Re Movassaghi

IN THE MATTER OF:

The Mutual Fund Dealers Association of Canada

and

Mohammad Movassaghi

2023 CIRO 18

Canadian Investment Regulatory Organization
Hearing Panel (Pacific District)

Heard: October 19-23, 2020, January 18-20, 2021, March 5, 2021, and March 19, 2021
Decision: March 19, 2021
Reasons for Decision: November 7, 2023

Hearing Panel:
Stephen D. Gill, Chair
Holly Martell, Industry Representative
Richard R. Sydenham, Industry Representative
Appearances:
Shelly Feld and Zaid Sayeed, Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Bobby Movassaghi, Counsel for the Respondent (ceased attending from January 18, 2021)
Mohammad Movassaghi, Respondent, in person (ceased attending from January 18, 2021)

REASONS FOR DECISION

PART I. OVERVIEW

¶ 1 In this proceeding, the Mutual Fund Dealers Association of Canada (the "**MFDA**") has made the following allegations against Mohammad Movassaghi (the "**Respondent**"):

Allegation #5: Between April 2015 and October 2015, the Respondent:

(a) falsified Client KO's signature on nine account forms; or

(b) knew or ought to have known that nine account forms that were submitted for processing with respect to investment accounts of Client KO had not been signed by Client KO; or

(c) failed to exercise due diligence to ensure that nine signed account forms that were submitted for processing with respect to investment accounts of Client KO had been signed by Client KO;

contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.5.1, 2.10, and 1.1.2.

Allegation #6: Between April 8, 2015 and June 9, 2015, the Respondent instructed KB to submit three Know-Your-Client ("**KYC**") Update Forms to update records concerning the investment accounts of Client KO without the knowledge or authorization of Client KO or, in the alternative, the Respondent knew or ought to have known that three KYC Update Forms that were submitted to the Member to update account records of Client KO were submitted without the knowledge or authorization of Client KO and he failed to exercise due diligence to ensure that Client KO was aware of and had authorized the changes to her KYC information, contrary to the policies and procedures of the Member and MFDA

Rules 2.2.1, 2.1.1, 2.5.1, 2.10, and 1.1.2.

Allegation #7: Between January 2015 and June 2016, the Respondent processed or directed other Approved Persons or employees subject to his authority to process at least 180 trades in the investment accounts of Client KO without the knowledge or authorization of Client KO; or, in the alternative, he knew or ought to have known that Approved Persons or employees subject to his authority were processing a large number of trades in the accounts of Client KO and he failed to exercise due diligence to ensure that Client KO had authorized all elements of the trades that were processed in Client KO's accounts, contrary to the policies and procedures of the Member and MFDA Rules 2.3.1(a) (now MFDA Rule 2.3.1(b)), 2.1.1, 2.1.0, and 1.1.2.

Allegation #8: Between January 2015 and June 2016, the Respondent:

(a) created or in some cases directed another Approved Person or other employees who worked in his office to create records of purported instructions received from Client KO which had not in fact been received (the "**Record of Instructions**"); or

(b) failed to exercise due diligence to ensure that the Record of Instructions accurately described instructions that had been received from Client KO;

contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 5.1(b), 2.10, 2.5.1, and 1.1.2.

Allegation #9: Between January 2014 and August 2016, the Respondent failed to disclose actual or potential conflicts of interest to the Member, contrary to the policies and procedures of the Member and MFDA Rules 1.2.1(c) (now Rule 1.3.2), 2.1.4, 2.1.1, 2.5.1, 2.10, and 1.1.2.

¶ 2 In 2014, the Respondent was engaged in an outside activity, namely acting as a landlord with respect to a property that he owned. Investors Group Financial Services Inc. (the "Member") had authorized this outside activity subject to the condition that the Respondent was required to seek further approval from the Member before opening investment accounts at the Member for any tenant. When Client KO arrived in Vancouver from Ontario and rented an apartment from the Respondent, the Respondent recruited her as a client. He did not disclose or obtain approval from the Member to open investment accounts with the Member for his tenant. The servicing of investment accounts of a client who was his tenant gave rise to a conflict, or potential conflict of interest that the Respondent was required to disclose to the Member and, together with the Member, address by the exercise of responsible business judgement influenced only by the best interests of the client. The Respondent failed to do so.

¶ 3 Between January and September 2014, the Respondent opened a Registered Retirement Savings Plan ("RRSP") account and a Tax-Free Savings Account ("TFSA") for Client KO and a non-registered account in the name of Client KO's personal corporation (the "Corporate Account"). The Respondent met with Client KO several times during 2014 to assist her with the process of opening new accounts and acquiring her initial investments in each one. He recorded accurate KYC information in the records of the Member for each of Client KO's three new accounts, and Client KO signed a New Account Application Form ("NAAF") that recorded KYC information for each account. The Respondent also recommended and obtained Client KO's authorization and approval to facilitate the purchase of investments in each of her three accounts.

¶ 4 Between January 2015 and July 2016, the Respondent:

(a) submitted three KYC information updates to the Member concerning Client KO's investment accounts; and

(b) processed more than 180 trades in the investment accounts of Client KO, all without the knowledge or authorization of Client KO.

¶ 5 In order to make KYC updates and transactions processed in the accounts of Client KO appear to be authorized, the Respondent (or other individuals acting at his direction and control) falsified Client KO's signature and initials on nine account documents and created dozens of false records purporting to record details of interactions and communications with Client KO that had not occurred.

PART II. FACTS

(A.) The Proceeding

¶ 6 The Respondent did not file a Reply in respect of the facts alleged and conclusions contained in the Fresh As Amended Notice of Hearing issued by the MFDA.

¶ 7 The Hearing on the Merits in this proceeding took place in Vancouver, British Columbia, from October 19, 2020 to October 23, 2020, and January 18, 2021 to January 20, 2021, and March 19, 2021.

¶ 8 The Hearing Panel heard testimony in person and by videoconference.

¶ 9 The Respondent attended part of the Hearing on the Merits but ceased participating as of January 18, 2021.

¶ 10 The material evidence elicited during the Hearing allowed the panel to establish the facts summarized herein.

(B.) Summary of Involved Persons

¶ 11 **Mohammad Movassaghi:** Mr. Movassaghi is the Respondent in these proceedings. After becoming an Approved Person of the Member, on May 22, 2013, the Respondent rapidly grew his book of business and serviced the investment accounts of many mutual fund clients of the Member. In October 2015, the Respondent entered into a commission sharing agreement with another Approved Person, KB, who assisted the Respondent to service the accounts of clients. Even after this agreement was implemented, all of the joint business of the Respondent and KB was processed in the name of the Respondent, and the income and responsibility for the accounts was attributed exclusively to the Respondent's representative code. From time to time, the Respondent also hired other unlicensed employees and offered opportunities to unpaid (and unlicensed) interns to assist with and learn about his investment business. As set out in more detail below, after Client KO became his tenant in October 2013, the Respondent recruited her to become a client of the Member and thereafter he was the primary Approved Person responsible for servicing her investment accounts with the Member. Based on the evidence that was heard during the Hearing, it is clear that the Respondent was responsible for:

(a) the falsification of signatures of Client KO on nine account forms associated with the servicing of Client KO's accounts;

(b) unauthorized changes in KYC information on record for Client KO's three investment accounts;

(c) more than 180 unauthorized trades that were processed in Client KO's investment accounts;

(d) the creation of false records concerning the servicing of Client KO's accounts; and

(e) his failure to disclose or appropriately address conflicts of interest that arose when he began servicing the investment accounts of his tenant Client KO, and AG – a business associate involved with his fashion clothing business.

¶ 12 **Client KO:** In October 2013, Client KO arrived in Vancouver to accept a position as an emergency room physician at a Vancouver hospital after completing her medical education and training in Ontario. Client KO met the Respondent after responding to an advertisement for a furnished apartment that the Respondent owned. Client KO entered into a lease with the Respondent and the Respondent became her landlord. At the time, Client KO had limited investment experience and substantial student debt. The Respondent encouraged Client KO to meet with him to address her investment and insurance needs. In January 2014, Client KO met with the Respondent and agreed to open an RRSP account and a TFSA with the Member. In September 2014, Client KO opened the Corporate Account. Client KO signed account opening paperwork that accurately documented her KYC information. She also authorized the purchase of investments in each of the three accounts. In August 2016, Client KO discovered that her investment accounts with the Member had been transferred to Harbour Front Wealth Management Inc. ("**Harbourfront**") without her knowledge or authorization. At the time of the transfer, Client KO was overseas and unreachable. The Respondent subsequently admitted that he forged her signature on paperwork without her knowledge or authorization in order to facilitate the opening of new investment accounts in her name at Harbourfront and the transfer of her investments from the

Member to Harbourfront. Upon further investigation, Client KO discovered that her signature had been forged on nine account forms that had been submitted for processing by the Member and that more than 180 trades were processed in her investment accounts without her knowledge or authorization. Many of the trades were processed on dates when Client KO was travelling, or otherwise unavailable to provide investment instructions.

¶ 13 After discovering that her investments had been transferred to Harbourfront, Client KO arranged to transfer the investments back to the Member. In response to Client KO's complaints about forged account documentation and unauthorized trading in her accounts, the Member paid more than $22,000 in compensation to Client KO. Client KO attended the Hearing to provide extensive testimony about her dealings with the Respondent. We found her to be an excellent witness and very credible.

¶ 14 **KB:** KB was a former Approved Person of the Member who worked with the Respondent as an associate consultant to assist him with the servicing of client accounts between October 2014 and July 2016. KB signed on the "Consultant" line of the documents that contain the falsified signatures of Client KO, including three KYC update forms that recorded KYC changes that Client KO claimed were inaccurate and unauthorized. Based on the evidence of KB at the Hearing, we find that those three KYC update forms were in fact inaccurate and unauthorized; KB also prepared many of the records related to the trades that were processed in Client KO's accounts that Client KO claims she did not authorize.

