BRITISH COLUMBIA **SECURITIES COMMISSION**
Securities Act, RSBC 1996, c. 418

Citation: Re Bansal, 2017 BCSECCOM 144 Date: 20170501

Gurpreet Singh Bansal and Mutual Fund Dealers Association of Canada

Panel	Audrey T. Ho	Commissioner
	Gordon L. Holloway	Commissioner
	Suzanne K. Wiltshire	Commissioner
Hearing Date	April 3, 2017	
Submissions Completed	April 3, 2017	
Date of Decision	May 1, 2017	

Appearing

Gurpreet Singh Bansal	For himself
Christopher Corsetti	For Mutual Fund Dealers Association of Canada

Reasons for Decision

I. Introduction

[1] This is a hearing and review under section 28 of the *Securities Act*, RSBC 1996, c. 418 of the decision of a hearing panel of the Mutual Fund Dealers Association (MFDA) in the matter of Gurpreet Singh Bansal, a former mutual fund salesperson.

[2] On September 12, 2016, Bansal entered into an Agreed Statement of Facts with the MFDA, in which Bansal admitted that, between July 12, 2012 and December 10, 2013, he obtained and maintained 87 pre-signed account forms for 37 clients, contrary to MFDA Rule 2.1.1.

[3] On October 6, 2016, a hearing was held before a MFDA panel to determine the appropriate sanctions for that misconduct.

[4] On October 6, 2016, the hearing panel ordered Bansal to pay a fine of $12,500 and costs of $2,500. Reasons for its decision were issued on November 23, 2016.

[5] On November 1, 2016, Bansal applied to this Commission for a hearing and review of the MFDA decision, but only with respect to the sanctions ordered by the MFDA.

[6] Bansal also applied to introduce additional evidence pertaining to his financial circumstances at the hearing and review. The MFDA opposed that application.

[7] Bansal and the MFDA made written and oral submissions on both the application to introduce new evidence and the section 28 review, and attended the hearing and review. The Executive Director did not make any submissions and did not attend the hearing and review.

II. Background

[8] Through staff notices and bulletins over a number of years, as well as enforcement decisions, the MFDA has repeatedly warned industry participants that obtaining and maintaining pre-signed forms from clients violates MFDA rules, even if there is no evidence of intent to use pre-signed forms for the purpose of discretionary trading.

[9] In an October 2015 bulletin, the MFDA indicated that the problem persisted and warned that it had recently sought increased penalties in enforcement cases and would continue to do so in upcoming cases.

[10] The MFDA was concerned that pre-signed forms could: adversely affect the integrity and reliability of documents, destroy audit trails, negatively impact complaint handling, and be misused in the form of unauthorized trading, fraud and misappropriation.

[11] The key facts agreed to between Bansal and the MFDA in the Agreed Statement of Facts are as follows:

a) From July 12, 2012 to December 10, 2013, Bansal was registered in British Columbia as a mutual fund salesperson with Firm D, a MFDA member.
b) From July 2010 to January 2012, Bansal was registered in British Columbia as a mutual fund salesperson with another MFDA member.
c) Bansal is not currently registered in the securities industry in any capacity.
d) At all material times, Firm D's policies and procedures prohibited its "approved persons" from obtaining or maintaining pre-signed blank or partially completed account forms to conduct business.
e) Between July 12, 2012 and December 10, 2013, Bansal obtained and maintained 87 pre-signed account forms for at least 37 clients. These forms consisted of: account opening forms, registered savings plan application forms, change of dealer forms, account transfer forms, letters of direction, education savings plan application forms, tax free savings account forms, investor questionnaires, account modification forms and one trade ticket.
f) Firm D detected the conduct described in subparagraph (e) above in August 2013 during a routine audit of client files maintained by Bansal.
g) In response to enquiries, Bansal admitted to Firm D and the MFDA that he had obtained and maintained pre-signed forms.
h) On September 26, 2013, Firm D placed Bansal on close supervision.
i) On December 10, 2013, Bansal submitted his resignation to Firm D.
j) Firm D sent letters to all of the clients serviced by Bansal to determine whether he had engaged in any unauthorized trading in client accounts. None of the clients reported any such concerns to Firm D.

