



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Richard Dhur and Frank Shaw

Heard: July 28, 2015, in Toronto, Ontario
Reasons for Decision: September 10, 2015

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

| | |
|---------------------|-------------------------|
| Paul M. Moore, Q.C. | Chair |
| Cheryl Hamilton | Industry Representative |
| Patrick Galarneau | Industry Representative |

Appearances:

| | | |
|----------------|---|--|
| Sarah Glickman |) | For the Mutual Fund Dealers Association of |
| |) | Canada |
| |) | |
| Ross Stewart |) | For the Respondents |
| |) | |
| |) | |

Procedure

1. On the consent of the parties these two matters were heard together.
2. Each Respondent and the MFDA presented to the panel an Agreed Statement of Facts for the Respondent's matter which the panel accepted as proof of the misconduct alleged. Both Agreed Statements of Facts are attached as exhibits 'A' and 'B' to these Reasons.
3. In essence, the parties agreed on everything except the appropriate sanctions for the misconduct. Since the panel accepted the agreed facts as establishing contraventions of the rules as alleged, this hearing for the most part was a penalty hearing.
4. This hearing was not a hearing to approve settlement agreements. Therefore, the panel was not limited by the MFDA Rules in seeking additional information from the parties. The panel stated that it did not consider itself bound by the clause (typically contained in settlement agreements) in each Agreed Statement of Facts that the parties would not provide additional facts not agreed to in the Agreed Statement of Facts, without the other party's consent (although, as the Chair observed, unlike a court, the panel did not have judicial power to compel a party to answer).

Facts

5. The facts are set out in the Agreed Statements of Facts.
6. In addition to these agreed facts the Hearing Panel learned the following through answers to questions it asked at the hearing:
 - a) Both Respondents were working out of the Orleans branch of the Member.
 - b) Mr. Shaw was the primary branch manager.
 - c) Mr. Dhur was the assistant branch manager at the time and, in a supervisory capacity, supervised Mr. Shaw's trades. But in terms of the hierarchy or the structure of the

branch, Mr. Shaw was the most senior member there and Mr. Dhur was subordinate to him.

7. When the misconduct was discovered, the branch was closed and the Respondents ceased to be branch managers. That was 16 months ago. The Respondents have since been in sales under close supervision with a different branch manager at a different branch. They are dealing with their compliance department directly, in Toronto.

The Allegations

8. As stated in paragraph 22 of the Agreed Statement of Facts for Mr. Shaw:

"By engaging in the conduct described above [in the Agreed Statement of Facts], the Respondent admits that he obtained, maintained and in some instances used to process transactions 24 account forms or photocopies of account forms in respect of 10 clients which were blank or only partially complete at the time the client signed the account forms or previously used account forms that the Respondent altered in order to process transactions thereby failing to observe the high standard of ethics and conduct in the transaction of business and engaging in conduct unbecoming an approved person contrary to MFDA Rule 2.1.1."

9. As stated in paragraph 24 of the Agreed Statement of Facts for Mr. Dhur,

"By engaging in the conduct described above, the Respondent admits that he reviewed and approved each of the 24 account forms or photocopies of account forms in respect of 10 clients submitted by Shaw which were blank or only partially complete at the time the client signed the account forms or previously used account forms that Shaw altered in order to process transactions, thereby failing to observe the high standards of ethics and conduct in the transaction of business and engaging in conduct unbecoming an approved person contrary to MFDA Rules 2.1.1 and 2.5.5(d), now Rule 2.5.5(f)."

10. Rule 2.5.5(f) provides:

"The branch manager must: (i) supervise the activities of the Member at a branch or sub-branch that are directed towards ensuring compliance with the By-laws, Rules and Policies and with applicable securities legislation by the Member and its Approved Persons."

Staff's Submission

11. Staff sought the same penalty for each Respondent: a fine of \$10,000 for each, costs in the amount of \$2,500 for each, and a one-year prohibition from acting as branch manager for each.

12. Staff submitted that this penalty would address factors that a hearing panel should consider: Protection of the investing public; the integrity of the securities markets; specific and general deterrence; protection of the MFDA's membership and protection of the integrity of the MFDA's enforcement processes.

13. The use of pre-signed forms is not permitted and contravention of the rules regarding them is considered serious. With them there is a risk of discretionary trading. There is a risk of fraud. They destroy the audit trail. Their use is harmful to the client, to the Approved Person and to the Member.

