

Re Movassaghi

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Mohammad Movassaghi

2024 CIRO 79

Canadian Investment Regulatory Organization
Hearing Panel (Pacific District)

Heard: December 12, 2023 in Vancouver, British Columbia (via videoconference)

Decision: December 14, 2023

Reasons for Decision: October 31, 2024

Hearing Panel:

Stephen D. Gill, Chair

Holly Martell, Industry Representative

Richard R. Sydenham, Industry Representative

Appearances:

Alan Melamud, Senior Enforcement Counsel

Eric Chow, Enforcement Counsel

Mohammad Movassaghi, Respondent, absent

REASONS FOR DECISION (SANCTIONS)

INTRODUCTION

¶ 1 This matter came before a Hearing Panel of the Pacific District Hearing Committee of the Canadian Investment Regulatory Organization (“CIRO”) to hear from the parties in respect to an appropriate penalty for the Respondent. In a decision rendered on March 19, 2021, the Hearing Panel found the Respondent had committed misconduct as set out in a Notice of Hearing dated March 21, 2019, amended August 30, 2019, November 15, 2019 and December 10, 2019. Written reasons for the decision in the Hearing on the Merits were issued on November 7, 2023. The matter was adjourned to December 12, 2023 for a hearing to determine the appropriate sanctions in this proceeding (the “Sanctions Hearing”).

BACKGROUND

¶ 2 After hearing from Staff of CIRO (“Staff”) and considering the submissions and exhibits submitted; the Hearing Panel imposed a penalty pursuant to Mutual Fund Dealer Rule 7.4.1.1 (formerly MFDA By-Law No. 1, section 24.1.1) being: (a) the Respondent is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any Dealer Member of CIRO registered as a mutual fund dealer; (b) a fine in the amount of \$70,000.00; and (c) costs in the amount of \$45,000.00.

ANALYSIS

PART ONE: FACTS

¶ 3 Following the hearing on the merits, the Hearing Panel found that the Respondent contravened his regulatory obligations by engaging in the following conduct:

Contravention #1: 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.

Contravention #2: 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 X 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.

Contravention #3: 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, 2.10, and 1.1.2.

Contravention #4: 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.

Contravention #5: Between January 2014 and August 2016, the Respondent failed to disclose actual 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.

PART TWO: STAFF'S SUBMISSIONS

¶ 4 The Respondent engaged in serious misconduct, utterly disregarding his obligations to Client KO as her mutual fund advisor. Client authorization is a fundamental pillar of the mutual fund industry; it is required for all account forms and Approved Persons are required to get instructions on all elements of every trade. Indeed, the exercise of discretionary authority exceeds the scope of the dealing representative registration category that was held by the Respondent. The Respondent undermined this fundamental pillar, choosing to: (1) falsify Client KO's signature multiple times; (2) have inaccurate KYC information recorded for Client KO's accounts; (3) have processed at least 180 unauthorized discretionary trades; and (4) have false client notes recorded to support the unauthorized trades. The Respondent engaged in this misconduct while he was Client KO's landlord and thereby in control of her living arrangements, disregarding a serious conflict or potential conflict of interest between his role as a mutual fund advisor and his role as landlord.

¶ 5 These serious and deliberate regulatory contraventions by the Respondent call for significant sanctions. Misconduct that undermines the requirement for client authorization harms trust and confidence in Approved Persons and the mutual fund industry more broadly. It is therefore necessary that CIRO deter such misconduct and send a message that it will not be tolerated.

Authority of the Hearing Panel

¶ 6 Pursuant to Mutual Fund Dealer Rule 7.4.1.1 (i) (formerly s. 24.1.1.(i) of MFDA By-Law No. 1), if, in the opinion of a Hearing Panel, an Approved Person has failed to comply with the provisions of any By-law, Rule, or Policy of CIRO, a Hearing Panel can impose any of the penalties set out in Mutual Fund Dealer Rules 7.4.1.1 (a) – (f) (formerly s. 24.1.1 (a) – (f) of MFDA By-Law No. 1), including a permanent prohibition of the authority of the Approved Person, to conduct securities related business and a fine, not exceeding the greater of \$5,000,000 or three times the profit obtained or loss avoided by engaging in the misconduct.

¶ 7 Pursuant to Mutual Fund Dealer Rule 7.4.2 (formerly s. 24.2 of MFDA By-law No. 1), a Hearing Panel has the discretion to require a Member or Approved Person to pay the whole or part of the costs of the proceeding before the Hearing Panel and any investigation relating to that proceeding.

Proposed Sanction

¶ 8 Staff submits that the appropriate sanction to impose is:

- (a) the Respondent be permanently prohibited from conducting securities related business in any capacity while in the employ of or in association with any Member of CIRO who is registered as a Mutual Fund Dealer, pursuant to Mutual Fund Dealer Rule 7.4.1.1(e) (formerly s. 24.1.1 (e) of MFDA By-Law No. 1);
- (b) the Respondent pay a fine in the amount of at least \$70,000, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b) (formerly s. 24.1.1.(b) of MFDA By-Law No. 1); and
- (c) the Respondent pay costs in the amount of \$45,000 as set out in the Bill of Costs, pursuant to Mutual Fund Dealer Rule 7.4.2 (formerly s. 24.2 of MFDA By-law No. 1).