k) There is no evidence that:
    i. Bansal processed any trades or changes to client information without the knowledge or authorization of his clients.
    ii. Clients suffered any financial harm as a result of Bansal's conduct.
    iii. Bansal received any financial benefit from engaging in the misconduct beyond commissions or fees that he would have been ordinarily entitled to had the transactions in the clients' accounts been carried out in the proper manner.
    iv. Any clients have complained about Bansal's conduct.

[12] At the MFDA hearing, Bansal submitted additional evidence indicating that:
a) He did not know there was anything wrong with obtaining pre-signed account forms.
b) He was not adequately (or at all) trained or told by anyone that obtaining and using pre-signed forms was contrary to the MFDA Rules.
c) Given his lack of training and his financial circumstances, the normal penalties should be mitigated.

[13] In determining the appropriate sanction, the MFDA hearing panel identified a number of factors to be considered, including: the seriousness of the misconduct, the respondent's past regulatory conduct, whether the respondent recognizes the seriousness of the misconduct, the harm suffered by investors, the benefits received by the respondent as a result of the misconduct, the risk to investors and the capital markets, the damage caused to the integrity of the capital markets, the need for specific and general deterrence, the need to alert others to the consequences of misconduct, and previous decisions in similar circumstances.

[14] The MFDA hearing panel applied those factors to Bansal's situation and found:
a) The misconduct took place over the course of 1.5 years.
b) 87 forms were obtained and 37 clients implicated. It was a standard practice.
c) Bansal was registered with two separate MFDA members prior to the misconduct and was bound to comply with MFDA rules and member policies but failed to do so.
d) Firm D had a policy and procedure prohibiting approved persons obtaining or maintaining pre-signed or partially completed account forms to conduct business.
e) There is no evidence that clients were harmed.
f) There is no evidence that Bansal received any financial benefit for engaging in the misconduct.
g) While the panel had some sympathy with Bansal's economic circumstance and professed lack of knowledge, Bansal was obligated to know and comply with his regulatory obligations, whether or not he was aware of those obligations.
h) Bansal had not previously been subject to MFDA disciplinary proceedings.
i) Bansal had proved to be cooperative and had accepted responsibility for his misconduct.
j) The panel considered a number of authorities in coming to its decision. (Case names omitted here).

[15] MFDA staff asked for a fine of $12,500 and costs of $5,000. The MFDA hearing panel ordered a fine in the recommended amount but only ordered costs of $2,500.

III. Preliminary Application to Introduce New Evidence

[16] Bansal applied to introduce additional evidence at this hearing and review.

[17] The following is a high level description of the additional evidence:

a) A summary of his debts and expenses.
b) Evidence of his family's circumstances affecting his ability to pay.
c) Evidence of his and his family's specific debts and expenses including income tax assessments and taxes owed; mortgage, loan, credit card and bank account statements; property tax, utility and telecom bills.

[18] We entered the additional documents for the purpose of making a decision on Bansal's application to introduce new evidence.

[19] The test on the introduction of new evidence in a hearing and review is set out in BC Policy 15-601 - *Hearings*. The test is that the evidence must be "new and compelling". See: *Re TerraNova Partners LP*, 2017 BCSECCOM 76.

[20] In this case, the additional evidence from Bansal can be loosely divided into two categories:

a) Information on family circumstances, debts and expenses existing at the time of the MFDA hearing.
b) Information on more current family circumstances, debts and expenses.

[21] The evidence referred to in subparagraph 20(a) existed at the time of the MFDA hearing and decision. It would have been known to Bansal at that time given that it is information relating to his and his family's circumstances. In fact, Bansal submitted some of that evidence (albeit with less specificity) at the MFDA hearing.