¶ 15 When this proceeding was commenced, KB was named as a respondent to the proceeding. In January 2020, KB entered into a settlement agreement with the MFDA. KB admitted that she had not spoken with Client KO about the KYC updates and trades that were processed in Client KO's accounts and that she created records of purported instructions received from Client KO that had not in fact been received. KB accepted responsibility for failing to exercise due diligence to ensure that the account changes and trades that were processed in Client KO's accounts were authorized before she facilitated the processing of those changes and trades, and for failing to exercise due diligence to ensure that the records that KB prepared concerning communication with Client KO about Client KO's investment accounts were accurate. KB agreed to pay a $35,000 fine and $5,000 in costs as a consequence of her misconduct. Further, KB denied that she falsified Client KO's signature on any account documents and has always maintained her position that she believed the Respondent obtained instructions from Client KO concerning the account changes and transactions that were processed in Client KO's accounts. KB testified about the functioning of the Respondent's office and her knowledge of and role in the impugned conduct.

¶ 16 **AB:** AB was a university student when she began working initially as an unpaid intern in approximately March 2015 and subsequently as a paid but unlicensed assistant in the office of the Respondent. AB acknowledged that she never met or spoke with Client KO but had prepared some of the records concerning interactions with Client KO relating to the servicing of Client KO's investment accounts that Client KO claims are inaccurate. AB explained how she was trained to fulfill her role in the Respondent's office and testified about her knowledge and understanding about the roles of other individuals who worked in the office including the Respondent and KB.

¶ 17 **SH:** SH was an Approved Person of the Member who was designated as the branch manager responsible for supervising the Respondent and KB while the Respondent and KB were Approved Persons of the Member. This proceeding was initially scheduled to take place in January 2020; however, at that time, SH was recovering from significant surgery associated with his recent cancer diagnosis and did not expect to be able to testify at the Hearing. SH swore an affidavit on December 31, 2019, that was entered into evidence. In his affidavit, SH explained that the Respondent had been authorized to engage in two outside activities, one as a landlord and one as a director and silent partner of a clothing business called Valerio Design Inc. ("**Valerio**"). However, the Respondent had indicated in his application for approval of his rental business outside of the Member that no tenants of his rental business were clients of the Member. On his application for approval of Valerio, the Respondent indicated that no clients or other directors of Valerio and their families would become clients of the Member. His involvement in the outside activities was subject to the obligation to disclose to his branch manager if a tenant became a client, or if anyone associated with Valerio became a client. As per his affidavit, SH was not informed that Client KO was the Respondent's tenant, or that AG – a co-director and shareholder of Valerio – became a client of the Member whose accounts were serviced by the Respondent. SH

also indicated in his affidavit that he would have reported to the Member's head office if he was told that the individuals associated with the Respondent's outside activities had become clients so that any conflicts of interest could be addressed in accordance with MFDA Rule 2.1.4. SH testified during the Hearing, affirmed the accuracy of his affidavit, and was subject to cross-examination by the Respondent's counsel.

¶ 18 **LB:** LB is a Senior Manager, Compliance Investigations at the Member. She has worked for the Member for 25 years and has been in her current role since January 1, 2020. She held other management roles in the Compliance Investigations group with the Member dating back to 2008. She offered testimony about the following, among other things:

(a) the policies and procedures of the Member;

(b) the contracts between the Member and the Respondent and between the Member and others who worked in the Respondent's office, and the obligations that flowed from those contracts;

(c) the Member's investigation into the conduct of the Respondent and Client KO's complaint;

(d) the conclusions reached by the Member upon completion of those investigations; and

(e) the remedial action that was taken by the Member thereafter.

¶ 19 **Harbourfront Wealth Management Inc.:** Harbourfront is an investment dealer regulated by the Canadian Investment Regulatory Organization ("**CIRO**"), and formerly regulated by the Investment Industry Regulatory Organization of Canada ("**IIROC**"). At the time of the Hearing, the amalgamation of IIROC and the MFDA had not yet occurred. Accordingly, throughout these reasons, the two organizations will be referred to by their pre-amalgamation names. The Respondent was registered as a dealing representative with Harbourfront from July 25, 2016 to September 2, 2016. Harbourfront terminated the Respondent's registration when it came to light that the Respondent had falsified Client KO's signatures on the account opening documents and paperwork necessary to facilitate the transfer of Client KO's investments from the Member to Harbourfront without the knowledge or authorization of Client KO. This conduct was subsequently the subject matter of a disciplinary proceeding that was conducted against the Respondent by IIROC. In that proceeding, the Respondent entered into a settlement agreement with IIROC in which the Respondent admitted to falsifying Client KO's signature on transfer and account opening documentation, and that he had failed to inform Harbourfront that Client KO was his tenant.

¶ 20 **BO:** BO is an investigator and former senior Compliance Officer with the MFDA who prepared a detailed analysis on the account activity processed in the investment accounts of Client KO, which account activity Client KO claimed was unauthorized.

¶ 21 **IN:** IN is the Manager of Investigations in the MFDA's Pacific Regional Office in Vancouver. IN was the primary investigator responsible for the investigation of this matter. IN testified about the results of Staff's investigation into the conduct of the Respondent, and also tendered records of related civil proceedings, namely the Respondent's unsuccessful lawsuit against Harbourfront for wrongful dismissal, and regulatory proceedings against the Respondent (IIROC proceedings and FP Canada proceedings).

(C.) Summary of Material Facts

The Respondent Became an Approved Person and Disclosed Outside Activities

¶ 22 In April 2013, the Member agreed to sponsor the Respondent's registration as a dealing representative and Approved Person. The Respondent immediately sought the Member's approval to engage in outside business activities. In particular, the Respondent disclosed that he was a silent partner and director of a fashion clothing business called Valerio and conducted some consulting duties for them. On an outside business activity ("**OBA**") worksheet dated April 17, 2013, that the Respondent signed and submitted to the Member, he disclosed the Valerio business. The Respondent stated, in response to questions 3(a) and (h) of the worksheet, that clients and other directors of Valerio and their families would not become clients of the Member, would not be solicited, and would not be associated with the business of the Member. The Respondent completed and submitted a second OBA worksheet dated April 23, 2013, in which he disclosed that he owned rental properties. At that time, it was accurate for the Respondent to state in response to questions 3(b) and 3(h) that his OBA

did not involve clients of the Member and that no client of the Member would be associated with the OBA. Both OBA worksheets were approved by the Member subject to conditions, including that:

(a) he would not take on any individuals associated with Valerio as clients; and

(b) if a tenant of one of the Respondent's rental properties became a client, he would disclose that fact to his branch manager.

¶ 23 On April 25, 2013, the Respondent signed an Agreement of Approved Person in which he agreed to be bound by and comply with the rules of the MFDA. On or about May 23, 2013, the Respondent signed a Consultant's Agreement pursuant to which he agreed to comply with all policies, procedures, and directions issued by the Member and all regulatory requirements imposed by regulatory bodies, self-regulatory organizations, and other authorities that govern the distribution of financial products and services. He signed a similar agreement on behalf of his personal corporation, Movassaghi Enterprises Inc., on or about June 1, 2014.

¶ 24 On May 22, 2013, the Respondent was registered as a dealing representative with the Member and became an Approved Person of the Member. He remained in that position until July 8, 2016, when he resigned from the Member to accept a position at Harbourfront. During the period when he was an Approved Person of the Member, the Respondent built an extremely busy practice and was a recipient of multiple sales performance awards. The Respondent's branch manager, SH, commented on the high volume and frequency of his trading and mutual fund accounts.

Client KO Became the Respondent's Tenant and then Became a Client of the Member

¶ 25 On October 9, 2013, Client KO arrived in Vancouver, where she obtained employment as an emergency room physician. Before she arrived, she came across an advertisement promoting the Respondent's rental unit on a website and arranged through the website to meet with the Respondent in order to rent the unit.

¶ 26 On October 10, 2013, the Respondent met Client KO for the first time at the condo unit that he ultimately rented to her. He learned that she was a young doctor who had recently graduated. The Respondent agreed to rent the condo unit to her. During the same meeting, the Respondent asked Client KO whether she had set up various investment accounts, including a TFSA and an RRSP. She had limited investing experience, and she was not familiar with some of the acronyms that he rattled off during their discussion. He left her a business card and advised her to make an appointment to meet him at his investment business office and she agreed to meet with him again in the future.

¶ 27 Before meeting with the Respondent to consider opening an investment account, Client KO felt "a little bit strange" about her landlord becoming her investment advisor. She testified that she met with her friend who advised her that it was not something they would do, but suggested if there was a conflict of interest, the Respondent would make her aware of that. She proceeded to make an appointment to meet the Respondent at his office.

¶ 28 Client KO believed that she first met with the Respondent at his office in the fall of 2013, and that she definitely met with him in January 2014. In January 2014, she agreed to sign paperwork to open new RRSP and TFSA investment accounts.

¶ 29 Prior to meeting the Respondent, Client KO had minimal investment knowledge and experience. She had never taken finance or investment courses. She was recruited as a student during her medical school training to become a client of an investment dealer in Toronto, but she only met with an advisor (never the same person twice) two or three times while she was a student in Toronto. The company had helped her to manage her student debt, obtain a line of credit, and open an RRSP account. Prior to medical school, she had applied her savings from part-time jobs as a high school student to purchase a GIC through a local bank branch, but she had cashed it out to pay for her university education. She considered her risk tolerance to be low to moderate, which she attributed to her modest upbringing. She recalls suffering food insecurity as a child and considered herself cautious when it came to investing. She explained that she did not have a "huge area of knowledge in finances".

¶ 30 Client KO acknowledged that she signed a pre-authorized contribution ("**PAC**") agreement on January 9,

2014, to begin making monthly contributions to five mutual funds (5 x $200 = $1,000) that the Respondent recommended to her based on her risk tolerance. She understood how a PAC agreement worked but did not have enough financial knowledge to come up with suggestions as to where her money should be invested.

