to a client's investment account or pre-authorized debits from the client's financial institution;
d) approximately 18 New Account Application Forms ("NAAFs") that were used to open new accounts at the Member;
e) more than 80 investment fund company account application forms and subscription forms;
f) approximately 8 forms authorizing changes to client KYC information on file with the Member;
g) approximately 5 forms authorizing changes to financial account information on file with B2B Trust;
h) more than 40 investment loan application forms;
i) some mandatory leverage disclosure forms; and
j) account transfer, asset transfer and dealer transfer request forms.

13. In some cases, a signature guarantee stamp had been applied to the form by the Respondent even though a photocopied signature had been used to execute the form.

14. During the course of FundEX's review of the Respondent's client files, FundEX also discovered 12 blank pre-signed forms relating to the accounts of at least 7 different clients[1], as follows:

a) 5 pre-signed, undated order entry forms relating to the client accounts of clients PA, BP, FP, PR and SM;
b) An undated pre-signed KYC information update form relating to client PR (referenced above);
c) An undated NAAF, an undated investment company account application form, and an RESP application form dated February 20, 2012 that were pre-signed by a sixth client, SD;
d) An undated Leverage Account Review Form that was pre-signed by a seventh client, SE;
e) An undated NAAF pre-signed by an unknown individual; and
f) An undated investment company account application form that was pre-signed by an unknown individual.

15. The basis of the two allegations is that maintaining and/or using documents containing clients' photocopied signatures or pre-signed client documents constitutes a violation of MFDA Rule 2.1.1. Rule 2.1.1 provides, 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;

[1] In some cases, it was not possible to determine the identity of the individual from the signature which appeared on the blank pre-signed form. The individual may have been an existing or prospective client.

(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.

16. There is clear MFDA Hearing Panel jurisprudence which holds that obtaining and/or maintaining and/or using pre-signed forms amounts to conduct which violates MFDA Rule 2.1.1. See *Re Price*, [2011] Hearing Panel of the Central Regional Council, MFDA File No. 200814, at paragraphs 122-124; *Re Landry*, [2012] Hearing Panel of the Central Regional Council, MFDA File No. 201132, at paragraph 21; and *Re Byce*, [2013] Hearing Panel of the Central Regional Council, MFDA File No. 201311, at paragraph 6.

17. The rationale for holding that the use of pre-signed forms constitutes a violation of Rule 2.1.1 is set out in *Re Price* at paragraphs 122-124:

> 122. Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading. As will be discussed more fully *infra*, the Respondent, in this case, did not have the proper authority to engage in discretionary trading of any nature or kind on behalf of his clients.
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> 123. At its worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client. While there is absolutely no suggestion that the Respondent engaged in any of these activities, the rationale for the prohibition on pre-signed forms becomes clear.
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> 124. Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. The presence of the client's signature on a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the Member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account.

18. That rationale is also explained in *Re Byce* at paragraph 6:

> 6. The actions which the Respondent has admitted, as set out in paragraph 2 above, are infractions which merit sanctions from the standpoint of both specific and general deterrence. Even though there was no evidence that the Respondent

> intended to use the pre-signed forms for any improper purpose, the use of such forms is prohibited because the presence of client's signatures on such forms can no longer be taken as confirmation that the client authorized a particular trade and also compromises the Member's ability to investigate and respond to a client complaint concerning the propriety of trading in his/her account. For these reasons, pre-signed forms are prohibited regardless of whether the Approved Person's intention is to enhance client convenience, and irrespective of whether a client had ostensibly endorsed the practice.

19. We agree with the conclusions of those Hearing Panels. We add that those conclusions must apply as well to forms where photocopied signatures are used. Forms bearing photocopied client signatures carry exactly the same risks for clients as do pre-signed ones.

20. There is no doubt that the Respondent has used large numbers of forms bearing photocopied client signatures. There is also no doubt that he was in possession of a significant number of blank pre-signed forms relating to client accounts. It is clear that such conduct violates Rule 2.1.1.

21. Because the Respondent did not file a Reply, pursuant to Rule 8 of the Rules of Procedure, or appear at the hearing, we have no explanation of why he used those forms. It may be that the use of forms with photocopied signatures or pre-signed forms facilitated the efficient conduct of his business. We have no hesitation in holding that administrative convenience could never justify a violation of MFDA Rule 2.1.1.

22. We hold, therefore, that both Allegation #1 and Allegation #2 have been proven.

PENALTY

23. Enforcement Counsel suggested that these violations justify the imposition of both a suspension and a fine. We view the violations to be very serious ones for the reasons cited above from both *Re Price* and *Re Byce*. Those reasons need not be repeated.

24. Jurisprudence is constant that when assessing a penalty, a Hearing Panel must take into account circumstances of mitigation. Apart from these violations the Respondent has no

disciplinary history. Moreover, there is no evidence of client complaints, client losses or misuse of authority given to him by his clients. The number of forms involved is large and a significant number of clients were involved. If the Respondent was misusing client authority one might expect that out of all of those numbers at least one client complaint might have come forward. While we cannot conclude with certainty that the Respondent's violations of MFDA Rule 2.1.1 did not cause harm, the absence of evidence of harm suggests that this is not the worst of cases.

25. We do not know whether the Respondent will ever again attempt to work in the mutual fund industry. Probably specific deterrence to him is not the most important principle of penalty which should guide us in this case. In his written submissions, Enforcement Counsel cited nine MFDA Hearing Panel decisions, in addition to the three that we have referred to above, within the last few years which deal with pre-signed forms or some other impropriety relating to client signatures on documents. Those cases suggest that some Approved Persons are not treating the signature of a client upon a document with the importance which it deserves. Thus the important principle to be applied in this case is that of general deterrence. Approved Persons must be aware that carelessness in respect to client signatures upon documents will attract serious consequences.

26. It is not necessary to refer specifically to any of the nine cases which were referred to us. They are listed in paragraph 20 of Enforcement Counsel's written submissions.

27. Those cases show a broad range, which arises out of the particulars of each case, from no suspension to a permanent prohibition. A suspension of two years was ordered in three of those cases. We take the view that a suspension should act as a general warning to persons in the industry that we consider the use of photocopied signatures or pre-signed documents to be very serious matters.

28. We are of the opinion that the seriousness of the violations calls for a fine in addition to the suspension. A fine of $5,000 falls within the range suggested by the nine decisions referred to above. We will impose a fine in that amount. The MFDA is entitled to its costs. The sum of $5,000 suggested by Enforcement Counsel is reasonable. We allow costs in that amount. In

addition we agree with Enforcement Counsel's suggestion that, if the Respondent wishes to return to the mutual fund industry, he should successfully write and complete the Conduct and Practices course offered by the Canadian Securities Institute or another course acceptable to Staff of the MFDA prior to becoming registered.

29. In the result we make the following orders:

a) That the Respondent's authority to conduct securities related business while in the employ of or associated with a Member of the MFDA be suspended for a period of two years;

b) That the Respondent pay to the MFDA a fine of $5,000 and $5,000 for costs; and

c) That the Respondent be required to successfully complete the Conduct and Practices Handbook course offered by the Canadian Securities Institute or another course acceptable to Staff of the MFDA prior to becoming registered in the securities industry again.

DATED this 14th day of February, 2014.

"Patrick T. Galligan"

The Hon. Patrick T. Galligan, Q.C.,
Chair

"Brigitte J. Geisler"

Brigitte J. Geisler,
Industry Representative

"Teri L. Ryan"

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