



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

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Stefano Arena

Heard: October 8, 2020 by electronic hearing in Toronto, Ontario

Decision: October 8, 2020

Reasons for Decision: December 7, 2020

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Emily Cole
Matthew Onyeaju
Matthew Prew

Chair
Industry Representative
Industry Representative

Appearances:

Brenden Forbes)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Laura Paglia)	Counsel for the Respondent
)	
)	
Stefano Arena)	Respondent
)	
)	

I. INTRODUCTION

1. This was a hearing pursuant to section 24.4 of By-Law No.1 of the Mutual Fund Dealers Association of Canada (“MFDA”) to consider a settlement agreement between Staff of the MFDA (“Staff”) and the Respondent, Stefano Arena executed August 28, 2020 (the “Settlement Agreement”).

2. After reviewing the proposed Settlement Agreement and the material filed by Staff and hearing the submissions of counsel for Staff and counsel for the Respondent, the Hearing Panel accepted the Settlement Agreement attached and signed an order reflecting our approval. These are the reasons for our decision:

II. CONTRAVENTIONS

3. The Respondent admits that between June 2016 and May 2018, he processed switches on behalf of clients using his discretion to determine the timing and amount of the switches, contrary to the Member’s policies and procedures and MFDA Rules 2.3.1(b), 2.1.1, 1.1.2 and 2.5.1.

4. Since July 1999, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative)¹ with Sun Life Financial Investment Services (Canada) Inc. (the “Member”), a Member of the MFDA.

III. PROPOSED SANCTIONS

5. The Respondent agrees to accept the following penalties:

- a) he will be suspended from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of two months commencing from the date the Settlement Agreement is accepted by the Hearing Panel;
- b) he will pay a fine in the amount of \$35,000 in certified funds upon acceptance of the Settlement Agreement; and

¹ In September 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force

- c) he will pay costs in the amount of \$5,000 in certified funds upon acceptance of the Settlement Agreement.

IV. AGREED FACTS

Registration History

6. At all material times, the Respondent conducted business in the Scarborough, Ontario area.

Discretionary Trading

7. At all material times, the Member's policies and procedures prohibited Approved Persons from engaging in discretionary trading.

8. Specifically, the Member's policies and procedures required Approved Persons to obtain specific instructions relating to all elements of a trade from a client prior to the execution of a trade. The elements of a trade include:

- a) The selection of the investment to be purchased or sold;
- b) The amount of the investment to be purchased or sold; and
- c) The timing of the trade.

9. Between June 2016 and May 2018, the Respondent engaged in discretionary trading by processing approximately 1062 switches from money market to equity mutual funds on behalf of 36 clients when he determined the timing and amount of the switches without obtaining specific instructions of the clients for these elements of the transaction at the time of processing the transactions.

10. At initial meetings with the clients, the Respondent completed Know-Your-Client ("KYC") documents and Investor Profile Questionnaires ("IPQs").

11. The completed IPQs and KYC documents provided risk tolerances and investment objectives for each client. The Respondent recommended a portfolio of equity mutual funds to the clients, based on the risk tolerances and investment objectives for each client found in the clients' IPQs and KYC documents. The Respondent states that, at the time of recommending the portfolio

of equity mutual funds to the clients, he provided fund facts for each mutual fund purchased to the clients which included the price of the funds chosen on the date the fund facts were provided.

12. The Respondent also states that he discussed with the clients which equity mutual funds were to be purchased as part of the portfolio of equity mutual funds, and that the total amount the clients invested in money market mutual funds would be invested in the equity mutual funds the clients had chosen, periodically, through a series of switches by the Respondent. The Respondent states the clients instructed him to proceed in this manner. The Respondent did not maintain sufficient notes of these discussions with the clients.

13. The Respondent placed all initial client monies transferred into the Member from other financial institutions into money market mutual funds on behalf of the clients in accordance with the clients' instructions obtained during the initial meetings with the clients.

14. The Respondent then periodically processed a total of approximately 1062 switches from the money market mutual funds into the equity mutual funds in the client accounts using his discretion to determine the timing and the amount of the switches without further discussing these elements of the transactions with the clients prior to processing the switches in each instance.

15. The Respondent states that the clients received a further fund facts from the Member along with their trade confirmation shortly after the switches from money market mutual funds to equity mutual funds.

