

# Re Saavedra

IN THE MATTER OF:

**The Mutual Fund Dealer Rules**

**and**

**Juan Carlos Saavedra**

2024 CIRO 82

Canadian Investment Regulatory Organization  
Hearing Panel (Alberta District)

Heard: September 25, 2024, in Calgary, Alberta (via videoconference)  
Decision and Reasons: November 20, 2024

**Hearing Panel:**

Omolara Oladipo, Chair  
Kathleen Jost, Industry Representative  
Annette Stephens, Industry Representative

**Appearances:**

Maria Di Clemente, Enforcement Counsel  
Juan Carlos Saavedra, present and self-represented

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## PENALTY DECISION AND REASONS

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### INTRODUCTION

¶ 1 This was a disciplinary hearing pursuant to Mutual Fund Dealer Rules 7.3 and 7.4 against Juan Carlos Saavedra (the "Respondent") to determine the appropriate sanctions and costs, if any, to be imposed upon the "Respondent".

¶ 2 The Respondent was self-represented.

¶ 3 An Agreed Statement of Facts (the "ASF") was signed on August 23, 2024 by the Respondent and Enforcement Staff ("Staff") on behalf of the Canadian Investment Regulatory Organization ("CIRO").

¶ 4 In the ASF, which was filed for our consideration, the Respondent admitted to engaging in the following misconduct:

- **Contravention # 1:** Between July 21, 2021 and October 2021, the Respondent misappropriated or otherwise failed to account for client monies, contrary to Mutual Fund Dealer Rule 2.1.1; and
- **Contravention # 2:** Commencing in December 2022, the Respondent failed to cooperate with an investigation by the MFDA into his conduct, contrary to Mutual Fund Dealer Rule 6.2.1.

¶ 5 We heard further submissions from Staff and the Respondent regarding the appropriate sanctions. The Respondent did not oppose the imposition of a permanent prohibition of the Respondent's ability to conduct securities related business in any capacity while in the employ of or associated with any Dealer Member of CIRO. Staff and the Respondent appeared to mainly disagree on the amount of fine and costs, if any.

¶ 6 We reserved our decision.

¶ 7 After the Hearing, this Hearing Panel carefully reviewed Staff's written submissions and considered the submissions made by the parties at the hearing. We decided the appropriate sanctions are:

- a) the Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any Dealer Member of CICO, pursuant to Mutual Fund Dealer Rule 7.4.1.1(e);
- b) the Respondent shall pay a fine of \$100,000, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b), comprising of:
  - i a fine of \$50,000 with respect to Allegation #1;
  - ii a fine of \$50,000 with respect to Allegation #2; and
- c) the Respondent shall pay costs in the amount of \$5,000, which would constitute part of the costs to Staff of conducting the investigation and prosecution of the Respondent, pursuant to Mutual Fund Dealer Rule 7.4.2.

¶ 8 Below are the reasons for our decision starting with the ASF.

#### **AGREED FACTS**

¶ 9 From March 2018 to October 2021, the Respondent was registered in Alberta and carried on business in Calgary as a dealing representative with PFSL Investments Canada Ltd. ("PFSL"), a Dealer Member of CICO and a successor to the Mutual Fund Dealers Association ("MFDA").

¶ 10 The Respondent was also registered with the Dealer Member in the province of Saskatchewan from February 2021 to October 2021.

¶ 11 From November 2008 to November 2021, the Respondent was also licensed to sell insurance and offered segregated funds through an insurance company affiliated with the Dealer Member (the "Insurance Affiliate").

¶ 12 From July 2020 to October 2021, PFSL designated the Respondent as a branch manager.

¶ 13 On or about October 29, 2021, PFSL terminated the Respondent because of the conduct described herein, and the Respondent is not currently registered in the securities industry in any capacity.

¶ 14 At all material times, the Respondent serviced the account held by WF who was PFSL's client.

¶ 15 Between July 2021 and October 2021, the Respondent misappropriated or otherwise failed to account for at least \$56,065 obtained from WF.

¶ 16 The Respondent obtained the monies from WF by processing a total of six redemptions from WF's Tax-Free Savings Account ("TFSA") at PFSL. The Respondent redeemed the monies from WF's TFSA by signing WF's signature on the account documentation without his knowledge.

¶ 17 The Respondent deposited the proceeds received from the unauthorized redemptions into the Respondent's own personal bank account.

