IIROC OCRCVM

MFDA

Now New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA

IN THE MATTER OF

THE MUTUAL FUND DEALER RULES

and

Amin Mohammad Ali

Heard (Misconduct): February 8, 10-11, 2022 by electronic hearing in Toronto, Ontario
Decision (Misconduct): February 11, 2022
Heard (Penalty): July 20 and September 20, 2022 by electronic hearing in Toronto, Ontario
Decision (Penalty): September 20, 2022
Reasons for Decision: March 10, 2023

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

John Lorn McDougall, K.C.	Chair
Cheryl Hamilton	Industry Representative
Samuel Mah	Industry Representative

Appearances:

Alan Melamud	)	Senior Enforcement Counsel for the New Self-Regulatory Organization of Canada (Mutual Fund Dealer Division)
Rafal Szymanski	)	Counsel for Respondent (Hearing on the Merits)
Zachary Al-Khatib	)	Counsel for Respondent (Penalty Hearing)
Amin Ali	)	Respondent

I. INTRODUCTION

1. The present case concerns a dealing representative, Amin Mohammad Ali ("Respondent") for a member of the MFDA, Quadrus Investment Services Inc. ("Member"), from May 4, 2006, to February 13, 2018. He conducted business in Burlington, Ontario. The Respondent is no longer registered in the securities industry. As well as being a dealing representative, he has been licensed to sell life, accident and sickness insurance since 2006.

2. From the date of the Notice of Hearing ("NOH"), June 4, 2020, until the last day of the Sanction Hearing held on September 20, 2022, there were twelve hearing dates and appearances for which there are transcripts, and which form part of the record. All of these were remote. It was, it is fair to say, a cautionary tale with respect to the effectiveness of remote only proceedings.

3. The NOH was delivered to the Respondent on August 20, 2020. In it, the MFDA alleged that the Respondent violated the by-laws, rules or policies of the MFDA as follows:

> **Allegation #1**: Between 2006 and February 13, 2018, the Respondent engaged in outside activities that were not disclosed to or approved by the Member or entered into unauthorized referral arrangements with third parties by:
>
> a) acting as an officer and director of a corporation that produces software and provides services in the American healthcare sector and its subsidiary corporation;
> b) offering financial planning, consulting, estate planning, tax preparation or other services to clients or other individuals for which he charged fees;
> c) charging fees to clients or other individuals for referrals to third party professionals;
> d) owning, maintaining and renting out at least three rental properties;
>
> contrary to the Member's policies and procedures and MFDA Rules 1.2.1(d)1 [now Rule 1.3.2], 2.4.2, 2.5.1, 2.10 and 1.1.2.
>
> **Allegation #2:** Between 2006 and February 13, 2018, the Respondent provided false and misleading responses to the Member, contrary to MFDA Rule 2.1.1(b) and (c).
>
> **Allegation #3:** Commencing no later than June 18, 2019, the Respondent failed to cooperate with an investigation of his conduct by Staff of the MFDA, contrary to section 22.1 of MFDA By-law No. 1.

II. BACKGROUND

4. On January 26, 2018, the Member filed a report on the MFDA Member Event Tracking System ("METS"), stating that it had received anonymous complaints that the Respondent had misappropriated client funds and was attempting to bribe agents of the Member's insurance

affiliate, London Life Insurance Company ("London Life") in relation to the renewal of a personal mortgage.

5. During the course of its supervisory investigation of these complaints, the Member sent letters to the Respondent's clients asking them to advise of any concerns they might have with the Respondent's business conduct. The Member received a number of complaints in response, including allegations of misappropriation of funds and that clients had provided the Respondent with blank cheques at his request.

6. The investigation by the MFDA was conducted by MFDA counsel and by the lead investigator, Karen Mills ("Mills"). The MFDA investigation began following receipt of the Member's report of its investigation of the Respondent. During the MFDA investigation, the Respondent was represented by two counsel and both appeared with him when he was interviewed by Staff.

7. As a Senior Investigator in the Enforcement Department of the MFDA, Mills was assigned to investigate the business conduct of the Respondent in 2018 and was engaged on the file from that time. She made the main Affidavit, sworn January 24, 2022, which forms the bulk of the evidence before the Panel ("Mills Affidavit"). Attached to the Mills Affidavit are exhibits which constitute almost the entire record of this case. The oral examination of the Respondent by the MFDA took place on three days in May 2019, approximately a year before the NOH was issued.

8. Also included as an exhibit to the Mills Affidavit, is a copy of the Report of the Member resulting from the investigation described above. In summary, that Report describes the investigation but does not identify any of the complainants, one can assume because of concerns of confidentiality. However, the consequence was that the investigators were unable to pursue the question of whether there had been any loss as of the result of the Respondent's activities and were unable to reach any conclusion in that regard. Consequently, there is no allegation in this proceeding of misappropriation or misuse of client funds.

9. On the other hand, the names of two of the Respondent's clients were known as they had disclosed the facts surrounding their difficulties with him during the Members' investigation. In short, they alleged that the Respondent had wrongfully appropriated money given to him by them for investment purposes. The total loss of the couple was $11,500.00 and restitution was made to them by the Member. They declined to co-operate with the MFDA investigation thereafter.

10. Ms. Mills was present for all hearing dates which were conducted by the Panel and was available to be cross-examined during the Merits and Sanctions Hearings. No cross-examination of her occurred in either of these Hearings or otherwise.