16. The Respondent also states that he exercised discretion regarding the switches as described in paragraphs 13 to 15 above, within each client account in order to achieve a lower average cost for the equity mutual fund units purchased on behalf of the clients by attempting to purchase the equity mutual funds at times where the market price for the mutual funds had decreased.

The Member's Investigation

17. In May 2018, the Member's compliance department conducted trade reviews of the switches from money market mutual funds to equity mutual funds made by the Respondent on behalf of two clients. Based on the findings from its review, the Member began an investigation into the Respondent's conduct which is the subject of this Settlement Agreement.

18. The Respondent states that, as of May 2018, he has ceased engaging in discretionary trading.

19. In July 2018, after a review of the Respondent's conduct, the Member placed the Respondent under close supervision.

20. On August 10, 2018, the Member sent audit letters to all clients whose accounts were serviced by the Respondent. The audit letter asked the clients to verify, among other things, that all transactions within the account had been authorized by the client. The letter further provided clients with an opportunity to raise any concerns regarding their account to the Member. The Member did not receive any responses from any clients which indicated that the Respondent had placed trades in the client accounts without the authorization of the clients or raised concerns regarding the transactions in their accounts.

21. In December 2018, the Member removed the Respondent from close supervision and placed him under enhanced supervision.

22. In December 2019, the Member removed the Respondent from enhanced supervision.

23. The Member's close supervision and enhanced supervision did not give rise to compliance concerns regarding the Respondent.

24. The Respondent paid the Member approximately \$17,786 for costs related to the Member's close supervision and enhanced supervision of the Respondent.

Additional Factors

25. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described above beyond any commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

26. The Respondent states that he mistakenly believed that the Limited Trading Authorization provided by clients permitted him to exercise discretion to process the switches as described above. The Respondent has expressed remorse for his actions.

27. There is no evidence of any client loss or additional costs to any clients relating to the Respondent's misconduct.
28. The Respondent has not been the subject of any client complaints related to the misconduct in this Settlement Agreement.
29. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
30. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing of the allegations.

V. ANALYSIS

A. Jurisdiction and Role of the Panel

31. A Hearing Panel is authorized to either accept or reject a settlement agreement.

Section 24.4.3 of MFDA By-law No. 1

32. The role of a Hearing Panel in reviewing a settlement agreement is to determine whether the proposed penalties agreed to by Staff and the Respondent fall within a reasonable range of appropriateness – not to determine what is, in its view, the correct penalty. A Hearing Panel "will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness." *Milewski (Re)*, [1999] I.D.A.C.D. No. 17.

Sterling Mutuals Inc. (Re), 2008 LNCMFDA 16 at para 37

33. Settlements are to be encouraged. They help the MFDA meet its primary objective of investor protection and provide a practical and efficient way of addressing misconduct in the mutual fund industry. Where the Respondent admits his misconduct and takes responsibility for it, it is more likely he will comply with the sanctions imposed. In addition, where the parties can agree upon appropriate sanctions, settlements can save time, conserve the MFDA's limited resources and provide greater certainty.

British Columbia (Securities Commission v. Seifert, [2006] B.C.J. No 225 at paras. 48-49 (S.C.), aff'd [2007 B.C.J. No 2186 at para. 31 (C.A.)

B. The Seriousness of the Misconduct

34. In concluding that the proposed penalty falls within a reasonable range of appropriateness, we considered the seriousness of the misconduct, the aggravating and mitigating factors that are present in this case and the sentencing principles of general and specific deterrence.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para. 71

35. The Respondent's misconduct is serious in nature, duration, and frequency. The Respondent admitted that over a period of nearly two years he contravened the Member's policies and procedures and MFDA Rules 2.3.1(b), 2.1.1, 1.1.2 and 2.5.1 by processing 1062 switches on behalf of 36 clients using his discretion to determine the timing and amount of the switches. By processing switches on behalf of clients using his discretion to determine the timing and amount of the switches the Respondent engaged in discretionary trading. Discretionary trading is expressly prohibited by MFDA Rule 2.3.1 (b). MFDA Hearing Panels have also held that, where an Approved Person engages in discretionary trading contrary to MFDA Rule 2.3.1, the Approved Person has also contravened MFDA Rule 2.1.1.

