

# Re Arora

IN THE MATTER OF:

**The Mutual Fund Dealers Rules**

**and**

**Megha Arora**

2023 CIRO 37

Canadian Investment Regulatory Organization  
Hearing Panel (Manitoba District)

Heard: March 6 and 29, 2023 by electronic hearing in Winnipeg, Manitoba  
Decision: March 29, 2023  
Reasons: December 8, 2023

**Hearing Panel:**

Robert Stack, Chair  
James Samanta, Industry Representative  
Kathleen Jost, Industry Representative

**Appearances:**

Brendan Forbes, Enforcement Counsel for the Canadian Investment Regulatory Organization  
Kenneth J. Muys, Counsel for the Respondent  
Megha Arora, Respondent

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## DECISION

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### I. BACKGROUND

¶ 1 On December 5<sup>th</sup>, 2022, the Mutual Fund Dealers Association of Canada (“**MFDA**”), a predecessor of the Canadian Investment Regulatory Organization (“**CIRO**”) (collectively referred to as the “**Corporation**”), issued a Notice of Settlement Hearing in relation to one of its Approved Persons, Megha Arora (“**Ms. Arora**” or the “**Respondent**”).

¶ 2 The Notice of Settlement Hearing asked a hearing panel of the Prairie Regional Council (the “**Hearing Panel**”) to approve a settlement agreement (“**Settlement Agreement**”) entered into between the Corporation and Ms. Arora pursuant to s. 24.4.3 of MFDA By-law No. 1. According to the Notice of Settlement Hearing, the conduct that led to the Settlement Agreement involved the Respondent altering client contact information, without the knowledge or authorization of the client, contrary to MFDA Rules 2.1.1. and 2.1.4.

¶ 3 At an appearance on March 29, 2023, the Hearing Panel did endorse the Settlement Agreement. These are its reasons for doing so.

¶ 4 While this proceeding was commenced under the MFDA, it is continued under the CIRO pursuant to transitional provisions set out in Mutual Fund Dealer Rule 1.A and s. 14.6 of By-law No. 1 of the Corporation. The power to approve settlements is now set out in Mutual Fund Dealer Rule 7.4.4.3.

### II. DISCLOSURE OF MISCONDUCT IN THE SETTLEMENT AGREEMENT

¶ 5 At the hearing, the Staff of the Corporation asked for an order that the Hearing Panel review the Settlement Agreement *in camera* pursuant to Rule 15.2(2) of the Mutual Fund Dealers Rules of Procedure. The Hearing Panel did order that the hearing be conducted in private until a decision was reached on the Settlement Agreement.

¶ 6 The Settlement Agreement was then presented to the Hearing Panel for review. It contained the following admission by the Respondent:

Between November 2018 and July 2020, the Respondent altered client contact information on the Member's system without the knowledge or authorization of the client, which had the effect of avoiding the Member's supervisory and training controls and impacted its ability to communicate with clients, contrary to MFDA Rules 2.1.1. and 2.1.4.

¶ 7 The Settlement Agreement further disclosed the following facts and admissions:

- a. From June 15, 2015 to July 23, 2020, the Respondent was registered in Manitoba with Royal Mutual Funds Inc. (the "**Member**").
- b. The Member sent satisfaction surveys to clients. Responses to these surveys could potentially have had an impact on the Respondent's variable compensation.
- c. Between November 2018 and July 2020, the Respondent made 1161 unauthorized changes to client contact information held by the Member. 52 clients were affected. The bulk of the changes involved marking client email addresses as "invalid". Ms. Arora would also edit or delete client's email addresses or have the client's records show "do not survey".
- d. The Respondent admitted that these alterations interfered with the Member's ability to communicate with clients and prevented clients from receiving various notifications about their accounts, such as that their investment account statements, bank statements or trade confirmations were available. As a result of these unauthorized alterations, the Member may have misdirected e-mail to someone other than the client.
- e. The Respondent stated that she conducted the unauthorized alterations to contact information in order to avoid the Member receiving survey responses that may have reflected poorly on her performance. Her interference with client communication reduced the risk of being selected for additional training.
- f. Ms. Arora stated in the Settlement Agreement that she did not necessarily engage in this activity to increase her variable compensation, while she also admitted that the alterations could have had an impact on this compensation.
- g. The Settlement Agreement stated that it is not possible to determine what impact, if any, the misconduct did have on variable compensation.