11. Following completion of the interviews of the Respondent, held on May 2, 29 and 30, 2019, Staff received an email from Counsel for the Respondent which, in relevant part, reads as follows:

> As stated in a voice mail to you earlier today, Mr. Amin Ali has advised this firm today that he no longer wishes to participate in the interview process with the MFDA. As such, he will not provide any further bank statement, no [*sic*] provide information to enable this firm to respond to the undertakings, or provide information to enable either himself or this firm to provide responses to the written interrogatories.
>
> We have written to him that he is obligated to do so.
>
> Mr. Ali has conveyed to this firm and to you and Francis Roy during the last interview that he believes the MFDA process and the Investigators are biased/unfair and have been influenced unreasonably by Quadrus and London Life.

Thereafter the Respondent did not fulfill any of the undertakings given during his examinations and ceased to co-operate with the MFDA investigation.

12. One of the requests made by Staff of the Respondent, shortly before the May 2019 interviews, was by letter dated February 28, 2019, that the Respondent provide, no later than April 5, 2019, all bank account statements for bank accounts held in the Respondent's name or under his control during the period he was an Approved Person of the Member, as well as copies of cheques, transfers and e-transfers for over $1,000.00 during the same time period.

Mills Affidavit, para. 28 & Exhibit "EE"

13. On April 30, 2019, the Respondent sent Staff copies of bank statements for his operating company, Anusha Financial, for the period November 30, 2017 to January 31, 2018. On May 28, 2019, the Respondent provided Staff copies of the bank statements for Anusha Financial for the period January 5, 2010 to December 30, 2013. The bank transaction history, which was produced, shows that the Respondent obtained the records from January 1, 2010 to May 2, 2019, but only the records to the end of 2013 were produced to the MFDA.

Mills Affidavit, paras. 56-57.

14. On June 4, 2019, following the last day of the interviews of Mr. Ali conducted in May 2019, Staff sent a letter to the Respondent's counsel, asking that the Respondent satisfy undertakings given at the interviews and also to provide the outstanding bank records.

Mills Affidavit, para. 58.

Letter from Staff to the Respondent's Counsel, dated June 4, 2019, Exhibit "HH" to the Mills Affidavit.

15. As previously stated, the NOH was issued by Staff on June 4, 2020, and was served in August 2020. It appears that at about that time the lawyers that had been previously acting for the Respondent were no longer retained. Another lawyer, Bruce O'Toole, had been engaged and he contacted Staff with respect to setting a Hearing date.

16. By the time of the First Appearance on September 8, 2020, the Panel had been advised by Staff that Mr. O'Toole had resigned several days before and that a family friend, Sohail Jaffer, would represent the Respondent.

17. At the First Appearance, as is the practice, only the Chair was present. Following an inquiry made by him as to whether a Reply had been filed and upon hearing one had not, the Chair requested that that requirement of the Rules be complied with and that a Reply be delivered forthwith.

Rule 8 of the Rules of Procedure and MFDA By-law No. 1, ss. 20.2-20.4.

18. At the September 8, 2020 Appearance, Mr. Jaffer informed the Chair that Mr. Ali needed a six months adjournment for health reasons. The Panel adjourned for the parties to consult after which they jointly reported that they had agreed that the next appearance would be on September 23, 2020. During the interim before that date, the Panel was advised that Staff had agreed to a further six months adjournment, having received a letter from the Respondent's attending psychiatrist, Dr. Arif Syed, which was to the effect that the adjournment was needed for health reasons. Staff informed the Panel that while previous accommodations in respect to setting a timeline culminating in a Merits Hearing, no further adjournment would be granted. The six months adjournment was granted by the Panel, in order that, as Mr. Roy put it, "[s]o we do want Mr. Ali to have a reasonable amount of time to get better, but we may not agree to another delay in the future." Dr. Syed's letter was not given to the Panel at that time, but it formed part of a subsequent record filed for the Merits Hearing.

Transcript, September 23, 2020, p. 7, ln. 3 – p. 8, ln. 23

19. On or about December 19, 2020, a Reply by the Respondent was filed with MFDA after much delay. It is reproduced in full below:

Date 19th December 2020 Hi Mr. Roy,

Firstly, I wanted to apologize that I was not able to respond in a timely fashion. Although you provided me with 2 weeks of additional response time but due to my medical conditions and severe medication regimen, I am almost unresponsive at times. I had to request my family to assist me with responding to the allegations. I have additional letter written by my attending physician outlining some of these chronic health battles, which can be provided upon request.

This response is written on behalf of Amin Ali, as information was collected from. Defence of Amin Ali:

Amin Ali's dealer Quadrus Investment Services/London life abruptly terminated his contract without any prior verbal/written indication or warning. Also, to break into his private office while in progress of removing files etc dealer appointee was interrupted by sudden arrival of his associate upon questioning she was manhandled

, this took place in absence of Amin Ali. he was robed off his practice of l5years [*sic*] livelihood, personal belongings along with every client file including Compliance Binder which is updated regularly must be kept onsite where advisor keeps client files and able to present readily when asked. every client file for advisor's record must mirror branch file ,which is audited and checked regularly.

At the time of termination on 13th of February 2018, Mr. Ali was threatened using MFDA reference like they own it and warned not try to reregister , by the end of feb [*sic*] 2018 every industry person and client he dealt with was advised using false pretences that Mr. Amin Ali is under investigation by MFDA and other industry enforcement agencies and provided falsified information to clients some were offered bribe and held their accounts under duress by telling them there accounts were frozen etc [*sic*] causing unnecessary delays causing grief to clients only so they complain against Mr Ali. he continued to stand his ground during all of this ordeal .. [*sic*] which was untrue , unethical and against code of conduct. Mr Ali was advised by the dealer to leave the financial industry multiple times throughout since termination, before MFDA was involved the dealer By November 2018, clients were motivated to make up fabricated complaints against him. When his family was harassed and dragged into this charade and it was clear that anyone who is even remotely associated with him will not be able to work in the financial industry.