¶ 31 On January 9, 2014, the Respondent filled out portions of a NAAF to facilitate the opening of an RRSP for Client KO with the Member, and Client KO signed the NAAF and became a client of the Member. Her accounts were serviced by the Respondent. The RRSP NAAF recorded the following KYC information:

(a) Investment knowledge: novice;

(b) Investment time horizon: 10+ years;

(c) Risk tolerance: medium; and

(d) Investment portfolio profile: moderate conservative to moderate.

¶ 32 The Respondent signed as Consultant, and from this point on, Client KO considered the Respondent to be her investment advisor. This did not change until the Respondent left the Member in July 2016.

¶ 33 On January 21, 2014, Client KO signed a NAAF to open a TFSA with the Member. The following KYC information was recorded on the TFSA NAAF:

(a) Investment knowledge: fair;

(b) Investment time horizon: 3-6 years;

(c) Risk tolerance: medium; and

(d) Investment portfolio profile: moderate conservative to moderate.

¶ 34 On the TFSA/NAAF, the Respondent signed as consultant.

¶ 35 On or about September 19, 2014, Client KO met with the Respondent at the Respondent's office to open the Corporate Account for her corporation, "Dr. 'KO' Inc.". On that form, her information was filled out as follows:

(a) Investment knowledge: novice;

(b) Investment time horizon: 6-10 years (this had been changed and the change was initialed, the initial response had been "3 years" but Client KO believed that the change was appropriate);

(c) Risk tolerance: medium; and

(d) Investment portfolio profile: moderate conservative to moderate.

¶ 36 Again, on this form, the Respondent signed as Consultant.

¶ 37 Through to the end of 2014, Client KO met with the Respondent at his office fairly frequently (every week or two). Initially, she met only with the Respondent. Later, an associate of the Respondent named "Simon W." attended the meetings and they became "high pressure meetings" for Client KO. This became extremely uncomfortable and unpleasant for her, to the point that she broke down crying and told the Respondent she would not meet with "Simon W." again.

¶ 38 It appeared that Client KO's request to the Respondent motivated a response. Although the Respondent continued to serve as the Approved Person responsible for servicing her accounts, on or about September 14, 2014, "Simon W." was replaced by KB.

Background – KB

¶ 39 Client KO perceived KB to be the Respondent's "very young and very, very new and inexperienced" assistant who took notes at the couple of meetings between Client KO and the Respondent that KB attended. When Client KO would email questions to the Respondent, sometimes KB would respond on behalf of the Respondent. Client KO would ask KB for technical assistance, such as how to select electronic statements on the Member's website, and KB would assist her with administrative matters of that nature.

¶ 40 KB attended two or three meetings between the Respondent and Client KO in the fall of 2014, but Client KO never considered KB to be someone who had overall responsibility for servicing her investment accounts. Client KO always considered the Respondent to be her investment advisor. Client KO believed that KB was still in school acquiring training in finances. If Client KO needed substantive advice about her investments or her accounts, she would only have contacted the Respondent, and if she was seeking investment recommendations, the Respondent would provide those recommendations. Client KO acknowledged that she might have included KB on email communications directed to the Respondent because she viewed them as working together as a team, but her investment questions would be directed to the Respondent. She does not recall ever receiving investment advice from KB. She never asked for or received investment advice from KB and never considered KB to be her advisor.

¶ 41 Towards the end of 2014, Client KO attended what turned out to be the last meetings that she ever attended with the Respondent or KB in person at the Respondent's office. In June 2015, she contacted the Respondent's office (and exchanged emails with KB) to facilitate the redemption of mutual funds in order to finance the purchase of a vehicle. Between January 2015 and July 2016 (when the Respondent and KB resigned from the Member), Client KO had no other communication with the Respondent or anyone in his office to update her KYC information, to provide trade instructions, or to obtain investment recommendations.

¶ 42 In August 2016, Client KO discovered that her investment accounts with the Member had been transferred to Harbourfront without her knowledge or authorization. At the time of the transfer, Client KO was overseas and unreachable. The Respondent subsequently admitted that he forged her signature on paperwork without her knowledge or authorization to open new investment accounts in her name at Harbourfront and transfer her investments from the Member to Harbourfront.

¶ 43 Upon further investigation, Client KO discovered that her signature had been forged on nine account forms that had been submitted for processing by the Respondent and that more than 180 trades were processed in her investment accounts without her knowledge or authorization. Many of the trades were processed on dates when Client KO was travelling or otherwise unavailable to provide investment instructions to the Respondent. After discovering that her investments had been transferred to Harbourfront, Client KO arranged the transfer of the investments back to the Member.

¶ 44 In response to Client KO's complaints about forged account documentation and unauthorized trading in her accounts, the Member paid more than $22,000 in compensation to Client KO.

¶ 45 When this proceeding was commenced, KB was also named as a respondent to the proceeding. In January 2020, KB entered into a settlement agreement with the MFDA. KB admitted that she had not spoken with Client KO about the KYC updates and trades that were processed in Client KO's accounts and that she created records of purported instructions received from Client KO that had not in fact been received. KB accepted responsibility for failing to exercise due diligence to ensure that the account changes and trades that were processed in Client KO's accounts were authorized before she facilitated the processing of those changes and trades, and for failing to exercise due diligence to ensure that the records that KB prepared concerning communication with Client KO about Client KO's investment accounts were accurate. KB agreed to pay a $35,000 fine and $5,000 in costs as a consequence of her misconduct.

¶ 46 KB denied that she falsified Client KO's signature on any account documents and has always maintained her position that she believed that the Respondent had obtained instructions from Client KO concerning the account changes and transactions that were processed in Client KO's accounts.

¶ 47 In respect of client interactions, KB had no experience in a licenced role and "didn't have very much investment knowledge" or knowledge of "actual investment strategy", so it was the Respondent and not KB who provided advice and recommendations to clients.

¶ 48 KB relied on the Respondent to obtain client instructions in respect of trades that he instructed her to process. She did not consider it to be part of her role to contact clients to obtain instructions concerning trades that the Respondent instructed her to process. Client KO testified that she had no meetings with the Respondent or with KB after 2014.

¶ 49 KB acknowledged that she signed as the consultant on the nine documents that contained the falsified signature of Client KO. KB claimed in respect of each of the nine documents that she did not personally falsify Client KO's signature on the form. KB testified that she often signed account documents as the "consultant" as the last thing that would happen on the form even in circumstances where she was not privy to instructions from the client concerning the contemplated use of the form. She regarded her signature as a "consultant" as an administrative function. She did not consider her signature to mean that she was vouching for the accuracy of the content of the form or that it had been authorized or requested by the client.

¶ 50 Once paperwork was prepared by assistants/interns, they would be put in a pile by the assistant/intern for KB to sign. KB would sign on the Respondent's behalf. Her signatures would essentially be an administrative task, effectively a "rubber stamping" of the forms as she would not check the authenticity of trade instructions or any other feature of the trades directly with any client. She assumed the trade instructions the Respondent had given her were based on recommendations he had given to clients, and that the Respondent had confirmed the clients' approvals of same.

¶ 51 Records of trade instructions and client interactions were recorded on the Member's "Pathway" note-keeping and client management system. Before KB joined the Respondent's practice, he had developed a template for "meeting outlines" and for post-meeting notes that he subsequently gave KB and the assistants to use when they recorded interactions with clients on the Pathway system. Sections of this outline were copied and pasted into Pathway records. KB testified that the Respondent would provide verbal instructions to KB during a meeting or phone call between KB and the Respondent. Subsequently, KB would process the trades herself or instruct assistants to process trades.

¶ 52 Occasionally, the Respondent would also provide trading instructions directly to an assistant. The Respondent expected them to create notes on Pathway documenting client authorization of the trades. In most cases, neither KB nor an assistant had participated in a meeting or a call during which instructions or information from the client were obtained. They entered standardized notes from the outline, but they could not vouch for the accuracy of the notes or that any interaction between the Respondent and the client had actually occurred. When they wrote in a note "spoke with the client", that did not mean that KB or an assistant entering the note spoke with the client. She testified that investment instructions predominantly came from the Respondent; he was the senior consultant and the one who dealt with the client, and she relied on him for instructions. KB rarely received client instructions directly from the clients and did not recall seeing assistants attend meetings with clients.

¶ 53 We accept Staff's submission that the practice described by KB of creating standardized records using a pre-existing outline created by the Respondent to record "notes" about matters discussed during a meeting or client interaction that the assistant recording the note did not participate in firsthand (or even receive a specific note about it from someone who did participate) accounts for the repetitive wording that appears in many Pathway entries and renders the reliability of the notes as accurate records of client communications and interaction highly suspect.

¶ 54 Many of the records that were maintained in the Respondent's office were vague as to who spoke with the client or obtained instructions or information relevant to the servicing of Client KO's account. Such purported interactions were rarely confirmed in written correspondence sent to or exchanged with the client and, after 2014, there were no contemporaneous handwritten notes created to support the accuracy of the Pathway entries. It is noteworthy that on the somewhat rare occasions when an interaction was attributed to a specific Approved Person, it was usually the Respondent.

¶ 55 KB's role with the Respondent consisted of helping with administrative tasks or helping the assistant. KB testified that it was the Respondent who took instructions from and made recommendations to the clients. In KB's view, the Respondent had a larger amount of investment experience than she had, and he knew more about rebalancing and what opportunities investment clients should pursue based on the circumstances.

¶ 56 AB was an assistant that worked in the Respondent's office. In 2015, AB was completing her commerce degree at UBC, and, between March 2015 and May 2015, she served as an unpaid intern working at the Respondent's office two or three days each week in the afternoon after she finished her classes. She did not

work there from May to August of 2015, as she took the summer break off. In 2015, after she returned from her summer travels, she began working full-time as a paid unlicensed assistant. She worked at the Respondent's office until March 22, 2016, when she was terminated.