14. Staff submitted that the seriousness of the misconduct here, the use of pre-signed forms, was compounded by the fact that both Respondents have significant industry experience and are registered as branch managers.

15. Staff submitted that the misconduct was not a mistake, an omission, or a misunderstanding; this was an arrangement made by the Respondents.

16. Staff submitted that the Respondents did not understand the seriousness of their misconduct: they are merely seeking a reprimand. Staff observed that the Respondents called their misconduct a technical violation. Furthermore, in Staff's submission, there was no evidence before the panel that the Respondents do understand the seriousness of the misconduct.

17. Staff referred to the MFDA penalty guideline which suggests a fine in the minimum of \$5,000.

Respondents' Submission

18. The Respondents suggested a reprimand.

19. Respondents' counsel submitted that all members of the industry need to be judged equally, but people perhaps of more significant vintage would be expected to have a greater familiarity with the Rules. But they should not, as a result of that, be judged more harshly. Quite to the contrary, counsel suggested, we should take into account the fact that the Respondents have many years of service having no disciplinary history; they are entitled to that credit as well. They have shown in terms of their character that they have served multiple years in this industry, never having run afoul of rules and regulations. They are entitled to be judged not just on this incident but on the entirety of their work history in terms, ultimately, of the penalty that is going to be imposed.

20. Counsel submitted that Mr. Dhur and Mr. Shaw were very forthright when they were approached by regulators in terms of what happened. They acknowledged their misconduct from the start. To say that they do not recognize the seriousness of their misconduct is fundamentally wrong. In fact, they do understand the seriousness of this matter. They were cooperative throughout this investigation; they acknowledged their liability. They have endured what can no doubt be some professionally embarrassing moments in terms of having to go through the whole hearing, having press releases issued where their names are in it; this has not been a pleasant experience for them, but they have done so willingly. They have done so voluntarily and they have not simply sat back and said, "Prove it, we have done nothing wrong." In counsel's submission, that does not speak of someone who doesn't appreciate the seriousness of the conduct, but quite the opposite: someone who realizes that rules are there for a reason and that they must be adhered to.

21. In counsel's view, in determining the appropriate penalty we needed to consider the likelihood of recidivism on behalf of the Respondents. Counsel urged us to consider that in 19 to 23 years of their professional lives this is the first time that they have ever been before a panel like this, where they have had their professional integrity called into question. That is not a

matter that they take lightly, as evidenced by the fact they have retained counsel, travelled to Toronto, and participated fully in this hearing.

22. Finally, counsel submitted, in this matter we have: no harm to investors, no losses, no benefits received by them. Their motivation was expediting client convenience. This was relevant, counsel suggested, not in judging the conduct, but in setting the penalty.

23. Counsel observed that we are talking about 10 clients here when we deal with Mr. Shaw. That is not the entirety of Mr. Shaw's client list. Therefore, this was not behaviour endemic to all clients that Mr. Shaw represented.

24. Counsel observed that all 10 of the clients were canvassed and confirmed that the conduct in question was done with their prior knowledge and consent, and oftentimes at their request.

25. Counsel stated that the Respondents have been unable to act as branch managers for a significant period of time; that has a financial impact on them.

26. In terms of costs, counsel suggested that consideration be given to the cooperation of the Respondents in helping to bring this matter forward expeditiously: Mr. Dhur and Mr. Shaw agreed to have this hearing done jointly.

27. Our decision was given orally at the hearing. We held that the appropriate sanctions in these two cases should be slightly different, taking into account the responsibility of Mr. Shaw as opposed to Mr. Dhur.

Fine

28. We imposed a fine of \$5,000 on Mr. Shaw and a fine of \$2,500 on Mr. Dhur.

Costs

29. With respect to costs, we agreed with what Staff said about costs. The request of \$2,500 per Respondent was extremely modest and our experience suggests that that already has a big discount in it. We ordered that each Respondent pay Staff costs at \$2,500 per Respondent.

No Suspension

30. We did not order any suspension or prohibition on the Respondents acting in the capacity of branch manager. In the circumstances of this case, we took into account the fact that the Respondents have been suspended as branch managers for 16 months and that they are under close supervision now. And we did not believe that, from an individual deterrence point of view, any further period of suspension was necessary. From a general deterrence point of view no further period of suspension made any sense.