¶ 18 On or about July 15, 2021, the Respondent set up Pre-Authorized Contributions (the "PAC") in WF's TFSA without his knowledge and authorization, and over the span of six months deposited a total of \$105 into WF's account.

¶ 19 By setting up the PAC, the Respondent associated the Respondent's personal bank account information with the account of WF to redeem amounts from WF's account directly into the Respondent's account.

¶ 20 On or about October 19, 2021, WF discovered the unauthorized redemptions and when he brought the redemptions to attention of the Respondent, the Respondent told WF that the withdrawals were the result of a cyber-attack. This was false or misleading.

¶ 21 On or about October 20, 2021, WF reported the unauthorized redemptions to AGF Investments Inc.,

which then notified PFSL.

¶ 22 PFSL compensated WF for the misappropriated funds.

¶ 23 To date, the Respondent has failed or refused to account for his unauthorized redemptions of WF's funds totaling \$56,065 which remain outstanding and unaccounted for by the Respondent.

¶ 24 As far as CIRO is aware, the Respondent misappropriated monies from at least five clients of the Insurance Affiliate of the Dealer Member during the material time. The Respondent was found to have processed unauthorized redemptions in the individuals' insurance accounts totalling approximately \$127,693. The Alberta Insurance Council has ordered that the Respondent pay a \$105,000 fine in relation to the misappropriation of monies from the insurance clients. Staff's proposed penalty considers that the Respondent has been fined for the misappropriation involving the insurance clients and does not include an amount that would have the effect of disgorging the benefit obtained by the Respondent.

¶ 25 The Respondent was convicted of uttering a forged document under s. 368(1)(a) of the *Criminal Code of Canada*, R.S.C., 1985, c. C-46, for various conduct involving WF as well as WF's spouse who was a client of the Insurance Affiliate. The Respondent was required to pay \$73,515 in restitution by May 2025 as part of that criminal sentence.

¶ 26 During CIRO's investigation, Staff repeatedly requested that the Respondent provide a copy of his banking records for two bank accounts to allow Staff to verify the amounts the Respondent obtained through the unauthorized redemptions and explain how the monies were used.

¶ 27 The Respondent only provided partial records with respect to one of his bank accounts. He failed to provide complete copies of bank records as requested.

## **ANALYSIS**

¶ 28 Mutual Fund Dealer Rule 2.1.1 requires that Members and Approved Persons deal fairly, honestly, and in good faith with clients, observe high standards of ethics and conduct in the transaction of business, and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest. This Rule is central to CIRO's mandate of enhancing investor protection and strengthening public confidence in the Canadian mutual fund industry.

¶ 29 There is no doubt from a review of the facts, that the Respondent contravened Mutual Fund Dealer Rule 2.1.1.

¶ 30 Further, the Respondent's admitted misappropriation of the subject funds contravened Rule 6.2.1.

¶ 31 Pursuant to Mutual Fund Dealer Rule 6.2.1, all Approved Persons and former Approved Persons have an obligation to provide information and documents sought by Staff. The obligation to cooperate with CIRO's examinations and investigatory powers is a necessary corollary to CIRO's duty to conduct such examinations and investigations relating to matters of compliance with CIRO's By-laws or Rules as CIRO deems necessary.

¶ 32 The Respondent's persistent failure to provide complete copies of his bank records as repeatedly requested by Staff contravened Rule 6.2.1 and prevented Staff from a fulsome investigation into the full nature and extent of the Respondent's conduct, as well as into whether the Respondent engaged in similar misconduct with other clients and how the misappropriated monies were used.

¶ 33 During its investigations, CIRO relies on voluntary compliance by Approved Persons as it has no statutory power of search and seizure. As such, hearing panels have repeatedly held that there can be no exceptions to CIRO's regulatory obligation and the failure or refusal of an Approved Person to cooperate with an investigation undermines CIRO's regulatory obligations and to a large extent, the overarching goal of the securities regulatory framework. As the hearing panel in *Vitch (Re)*, 2011 LNCMFDA 63 surmised at paras. 55 to 56:

*The fulfilment of that obligation is particularly important to the MFDA because it has no statutory power to search and seize or to compel the production of documents. Without the*

*cooperation of Members and Approved Persons, the MFDA's ability to investigate and discipline its Members and Approved Persons is gravely fettered.*

¶ 34 Hearing Panels have repeatedly held that the failure to cooperate with Staff is very serious misconduct as it “subverts the ability of the MFDA to perform its regulatory function by fully investigating a matter and determining all the facts. Further, the failure to provide information requested in an investigation undermines the integrity of the industry's self-regulatory system and the effectiveness of its operations, including the MFDA's mandate to protect the public” – per the Hearing Panel in *Dixon (Re)* 2017 LNCMFDA 247 at para. 12.