¶ 57 AB did not typically speak to clients; she thought she might have spoken to clients a couple of times to schedule meetings, but she certainly never gave clients any investment advice and never received trading instructions directly from clients. She did not attend client meetings or listen in on phone calls between the Respondent or KB and clients; she processed paperwork after trading instructions were received. AB's testimony was very consistent with the testimony of KB.

Client KO's Evidence Regarding the Events in 2015 and 2016

¶ 58 Client KO testified that during 2015 and 2016, she did not meet in person with the Respondent or with KB, she did not provide trade instructions over the phone, and she did not execute account forms (except on one occasion in June 2015 when she redeemed some investment holdings to finance the purchase of a car).

¶ 59 However, in 2015 and 2016, over 180 unauthorized trades were completed by the Respondent in respect of Client KO's accounts. From April 2015 to October 2015, nine account forms were processed which bore Client KO's ostensible (forged) signature. Further, the Respondent possessed notes for: (i) in early 2015, ostensible meetings with Client KO; and with(ii) respect to the 2015 and 2016 trades as previously stated, telephone calls/meetings where Client KO allegedly gave trade instructions and/or signed account forms. These notes are false.

¶ 60 Staff submitted tables outlining the documents containing the falsified signatures of Client KO, a detailed tally of the falsified trades, and a list of false notes which appear to be attributable to the Respondent personally, which we rely on and reproduce below.

List of the Documents Containing Alleged Falsified Signatures of Client KO

#	DATE	FORM	ACCOUNT	EXHIBIT	TAB	PAGE	PDF PAGE
1	April 8, 2015	Know Your Client	RRSP/TFSA	46	10	3249	80/828
2	June 9, 2015	Know Your Client	RRSP/TFSA	47	12	3250	90/828
3	June 9, 2015	Know Your Client	Non-Reg	48	13	3258	92/828
4	June 10, 2015	Client Update	TFSA	49	14	3259	94/828
5	June 10, 2015	Client Update	RRSP	50	14	3260	95/828
6	June 23, 2015	Client Update	TFSA	52	15	3261	107/828
7	June 24, 2015	PAC Agreement	TFSA	54	54	3262	113/828
8	June 29, 205	PAC Agreement	TFSA	56	17	3293	120/828
9	Oct 30, 2015	PAC Agreement	Non-Reg	58	21	3394	146/828

Detailed Tally of the Alleged Falsified Trades

ACCOUNT	# OF FALSIFIED NOTES	# OF UNAUTH. TRADES	REFERENCE	PDF REFERENCE
CORP (Non-Reg)	47	106	Ex. 140, Tab 0, Corp. Reconciliation, Page 4	Page 12/376
TFSA	49	96	Ex. 140, Tab 0, TFSA Reconciliation, Page 6	Page 19/376

RRSP	44	112	Ex. 140, Tab 0, RRSP Reconciliation, Page 5	Page 25/376
TOTALS	**140**	**314**		

List of Notes that Are Allegedly False Which Appear to be Attributable to the Respondent Personally

#	TYPE OF NOTE/FORM	DATE OF NOTE/FORM	REFERENCE	PDF REFERENCE
1	Summary of Communication	January 27, 2015	Ex. 140, Corp Tab A2	Page 36/376
2	Summary of Communication	January 30, 2015	Ex. 140, Corp Tab A3	Page 40/376
3	Summary of Communication	March 31, 2015	Ex. 140, Corp Tab A4	Page 43/376
4	Summary of Communication	April 2, 2015	Ex. 140, Corp Tab A5	Page 46/376
5	Summary of Communication	April 7, 2015	Ex. 140, TFSA Tab B1	Page 241/376
6	Summary of Communication	August 5, 2015	Ex. 140, Corp Tab A5	Page 46/376
7	Pathway Notes	January 20, 2016	Ex. 154, Vol. 1, Tab 32, p. 3554	Page 342/828
8	Pathway Notes	January 21, 2016	Ex. 154, Vol. 1, Tab 32, p. 3489	Page 394/828
9	Pathway Notes	February 12, 2016	Ex. 154, Vol. 1, Tab 32, p. 751	Page 423/828
10	Pathway Notes	February 23, 2016	Ex. 154, Vol. 1, Tab 32, p. 3553	Page 341/828
11	Pathway Notes	March 2, 2016	Ex. 154, Vol. 1, Tab 32, p. 792	Page 463/828
12	Pathway Notes	May 2, 2016	Ex. 154, Vol. 1, Tab 32, p. 3553	Page 341/828
13	Pathway Notes	May 19, 2016	Ex. 140, TFSA Tab A32	Page 232/376
14	Pathway Notes	June 24, 2016	Ex. 140, TFSA Tab A34	Page 238/376

¶ 61 Client KO testified extensively as to her intensive professional, personal, and humanitarian commitments, providing specific dates and periods during which she could not have provided trade instructions or could not have met with the Respondent as his notes suggest. Her commitments included the following:

(a) as an emergency room physician, Client KO works long and intensive shifts where the stakes are critical. She does not make or take calls during her work periods;

(b) as a tri-athlete, Client KO would train intensively, often for many hours, and sometimes followed-up training with emergency room trips. She would not make or take calls during such periods; and

(c) Client KO would frequently travel for humanitarian pursuits, pleasure, and international races. She would often travel to remote, un-serviced areas as a volunteer medical professional, paying out of her own pocket for plane tickets, food, and medical equipment in order to provide primary and infant medical care. She would not take calls from her investment advisor during these trips, and, on some occasions, she would not have the mobile connectivity or telephone access required to take calls at all. This also applied to some days while on vacation, for example, when she claimed she had spent the day scuba diving.

¶ 62 With respect to trade instructions, there are many hours/days in which Client KO's recorded commitments conflict with the hours/days in which the Respondent's notes appear to indicate that she met with him or otherwise provided trade instructions. The recorded conflicts include the following:

(a) On January 27, 2015, various trade instruction forms and notes indicate that Client KO issued unsolicited instructions concerning the commencement and stopping of PACs, changing the amount of PACs, and fund transfers. In fact, she was in Mexico on vacation from January 21, 2015 to January 28, 2015.

(b) On April 2, 2015, between 1:50 p.m. to 3:11 p.m., various trade instruction forms and notes indicate that Client KO issued unsolicited instructions concerning the stopping of PACs, changing the number of PACs, and fund transfers. In fact, she was at work in the emergency department from 7:00 a.m. to 5:00 p.m. on that day and was active as the trauma team leader thereafter until 7:00 a.m. the following morning.

(c) On August 5, 2015, a "Summary of Communications" and Pathway notes logged by the Respondent's Pathway ID indicate that Client KO communicated instructions regarding stopping a PAC, increasing a PAC, starting a new PAC, and a fund transfer to rebalance funds. In fact, from July 30 to August 14, she was in Honduras at an "off grid" location where she was completely inaccessible. This note appears to have been entered by the Respondent himself and references an interaction with Client KO that could not have occurred.

(d) On September 16, 2015, various trade instruction forms and notes indicate that Client KO issued unsolicited instructions concerning a fund transfer. In fact, Client KO's mother was visiting in Vancouver from September 13, 2015, to September 20, 2015, and Client KO would not have issued trade instructions at that time.

(e) On January 20, 2016, various trade instruction forms and notes indicate that Client KO issued unsolicited instructions concerning fund transfers. In fact, Client KO had been in Nicaragua from January 15, 2016, to January 24, 2016, and would not have been in a position to issue trade instructions.

(f) From April 7, 2016, to April 11, 2016, various trade instruction forms and notes indicate that Client KO issued unsolicited instructions concerning stopping PACs, starting PACs, decreasing PACs, and transferring funds. In fact, Client KO was in South Africa from March 22, 2016, to April 12, 2016, and did not issue any trade instructions.

(g) From May 3, 2016, to June 24, 2016, various trade instruction forms and notes indicate that Client KO issued unsolicited instructions concerning stopping PACs, starting PACs, starting Systematic Transfer/Exchange Plans, and transferring funds. In fact, Client KO's father was seriously ill from May 2, 2016, to June 24, 2016, and she did not issue trade instructions during that time.

¶ 63 Further, with respect to the alleged genuine account forms, they bore signatures which were dated between April 8, 2015, and October 30, 2015. Client KO testified concerning what she did on some of those days to support her sworn testimony that she did not execute the account forms. Such evidence includes the following:

(a) A KYC Form completed April 8, 2015, raised Client KO's time horizon to "10+ years", her risk tolerance to "high", and her "investment portfolio profile" to "moderate aggressive to

aggressive" for her RRSP and TFSA accounts. The signature on this form was dated April 8, 2015. On that date, Client KO was scheduled for a 45 minute swim, a 4-hour morning bike ride, and to work thereafter from 2:00 p.m. to 12:00 a.m. She testified she did not sign that form.

(b) Further, a Client Update Form was completed on June 23, 2015, with respect to Client KO's TFSA account. Her signature on this account was dated June 23, 2015. On that day, however, Client KO completed what she referred to in a Facebook post as "the longest workout of [her] life". That same Facebook post included a picture of her fitness tracker, which lists 6 hours and 41 minutes of workout time, including 8 kms of swimming and 21 kms of running against a head wind. Her workout schedule indicates that she was in Whistler, British Columbia, on this date, and staying overnight in a hotel, and therefore she would not have attended a meeting at the Respondent's office to execute a Client Update Form.

(c) With respect to the early 2015 meeting notes that were produced from the Respondent's client file, Client KO testified that some of those meetings did not occur. She also testified that some of those notes contain false information including the following:

(i) Multiple meeting notes state, in the exact same manner, that commissions to the bonus structure was discussed, including management expense ratios, deferred sales charges, no load funds, etc. Client KO testified that such information was never discussed with her throughout the entirety of her relationship with the Respondent.