Repassing course

31. We ordered that before a Respondent again acts as a branch manager, he successfully complete the branch manager's course offered by the Canadian Securities Institute in relation to the mutual fund industry.

Reasons

32. As Staff and Respondents' counsel have pointed out, this self-regulatory organization regulates to protect the public. Our mandate is not to punish.

33. Paramount in the purpose of sanctions is deterrence, from the Respondents' point of view, and from that of others in the industry.

34. We accepted the arguments of Respondents' counsel that the likelihood of recidivism here was extremely low, taking into account all the circumstances of this case.

35. While the misconduct was serious it was not egregious.
36. The word "egregious" should not be used because there was little likelihood of future public harm by these individuals or a likelihood that these individuals are ungovernable, and there has been no evidence of fraud or moral misconduct or unsuitability or other such things.
37. There was no client loss, no client harm, and no client complaints. There was no failure to follow client instructions. There was no personal benefit. There was no discretionary trading; in fact, the motivation was client convenience.
38. The Respondents have no record of prior disciplinary infractions or misconduct, and have had long successful careers in the industry.
39. In spite of all that, the conduct was wrong. And in spite of all that, it can't be permitted to not have any regulatory consequences.
40. The conduct in question is not permitted because it can present difficulties in establishing an audit trail, and could create opportunities for fraud and unauthorized discretionary trading.
41. We accepted what Staff counsel said about these individuals being standard bearers and leaders of the industry. That is why we felt fines were necessary. There was no mistake of fact or a misunderstanding of what the Rules were on the part of the Respondents and the conduct that was undertaken was deliberate, which was another reason why a fine was appropriate and why we could not go with what was recommended by Respondents' counsel, namely, a reprimand. A reprimand in this case just wouldn't be sufficient.
42. If the Respondents had not been out of the supervisory capacity and suffered the closing of their branch for the last 16 months, then we would have considered a period of a suspension in acting as branch manager for perhaps six months but we don't need to speculate.

43. We considered the precedents presented to us at the hearing. While some of them were helpful, in particular *Kant (Re)*, [2014] Hearing Panel of the Prairie Regional Council, MFDA File No. 201357 (March 23, 2014); *Kahlon (Re)*, [2015] Hearing Panel of the Central Regional Council, MFDA File No. 201357 (March 4, 2015), and *Durotoye (RE)*, [2014] Hearing Panel of the Central Regional Council, MFDA File No. 201328 (May 20, 2014) the precedents were not generally directly equivalent to our case.

44. The parties are to be commended on the cooperation that took place in this case. The fact that the parties came to Agreed Statements of Facts, and that when they could not agree on appropriate penalties they brought that to a hearing, is all commendable. We are all interested in the efficient and speedy administration of justice, and this was one way to achieve it.

DATED this 10th day of September, 2015.

“Paul M. Moore”

Paul M. Moore, Q.C.
Chair

“Cheryl Hamilton”

Cheryl Hamilton
Industry Representative

“Patrick Galarneau”

Patrick Galarneau
Industry Representative

Exhibit 'A'

Agreed Statement of Facts

File No. 201439



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1
OF THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Richard Dhur

AGREED STATEMENT OF FACTS

I. INTRODUCTION

1. By Notice of Hearing dated December 19, 2014 the Mutual Fund Dealers Association of Canada (the "MFDA") commenced a disciplinary proceeding against Richard Dhur (the "Respondent") pursuant to ss. 20 and 24 of MFDA By-law No. 1.
2. The Notice of Hearing set out the following allegations:

Allegation #1: between July 2008 and May 2013, while acting in the capacity of a Branch Manager, the Respondent reviewed and approved 24 account forms or photocopies of account forms in respect of 10 clients, which he knew were blank or only partially complete at the time the clients signed the account forms or were previously used account forms which had been altered in order to process transactions, contrary to MFDA Rules 2.5.5(d) (now Rule 2.5.5(f)) and 2.1.1.

II. IN PUBLIC / IN CAMERA

3. The Respondent and Staff of the MFDA (“Staff”) agree that this matter should be heard in public pursuant to Rule 1.8 of the MFDA Rules of Procedure.

III. ADMISSIONS AND ISSUES TO BE DETERMINED

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

5. Staff and the Respondent jointly request that the Hearing Panel determine, on the basis of this Agreed Statement of Facts, the appropriate penalty to impose on the Respondent.

6. Staff is seeking a fine in the amount of \$10,000, a 1 year suspension from acting as branch manager, and costs in the amount of \$2,500.