¶ 35 Staff pointed this Hearing Panel to the repeated finding of seriousness of the allegation of failure to cooperate even when a Respondent had attended an interview and the failure to cooperate is based solely on the Approved Person's failure to answer questions or produce documents following an interview.

#### **Authority of the Hearing Panel**

¶ 36 Staff established that pursuant to Mutual Fund Dealer Rule 7.4.1.1(i), a Hearing Panel can impose any of the sanctions set out in Mutual Fund Dealer Rules 7.4.1.1(a)-(f), if in the opinion of such a Hearing Panel, an Approved Person has failed to comply with the provisions of any of CIRO's By-laws or Rules. Such sanctions include 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.

¶ 37 Further, a Hearing Panel has the discretion to require a Respondent to pay the whole or part of the costs of the proceeding before the Hearing Panel and any investigation relating to that proceeding pursuant to Mutual Fund Dealer Rule 7.4.2.

#### **Sanctions**

¶ 38 Staff proposed the following sanctions be imposed on the Respondent pursuant to Mutual Fund Dealer Rules 7.4.1.1 (b) and (e) and 7.4.2:

- a) permanent prohibition from conducting securities-related business in any capacity while in the employ of or associated with any Dealer Member of CIRO;
- b) a fine of \$50,000 for each of the two counts; and
- c) costs in the amount of \$5,000.

¶ 39 Further, Staff submits the proposed sanctions are appropriate to preserve the primary goal of securities regulation, viz, the protection of investors, and fostering public confidence in the capital markets and the securities industry. To achieve those goals, sanctions imposed by hearing panels must balance the imposition of a level of burden on contraveners of CIRO's regulatory framework to act as deterrence, as well as a level of burden which does not over-emphasize general deterrence and overlook individual circumstances. Staff cited several jurisprudential supports of this argument, including *Fauth (Re)*, 2019 LNABASC 90 and *Kowalsky (Re)*, 2022 LNCMFDA 31.

¶ 40 Staff submitted that this Hearing Panel should reference CIRO's Sanction Guidelines (the “Sanction Guidelines”) which while neither mandatory nor binding on the Hearing Panel, provide a summary of the key factors upon which discretion can be exercised consistently and fairly. Many of the same factors that are listed below, which have been considered in previous decisions of Hearing Panels.

¶ 41 To determine whether a sanction is appropriate, Staff compiled factors for consideration by this Hearing Panel and we have taken the liberty of compacting the list which include:

- a) the seriousness of the allegations proved against the Respondent;
- b) the Respondent's past conduct, including prior sanctions;
- c) the benefits received by the Respondent;

- d) the protection of the integrity of CIRO's enforcement processes, as well as the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- e) whether the Respondent recognizes the seriousness of the improper activity;
- f) the protection of the investing public and the integrity of the securities markets;
- g) specific and general deterrence;
- h) the protection of CIRO's membership and specifically, the harm suffered by investors because of the Respondent's activities;
- i) the Respondent's experience and level of activity in the capital markets;
- j) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in the capital markets in the jurisdictions; and
- k) previous decisions made in similar circumstances.

¶ 42 This Hearing Panel considered some of the foregoing factors in determining the appropriateness of the proposed sanctions:

#### **Seriousness of the Respondent's Misconduct**

¶ 43 Without doubt, the actions of the Respondent were egregious. Misappropriation being among the most serious types of misconduct, causing client harm and undermining confidence in the industry. The Respondent compounded the egregious nature of the misappropriation, first by his false statements to WF in the first instance and failing to cooperate with CIRO's investigation. This Hearing Panel notes and accepts Staff's submissions that the failure to cooperate continued leading to the within penalty hearing as the Respondent failed and or refused to provide access to his bank account(s), thereby preventing CIRO from conducting a fulsome investigation into the Respondent's conduct. Staff have been unable to determine the full nature and extent of the Respondent's conduct, including whether the Respondent engaged in similar misconduct with additional clients or other individuals, and how the monies which the Respondent misappropriated or failed to account for were used. The false statements and the failure to cooperate are significant aggravating factors.

