Re Kandiah

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Poorvika Kandiah

2023 CIRO 34

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: March 1, 2023 at Toronto, Ontario
Decision: March 1, 2023
Reasons for Decision: December 6, 2023

Hearing Panel
Frederick W. Chenoweth, Chair
Michael-Murray Coulter, Industry Representative
Robert C. White, Industry Representative

Appearances:
Brendan Forbes, Counsel for the Canadian Investment Regulatory Organization
Sarah Corman, Counsel for the Respondent
Poorvika Kandiah, Respondent

REASONS FOR DECISION

BACKGROUND

¶ 1 By Notice of Settlement Hearing dated the 1st day of February, 2023, a Hearing Panel of the Ontario District Hearing Committee (the "Hearing Panel") , was convened to consider whether pursuant to Mutual Fund Dealer Rule 7.4.4., the Hearing Panel should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of the corporation and Poorvika Kandiah (the "Respondent").

¶ 2 At the outset of the proceeding, the Panel considered a joint motion by Staff and the Respondent to move the proceedings "in camera". The Panel granted the motion. The Panel then considered the provisions of the Settlement Agreement, aided by submissions as to the applicable law, which should guide the Panel in determining whether to accept or reject the Settlement Agreement. The Panel unanimously accepted the Settlement Agreement and issued an Order accordingly. These are the Panel's reasons for doing so.

The Contraventions

¶ 3 In the Settlement Agreement, the Respondent admits that:

(a) between September 2020 to April 2021, the Respondent altered Client Contact Information on the Dealer Member's system without the knowledge or authorization of the client, which had the effect of interfering with the Member's supervision of the Respondent and impacted its ability to communicate with clients, contrary to Mutual Fund Dealer Rules 2.1.1 and 2.1.4.

The Facts

¶ 4 In the Settlement Agreement, Staff of the Corporation and the Respondent agreed to the existence of a series of facts, which are set out in Section II and IV of the Settlement Agreement. The Settlement Agreement is attached as Appendix "A" to these Reasons.

¶ 5 Commencing in May 2018, the Respondent became registered in Ontario with TD Investment Services Inc. ("Dealer Member"), a Dealer Member registered with the Corporation. Commencing in June 2020, the Dealer Member designated the Respondent as a branch manager. At all material times, the Respondent was also employed with the Toronto-Dominion Bank (the "Bank"), which is affiliated with the Dealer Member. The Respondent conducted business in the Toronto, Ontario area.

Discussion

¶ 6 The Hearing Panel was aware that prior to accepting a Settlement Agreement, a Hearing Panel must be satisfied that:

(a) The facts admitted by the Respondent constitute misconduct in contravention of the By-law, Mutual Fund Dealer Rules or policies, or provincial securities legislation; and

(b) The penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness, bearing in mind the nature and extent of the misconduct and all the circumstances.

¶ 7 The Panel accepted that the role of a Hearing Panel at a settlement hearing was fundamentally different than its role at a contested hearing. As stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re),* citing the I.D.A. Ontario District Council in *Milewski (Re)*:

> We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the 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." [Emphasis added].
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> *Sterling Mutual Inc. (Re),* MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at para. 37.
>
> *Milewski (Re),* [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999.

¶ 8 The Panel also considered that settlements are necessary to assist the Corporation to fulfill its regulatory objective of protecting the public. Settlements advance this regulatory objective by proscribing activities that are harmful to the public, while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent.

> *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) ["*British Columbia (Securities Commission)*"].

¶ 9 Hearing Panels have consistently held that obtaining or using pre-signed or altered forms is a contravention of the standard of conduct prescribed under Mutual Fund Dealer Rule 2.1.1.

> *Donais (Re) [2020]*, Hearing Panel of the Pacific Regional Council, MFDA File No. 201945, Panel Decision dated January 20, 2020 at paras 10-11.
>
> *Smith (Re) [2019]*, Hearing Panel of the Central Regional Council, MFDA File No. 201960, Panel Decision dated December 17, 2019 at para. 14.

¶ 10 Pursuant to the terms of the Settlement Agreement, the Respondent admitted that between September 2020 to April 2021, she altered Client Contact Information on the Dealer Member's system without the knowledge or authorization of the client, which had the effect of interfering with the Member's supervision of

the Respondent and impacted its ability to communicate with clients, contrary to Mutual Fund Dealer Rules 2.1.1.and 2.1.4 (2).

¶ 11 Between September 2020 to April 2021, the Respondent set the contact preferences to "no" for seven clients who held investment accounts at the Dealer Member and 36 other individuals who held accounts at the bank, without the clients' consent. As a result, these clients and other individuals did not receive the Client Contact Information questionnaires from the Member.

¶ 12 At all material times, Approved Persons of the Member were subject to a Code of Conduct and Ethics which prohibited Approved Persons from engaging in unethical business practices. In addition, the Dealer Member prohibited Approved Persons from changing client contact preferences contained in the Client Contact Information System without the consent of the client.