All allegations concerned are being denied by him, here is some additional information The Shams Group job was strictly volunteer position couple hours a month without any conflict of interest . There was no compensation involved and it was approved by his then Branch Manager at the dealer. He did not own any rental property. He also did not engage in any other outside/undisclosed businesses (tax preparation, consultation etc) with his former clients. His previous counsel Mr. O'Toole had mentioned a list of names and none of those names were his former client. His wife had informed both of his previous counsels that because of the immense stress and stress-induced mental conditions he was not fit to respond or attend the MFDA interviews. Due to the inhuman and insane stress caused by the dealer's actions, his conditions have further deteriorated, he barely has any recollection of events that took place in 2019. It has been a great struggle for him to compose this response.

I hope this will suffice , For

Amin Ali

20. An interim appearance was held on January 25, 2021, at which Mr. Ali appeared without counsel. It was ultimately adjourned after it was determined the Reply had been filed but not sent to the Panel. Mr. Roy described the purpose of the January 25, 2021 appearance as follows:

Mr. Roy: Oh, good morning. So my understanding, the -- to my understanding, the purpose of today's attendance is to check in on the status of Mr. Ali. As the -- as you will recall, Mr. McDougall, the hearing has been set to proceed and take place on May 27 and 28, 2021, so in approximately four months from now.

> Staff is still ready, willing, and able to proceed at this time. As we mentioned during our last appearance on September 28th, we see no reason to delay this matter any further.
>
> As you will recall, the notice of hearing was issued on -- in June, June 4th of 2020. Should the proceeding commence on May 27th, it will be almost one year to the date that the notice of hearing was issued. And subject to whatever Mr. Ali has to say at this point, it is Staff's position that there is a public interest in the matter moving forward at this time.
>
> The Chair: I'm sorry. I missed the last, Mr. Roy.
>
> Mr. Roy: Oh. Subject to what Mr. Ali has to say, and Staff does not know at this time what Mr. Ali's position or status is, but subject to what he has to say, our view is that it is in the public interest for us to -- you know, for the matter to proceed at this time and be held according to the current schedule that was –
>
> The Chair: In February -- it's in the public interest to proceed in February? Mr. Roy: To proceed as scheduled.

21. Following this interim appearance, the scheduled Merits Hearing, which had been fixed for May 27-28, 2021, was adjourned on consent. This was the consequence of a motion brought by Rafal Szymanski who had been retained as new counsel for the Respondent. This new Motion was returnable August 30, 2021, and in it, the Respondent sought the following relief:

a) An order adjourning the hearing of this matter on the merits sine die until such time the Respondent is medically cleared by his treating psychiatrist;
b) In the alternative, an adjournment of the Merits Hearing on terms that the Hearing Panel deems just;
c) If opposed, costs of this motion; and
d) Such further and other relief as the Hearing Panel deems just.

22. On the opening of the pre-hearing motion on August 30, 2021, the Panel advised the parties that they were concerned with the impartiality of Dr. Syed, and that it would be its preference to have psychiatric evidence from an expert who was independent of the parties and who understood that his or her duty was to advise the Panel in an appropriately impartial manner. Counsel agreed to discuss this request and the possibility of obtaining such independent evidence. The Motion was then adjourned to September 14, 2021 to ascertain if it would be possible to do so.

23. The Panel was not privy to the discussions between Counsel regarding the retention of an independent psychiatrist. However, the Panel made it clear that we agreed with Staff submission made on September 14, 2021 that the burden of proof with respect to the fundamental submission, that is to say the Respondent's ability to proceed with the Hearing lay with him. The Panel accepted the submission of Mr. Melamud wherein explained as follows:

> MR. Melamud: Sure, so perhaps I'll take the opportunity to speak first, as I've advised Mr. Szymanski by email of Staff's position on the matter. So I was able to see the instructions during the adjournment. Staff is not prepared to contribute to the financial cost of retaining an independent expert. And I'd like to sort of take an opportunity to explain Staff's reasoning as to why.
>
> In Staff's submission, this is the Respondent's Motion. It is incumbent upon the Respondent to provide evidence to the Panel to satisfy the Panel that relief that (inaudible) has requested should be permitted. So to the extent that the Hear [sic] Panel is dissatisfied with the evidence, that's been provided by the Respondent from his treating psychiatrist, while the Respondent can be provided an opportunity to provide additional evidence that should be obtained at the Respondent's expense. It is ultimately... the onus for this Motion is on the Respondent.
>
> Staff would also like to point out that the Respondent's Motion, both in the Notice of Motion and in the submissions, was based on the argument that the Respondent was not sufficiently well to participate in the Hearing, in the sense of instructing Counsel receiving legal advice in attending the proceeding.
>
> Staff has made its submissions on this point and even taking Dr. Syed's evidence at face value, Staff's position is that the Respondent has not satisfied, has not provided sufficient evidence to establish that he is unfit to participate in the proceeding.
>
> The Respondent's Motion was never styled as, or based on an argument, that proceeding with the Hearing on the Merits would in some way cause serious harm to the Respondent. It's not raised in the Notice of Motion, it's not argued in the written submissions, nothing clearly comes out of the evidence of Dr. Syed that there would be any serious harm. And in Staff's submission, it's speculative at this point to assume that there would be significant harm to the Respondent from participating in a Hearing on the Merits. In Staff's submission, there is no authority, either in the MFDA Bylaw or the Rules, to compel the parties to obtain an independent medical examination of the Respondent. And so the evidence...that the Panel has the evidence that's been provided by the Respondent and Staff, if the Respondent is prepared to obtain an independent medical examination, we can certainly... that can be done and the Panel will have the benefit of that evidence, and if not, then the Motion needs to be decided in Staff's submission on the basis of the evidence that is before the Panel, and the submissions that have been made by the parties.
>
> Transcript, September 14, 2021, p. 5, ln. 2 – p. 7, ln. 8