#### **Respondent's Past Conduct**

¶ 44 Considering the egregiousness of the Respondent's actions, this Hearing Panel does not consider the Respondent's lack of history as a subject of a CIRO (or MFDA) disciplinary proceeding to be a significant mitigating factor.

#### **Benefit Received by the Respondent**

¶ 45 As a result of the misconduct, the Respondent received the benefit of the initial use of the misappropriated funds in the amount of \$56,065. As part of criminal sentencing for his misconduct, the Respondent must pay restitution in the amount of \$73,515 by May 2025. Since the deadline is still more than six months away, this Hearing makes no inference of significance to the fact that the restitution remains unpaid as at the date of the hearing. However, this Hearing Panel finds it to be an aggravating factor that rather than volunteer to repay WF, PFSL bore the burden of repaying WF with no corresponding benefit to PFSL.

#### **Harm Caused to Investors**

¶ 46 Although WF was eventually and fully compensated by PFSL, Staff rightly directs this Hearing Panel to *Mutual Fund Dealers Assn. (Re)*, 2021 LNONOSC 400 for the submission that the Respondent's misappropriation resulted in a monetary loss to WF in the amount misappropriated and the compensation of the client by the Dealer Member is not a mitigating factor.

¶ 47 In any event, the harm caused in such cases is not limited to financial harm as it undermines trust in the industry.

#### **Damage Caused to the Integrity of the Capital Markets**

¶ 48 Misappropriation undermines public trust in and causes damage to the reputation and integrity of the securities industry. Further, the Respondent's failure to cooperate, undermines CIRO's ability to regulate the industry.

### **Recognition by the Respondent of the Seriousness of the Misconduct**

¶ 49 This Hearing Panel considers Staff's submission to be generous in the submission that by agreeing to a joint Statement of Facts, the Respondent accepted responsibility and avoided the time and expense of a fully contested disciplinary hearing. Much of the acceptance of responsibility did not come through to this Hearing Panel in the Respondent's submissions before us. While this Hearing Panel did not have before it the Agreed Statement of Facts for Alberta Court of Justice docket number 220524805P1 which the Respondent relied upon in his Reply of January 2, 2024, they were likely the set of facts which form the bases of his conviction. As such, this Hearing Panel sees the Respondent's agreement to sign the Agreed Statement of Facts as a neutral factor at best. While before this Hearing Panel, the Respondent admitted his actions, there was no convincing recognition of the damage his misconduct caused.

### **Deterrence**

¶ 50 Deterrence is intended to capture both specific deterrence of the wrongdoer as well as general deterrence of other participants in the capital markets to protect investors. Staff cited the Supreme Court of Canada at para. 61 of *Cartaway Resources Corp. (Re)*, 2004 SCC 26:

*"The Oxford English Dictionary (2nd ed. 1989), vol. XII, defines "preventive" as "[t]hat anticipates in order to ward against; precautionary; that keeps from coming or taking place; that acts as a hindrance or obstacle". A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction under s. 162. The respective importance of general deterrence as a factor will vary according to the breach of the Act and the circumstances of the person charged with breaching the Act."*

### **Previous Decisions Made in Similar Circumstances**

¶ 51 Staff provided this Hearing Panel with 36 previous decisions; 17 of which were provided for our consideration of the appropriateness of the sanctions. Regarding Allegation #1 and the Respondent's misappropriation of client monies, we reviewed:

*Armitstead (Re)*, 2024 CIRO 60  
*Breukelman (Re)*, 2018 LNCMFDA 82  
*Dew (Re)*, 2018 LNCMFDA 164  
*Douglas (Re)*, 2018 LNCMFDA 216  
*Hothi (Re)*, 2020 LNCMFDA 187  
*Mutual Fund Dealers Assn. (Re)*, 2021 LNONOSC 400  
*Olanrewaju (Re)*, 2022 LNCMFDA 14  
*Palumbo (Re)*, 2020 LNCMFDA 16  
*Schwartz (Re)*, 2018 LNCMFDA 157  
*Vanlandschoot (Re)*, 2021 LNCMFDA 10

¶ 52 Regarding Allegation #2 on the Respondent's failure to cooperate, we reviewed:

*Armani (Re)*, 2017 LNCMFDA 185  
*Chow (Re)*, 2022 LNCMFDA 9

*Cudmore (Re)*, 2018 LNCMFDA 177

*Dixon (Re)*, 2017 LNCMFDA 247

*Gizzo (Re)*, 2011 LNCMFDA 49

*Hylton (Re)*, 2018 LNCMFDA 254

*Phillips (Re)*, 2015 LNCMFDA 106

¶ 53 This Hearing Panel appreciates Staff's attempt to distinguish cases which departed from the severity being proposed in this case. However, this Hearing Panel accepts that there are enough similar cases to support the proposed sanctions for this Respondent.