(ii) On January 9, 2014, a meeting note listed her relationship status as "single", but she was in a relationship with someone at the time.

(iii) On January 25, 2015, a meeting note referred to Client KO's "high risk tolerance" when her risk tolerance was actually "low to moderate". Further, Client KO was in Mexico on the date of this alleged meeting.

(iv) On April 7, 2015, a meeting note emphasized that Client KO's KYC was updated to reflect her "true risk tolerance" and that she has "always had [a] high risk tolerance". The meeting note then goes on to justify the portfolio's earlier approach as "precautionary". Client KO testified that she has never hidden her "true" risk tolerance, never expressed a "high risk tolerance", and has a cautious approach to investing.

(v) On September 19, 2014, a meeting note makes a reference to Client KO's desire to purchase a car when in fact she had no desire to purchase a car at that time. The same note refers to her working in a hospital in Squamish, which was incorrect, as she only worked in that hospital for a single shift. It also referred to plans to go to Paris. Client KO never planned to travel to Paris. The note also referenced Client KO's plans to purchase a house in Coal Harbour when she had not even resided in British Columbia for a year at that time. Client KO was certain that she had no plans to purchase a property in Vancouver at that time. As her original and authentic TFSA time horizon reflected, she intended to purchase a property three to five years after her arrival in British Columbia, if she decided to stay. The note referenced a mortgage rate that the Respondent was allegedly holding for her at a time when he was her landlord, and he knew that she had no intention to purchase a property. She was bound by a lease with the Respondent. The note also referred to the purchase of a summer home as a long-term plan: she did not have the resources to purchase a city property, let alone a summer home at that time.

The Respondent Moved to Harbourfront

¶ 64 In June 2016, the Respondent called Client KO and advised her that he was leaving the Member for Harbourfront. He asked her to leave with him, advising that his departure was being withheld from the Member and requesting she keep the information private. He seemed excited and exuberant to her and exerted "quite a lot of pressure" to have her move to Harbourfront. At the time, Client KO had been feeling increasingly uncomfortable about the fact that the Respondent was her landlord and her investment advisor. However, she

also was not comfortable informing him that she no longer wished to retain him as her investment advisor. She considered his departure from the Member to be an ideal opportunity to sever the relationship in a context that was less likely to offend the Respondent.

¶ 65 On or about July 15, 2016, Client KO spoke with the Respondent on the telephone, at which time she had informed him that she had been actively looking to purchase a condominium and would be vacating his unit in the fall. The Respondent became very aggressive with her, asking her why she had not come to him to obtain a mortgage. When the call ended, Client KO was even more certain that she did not want to continue the relationship with the Respondent.

¶ 66 On July 8, 2016, the Respondent and KB resigned from the Member. The Respondent became a Registered Representative with Harbourfront on July 25, 2016, and KB went with him. KB subsequently emailed Client KO to invite her to a meeting to arrange for the transfer of accounts from the Member to Harbourfront. KB also requested a photo of Client KO's driver's license. Client KO continued to believe that she would have to sign documents to authorize the transfer of investments to Harbourfront. She did not want to upset the Respondent until she could inform him in person that she did not intend to move her accounts to Harbourfront. Client KO sent a copy of her driver's license over to KB to avoid creating conflict.

The Forged Account Forms

¶ 67 Subsequent to Client KO's email to KB, on or about July 30, 2016, Client KO departed on an annual trip to Honduras to engage in humanitarian work. While she was in Honduras, in August 2016, Client KO was genuinely "off the grid" with no access to email or phone communications. She returned on or about August 14, 2016, and she received an email advising her that her file had been assigned to a different approved person of the Member, namely BG, who was assisted by TK. Client KO worked with the two of them to arrange for the redemption of investments to fund her new condo purchase.

¶ 68 On or about August 16, 2016, TK sent an email to Client KO advising her that she had become aware that Client KO had transferred her investment accounts to Harbourfront. TK wished Client KO well. Client KO was surprised that she had not been asked to sign anything before the transfer took place, but she was no longer certain that she was required to sign documents to authorize the transfer of her accounts. She only became aware that something untoward had occurred through happenstance when an acquaintance of hers who worked with TK told her that written authorization was required to transfer investment assets to a new dealer. Her acquaintance provided her with the email address of the Regional Director of the Member. Client KO contacted the Regional Director to request a copy of the signed documents that the Member received before transferring Client KO's accounts to Harbourfront. Client KO thereby became aware that her signature had been forged on account forms at Harbourfront while she was volunteering in Honduras. On or about August 30, 2016, she proceeded to report this conduct to the Regional Director of the Member, to Harbourfront, to the MFDA, and to IIROC. Client KO also sent an email to the Respondent asking him not to contact her.

¶ 69 Shortly after reporting the Respondent's conduct, Client KO received a call from the Respondent which she did not answer. A short time later, she heard a jiggling and a knock at her door. When she went to the door, she saw KB standing in the doorway. Apparently, the Respondent had granted KB access to the building and to Client KO's unit, and KB was accessing the unit. Client KO, feeling unsafe, immediately packed her belongings and departed from the unit.

¶ 70 On September 3, 2016, the Respondent sent an extensive email to Client KO. He attempted to excuse his behaviour, but admitted that there was no excuse for what he did. He said, "[t]his does not excuse my behavior, for which I am deeply sorry for betraying your trust. And whatever happens going forward, I hope one day you will find it in your heart to forgive me." He advised her, "[a]s of 12 pm on Friday I was stripped of my license to practice and terminated."

Member Investigations, Conclusions, Discipline Imposed, and Compensation Offered

¶ 71 The Member investigated the conduct of the Respondent, reporting such conduct in multiple Member Event Tracking System ("**METS**") reports which were successfully filed as more information became available. The METS reports and subsequent Complaint Investigation Summaries described investigations into the signing

of nine account forms, unauthorized trading in 2015 and 2016, the falsification of notes to support said trading, the violation of conditions placed on the Respondent's OBA's, and the provision of false answers on the Respondent's Annual Consultant Certificate in 2014 to 2016. The Respondent made no attempt to cover his tracks when the facts became known.

¶ 72 The Complaint Investigation Summaries outlined the conclusion of the Member's investigations. In summary, the Member was satisfied based on its investigations that Client KO had not, in fact, signed the nine account forms, and had not authorized trading in 2015 and 2016. The Member further found that the Respondent had forged the nine account forms, falsified the notes, engaged in unauthorized trading in Client KO's account, violated the conditions of his 2014 to 2016 OBA, and provided false answers on his Annual Consultant Certificate from 2014 to 2016.

¶ 73 Through its investigation process, the Member also determined that Client KO had suffered investment losses in the amount of more than $22,000 resulting from the unauthorized changes to her risk tolerance, her risk profile, and the transition of her portfolio into higher risk investments than what would have been appropriate if unauthorized changes had not been made to update her KYC information by the Respondent. The Member calculated the amount of compensation due to Client KO by determining the extent to her which her portfolio value declined as a result of the investments that were transitioned into higher risk funds. On or about February 23, 2017, Client KO accepted a compensation offer from the Member, in the final amount of $22,193.65.

Client KO's Discovery of Unauthorized Trades and False Meeting Notes

¶ 74 IIROC investigated Client KO's complaint and, in early 2017, reached out to Client KO to interview her. It was at that phone interview that she first discovered signature falsification in her account going back to April 2015 and numerous unauthorized trades.

IIROC Involvement

¶ 75 On June 28, 2017, a Hearing Panel of IIROC accepted a Settlement Agreement with the Respondent in which he admitted that in respect of the Harbourfront account, he had forged Client KO's signature on the following documents:

(a) Transfer Authorization Forms;

(b) New Client Application Forms;

(c) Tax Free Saving Account Application Forms;

(d) Corporate Resolution for Opening an Account;

(e) Second Party Account Supplement Form;

(f) Corporate Account Ownership/Directorship Supplement;

(g) Treaty Supplement Form;

(h) Foreign Account Tax Compliance Act Classification and Self Certification For Legal Entities Form; and

(i) Form W-8BEN-E, Certificate of Status of Beneficial Ownership of United States Tax Withholding and Reporting (Entities).

A copy of the Settlement Agreement is attached as Appendix "A".

¶ 76 The Respondent also admitted that he had used Client KO's signature from the picture of her license that she had sent to him in order to guide his forgeries and that he had submitted all of the above noted forms for processing. There is no question that the Respondent knowingly engaged in these activities.

Conclusions Regarding the Facts

¶ 77 As reflected in our summary, the testimony of multiple witnesses did not conflict with one another in any material respects and appears to be consistent with the documents that were admitted into evidence.

¶ 78 We find that the evidence supports Staff's allegations that the Respondent was the primary Approved Person responsible for servicing Client KO's accounts. He had an independent relationship with her before and after she became a client of the Member, and she subjectively considered him to be her investment advisor. Furthermore, there was no documentary evidence that was inconsistent with Client KO's assertion that she always considered the Respondent to be her primary advisor even if KB had occasional contact with her and contributed some administrative support to the servicing of Client KO's investment accounts.

¶ 79 We find the evidence also supports the conclusion that as Client KO has always alleged, between January 2015 and July 2016, she did not attend any meetings or have any actual communication with the Respondent or his assistants about changes to her accounts or trades to be processed in them (with the exception of communications that were exchanged to facilitate the processing of redemptions that were necessary for Client KO to pay for the car that she purchased in June 2015). To the extent that any records suggest otherwise, we find those records created by the Respondent to be false.

¶ 80 The evidence of SH and the conclusions of the Member support the allegation that the Respondent did not inform SH or the senior compliance staff at the Member that a tenant (Client KO) and a shareholder and co-director of Valerio had become clients of the Member whose accounts were serviced by the Respondent. These omissions contravene conditions of the approval of the Respondent's OBA as a landlord and as a shareholder and director of Valerio. Furthermore, as a consequence, the Member was deprived of an opportunity to address the resulting conflicts of interest.