24. Mr. Szymanski advised the Panel at the September 14, 2021 appearance, that he could not get instructions from his client and therefore could not agree to anything, to which he was referring to any arrangements with respect to getting independent psychiatric opinions. The consequence was that the Panel was unable to deal with the Motion that Mr. Szymanski had brought on August 30, 2021.

25. When the Merits Hearing was fixed for February 8-11, 2022, provision was made for a status appearance to be held on November 15, 2021. At the opening of that appearance, Mr. Szymanski made the following statement: "I can advise the panel that my client's mental health has deteriorated significantly in the past two months, to the point that I have formed the opinion that he's not competent to give me any instructions one way or the other. I have spoken with him several times in the last few weeks, and based on these conversations, I'm not confident that he understands who I am or appreciates my role as his lawyer. That's to say nothing of his

understanding of these proceedings or the jeopardy in which he finds himself in these proceedings."

Transcript, November 15, 2021, p. 5, ln. 21 – p. 6, ln. – 6

26. After hearing Mr. Melamud, Mr. Szymanski's risk management partner, a Mr. Moore and Mr. Szymanski himself and also following deliberations by the Panel, the Panel acceded to the request made by Mr. Szymanski and granted him leave to withdraw from the case.

27. After hearing full argument from Mr. Melamud, and brief comments from Mr. Szymanski, the Panel issued the following order:

a) Pursuant to sections 24.3.1(a)(vii) and 24.3.3(a) of MFDA By-law No. 1, the Respondent's authority to conduct securities related business while in the employ of or in association with a Member of the MFDA is suspended until further order of a Hearing Panel;
b) The Respondent's motion to adjourn the proceeding sine die is dismissed without prejudice to the Respondent renewing his motion to adjourn supported by further evidence prior to or at the commencement of the hearing on the merits;
c) The next appearance in this proceeding shall take place by videoconference on November 15, 2021 at 4:00 p.m. (Eastern); and
d) Subject to any further order of the Hearing Panel, the hearing of this matter on its merits shall take place by videoconference from February 8 to 11, 2022, beginning at 10:00 a.m.(Eastern), each day, or as soon thereafter as the matter can be heard.

28. In the interim, after the Panel issued an Order dismissing the Respondent's Motion to adjourn the proceedings sine die, nothing further took place which involved the Panel until shortly before the Merits Hearing, which was now scheduled to commence on Tuesday, February 8, 2022. Early that morning, members of the Panel received a copy of an email from Mr. Szymanski addressed to each of them directly. Attached to it was a memorandum from Dr. Syed which was also addressed separately to the individual members of the Panel.

29. In this memorandum, Dr. Syed repeated his views that the Panel should accede to his demands that the proceedings against the Respondent be halted. He had made the same demand in previous submissions to the Panel but in this instance it was made in far stronger terms than previously. It was not an expert opinion, rationally based. The Panel regarded it as a purely partisan

act of advocacy couched in threatening terms regarding the consequences of continuing the proceedings against the Respondent.

30. Staff's view, earlier expressed at the Hearing on February 8, 2022, was that the matter should proceed to a Merits Hearing, in effect because there was no basis to do otherwise as there was nothing new in Dr. Syed's email. Consequently, after due consideration, the Panel decided that it would decline to hear Dr. Syed's evidence both on the grounds, that it could not qualify as an expert opinion of the kind and nature that would be of any assistance to the Panel and that it contained nothing new. The suggestion made by Dr. Syed of possible self-harm was an *in terrorem* speculation unsupported by any objective expert opinion evidence. The Panel therefore declined to renew the Respondent's motion to adjourn the proceedings and two days later, on February 10, 2022, proceeded to hear the matter on the Merits.

31. The Panel also felt that it would be incorrect to act on evidence, that in its view, had been improperly and unilaterally put before the Panel for the purpose of coercing the Panel to act on it. The Chair described it as somewhat of a "poisoned chalice" in that it was designed to limit the Panel's freedom of action by threats. We concluded that the safest course was to rely on what was already before us and what might be put before us in the Merits Hearing.

III. THE MERITS HEARING

32. Having disposed of the Motion to adjourn, the Panel proceeded to hear the matter on the Merits. It had before it the following written material filed by Staff:

a) The Affidavit of Karen Mills sworn January 24, 2022 (the "Mills Affidavit")
b) The Supplementary Affidavit of Karen Mills sworn February 7, 2022
c) Affidavit of Steven Elliot sworn January 7, 2022
d) Affidavit of Debbie Scott (the "Scott Affidavit") sworn February 4, 2022

33. The Mills Affidavit constitutes a compendious collection of all the relevant written documentation relating to the allegations of misconduct made by the MFDA Staff against the Respondent. It is, including the exhibits, approximately 670 pages in length including Ms. Mills' descriptive Affidavit of the investigation.

i. Allegation #1: Unapproved Outside Activities

34. At all material times, either in the Member's Policy and Procedure Manual or in the Member's Code of Business Conduct and Ethics or in both, the Member **sets** out requirements that its Approved Persons **must** disclose to and obtain approval from the Member before engaging in an outside business activity.