Martell (Re), [2018] Hearing Panel of the Pacific Regional Council, MFDA File No. 201782, Panel Decision dated October 29, 2018.

Carney (Re), [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201646, Panel Decision dated May 9, 2017 at para 12.

36. Discretionary trading was also contrary to the Respondent's Member's policies and procedures. MFDA Hearing Panels have held that, where an Approved Person engages in discretionary trading contrary to the policies and procedures of the Member, the Approved Person has contravened MFDA Rules 1.1.2 and 2.5.1.

Chiu (Re), [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201757, Panel Decision dated October 20, 2017

Halloran (Re), [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201905, Panel Decision dated May 30, 2019

37. An Approved Person is required to obtain client instructions about each of the elements of every trade. Unauthorized discretionary trading removes the client's ability to make informed

decisions about their investments. It also subverts the Member's ability to supervise trading activities and it destroys the integrity of the audit trail.

38. We were not persuaded by the argument that the Respondent mistakenly believed that the Limited Trading Authorization provided by his clients permitted him to exercise discretion to process the switches as described above. The Respondent is an experienced representative. It is part of his responsibilities to understand the authority conferred by a Limited Trading Authorization. Each unauthorized transaction put the Respondent's clients' investments at risk.

39. The Respondent lacks the education, skills, and experience to engage in discretionary trading. Discretionary trading may only be carried out by Portfolio Managers who are certified to do so.

40. Discretionary trading is an inherently high-risk activity which requires specific education and training. By engaging in discretionary trading without the necessary education, skill and experience the Respondent put his clients' investments at risk. It was only good fortune that there was no investor harm.

C. Aggravating and Mitigating Factors

41. We considered the following aggravating and mitigating factors in reaching our decision that the proposed settlement was reasonable and proportionate.

Aggravating Factors

42. The Respondent has been registered in the securities industry for almost 20 years and is an experienced dealing representative.

43. The misconduct occurred over prolonged two-year period from 2016 to October 2018.

Mitigating Factors

44. There were several mitigating factors in this case.

- i. The Respondent's misconduct did not result in any investor harm.
- ii. There were no investor complaints.

- iii. The Respondent did not reap any financial benefit from his misconduct.
- iv. The Respondent has not been the subject of any prior MFDA proceedings.
- v. The Respondent has expressed remorse for his actions.
- vi. The Respondent settled with the MFDA.

VI. COSTS

45. The Costs award is not inappropriate.

VII. CONCLUSION

46. The Respondent was under supervision from July 2018 until December 2019. The Member gradually reduced the level of supervision from close to normal. From the Member's actions, we can infer that the Member was satisfied that the Respondent is now complying with their policies and MFDA Rules. The Respondent paid the Member \$17,786 for the cost of supervision.

47. Staff provided five previous MFDA decisions which addressed discretionary trading. We agree with Staff's submission that the *Martell* case is the best comparator. We also agree that the high number of switches in this case, 1064 demands a higher penalty. Each individual unauthorized transaction presents a risk. Based on a review of the cases and taking into consideration the facts put before us and the factors discussed above, we are satisfied the proposed sanctions fall within a reasonable range of appropriateness.

48. In all of the circumstances, we are satisfied that the proposed sanctions, including the two month suspension of the Respondent's authority to work in the securities industry, the \$35,000 fine and \$5,000 costs will serve as a specific deterrence to Mr. Arena and as general deterrence to others in the industry who may contemplate engaging in similar misconduct in the future.

49. We therefore accepted the Settlement Agreement and made an order reflecting the agreed upon sanctions against Mr. Arena.

50. We also disagree with Staff's submission that the Respondent's motive to assist his clients lessens the seriousness. The fact that the Respondent engaged in this misconduct to achieve a lower average cost for the equity mutual fund units purchased on behalf of the clients by attempting to purchase the equity mutual funds at times where the market price for the mutual funds had

decreased and that the clients were aware of the general trading strategy does not make a wrong right.

DATED this 7th day of December, 2020.

“Emily Cole”

Emily Cole
Chair

“Matthew Onyeaju”

Matthew Onyeaju
Industry Representative

“Matthew Prew”

Matthew Prew
Industry Representative

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