¶ 13 In the Settlement Agreement, the Respondent further admitted that she engaged in the misconduct set out above in order to prevent the clients from receiving a survey which could have potentially negatively affected the customer feedback metric for the Respondent's branch, as well as her own eligibility for rewards and recognition programs. It was acknowledged in the Settlement Agreement, that the impact on the Respondent's compensation was not known.

¶ 14 Accordingly, the Hearing Panel concluded that the admitted contraventions by the Respondent breached Mutual Fund Dealer Rules 2.1.1 and 2.1.4(2).

Penalty

¶ 15 The Panel then proceeded to consider the appropriateness of the proposed penalty as set out in the Settlement Agreement. In doing so, the Panel considered the submissions of Staff and the Respondent's counsel, the Corporation's Sanction Guidelines and the substantial caselaw to which it was referred.

¶ 16 The Panel was mindful that the primary goal of securities regulation is the protection of the investor. The Panel was further mindful that in addition to protection of the public, the goals of securities regulation also include fostering public confidence in the capital markets and the securities industry.

> *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557.
>
> *Breckenridge (Re)*, MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para. 71.

¶ 17 The Panel also accepted the submissions of Staff that the following factors are frequently considered by Hearing Panels when determining whether a penalty is appropriate:

(a) The seriousness of the allegations proved against the Respondent;

(b) The Respondent's past conduct, including prior sanctions;

(c) The Respondent's experience and level of activity in the capital markets;

(d) Whether the Respondent recognizes the seriousness of the improper activity;

(e) The harm suffered by investors as a result of the Respondent's activity;

(f) The benefits received by the Respondent as a result of the improper activity;

(g) The Risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction.

(h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;

(i) The need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;

(j) The need to alert others to the consequences of inappropriate activity in the capital markets; and

(k) Previous decisions made in similar circumstances.

Breckenridge, *supra*.

¶ 18 In this respect, the Panel was mindful that, the nature of the contraventions that had been admitted by the Respondent were serious and warranted significant penalties.

¶ 19 The Panel also considered that:

(a) As a result of the misconduct described above, the Dealer Member imposed a 3 day unpaid suspension on the Respondent, prohibiting the Respondent from participating in the Dealer Member Rewards and Recognition Program in 2021, and negatively impacted the Respondent's managerial assessment rating for the remaining calendar year, which negatively affected the Respondent's paid salary for the following year;

(b) The Dealer Member had contacted affected clients to confirm the client's contact preferences contained in the Client Contact Information System;

(c) There was no evidence of financial loss to clients arising from the misconduct described in the Settlement Agreement;

(d) The Respondent has not previously been the subject of a MFDA or corporation disciplinary proceedings;

(e) In entering into the Settlement Agreement, the Respondent had saved the corporation the time, resources and expenses associated with conducting a full hearing of the allegations;

(f) An unspecified number of the changes made to client information were made at the direction of the Respondent's branch manager;

(g) There was no conclusive evidence that the Respondent received a benefit as a result of the admitted improper activity;

(h) The proposed penalty agreed to in the Settlement Agreement appeared to satisfy the need for both specific and general deterrence.

Result

¶ 20 For all the above reasons, the Panel concluded that the Settlement Agreement was reasonable and proportionate. Accordingly, the following penalties were imposed upon the Respondent:

(a) The Respondent shall pay a fine in the amount of $7,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 7.4.1.1(b) of the Mutual Fund Dealer Rules.

(b) The Respondent shall pay costs in the amount of $5,000 in certified funds upon acceptance of the Settlement Agreement pursuant to s. 7.4.2 of the Mutual Fund Dealer Rules;

(c) The payment by the Respondent of the fine and costs shall be made and received by Staff in certified funds as follows:

(i) $1,250 (Fine) upon acceptance of the Settlement Agreement by the Hearing Panel;

(ii) $5,000 (Costs) upon acceptance of the Settlement Agreement by the Hearing Panel;

(iii) $2,083 (Fine) payable on or before March 30, 2023;

(iv) $2,083 (Fine) payable on or before April 28, 2023; and

(v) $2,084 (Fine) payable on or before May 30, 2023.

(d) The Respondent shall be suspended from acting as a branch manager or in any supervisory capacity for a Dealer Member registered as a mutual fund dealer (formerly Members of the MFDA) for a period of two months commencing upon the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to s. 7.4.1.1(f) of the Mutual Fund Dealer Rules;

(e) The Respondent shall successfully complete an industry course that is acceptable to Staff of the Corporation within 12 months of the acceptance of the Settlement Agreement, pursuant to s. 7.4.1.1(f) of the Mutual Fund Dealer Rules;

(f) If at any time a non-party to this proceeding, with the exception of the bodies set out in the Mutual Fund Dealer Rule 6.3, requests production of or access to exhibits in this proceeding that contain personal information as defined by the Corporation's Privacy Policy, then the Corporation's Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the Mutual Fund Dealer *Rules of Procedure*.

Dated at Toronto, this 6 day of December, 2023.

"Frederick W. Chenoweth"

Frederick W. Chenoweth

Chair

"Michael-Murray Coulter"

Michael-Murray Coulter

Industry Representative

"Robert C. White"

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Industry Representative