[22] We have insufficient evidence to conclude if all the information referred to in subparagraph 20(b) existed and was known to Bansal prior to the MFDA decision. However, we do not have to make that determination because we have concluded that none of the additional evidence is compelling.

[23] In substance, the additional evidence corroborates, updates or supplements Bansal's evidence and submissions at the MFDA hearing that he could not afford to pay the fine and costs recommended by MFDA staff.

[24] In making its decision on sanction, the MFDA hearing panel took into account Bansal's evidence and submissions on his ability to pay. That is evident from the following passages in the MFDA's reasons for decision: (emphasis added)

a) "17. Notwithstanding the agreement as to facts set forth above, [Bansal] has submitted, without objection from Staff of the MFDA, additional

> evidence indicating … (c) ***given*** his lack of training and ***his financial circumstances, the normal penalties should be mitigated.***"

b) In listing the specific factors the panel found to be applicable to Bansal, the MFDA hearing panel stated:

> "22(g) ***While the Panel has some sympathy with [Bansal's] economic circumstance*** and professed lack of knowledge, [Bansal] was obligated to know and comply with his regulatory obligations, whether or not he was aware of those obligations."

[25] We do not find the additional evidence before us to be significantly different from the evidence of financial circumstances that was before the MFDA hearing panel. We are not persuaded that the MFDA hearing panel would have changed its sanction decision had it been aware of the additional evidence.

[26] Accordingly, we dismiss Bansal's application to introduce the additional evidence.

IV. Section 28 and Standard of Review

[27] Section 28 of the Act provides that a person directly affected by a direction, decision, order or ruling made under a bylaw, rule or other regulatory instrument of a self-regulatory organization (SRO) may apply by notice to the Commission for a hearing and review of the matter.

[28] Section 165(4) of the Act provides that, on a hearing and review, the Commission may confirm or vary the decision under review or make another decision it considers proper.

[29] Section 5.9(a) of BCP 15-601 sets out the Commission's framework for a section 28 review. It states:

> ***Where the review of an SRO decision proceeds as an appeal*** – The Commission does not provide parties with a second opinion on the matter decided by an SRO. If the decision under review is reasonable and was made in accordance with the law, the evidence, and the public interest, the Commission is generally reluctant to interfere simply because it might have made a different decision in the circumstances …
>
> In these circumstances, the Commission generally confirms the decision of the SRO, unless:
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> - the SRO has made an error in law
> - the SRO has overlooked material evidence
> - new and compelling evidence is presented to the Commission, or
> - the Commission's view of the public interest is different from the SRO's.

[30] This Commission has quoted with approval and consistently followed section 5.9(a) in its section 28 reviews. See: *Re TerraNova Partners LP, Re Chang*, 2017 BCSECCOM 70, and *Doreen Lowe, Marco Myatovic and IIROC*, 2014 BCSECCOM 458.

[31] In *Marlene Legare and MFDA*, 2013 BCSECCOM 362 (at paragraph 13), the Commission made clear that the onus is on the applicant to both identify the criteria in section 5.9 that applies to the SRO's decision, and show that the decision is unreasonable as a result.

[32] Accordingly, the standard of review is one of reasonableness and not correctness. The onus is on the applicant to establish that the decision is unreasonable.

V. Parties' Positions

[33] Bansal does not challenge that the standard of review is one of reasonableness. Nor does he challenge the MFDA decision on a public interest ground.

[34] Bansal's position is that the sanction is unreasonable and should be reduced, in light of the following:

a) he did not use the pre-signed forms or process any trades using them,
b) he did not receive any benefit from, and his clients were not harmed by, his conduct,
c) he did not know, and was not trained or informed, that obtaining pre-signed forms was contrary to MFDA rules,
d) his conduct was less severe and not comparable to some of the precedent cases considered by the MFDA panel in determining the fine, and
e) he could not afford to pay the fine and costs.