¶ 54 This Hearing Panel reviewed the cases cited in support of the appropriate ranges of penalties for misappropriation and concur that there is a history of significantly similar fines to the ones proposed, in addition to disgorgement and simultaneous in some instances, to criminal sanctions.

¶ 55 This Hearing Panel sees no reason to depart from the line of cases cited before us.

¶ 56 Although we acknowledge the requirement to balance personal circumstances with the goal of general deterrence, this Hearing Panel was unable to give any substantive weight to the Respondent's claim of an inability to pay and living through the Covid-19 pandemic with several dependants as a reason to depart from the proposed sanctions. The Respondent apparently elected to provide no back up evidence, notwithstanding Staff's request. The Respondent appeared to have been more interested in protecting the information regarding his personal finances as he continued to refuse to cooperate with CIRO's attempt to fully investigate the direction of the misappropriated funds.

#### **Appropriate Sanction**

¶ 57 The Respondent's misconduct and the surrounding circumstances are antithetical to the standard of conduct expected of industry members and undermines trust in the mutual fund industry. The Respondent engaged in egregious misconduct which caused harm, was intentional and deceptive, and likely undermined confidence in the mutual fund industry.

¶ 58 The proposed penalty took into consideration that the Respondent is under a related criminal sentence which includes a requirement to pay a fine.

¶ 59 Taking into consideration the egregious nature of the misconduct and all the factors described above, a permanent prohibition is necessary to ensure both adequate specific and general deterrence. The Respondent's misappropriation of client money, in addition to his failure to cooperate, demonstrates that he is ungovernable and cannot be trusted to return to the mutual fund industry.

¶ 60 In addition to the permanent prohibition, a significant fine is necessary to ensure general deterrence. It is not enough that the Respondent has plead guilty and been ordered to pay restitution of the amount he misappropriated. As stated by the ASC in *Fauth (Re)*:

¶ 61 This Hearing Panel accepts Staff's submissions that:

*"[a] sanction of a permanent prohibition and a fine of \$100,000 reflects the seriousness of the misconduct while considering the circumstances of this case. The proposed sanction will deter the Respondent and send a message to other Approved Persons and the public that misappropriation and failing to cooperate with CIRO will not be tolerated in the mutual fund industry."*

¶ 62 We have also determined that the costs should be \$5,000. Staff filed a Time Docket Management Report which showed a total of 212.50 hours spent on CIRO's investigations, meetings, reports and other related tasks, as well as a Bill of Costs which was limited in dollar costs to a conservative amount of \$25,937.50, because it did not include all of the time expended or even the time and expenses attributable to case management, process service or courier..

¶ 63 This Hearing Panel is satisfied that as a mere means of recovering costs incurred in enforcing CIRO's Rules, the proposed costs of \$5,000 are reasonable.

¶ 64 The penalty and costs are in line with the cases cited to us by Staff as well as with the Sanction Guidelines.

#### **CONCLUSION**

¶ 65 This Hearing Panel accepts Staff's submission that the proposed sanction is in keeping with the purpose of CIRO to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct are upheld by Dealer Members and Approved Persons. This Hearing Panel further accepts that the proposed sanctions will deter others from engaging in similar misconduct and foster public confidence in the mutual fund industry.

- 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;
- b) the Respondent must pay a global fine of \$100,000 which is made up of a fine of \$50,000 with respect to Allegation #1 of misappropriation and a further fine of \$50,000 with respect to Allegation #2 regarding failure to cooperate; and
- c) the Respondent must pay costs in the additional amount of \$5,000.

**Dated** at Calgary, Alberta this 20<sup>th</sup> day of November 2024.

"Omolara Oladipo"  
Omolara Oladipo, Chair

"Kathleen Jost"  
Kathleen Jost, Industry Representative

Annette Stephens"  
Annette Stephens, Industry Representative

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