¶ 81 Further, the evidence supports the conclusion that the Respondent was the "boss" in the office and, to the extent that other individuals like KB and AB assisted him to service the client base, they did so at his direction and subject to his instructions. The assistants rarely had any direct interaction with clients, and they claim that they relied on and believed that the Respondent was the source of instructions to them, and that he had obtained client instructions and signatures when necessary to process the trades and account changes that the assistants facilitated with the preparation of account forms and notes. The Respondent was also the person who developed and influenced a process whereby a Word document outline was used as a source of content for records rather than contemporaneous records of actual interactions with the clients that the Respondent or other individuals had actually participated in. In several cases, the Respondent's own personally maintained notes of interactions with Client KO were shown to be unreliable and likely inaccurate. In those cases, we do not accept his evidence.

¶ 82 The Respondent did not lead evidence to contradict the allegations of Staff.

¶ 83 In conclusion, the record supports our conclusion that the Respondent should be held accountable for the contraventions of regulatory requirements that occurred in this case. We find that the allegations have been proven.

¶ 84 In particular, the evidence supports our findings that:

(a) Client KO's signature was falsified on nine account forms that were submitted for processing by the Member;

(b) Client KO's KYC information was updated in three accounts between the April 8, 2015 and June 19, 2016, without her knowledge or authorization;

(c) at least 180 trades were processed by the Respondent in the accounts of Client KO without her knowledge or her authorization;

(d) false records were created by the Respondent and purported to document instructions from Client KO that had not in fact been received; and

(e) the Respondent failed to disclose to the Member actual or potential conflicts of interest arising from the tenant residing in his rental property and the business associate involved in his fashion clothing business becoming clients of the Member whose accounts were serviced by the Respondent. This was a conscious omission by the Respondent.

¶ 85 We find that there is ample evidence to support all of the findings in reference to the above and that

there is evidence and legal justification sufficient to hold the Respondent accountable for contraventions of his regulatory obligations in connection with all of those findings.

PART III. LAW

(A.) MFDA Jurisdiction Over the Respondent

¶ 86 Pursuant to s. 24.1.4 of MFDA By-law No. 1:

(a) ***Former Members.*** For the purposes of Sections 20 to 24 inclusive, any Member, Approved Person or other person subject to the jurisdiction of the Corporation shall remain subject to the jurisdiction of the Corporation notwithstanding that such Member has ceased to be a Member, Approved Person or other person subject to the jurisdiction of the Corporation.

(b) ***Limitation.*** No proceedings shall be commenced pursuant to Section 20.1 against a former Member or person referred to in Section 24.1.4(a) unless a Notice of Hearing has been served upon such Member or person no later than five years from the date upon which such Member or person ceased to be a Member or held the relevant position with the Member, respectively.

¶ 87 The Respondent became an Approved Person of the Member and signed an Agreement of Approved Person dated April 25, 2013, pursuant to which he agreed, amongst other things:

(a) to be bound by, observe, and comply with the MFDA Rules as they are from time to time amended or supplemented;

(b) that he is conversant with the MFDA Rules and to keep himself fully informed about the MFDA Rules as they are amended, or supplemented from time to time; and

(c) to submit to the jurisdiction of the MFDA and, wherever applicable the Board of Directors, Officers, Committees and Counsels thereof.

¶ 88 The Respondent ceased to be an Approved Person of the Member on July 8, 2016.

¶ 89 The original Notice of Hearing commencing this proceeding was issued on March 21, 2019, and served on the Respondent shortly thereafter. As the proceeding was commenced within five years of the date when the Respondent ceased to be an Approved Person of the Member, the proceeding was commenced prior to the expiry of the limitation period specified in s. 24.1.4(b) of MFDA bylaw No. 1.

¶ 90 Accordingly, there is no issue that the Notice of Hearing commencing this proceeding was commenced within time.

(B.) Standard of Proof

¶ 91 The standard of proof in an administrative and civil proceeding, including those instituted pursuant to MFDA By-law No. 1, is the civil standard of balance of probabilities. Since 2008, it has been settled law in Canada that “there is only one civil standard of proof at common law and that is proof on a balance of probabilities”. In a civil case, the trial judge must scrutinize relevant evidence with care to determine whether it is more likely than not that an alleged event occurred. Evidence must always be sufficiently clear, convincing, and cogent to satisfy the balance of probabilities test, but there is no objective standard to measure sufficiency.[1]

(C.) Credibility

¶ 92 Madam Justice Dillon, in *Bradshaw v. Stenner*, 2010 BCSC 1398, at paras. 186-187, aff’d 2012 BCCA 296, explained the process to be followed to resolve issues of credibility:

> 186 Credibility involves an assessment of the trustworthiness of a witness’ testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness

[1] *F.H. v. McDougall*, 2008 SCC 53, at paras. 40, 45, 46, 49; *DeVuono (Re)*, 2012 LNCMFDA 103 (Misconduct) (“***DeVuono***”), at paras. 11-13.

> provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis* (1926), 31 O.W.N. 202 (Ont. H.C.); *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 (B.C. C.A.) [*Faryna*]; *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484 (S.C.C.) at para.128). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356).
>
> 187 It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (*Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd. (1993)*, 12 Alta. L.R. (3d) 298 (Alta. Q.B.) at para. 13). I have found this approach useful.[2]
>
> [Emphasis added.]

¶ 93 On the proper approach to the evaluation of credibility, in the frequently cited decision of the British Columbia Court of Appeal in *Faryna v. Chorny*, the Court of Appeal stated that:

> 11 The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial judge to say "I believe him because I judge him to be telling the truth," is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.
>
> 12 The trial judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion. The law does not clothe the trial judge with a divine insight into the hearts and minds of the witnesses. And a court of appeal must be satisfied that the trial judge's finding of credibility is based not on one element only to the exclusion of others, but is based on all the elements by which it can be tested in the particular case.[3]
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> [Emphasis added.]

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[2] *Bradshaw v. Stenner*, 2010 BCSC 1398, at paras. 186-187, aff'd 2012 BCCA 296.

[3] *Faryna v. Chorny*, [1951] B.C.J. No. 152, [1952] 2 D.L.R. 354 (C.A.), at paras. 11-12.

¶ 94 As one MFDA Hearing Panel stated in its reasons for decision:

> 10 Credibility concerns the honesty or sincerity of a witness. Reliability has to do with the accuracy of what the witness says. In evaluating what weight, if any, can be placed on a witness's account, both credibility and reliability must be considered. A witness may be honestly conveying his or her recollection of events, and therefore credible, but be mistaken in that recollection. A witness may be dishonest or insincere in his or her testimony, and hence lack credibility. To state the obvious, a dishonest or insincere witness's evidence must be viewed with particular caution. Although we are entitled to accept all, part or none of any witness's account, a deliberate lie by a witness may impact on whether any reliance can be placed on anything contentious that the witness says.[4]

¶ 95 We find that, in this case, the testimony of the key witnesses called by the MFDA are buttressed not only by the demeanor of the witnesses but also by the consistency of their testimony on key issues with the testimony of other witnesses and with documentary evidence and other factual evidence that was produced during the Hearing.

¶ 96 The Respondent chose not to testify personally or to present testimony of other witnesses to contradict any of the evidence of witnesses called by Staff. Accordingly, the evidence of Client KO, KB, AB, SH and LD on the material facts is uncontradicted and is, to use the words of the British Columbia Court of Appeal in *Faryna v. Chorny* "in harmony with the preponderance of the probabilities". We so find.

¶ 97 To the extent that the testimony of witnesses called by Staff conflicts with positions taken by the Respondent about the facts, we find that we prefer the evidence offered by witnesses who testified during the Hearing.

Credibility – Client KO

¶ 98 We conclude that Client KO was an eminently credible witness. She is an emergency room physician who had dealings with the Respondent not only as her investment advisor, but also as her landlord. She attended as a voluntary witness who could not be compelled to testify in this proceeding, and attended the Hearing in spite of her extremely busy work schedule as an important front-line health care professional. She was compensated by the Member years ago for losses attributable to the misconduct alleged in this case and therefore had no present "financial interest" in the outcome. The motivation to testify was limited to her commitment to having findings made in the public interest.

¶ 99 Furthermore, Client KO has provided information, and when asked to, has testified about the matters at issue not only in this proceeding, but also in other contexts and proceedings including the Member's investigation into her complaint, the IIROC investigation that led to a Settlement Agreement between the Respondent and IIROC in 2017, the complaint that she submitted to the MFDA on May 1, 2017, the wrongful dismissal lawsuit between the Respondent and Harbourfront, and the disciplinary proceeding brought by FP Canada against the Respondent. We find that her testimony has consistently been accepted as truthful and preferred to the extent that it has conflicted with any evidence of the Respondent.

¶ 100 We find that her testimony was detailed, considered, and reasonable. Furthermore, on disputed facts, her assertions were often corroborated by other evidence such as contemporaneous photos, work schedules, training schedules, social media posts, travel records, and emails.

¶ 101 Where Client KO's evidence was challenged, for example on the issue of the Respondent's meeting notes of early 2015, she identified numerous inconsistencies in and suspicious details about the notes. Throughout her cross-examination, when aggressively challenged by counsel, she maintained her composure and answered in a confident, considerate, and balanced manner. We find her to be credible. In particular, on the most probative point that she did not meet with the Respondent or provide him or anyone from his office with trade instructions in 2015 or 2016, she was firm, clear, and unwavering. No other testimony was presented that contradicted that claim, and notes that purported to record the details of alleged interactions that she had

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[4] *Popovich (Re)*, 2015 LNCMFDA 48 (Misconduct), at para. 10.

with the Respondent or his team during that period were shown to be unreliable in many respects, including that some purported to document interactions that could not have occurred. We find those notes to be false.