[35] The MFDA submits that Bansal has failed to show that the MFDA hearing panel made any errors of law, overlooked material evidence or demonstrated a view of the public interest different from that of this Commission, such that the MFDA decision is unreasonable as a result.

[36] With regard to the precedent cases considered by the MFDA panel, the MFDA noted that all three were settlement cases whereby the sanction was agreed to without the need for a hearing on the merits, which tend to lend weight to a reduced fine. In the case of Bansal, there was no settlement on sanction and a hearing on the merits was held.

[37] The MFDA further submits that the determination of an appropriate sanction is a matter of discretion of the MFDA hearing panel and should be given deference unless the hearing panel has erred in the application of its discretion.

VI. Analysis and Findings

[38] This Commission has held that the determination of appropriate penalties is at the discretion of the hearing panel, and should not be disturbed on review where a hearing panel makes considered and comprehensive findings that support a reasonable sanction decision. See *Marlene Legare and MFDA.*

[39] In this instance, the record indicates that the MFDA hearing panel considered factors consistent with past MFDA decisions. See: *Re Headley,* 2006 MFDA File No. 200509 at

pages 25-26. We do not find any error in the identification of these factors for consideration. Indeed, this Commission typically considers the same factors in determining sanctions in its enforcement hearings.

[40] The record also indicates that the MFDA hearing panel applied those factors to Bansal's situation in accordance with the facts contained in the Agreed Statement of Facts and the additional evidence submitted by Bansal at the MFDA hearing.

[41] Notably, the MFDA hearing panel considered those matters raised by Bansal in this hearing and review, namely, his economic circumstances, his professed lack of knowledge, his lack of prior regulatory misconduct, and the lack of any financial benefit to Bansal or harm to clients.

[42] In determining the quantum of the sanction, the MFDA hearing panel considered three MFDA decisions imposing a fine between $10,000 to $15,000 and costs of $2,500.

[43] The three decisions were all cases where the approved person obtained, maintained, and in some cases, used or altered pre-signed forms. As with Bansal, in each of the three cases, there was no evidence of harm to clients, no evidence of unauthorized trading, and no financial benefit beyond the fees or commissions that the approved persons would have been entitled to ordinarily had the client transactions been carried out in the proper manner.

[44] Bansal asserts that his situation is distinguishable from some of these cases because he did not use or alter any pre-signed form. We note that the Agreed Statement of Facts states that Bansal did not process any trades or changes to client information without the knowledge or authorization of his clients, which is different from not using or altering any form.

[45] But even if Bansal's assertion were true, in our view, the precedent cases remain comparable. Given that the harm with pre-signed forms lies in the mere act of obtaining and maintaining them, we do not see any material distinction in the severity of the misconduct between obtaining a pre-signed form but not using it, versus obtaining a pre-signed form and subsequently using or altering it with the client's authority.

[46] The MFDA hearing panel did not reduce the fine in light of Bansal's economic circumstances. We do not find that an unreasonable outcome given the objectives of general deterrence and protection of the investing public, and the MFDA's continued experience with industry participants obtaining pre-signed forms.

[47] We do not find any errors in the panel's application of the relevant factors to Bansal. We find that the sanction imposed on Bansal falls within a range of possible reasonable outcomes.

[48] Although Bansal disagrees with the MFDA on the weight to be given to the matters referred to in paragraph 34 above, he has failed to establish that the MFDA hearing panel made any error in law or overlooked any material evidence.

[49] We have already found there is no new and compelling evidence, and we do not have a different view of the public interest.

[50] Accordingly, Bansal has failed to establish that the MFDA hearing panel's decision is unreasonable, and we dismiss his application for a review of that decision.

Ruling

[51] We dismiss Bansal's application to introduce additional evidence and his application for review under section 28 of the Act. We confirm the MFDA hearing panel's decision under section 165(4) of the Act.

May 1, 2017

For the Commission

Audrey T. Ho
Commissioner

Gordon L. Holloway
Commissioner

Suzanne K. Wiltshire
Commissioner