Mills Affidavit, para. 12.

Policy and Procedure Manual (excerpt) 2004, Exhibit "H" to the Mills Affidavit.

Policy and Procedure Manual (excerpt) 2008, Exhibit "I" to the Mills Affidavit. [2008 Member PPM]

Codes of Business Conduct and Ethics, Exhibit "J" to the Mills Affidavit. [Code of Business Conduct]

35. During the time the Respondent was registered with the Member, the Respondent engaged in the following outside business activities:

a) Beginning in 2013, the Respondent acted as a director of The Shams Group Canada Ltd. ("Shams Canada"), a company that "provide[s] solutions to Canadian Healthcare Institutions".

Mills Affidavit, paras.19-23

b) Beginning in 2006, the Respondent provided financial planning, estate planning, income tax preparation, and consulting services to clients and others. The Respondent charged a fee for his services, which he generally asked be paid to his personal corporation, Anusha Financial Group Inc. ("Anusha Financial"); and

Mills Affidavit, paras. 16, 24-27.

c) Beginning in 2006 or 2007, the Respondent retained third party professionals, including accountants and business consultants, to provide services to his clients for which he charged a mark-up or a fee above the amount charged to him by the third party professionals. The Respondent earned approximately $10,000 to $15,000 in connection with facilitating these third party professional services. The Respondent typically received the fees by cheque payable to Anusha Financial.

Mills Affidavit, paras. 28-31.

May 2, 2019 Interview Transcript, p. 56, ln. 22-24, Exhibit "K" to the Mills Affidavit.

36. As deposed to by Ms. Mills:

> The Respondent did not disclose any of the outside business activities listed above to the Member and the Member did not provide approval to the Respondent authorizing him to engage in any of these activities. Indeed, the Member had no record of the Respondent ever asking for approval to engage in any outside business activity. Even with respect to Anusha Financial, the Respondent's personal corporation, he had only disclosed that it had been established and had the name approved by the Member as a trade name.

Mills Affidavit, paras. 16-17.

37. The un-contradicted evidence of Ms. Mills continues as follows: While the Respondent asserted during an interview with Staff that he made oral disclosure to his branch manager about his outside activities, Mr. Elliott denies that the Respondent made such disclosure. Mr. Elliott also attested to the fact that if the Respondent had asked him to approve his engagement in an outside business activity, Mr. Elliott would have advised him that written disclosure to the Member was required. Pursuant to the Member's PPM and the Code of Business Conduct, disclosure of an outside activity to a branch manager like Mr. Elliott would not have been sufficient to comply with the Member's procedures.

Mills Affidavit, paras. 33-34.

Affidavit of Stephen Elliott, sworn January 17, 2022.

ii. Allegation #2: The Respondent Misled the Member

38. On an annual basis, the Respondent was required to execute the Member's Statement of Acknowledgment, pursuant to which he certified that he had received, read, and would abide by the Code of Business Conduct. Beginning in 2013, the Code of Business Conduct stated:

> You acknowledge that you disclosed ALL outside business activities (OBAs) to Quadrus. This includes any activities that you are involved in outside of your registration with Quadrus. You also acknowledge that you have ceased your involvement with any outside business activities NOT approved by the dealer.

Mills Affidavit, para. 36.

Code of Business Conduct, Exhibit "J' to the Mills Affidavit.

39. In November 2016, the Respondent was interviewed by the Member during a branch review conducted by the Member's compliance department. His answers were recorded in an interview booklet by a compliance officer with the Member, Debbie Scott. In response to a question asking the Respondent to describe all of his outside business activities, the Respondent replied "not involved in any." The Respondent further confirmed that he was aware of the

requirement to notify the Member before engaging in any outside business activities and that this was to be done by completion of an OBA Questionnaire.

Mills Affidavit, paras. 37-38.

40. Further, Ms. Mills deposes:

> The Respondent denied that the answers recorded in the interview booklet were his answers and further denied that the interview with Ms. Scott had happened at all. Ms. Scott confirmed in an affidavit that the interview had taken place on November 29, 2016 and that the answers recorded in the interview booklet were accurate. As an exhibit to her affidavit, Ms. Scott further provided a record showing the calendar invitation that was sent to the Respondent to set up the interview.

Mills Affidavit, para. 40.

Scott Affidavit

iii. Allegation #3: The Respondent's Failure to Cooperate

41. The history of the Respondent's failure to co-operate has been described earlier in the Background section and there is no need to repeat it. The history is fully described in the Mills Affidavit. It is sufficient at this point to say that the evidence in respect of Allegation #3 is incontrovertible.

42. The standard of proof in administrative proceedings, such as the present one instituted under the MFDA By-law, is the civil standard of the balance of probabilities. Since 2008, it has been settled law in Canada that "there is only one civil standard of proof at common law and that is proof on a balance of probabilities." The Supreme Court of Canada rejected the notion that the seriousness of the allegations affects the Standard of Proof. In all civil cases, the Trial judge must scrutinize relevant evidence to determine whether it is more likely than not that an alleged act of misconduct occurred. In this case, that burden of proof rests on Staff.