7. The Respondent is seeking a reprimand.

IV. AGREED FACTS

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

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

Registration History

10. The Respondent has been registered in the mutual fund industry since November 1995.

11. Since November 1999, the Respondent has been registered in Ontario and Quebec as a mutual fund salesperson with WFG Securities Inc.¹ (“WFG”), a member of the MFDA.

12. Commencing in November 2006, the Respondent was registered in Ontario and Quebec as a Branch Manager with WFG. At all material times, the Respondent acted as the alternate Branch Manager at his branch office, and reviewed and approved the trades submitted by the designated Branch Manager, Frank Shaw (“Shaw”).

13. On April 10, 2014, WFG suspended the Respondent from acting in the capacity of a Branch Manager as a result of the events described below.

14. At all material times, the Respondent conducted business in the Orleans, Ontario area.

Allegation #1: Pre-signed and Altered Forms

15. Between July 2008 and May 2013, Shaw obtained, maintained, and in some instances, used to process transactions, 24 account forms or photocopies of account forms in respect of 10 clients, which were blank or only partially complete at the time the clients signed the account forms, or were previously used account forms that Shaw altered in order to process transactions.

16. In particular, Shaw:

- (a) obtained, altered, and used to process trades, 19 trade tickets or photocopies of trade tickets, which were blank or only partially complete at the time the clients signed the trade tickets or were previously used trade tickets;

¹ Previously known as WFG Securities Canada Inc. and Transamerica Securities Inc.

- (b) obtained, altered and used to process transactions, 4 New Account Application Forms; and
- (c) obtained and maintained in 1 client file, 1 photocopy of a blank pre-signed trade ticket.

17. Shaw's conduct is the subject of an MFDA proceeding against him (file number 201437).

18. The Respondent, while acting as alternate Branch Manager, reviewed and approved each of the 24 account forms submitted by Shaw described above in paragraphs 15-16, which the Respondent knew were blank or only partially complete at the time the clients had signed the account forms or were previously used account forms which Shaw had altered in order to process transactions.

Additional Factors

19. As part of its investigation, WFG sent letters to all clients serviced by the Respondent in order to determine whether Shaw had engaged in any unauthorized trading. None of the clients reported any concerns to WFG.

20. None of the 10 clients in question have complained about the Shaw's conduct.

21. The Respondent provided the following statement to explain why he had approved transactions where Shaw had used pre-signed or altered account forms:

At the clients' verbal requests that we maintain a supply of authorized trade tickets to assist in their redemptions I agreed to the various requests. In these cases it was often distance that was the prime factor. None of these situations resulted in a misuse or misappropriation of the clients (*sic*) funds. No malice was intended. All trades were executed with the clients (*sic*) specific direction.

22. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct admitted to below beyond the commissions or fees he would ordinarily be entitled to had the transactions been carried out in the proper manner.

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

Misconduct Admitted

24. By engaging in the conduct described above, the Respondent admits that he reviewed and approved each of the 24 account forms or photocopies of account forms in respect of 10 clients submitted by Shaw, which were blank or only partially complete at the time the clients signed the account forms or were previously used account forms that the Shaw altered in order to process transactions, thereby failing to observe the high standards of ethics and conduct in the transaction of business and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rules 2.1.1 and 2.5.5(d) (now Rule 2.5.5(f)).

Execution of Agreed Statement of Facts

25. This Agreed Statement of Facts may be signed in one or more counterparts which together shall constitute a binding agreement.

26. A facsimile copy of any signature shall be effective as an original signature.

DATED this 13th day of June, 2015.

“Richard Dhur”

Richard Dhur

“Shaun Devlin”

Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President, Member Regulation -
Enforcement

Exhibit 'B'

Agreed Statement of Facts

File No. 201437



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1
OF THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Frank Shaw

AGREED STATEMENT OF FACTS

I. INTRODUCTION

1. By Notice of Hearing dated December 19, 2014 the Mutual Fund Dealers Association of Canada (the "MFDA") commenced a disciplinary proceeding against Frank Shaw (the "Respondent") pursuant to ss. 20 and 24 of MFDA By-law No. 1.

2. The Notice of Hearing set out the following allegations:

Allegation #1: between July 2008 and May 2013, the Respondent obtained, maintained, and in some instances, used to process transactions, 24 account forms or photocopies of account forms in respect of 10 clients, which were blank or only partially complete at the time the clients signed the account forms or were previously used account forms that the Respondent altered in order to process transactions, contrary to MFDA Rule 2.1.1.