¶ 102 We find that the evidence of Client KO should be accepted as credible and, where it conflicts with positions taken by the Respondent in this proceeding, her version of the facts is accepted.

Credibility – KB

¶ 103 We find that KB testified in a straight-forward and considered manner and provided answers that were directly responsive to the questions asked. Clearly her role in the Respondent's office was primarily administrative rather than client facing. Her position on this was reinforced during cross-examination, as was her testimony that the Respondent provided her with the client trade instructions for which he completed and signed paperwork for processing.

¶ 104 KB entered into a Settlement Agreement with the MFDA in which she accepted her share of responsibility for failing to exercise due diligence to ensure that KYC information that she had a role in updating, and trades that were processed on the basis of paperwork that she submitted, were authorized by a client, and that the notes she prepared concerning interactions with clients were accurate. KB entered into a Settlement Agreement with the MFDA and, pursuant to the terms of that Settlement Agreement, was ordered to pay a $35,000 fine and $5,000 in costs. We find that her testimony was factually consistent with the content of her Settlement Agreement with Staff.

¶ 105 On the most material aspects of KB's testimony, including her assertions about the Respondent's role in and control over the office, her own role in the office, the extent of her contact with Client KO, and the process by which trade documentation was filled out (typically signed by her, although usually without direct contact between her and the client), her testimony was consistent with the testimony of other witnesses such as Client KO and former office assistant AB.

¶ 106 We find that the evidence of KB is credible and, where it conflicts with positions taken by the Respondent, we prefer KB's version of the facts.

Credibility – AB

¶ 107 We find that the evidence of AB is very credible, and where it conflicts with positions taken by the Respondent in this proceeding, her version of the facts is preferred.

¶ 108 AB's testimony in respect of the structure and operation of the Respondent's office was credible and consistent with the testimony of KB. She clarified several times that the Respondent was the "boss" and she did not waiver on that point in cross-examination. She clearly stated that KB did not take action with respect to the business without the Respondent's permission, and the Respondent met with KB regularly and typically multiple times each day.

(D.) Findings

Allegation #5: Client KO's Signature Was Falsified on 9 Account Forms

¶ 109 Hearing Panels have consistently held that signing a client's signature or initials on a document with or without the client's knowledge or consent constitutes a serious contravention of the standard of conduct under MFDA Rule 2.1.1 that adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud, and misappropriation.[5]

¶ 110 Signature falsification has been treated as more egregious when it is done to facilitate unauthorized changes to client accounts. As one MFDA Hearing Panel stated:

> 9 Acts of falsification which are performed without the knowledge of the client, or resulted in loss or disadvantage to the client or Member, will be treated as more serious forms of

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[5] *Barnai, (Re)*, 2015 LNCMFDA 17 ("***Barnai***"), at paras. 5-6 and 11; *Stemshorn-Russell (Re)*, 2018 LNCMFDA 6, at paras. 20-22.

misconduct. Conversely, falsification which occurs with the knowledge or approval of the client, and can be shown to have given effect to the client's instructions, will generally be considered to be less serious misconduct.

10 The seriousness of the falsification of a client signature or initials also varies by the type or nature of the document involved. Falsification of a client's signature or initials on trade-related documents and Know-Your-Client ("KYC") forms will generally be treated more seriously than similar conduct carried out in relation to non-transaction oriented documents because of the greater risk of client harm.[6]

¶ 111 Pursuant to MFDA Rules 1.1.2 and 2.5.1, the Respondent was required to follow the supervisory policies and procedures that were established, implemented, and maintained by the Member. The Member's policies, as amended from 2014 to 2016, prohibited the falsification of client signatures as follows:

(a) Section **Error! Bookmark not defined.** "Ethical Practices": Emphasizes compliance with applicable laws, regulations and policies, but also requires that ethical conduct, broadly, be upheld.

(b) Section 10.3 "Other Prohibited Activities", Forgery: Provides that, consultants must "never sign another person's name to any document even if requested to do so by a client", even if intentions were not fraudulent.

¶ 112 Client KO testified that she did not meet with the Respondent in 2015 and 2016, and did not sign the 9 account forms which bear her signature during that period. As determined by the Member over the course of its investigation, the signatures on the 9 account forms bearing her signature are markedly different from her signatures on documents in 2014. Notes of her alleged meetings with the Respondent or others who worked at his office are rife with inaccuracies and lack reliability, not least of all because so many conflict with evidence of Client KO's availability to have participated in the alleged interactions that were purportedly recorded. No witnesses testified that they recall meeting with her to obtain her signatures, witnessed her signing any of the documents with impugned signatures, sending documents to her for signature, or receiving signed documents back from her.

¶ 113 We find that the purported signatures and initials of Client KO on the 9 forms in question are falsified.

Allegation #6: Failure to Obtain Client KO's Signatures on 3 KYC Forms

¶ 114 MFDA Rule 2.2.1 "Know-Your-Client" provides that Approved Persons are to use due diligence to learn facts relative to each client and each order accepted. MSN-0069 interprets this obligation to require Approved Persons to maintain "accurate and complete" KYC Information on file before trading on behalf of clients.[7]

¶ 115 The KYC and "Suitability" obligations incumbent upon investment advisors and dealers in the securities industry are fundamental requirements that impose a duty on registrants to use due diligence and make such inquiries as are appropriate to learn the essential facts relative to each client who is making investment decisions recommended or facilitated by the registrant in order to ensure that the investment advice provided to clients and the orders accepted from clients are suitable. These obligations are closely linked to the general obligation of a registrant to deal fairly, honestly, and in good faith with clients.[8]

¶ 116 Rule 2.2.4 also requires Members and Approved Persons to update documented KYC information in the event that material changes in client KYC information come to their attention and to make inquiries to clients at least once a year to find out whether a client's KYC information has changed. Even if an Approved Person initially receives inaccurate information or forms a mistaken impression about a client early in the relationship, as soon as the Approved Person becomes aware of the client's true circumstances (or any changes), the

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6 *Barnai*, *supra*, at paras. 9-10.

7 MFDA Rule 2.2.1; MSN-0069.

8 See, *e.g.*, MSN-0069, at pp. 3, 15 and 23-26; *Arseneau (Re)*, 2012 LNCMFDA 93 at para. 52.

Approved Person has an obligation to update the KYC records and correct errors.[9]

¶ 117 As stated above, pursuant to MFDA Rules 1.1.2 and 2.5.1, the Respondent was required to comply with the policies and procedures that were established, implemented, and maintained by the Member. With respect to an Approved Person's KYC due diligence obligations, the Member's policies, as amended from 2014 to 2016, state the following.

(a) Section 6.2 "Consider all client information": Provides that information obtained from the client must be properly documented in the client's file, including "the client's signature acknowledging the updates to their KYC information".

(b) Section 6.6 "Meeting KYC requirements": Provides that clients be contacted "at least annually" to determine whether there has been a change in circumstances.

(c) Section 6.7 "KYC best practices": Provides that a consultant's file should be able to support an altered KYC assessment through an Investment Profile Questionnaire, updated PFR, and detailed notes.

¶ 118 By failing to obtain client signatures on 3 KYC forms, at all or prior to trading, and by failing to advise Client KO of the unsuitable transactions, the Respondent failed to use "diligence" to learn facts relative to his client or to maintain accurate and complete KYC information on file prior to client trades and thereby violated MFDA Rule 2.2.1 and Member policy.

Allegation #7: Unauthorized Trades

¶ 119 While the Respondent was an Approved Person of the Member, MFDA Rule 2.3.1(1)(a) prohibited Approved Persons from engaging in discretionary trading. Specifically, at that time, the Rule stated that:

> 2.3.1 (a) **Prohibition.** No Member or Approved Person shall accept or act upon a general power of attorney or other similar authorization from a client in favour of the Member or Approved Person or engage in any discretionary trading.
>
> (b) **Exception.** Notwithstanding the provisions of paragraph (a), an Approved Person may accept or act upon a general power of attorney or similar authorization from a client in favour of the Approved Person where such client is a spouse, parent or child of the Approved Person and provided that:
>
> (i) the Approved Person notifies the Member of the acceptance of the general power of attorney or similar authorization;
>
> (ii) an Approved Person other than the Approved Person holding the general power of attorney must be the Approved Person of record on the account; and
>
> (iii) such other conditions as prescribed by the Corporation are met.
>
> [Emphasis added.]

¶ 120 Discretionary trading occurs when an Approved Person exercises authority to make decisions with respect to at least one of the elements of a trade to be processed in a client's account. The essential elements of a trade in respect of which instructions from a client must be obtained include the following:

(a) the specification of which security is to be traded;

(b) the amount of the trade (in either dollar value or the number of units to be traded);

(c) the account in which the trade is to be processed;

(d) the timing of when the trade is to be processed; and

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[9] *DeVuono*, *supra* at para. 54.

(e) the specific details of any fees associated with executing the trade.[10]

¶ 121 As one Hearing Panel explained:

> 45 If an Approved Person fails to obtain instructions from a client with respect to one or more elements of the trade and exercises his or her own discretion with respect to any elements of the trade in order to process the trade, the Approved Person has engaged in discretionary trading.
>
> 46 If a trade is processed without the knowledge or approval of the client (even if it can be shown that the trade was processed with good intentions and even if the client benefits the client financially or otherwise) the trade is unauthorized and the processing of such a trade constitutes a contravention of the regulatory obligations of the Approved Person who processed it.[11]

¶ 122 It is material to the egregiousness of the misconduct to distinguish between:

(a) 'authorized' discretionary trading which occurs in circumstances in which clients consciously and intentionally grant the Approved Person authority to exercise discretion with respect to one or more elements of the trading in their accounts (which remains prohibited conduct in spite of such client authorization or consent as Approved Persons are not permitted to accept such authority); and

(b) 'unauthorized discretionary trading' (sometimes referred to merely as 'unauthorized trading') which occurs when the client is not aware that the Approved Person is exercising discretion with respect to trades processed in their accounts and has not authorized such conduct.[12]

¶ 123 The Member's policies, as amended from 2014 to 2016, state the following.