FH v. *McDougall* [2008] 3 SCR 41 at paras. 40, 45, 46 and 49

43. Strictly speaking, there is no evidence before the Panel from the Respondent because none was proffered by him and no cross examinations took place. However, the Panel took broader approach in that it has considered everything in the Hearing Record including the transcripts taken over the many preliminary hearings and investigations that occurred.

44. It is also significant that, despite protestations to the contrary, the Respondent seemed to be actively engaged in the Hearings, often appearing on screen and at least on one occasion appearing in-person without Counsel. Electronic hearings facilitate parties being able to attend

anonymously if one chooses to do so, as Mr. Ali seemed to have done regularly. The Panel concluded that the Respondent was actively directing his Counsel and other representatives in the conduct of his case, and his representatives made it clear to the Panel that they were acting on his instructions.

45. The co-operation of Approved Persons with investigations by Staff is critical to the investigative process so that the MFDA can fulfil its regulatory mandate of investor protection. Ms. Mills details the matters which suggested possible defalcations and financial misconduct, in fact, a number of his clients which Staff wished to investigate further but was unable to do so because of the Respondent's refusal to cooperate.

Mills Affidavit, paras. 42 – 57.

46. Staff attempted to contact several of the clients whose names had been given, particularly a couple who are referred to in earlier paragraphs above, but neither agreed to speak to Staff nor was Staff able to speak to any of the other clients of the Respondent.

Mills Affidavit, paras. 52 – 53.

47. It must be made clear again, that there was no allegation of misappropriation of clients' funds before the Panel. A mere suspicion is not enough. It is a fundamental tenet of our law that there must be an allegation of misappropriation before the tribunal can deal with such an issue. The third allegation, failure to cooperate with an MFDA investigation, does not cover any other kind or type of misconduct.

48. On the other hand, the alleged failure to cooperate with the MFDA investigation is in a very real sense a breach of an obligation which is fundamental. The obligation of every Approved Person is to cooperate fully with the MFDA and that is an essential part of the self-regulatory process that the MFDA is privileged to have.

Vitch (Re), 2011 LNCMFDA 63 at paras. 55 and 56

Tuitakalai (Re), 2021 LNCMFDA 21 at paras. 50-54, 60

Travis (Re), 2018 LNCMFDA 178 at para. 8

49. In the *British Columbia Securities Commission v Branch* case in the Supreme Court of Canada, Justice L'Heureux-Dubé summarizes the rational for the requirement for complete cooperation from members of regulated securities markets as follows:

> ... given the nature and breadth of this obligation, as well as the important economic stake that the investing public holds in its proper fulfillment, I fail to see how market participants would not expect to be questioned by regulators from time to time as to their market activities, in order for the securities commissions to be able to ensure that they, or the corporations that they represent, have complied with the prescribed standards.
>
> *British Columbia Securities Commission* v. *Branch*, [1995] 2 SCR 3 at paras. 77 and 78.

50. This same principle has been confirmed by multiple securities regulators, that the privilege of being permitted to participate in the securities markets as an advisor comes with the fundamental obligation to submit to the jurisdiction of securities regulators and to participate in regulatory investigations when asked to do so.

> *Robb (Re)*, [2002] I.D.A.C.D. No. 1 at para. 16
>
> *Chow (Re)*, (2022), MFDA File No. 202054 at paras. 65-68

51. As stated by the Hearing Panel in *Vitch (Re)*, there can be no exception to the obligation to cooperate. Otherwise, Approved Persons would only be obliged to cooperate with an investigation if Staff could establish that there was no other way to obtain the requested records or information that were requested from the Respondent. The imposition of the obligation on subjects of regulatory investigations to cooperate with the investigation is the most expeditious and cost effective way (and in some cases the only way) that Staff can obtain records or information within the knowledge, possession, power, or control of a subject of an investigation is from the subject directly.

> *Vitch (Re)*, 2011 LNCMFDA 63 at paras. 55 and 56

52. By failing to produce banking records requested by Staff, failing to fulfil undertakings given by Staff and expressly refusing to further cooperate with Staff's investigation, the Respondent contravened section 22.1 of MFDA By-law No. 1.

IV. CONCLUSION

53. Having regard to all the evidence and the facts as they appear in the proceedings before us and having heard Counsel on behalf of the parties, the Panel found the following Allegations had been proved:

Allegation #1: Between 2006 and February 13, 2018, the Respondent engaged in outside activities that were not disclosed to or approved by the Member or entered into unauthorized referral arrangements with third parties by:

a) acting as an officer and director of a corporation that produces software and provides services in the American healthcare sector and its subsidiary corporation;
b) offering financial planning, consulting, estate planning, tax preparation or other services to clients or other individuals for which he charged fees;
c) charging fees to clients or other individuals for referrals to third party professionals;
d) *withdrawn by Staff*;

contrary to the Member's policies and procedures and MFDA Rules 1.2.1(d)1 [now Rule 1.3.2], 2.4.2, 2.5.1, 2.10 and 1.1.2.

Allegation #2: Between 2006 and February 13, 2018, the Respondent provided false and misleading responses to the Member, contrary to MFDA Rule 2.1.1(b) and (c).

Allegation #3: Commencing no later than June 18, 2019, the Respondent failed to cooperate with an investigation of his conduct by Staff of the MFDA, contrary to section 22.1 of MFDA By-law No. 1.

(For clarity, the Panel adopted the minor amendments to allegations 1 and 2 requested by Staff as they were inconsequential.)