II. IN PUBLIC / IN CAMERA

3. The Respondent and Staff of the MFDA (“Staff”) agree that this matter should be heard in public pursuant to Rule 1.8 of the MFDA Rules of Procedure.

III. ADMISSIONS AND ISSUES TO BE DETERMINED

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

5. Staff and the Respondent jointly request that the Hearing Panel determine, on the basis of this Agreed Statement of Facts, the appropriate penalty to impose on the Respondent.

6. Staff is seeking a fine in the amount of \$10,000, a one year suspension from acting as branch manager, and costs in the amount \$2,500.

7. The Respondent is seeking a reprimand.

IV. AGREED FACTS

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

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

Registration History

10. The Respondent has been registered in the mutual fund industry since June 1992.

11. Since January 1999, the Respondent has been registered in Ontario and Quebec as a mutual fund salesperson with WFG Securities Inc.² (“WFG”), a member of the MFDA.

12. From September 28, 2009 to April 10, 2014, the Respondent was registered in Ontario and Quebec as a Branch Manager with WFG.

13. On April 10, 2014, WFG suspended the Respondent from acting in the capacity of a Branch Manager as a result of the events described below.

14. At all material times, the Respondent conducted business in the Orleans, Ontario area.

Allegation #1: Pre-signed and Altered Forms

15. Between July 2008 and May 2013, the Respondent obtained, maintained, and in some instances, used to process transactions, 24 account forms or photocopies of account forms in respect of 10 clients, which were blank or only partially complete at the time the clients signed the account forms, or were previously used account forms that the Respondent altered in order to process transactions.

16. In particular, the Respondent:

² Previously known as WFG Securities Canada Inc. and Transamerica Securities Inc.

- a. obtained, altered, and used to process trades, 19 trade tickets or photocopies of trade tickets, which were blank or only partially complete at the time the clients signed the trade tickets or were previously used trade tickets;
- b. obtained, altered and used to process transactions, 4 New Account Application Forms; and
- c. obtained and maintained in 1 client file, 1 photocopy of a blank pre-signed trade ticket.

Additional Factors

17. As part of its investigation, WFG sent letters to all clients serviced by the Respondent in order to determine whether the Respondent had engaged in any unauthorized trading. None of the clients reported any concerns to WFG

18. None of the 10 clients in question have complained about the Respondent's conduct.

19. The Respondent states that all transactions were completed at the request of the client in order to service clients as quickly as possible.

20. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct admitted to below beyond the commissions or fees he would ordinarily be entitled to had the transactions been carried out in the proper manner.

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

Misconduct Admitted

22. By engaging in the conduct described above, the Respondent admits that he obtained, maintained, and in some instances, used to process transactions, 24 account forms or photocopies of account forms in respect of 10 clients, which were blank or only partially complete at the time the clients signed the account forms or were previously used account forms that the Respondent

altered in order to process transactions, thereby failing to observe the high standards of ethics and conduct in the transaction of business and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

Execution of Agreed Statement of Facts

23. This Agreed Statement of Facts may be signed in one or more counterparts which together shall constitute a binding agreement.

24. A facsimile copy of any signature shall be effective as an original signature.

DATED this 15th day of June, 2015.

“Frank Shaw”

Frank Shaw

“Shaun Devlin”

Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President, Member Regulation -
Enforcement

‘Addendum’



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

DELIVERY

August 17, 2015

Paul M. Moore, Q.C.
Patrick Galarneau
Cheryl Hamilton
c/o Corporate Secretary's Office
Mutual Fund Dealers Association of Canada
900-121 King Street West
Toronto, ON
M5H 3T9

Dear Sirs and Mesdames:

Re: In the Matter of Frank Shaw and Richard Dhur
MFDA File Nos. 201437 and 201439

At the hearing of this matter on July 28, 2015, the parties agreed that paragraph 12 of the Agreed Statement of Facts of Frank Shaw (Exhibit 6 in that proceeding) be amended to read as follows:

The Respondent has been registered as a branch manager since 1996.

Counsel for the Respondents has approved the above amendment as to form and content. A copy of this letter will be placed in proceeding file available to the public.

Yours truly,

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

“Sarah Glickman”

Sarah Glickman
Enforcement Counsel

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