(a) Section 8.9 "Restrictions and Requirements for Client Communications": Provides that "all trades must be authorized by the client prior to their execution."

(b) Section 10.3 "Other prohibited activities": Provides that discretionary trading is prohibited in all cases.

¶ 124 By processing at least 180 trades in the investment accounts of Client KO without her knowledge or authorization, the Respondent engaged in unauthorized discretionary trading and thereby contravened the policies and procedures of the Member and MFDA Rules 2.3.1(a) (now MFDA Rule 2.3.1(b)), 2.1.1, 2.1.0 and 1.1.2.)

¶ 125 Client KO testified that she did not, during 2015 and 2016, provide trade instructions to the Respondent or his employees. She testified that she attended no meetings with the Respondent or his employees in 2015 and 2016. She provided numerous examples of trades she could not have given authorization for due to her professional, personal, and humanitarian commitments.

¶ 126 During 2015 and 2016, without notifying her, the Respondent's office processed trades in Client KO's accounts, and recorded notes indicating that communications with Client KO about the transactions took place. We find that in 2015 and 2016, Client KO did not meet in person with or provide trade instructions to the Respondent's office. In 2015 and 2016, the trades processed by the Respondent's office in Client KO's accounts, as set out in the Transaction Charts submitted by BO, were not authorized by Client KO.

¶ 127 Based upon all of the evidence we have heard in this matter, we find that the Respondent was Client KO's investment advisor and was aware of and responsible for all trades processed in her accounts and any

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[10] *Garries* (*Re*), 2016 LNCMFDA 174 ("***Garries***"), at para. 44; *Showalter*, 2019 LNCMFDA 101, at para. 11; *In The Matter Of Stefano Arena*, Reasons for Decision of the Central Regional Council, MFDA File No. 202047 dated December 7, 2020, at para. 8; *Smilestone* (*Re*), 2013 LNCMFDA 55 ("***Smilestone***"), at para. 22; *MacPherson* (*Re*), 2017 LNCMFDA 65, at para. 7 (21); *O'Brien* (*Re*), 2008 LNCMFDA 17 ("***O'Brien***"), at para. 21.

[11] *Garries*, *supra*, at paras. 45-46.

[12] See *Romain* (*Re*), 2016 LNCMFDA 197, at paras. 32-34.

KYC information updates that were submitted to the Member in respect of her accounts.

Allegation #8: Responsibility for Falsification

¶ 128 MFDA Rule 5.1(b) requires that an adequate record of each order and instruction, given or received for the purchase or sale of securities, must be maintained by the Member and, by operation of Section 1.1.2, by Approved Persons.[13]

¶ 129 The Member's policies concerning "Documenting Client Trade Instructions", as amended from 2014 to 2016, state that when accepting trade instructions, Consultants must ensure that every transaction is consistent with the KYC information on file, each client is properly identified, the client file's notes include sufficient information concerning the client trade to document the verbal instructions received, and documentation is maintained in the client file, including the date, time, and details of any trade received. Further, the policies import the requirements of MSN-0035, *Recording and Maintaining Evidence of Client Trade Instructions.*

¶ 130 By creating false records of purported instructions or by failing to ensure proper records were created, the Respondent violated MFDA Rule 5.1(b), 2.5.1, 1.1.1 and 2.1.1 and Member policies.

¶ 131 The Respondent has admitted, in another context, that he personally falsified forms in respect of Client KO's accounts. Specifically, he admitted to IIROC that he forged account opening and transfer documentation to transfer Client KO's accounts from the Member to Harbourfront. He later attempted to justify his conduct in email communications with Client KO, stating in effect that it was the best thing that he could have done for her in light of the circumstances.

¶ 132 The evidence shows that the Respondent acted unilaterally to falsify her signature, create and submit forms to change KYC information, process trades and maintain records of authorization (whether authentic or not) when he felt it was best for her, and had no compunction about signing her name on account forms if that was necessary.

¶ 133 KB denied that she signed Client KO's name on any of the falsified forms. It is noteworthy, however, that the Respondent did not testify in this proceeding and has not denied under oath that he was the person who signed Client KO's signature on the impugned forms.

¶ 134 Based on all of the evidence we have heard, we find that the Respondent did sign Client KO's signature on the impugned forms. By making KYC changes for Client KO's accounts to increase her time horizon and her risk tolerance, the Respondent decreased the likelihood that any trade instructions submitted for processing with respect to Client KO's accounts would be queried with respect to suitability at any time.

¶ 135 Based on all of the evidence, we find that the Respondent falsified Client KO's signature on the 9 account forms.

Allegation #9: The Respondent Was in a Conflict of Interest

¶ 136 Pursuant to former MFDA Rule 1.2.1(c) (now amended and renumbered as Rule 1.3.2), an Approved Person may have, and continue in, an outside activity provided that, among other things: the Approved Person discloses the outside activity to the Member, and the Approved Person obtains written approval from the Member to engage in the outside activity prior to engaging in that outside activity.[14]

¶ 137 Former Rule 1.2.1(c)(iv) required the Member to establish and maintain procedures to "address potential conflicts of interest" associated with outside activities that an Approved Person might seek authorization to engage in.

¶ 138 MFDA Rule 2.1.4 imposes the obligation on Members and Approved Persons to be aware of actual and potential conflicts of interest, and in the case of Approved Persons, to report conflicts to

[13] MFDA Rule 5.1(b).

[14] Former MFDA Rule 1.2.1(c) (now 1.3.2). This Rule was amended and renumbered to become current Rule 1.3.2 effective March 17, 2016.

the Member, to disclose conflicts to clients in writing, and to address such conflicts by the exercise of responsible business judgment influenced only by the best interests of the client. Staff Notice *MSN-0047 Personal Financial Dealings With Clients* reinforces these obligations and notes, in particular, that conflicts arising in the context of OBAs have to be managed by the Member.[15]

¶ 139 In this case, the Member had implemented an OBA approval process that was designed to identify and address conflicts of interest associated with proposed outside activities. There was nothing wrong with the Member approving the Respondent's engagement in a rental property business, and conflicts of interest were not likely to arise if no clients were involved in financing the business or as tenants.

¶ 140 Similarly, there was nothing wrong with the Respondent engaging as a 'silent partner' in a fashion clothing business (Valerio) if no person associated with Valerio was a client of the Member.

¶ 141 When the Respondent filled out his OBA approval forms in April 2013, no tenants residing in dwellings owned by the Respondent were clients of the Member and no person associated with Valerio was a client of the Member. The Member approved the OBAs that the Respondent sought permission to engage in subject to the conditions that "[the Respondent] was not to solicit any tenants as clients" and "if [the Respondent] did obtain a client through the activity described in the Rental OBA Disclosure Form, he was required to disclose this to his branch manager and issue a disclosure letter." With respect to Valerio, the OBA was approved subject to the conditions that "Candidate cannot pursue prospects/clients related to Valerio".

¶ 142 The Respondent was required to report to his branch manager if a tenant became a client or if a business associate connected with Valerio became a client. We find that the Respondent failed to abide by those conditions.

¶ 143 MFDA Rule 1.1.2, in combination with Rules 2.10 and 2.5.1, impose on Approved Persons the obligation to comply with the policies and procedures of the Member firms with whom they are associated so that the Member can fulfill its supervisory obligations and ensure that its Approved Persons are carrying on Member business in compliance with their regulatory obligations. The Respondent was required to comply with the policies and procedures that were established, implemented and maintained by his Member including the following:

> Section 10 "Conflict of Interest": Requires actual and potential conflicts of interests, as well as personal financial dealings, be reported to the Member, including business relationships.

¶ 144 In *Chang (Re)*, the Hearing Panel stated that the underlying rationale for the rule respecting the disclosure of conflicts of interest and perceived conflicts is to guard against conflicts of interest and to ensure that the activities of the Approved Person do not compromise the regulation of the industry. More particularly, Rule 1.3.2(c) seeks to ensure that (a) securities legislation and internal procedures are complied with; (b) clients are aware that the outside activity is not the business or responsibility of the Member; (c) any actual or potential conflicts of interest are dealt with appropriately; and (d) the MFDA, its Members, and the mutual fund industry are not being brought into disrepute by an Approved Person's improper or inappropriate OBAs.[16]

¶ 145 Hearing Panels have held that failing to adhere to the conditions of approval is also a contravention of MFDA Rules concerning OBAs.[17]

¶ 146 We find that by failing to disclose to the Member that:

(a) a tenant of one of his rental properties had become a client of the Member whose accounts were serviced by the Respondent; and

(b) a shareholder and co-director of Valerio had become a client of the Member whose accounts

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[15] MFDA Rule 2.1.4 – Conflicts of Interest; MSN-0047 – Personal Financial Dealings with Clients.

[16] *Chang (Re)*, 2015 LNCMFDA 188, at para. 108, upheld by the British Columbia Securities Commission following a Hearing & Review in *Re Chang*, 2017 BCSECCOM 70.

[17] *Smilestone, supra*, at para. 5 (29-30).

were serviced by the Respondent;

the Respondent failed to disclose conflicts or potential conflicts of interest to the Member and failed to abide by the conditions of approval of his outside activities, contrary to the policies and procedures of the Member and MFDA Rules 1.2.1(c) (now Rule 1.3.2), 2.1.4, 2.1.1, 2.5.1, 2.10, and 1.1.2.

Written Submissions of Staff

¶ 147 In preparing these reasons, we relied extensively on the detailed and well-researched Written Submissions of Staff and adopted as our own much of their reasoning and analysis as well as much of their text.

DATED this 7 day of November, 2023.

"Stephen D. Gill"

Stephen D. Gill, Chair

"Holly Martell"

Holly Martell, Industry Representative

"Richard R. Sydenham"

Richard R. Sydenham, Industry Representative

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