V. SANCTIONS

54. By virtue of section 24 of MFDA By-law No, 1, having found the Allegations made against the Respondent to have been proven, the Panel could impose any of the penalties set out in s. 24.1.1 (a – f) which 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.

55. Staff asked for the following sanctions against the Respondent in its written Submissions on Sanctions ("SSOS"):

a) the Respondent be permanently prohibited from conducting securities related business in any capacity while in the employ of, or in association with, any MFDA Member pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

b) the Respondent pay a fine in the amount of at least $50,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and

c) the Respondent pay costs as set out in a Bill of Costs to be provided by Staff at the sanction hearing, pursuant to s. 24.2 of MFDA By-law No. 1.

56. The primary goal of securities regulation is the protection of investors and fostering public confidence in the capital markets and the securities industry. Disciplinary sanctions imposed in a securities regulatory context are intended to restrain future misconduct in furtherance of these goals. As stated by the Hearing Panel in *Tonnies (Re)*:

> The Ontario Securities Commission has set out succinctly its role, not dissimilar to the role of this Panel, in determining penalty in Re Mithras Management Ltd. et al. (1990), 13 O.S.C.B.1600. The Commission stated at 1610:
>
> ... [T]he role of this Commission is to protect the public interest by removing from the capital markets - wholly or partially, permanently or temporarily as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient.
>
> *Tonnies (Re)*, 2005 LNCMFDA 5 at para. 45
>
> *Pezim* v. *British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 at para. 59
>
> *Committee for the Equal Treatment of Asbestos Minority Shareholders* v. *Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 42

57. Sanctions imposed by a Hearing Panel should therefore be protective and preventative to prevent likely future harm to the markets. To determine whether a sanction is appropriate, the Hearing Panel should consider:

a) the protection of the investing public;

b) the integrity of the securities markets;

c) specific and general deterrence;

d) the protection of the MFDA's membership; and

e) the protection of the integrity of the MFDA's enforcement processes.

Tonnies (Re), supra at paras. 44, 46

58. Hearing Panels have also previously considered the following factors when determining whether a sanction 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 activities;
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 activities to those who are permitted to participate in the capital markets; and
k) previous decisions made in similar circumstances.

Tonnies (Re), 2005 LNCMFDA 5 para. 48

Breckenridge (Re), 2007 LNCMFDA 38 at para. 77

59. Of the foregoing factors, Staff chose, correctly in the Panel's view, to focus on the following,

a) the seriousness of the allegations proved;
b) the Respondent's past conduct;
c) the Respondent's recognition of the seriousness of the misconduct;
d) deterrence; and
e) previous decisions made in similar circumstances.

Factor a): The Seriousness of Allegations Proved

60. The three allegations of misconduct by the Respondent were: a failure to cooperate in an investigation, unapproved outside business activities and misleading the Member.

61. With respect to failure to cooperate in an investigation, the Panel adopts the following from the SSOS as reflecting its own conclusion with respect to the failure of the Respondent to cooperate and the explanation of the importance and significance for such a breach by an Approved Person.

> The Respondent failed to produce his banking records when requested by Staff as explicitly required by section 22.1(b) of MFDA By-law No. 1. Hearing Panels have repeatedly held that the failure to cooperate with MFDA Staff is very serious misconduct. Unlike statutory regulators, the MFDA has no statutory power to compel the production of documents and information, and so relies on Approved Persons' cooperation to fully investigate matters.
>
> Where an Approved Person fails to cooperate, as the case here, the MFDA cannot determine the full nature and extent of the Approved Person's potential misconduct. As held by the Hearing Panel in *Dixon (Re)*:
>
> The Panel considered that the failure of an Approved Person to cooperate with an MFDA investigation by among other things, not complying with a request by an MFDA investigator made pursuant to s. 22.1 of the By-law is serious misconduct. It subverts the ability of the MFDA to perform its regulatory function by fully investigating a matter and determining all of 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.
>
> *Dixon (Re)*, 2017 LNCMFDA 247 at para. 12

62. In short, leaving misappropriation of client's funds aside, in our view there is no more serious breach of the MFDA Rules and By-laws than the failure to cooperate. The Panel found the breach in this case to be particularly egregious in that it was coupled with lengthy breaches in conducting unapproved outside businesses and misleading the Member with respect to them.

63. The Respondent's failure to disclose his outside business activities to the Member and obtain approval is also serious misconduct. As also stated by the Hearing Panel in *Vitch (Re)*:

> We need say only a few words about the misconduct covered by Allegation #1 and Allegation #2. The need for a Member to know what other occupations and businesses its employee might be engaged in is obvious. There are many reasons why a Member must know what its employees are doing. We will mention only two of what seem to us to be the most important reasons. The first is that a failure to know about an employee's other commercial activities impinges upon the Member's ability to properly supervise its employee. The second reason is that the Member could be exposed to litigation alleging that the Approved Person's activity was within the scope of his/her employment with the Member. It is, therefore, our opinion that we are required to view very seriously the conduct covered by Allegations #1 and #2.
>
> *Vitch (Re)*, *supra* at para. 53

Factor b): The Respondent's past Conduct and Factor d) The Respondent's recognition of the seriousness of the misconduct

64. Dealing with the Respondent's past conduct which is factor b) together with factor d) Respondent's recognition of the seriousness of misconduct, the Panel was of the view that while the Respondent had not previously been the subject of a disciplinary proceeding, this is offset by

the fact that this misconduct took place over most, if not, all of the period he was employed by the Member. Further, there was no recognition, at any time by the Respondent of the seriousness of his misconduct. Quite the opposite as he seemed to regard his transgressions and his obligations to the Member as inconsequential.