Previous Decisions Made in Similar Circumstances

¶ 9 Staff provided the Hearing Panel with a detailed chart of previous similar cases, seeking to show that the penalties that they were proposing were consistent with the penalties of these cases. The cases in the chart show that they are equally consistent with the penalties which we have imposed upon the Respondent.

¶ 10 The following cases were discussed:

- (a) *Movassaghi Settlement, supra*, SSBA
- (b) *Movassaghi #2, supra*, SSBA
- (c) *Blythe (Re), supra*, SSBA
- (d) *Luciano (Re) (2023)*, CIRO File No. 202267
- (e) *Che (Re)*, CIRO File No. 202320, Order dated October 10, 2023
- (f) *Gill (Re)*, 2015 LNIIROC 39
- (g) *Faber (Re)*, 2014 LNIIROC 14
- (h) *Pekel (Re)*, 2021 LNCMFDA 2
- (i) *Snelson (Re)*, 2018 LNCMFDA 283
- (j) *Giuliani (Re)*, 2018 LNCMFDA 97
- (k) *Janiewicz (Re)*, (2006) I.D.A.C.D. No. 3
- (l) *Shanseer (Re)*, (2007) I.D.A.C.D. No. 2
- (m) *Stefaniuk (Re)*, 2015 LNIIROC 36
- (n) *Tersigni (Re)*, 2016 LNIIROC 19
- (o) *Carney (Re)*, 2017 LNCMFDA 100
- (p) *Moakler (Re)*, 2016 LNCMFDA 60

PART THREE: RESPONDENT'S SUBMISSIONS

¶ 11 The Respondent and the Respondent's counsel only attended the Hearing on the Merits on October 19-23, 2020 and did not call witnesses to testify, or make written or oral submissions. The Sanctions Hearing was scheduled to proceed as an electronic hearing by videoconference on December 12, 2023. The Respondent and the Respondent's counsel did not attend the Sanctions Hearing, although having received notice of the date set for the Sanctions Hearing.

PART FOUR: COSTS

¶ 12 Staff presented the Hearing Panel with a Bill of Costs in the amount of \$45,425.00. Staff requested an Order for Costs in the amount of \$45,000. We find both the Bill of Costs and the request of Staff to be appropriate.

CONCLUSION

¶ 13 On December 12, 2023, the Hearing Panel heard submissions by Enforcement Counsel with respect to the penalty to be imposed on the Respondent. The Hearing Panel took a brief adjournment so they could confer. They then reconvened the Hearing and advised Enforcement Counsel of their decision on penalty, namely:

- a) a permanent prohibition on the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any Dealer Member of CIRO registered as a Mutual Fund Dealer;
- b) a fine of \$70,000; and
- c) costs of \$45,000.

¶ 14 The Hearing Panel was of the opinion that these three penalties would be recognized in the industry as deterrents: *Kowalsky (Re)* 2022 LNCMFDA 31 Reasons for Decision dated March 2, 2022 at para. 61.

¶ 15 At its heart, this is a case of forgery by the Respondent. He obtained a copy of his client's drivers license which he used to forge her signature. Forgery is very serious misconduct. It requires will and effort to pull it off. In this case to affect the transfer of the KO accounts required the Respondent to carefully copy KO's signature on documents to effect a mass of new accounts opening and transfer forms; at least nine separate documents. Clearly this misconduct is deliberate and is extremely damaging to the reputation of the securities industry.

¶ 16 With respect to the unauthorized trading the Respondent conducted in his client's account, this again is a very serious breach. There was no client authorization of this conduct; it was carried out secretly.

¶ 17 Further, the Respondent created false KYC information to further mask his unauthorized activities; again, a very serious breach; and intentional conduct by the Respondent to defraud his client.

¶ 18 The Respondent's client suffered a \$22,000 loss due to the Respondent's unauthorized activity in her account. The Member compensated the client for this loss.

¶ 19 Has the Respondent accepted responsibility for his conduct? In our opinion he has not. The Respondent is entitled to defend himself, but he went far beyond that in our view, The fact that he didn't accept responsibility is a serious aggravating factor in this case.

¶ 20 The overall conduct of the Respondent herein seriously undermined the industry standards.

¶ 21 Further, the Respondent purposely misled CIRO Staff in this matter; a further reason for this permanent ban. Viewing the Respondent's conduct in totality, he clearly ignored the Rules, resulting in many contraventions. This resulted in a prolonged complex case; many witnesses and a great many exhibits.

¶ 22 The deliberateness of the Respondent's misconduct is a key factor in this case. Protecting the investing public is also a key factor.

¶ 23 The advisor and client relationship begins and ends with trust; it is predicated on honesty and

transparency. The Respondent failed to meet these criteria. The penalties reflect the gravity of the Respondent's ethical breaches.

Dated at Vancouver, British Columbia this 31st day of October 2024.

"Stephen D. Gill"

Stephen D. Gill, Chair

"Holly Martell"

Holly Martell, Industry Representative

"Richard R. Sydenham"

Richard R. Sydenham, Industry Representative

Copyright © 2024 Canadian Investment Regulatory Organization. All Rights Reserved.