Factor i): Deterrence

65. On the subject of the need for the sanction to provide deterrence to the Respondent and, perhaps more significantly in this case, to others from repeating the Respondent's misconduct. The following statement from the Supreme Court of Canada in *Cartaway Resources Corp.* is apposite:

> 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.
>
> *Cartaway Resources Corp. (Re)*, 2004 1 SCR 672 at para. 61.

Factor k): Previous Decisions made in Similar Circumstances

66. Finally, with respect to item k) Previous decisions made in similar circumstances, Staff provided the Panel with a summary chart of comparable cases, which taken overall, demonstrated to the Panel that Staff's submissions with respect to sanctions were moderate and in accord with the Panel's overall view of the case. Two cases were *Vitch (Re*) and *Travis (Re)* which were directly comparable to the present one in that they both involved a failure to cooperate and other contraventions. In each case, the fines imposed were the same suggested for this present case, $50,000 dollars.

> *Vitch (Re)*, *supra*, 61
>
> *Travis (Re)*, 2018 LNCMFDA 178 at para. 8

Respondent's Submissions on Sanctions

67. Prior to the Merits Hearing held in February 2022, the parties and the Panel had reached agreement that the Sanctions Hearing would take place on May 9, 2022. It was then adjourned to Tuesday, July 5, 2022, at the request of the Respondent. Following that event, nothing further was heard by the Panel other than Staff filing the SSOS. Nothing was filed by the Respondent.

68. The Sanctions Hearing commenced as agreed on schedule on July 5, 2022. However, instead of Mr. Szymanski, Mr. Zachary Al-Khatib appeared as Counsel for Mr. Ali. The Panel did not hear from Mr. Szymanski at all following the Merits Hearing, and no explanation was offered. However, obviously Mr. Ali had again chosen to change counsel.

69. Perhaps predictably, given the history of the matter, Mr. Al-Khatib's first step was to apply for an adjournment. During the back and forth between Mr. Melamud and Mr. Al-Khatib, the Panel learned that there was a proceeding in the Ontario Securities Commission between the same parties as this case and relating to it. Mr. Al-Khatib was acting for Mr. Ali in that proceeding. As it turned out that Mr. Al- Khatib was advised in writing of the Sanctions Hearing date and also was aware of the 60 day adjournment granted to Mr. Ali for the purpose of obtaining new counsel, the request for an adjournment was not pursued.

70. The Panel's only information about the proceeding in the Ontario Securities Commission, was Mr. Melamud's description of it on July 5, 2022, as a "Hearing in review that the Respondent has requested in this matter." Other than that, no further information was provided, and none was sought by the Panel.

Transcript, July 5th, 2022, at page 9, ln. 1 – 16.

71. Mr. Al-Khatib's submissions on sanctions were brief and amounted to two basic points which were, on examination, essentially the same. The first was that Mr. Ali's mental health condition should be taken into consideration when deciding what an appropriate sanction would be. The second basic submission was that "the penalties proposed by Staff are disproportionate to an appropriate characterization of what occurred here." Counsel went on to elaborate "when viewed through the lens of a mental health issue, that conduct is explainable".

Transcript July 5, 2022, pg. 29, ln. 5-30, ln. 22

72. Mr. Al-Khatib's submissions were incorrectly couched in terms of "punishment" being imposed. The MFDA has no power to punish per se. Its sanctions must be directed to achieving deterrence, both specific and general, to prevent future similar misconduct. In the Panel's view, that is exactly what Staff's recommendations were intended to achieve. To be sure, most sanctions by their very nature, are, to a degree, punitive. But it is not in this case, as it never should be, the purpose of the sanction being applied.

73. As was stated earlier in these Reasons, the Panel was fully aware of the issue of Mr. Ali's mental competency. It had Dr. Syed's reports and emails as previously discussed and it also closely observed the conduct of this case. The Panel saw nothing to suggest the Respondent was in any way incompetent. To the contrary, Mr. Ali was, as members of the Panel noted, fully in control and was the directing mind of his defense, in all its aspects. Clearly, the lawyers who appeared on his behalf looked to him, and to him alone, for their instructions. It was notable that a number of delays were occasioned by the lawyers asking for time in order to obtain instructions during the Hearings.

74. All that said, in the Panel's view, the Respondent did not discharge the burden of demonstrating mental incompetence of any kind, let alone of the kind which would ground Mr. Al-Khatib's basic submissions. Therefore, his argument on sanctions failed to persuade the Panel and it was not accepted by it.

VI. CONCLUSION

75. It was for the forgoing reasons that the Hearing Panel accepted Staff's submissions with respect to the Sanctions to be imposed upon the Respondent for misconduct in the three allegations proven against him. To repeat, the sanctions are,

a) The Respondent is permanently prohibited from conducting securities related business while in the employ of or in association with a Member of the MFDA, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
b) The Respondent shall pay a fine in the amount of $50,000 on the date of this Order, pursuant to section 24.1.1(b) of MFDA By-law No. 1; and
c) The Respondent shall pay costs in the amount of $10,000 on the date of this Order, pursuant to section 24.2 of MFDA By-law No. 1.

DATED this 10th day of March, 2023.

"John Lorn McDougall"
John Lorn McDougall, K.C.
Chair

"Cheryl Hamilton"
Cheryl Hamilton
Industry Representative

"Samuel Mah"

Samuel Mah
Industry Representative

DM 902318