¶ 8 The Settlement Agreement listed the following additional factors relevant to sanction:

- a. The Respondent stated that she is the sole income earner for her family and also supports her parents. Her mother has a serious illness. The Respondent's income does not meet her current obligations.
- b. The Member has been able to contact affected clients and correct their contact information. There is no evidence of financial loss to these clients.
- c. By entering into the Settlement Agreement, the Respondent has saved the Corporation the time and expense associated with a contested hearing.
- d. The Respondent is not currently a registrant in the securities industry.

¶ 9 In the Settlement Agreement, the Respondent expressly admitted that her conduct violated MFDA Rules

2.1.1. and 2.1.4. MFDA Rule 2.1.1 requires that Members and Approved Persons maintain high standard of conduct. It reads as follows:

2.1.1 Each Member and each Approved Person of a Member shall:

- (a) deal fairly, honestly and in good faith with its clients;
- (b) observe high standards of ethics and conduct in the transaction of business;
- (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and
- (d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

¶ 10 MFDA Rule 2.1.4. deals with conflicts of interest between clients and Approved Persons. At the time of the conduct in question, the provision read as follows:

2.1.4. Conflicts of Interest

- (a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.
- (b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d).
- (c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.
- (d) Each Member shall develop and maintain written policies and procedures to ensure compliance with Rules 2.1.4(a), (b) and (c).

¶ 11 Staff cites in its written submissions decisions from the Corporation panels indicating that a Member or Approved Person may violate Rule 2.1.4. in circumstances where the party advances his or her own interests in some fashion by means that are contrary to the interests of the client, thus creating a conflict. That does appear to be what occurred in this case and the Hearing Panel accepted that there was a violation of both MFDA Rules 2.1.1. and 2.1.4.

### III. PROPOSED TERMS OF SETTLEMENT:

¶ 12 The Settlement Agreement proposes that the misconduct should result in the following consequences:

- a. the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 18 months commencing from the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b. the Respondent shall pay a fine in the amount of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- c. the Respondent shall pay costs in the amount of \$5,000 in certified funds upon acceptance

of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;

- d. the Respondent shall complete an ethics or professional conduct course or another course acceptable to Staff prior to becoming re-registered as an Approved Person, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;
- e. the Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.1.4; and
- f. the Respondent shall attend by videoconference on the date set for the Settlement Hearing.

#### IV. PANEL JURISDICTION IN RELATION TO SETTLEMENT AGREEMENTS

¶ 13 When a settlement agreement has been referred to it under By-law No. 1, s. 24.4.3, a Corporation hearing panel is required to do one of two things: either accept or reject the agreement. Corporation panels have concluded that a hearing panel reviewing an agreed set of sanctions is not to determine what the correct penalty is or what it thinks the penalty should be. Its role is to determine whether the penalty to which the parties have agreed is within a reasonable range of outcomes. Deference to settlement agreements may be particularly appropriate where senior counsel representing both parties have negotiated the set of sanctions.

*Sterling Mutuals Inc. (Re)*, Hearing Panel of the Central Regional Council, File No. 200820, Decision and Reasons dated September 3, 2008 at p. 9.

*Milewski (Re)*, [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999 at p. 10.

*Ho (Re)*, [2018] Hearing Panel of the Central Regional Council, MFDA File No. 2017120, Reasons for Decision dated March 5, 2018 at para. 25.

¶ 14 In considering whether a proposed penalty is in a reasonable range, MFDA panels have considered general sanction factors such as the following:

- 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.

*Milewski (Re)*, [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999 at p. 25.

*Laverdiere (Re)*, [2010] Hearing Panel of the Pacific Regional Council, MFDA File No. 200936, Panel Decision dated May 12, 2010, at para. 22.

¶ 15 General Sanction Consideration factors, when applied to a circumstance where the parties are jointly recommending a set of sanctions, have been expressed as follows:

- a. Whether acceptance of the Settlement Agreement would be in the public interest and whether the penalties imposed will protect investors;
- b. Whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
- c. Whether the Settlement Agreement addresses the issues of both specific and general deterrence;
- d. Whether the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
- e. Whether the Settlement Agreement will foster confidence in the integrity of the Canadian Capital Markets;
- f. Whether the Settlement Agreement will foster confidence in the integrity of the MFDA;
- g. Whether the Settlement Agreement will foster confidence in the regulatory process itself.

*Jacobson (Re)*, [2007] Hearing Panel of the Prairie Regional Council, MFDA File No. 200712, Reasons for Decision dated July 13, 2007, at para. 68

#### **V. REASONABLENESS OF THE PROPOSED SANCTIONS**

¶ 16 When applying the above listed sanction factors in this case, the Hearing Panel determined that the proposed set of sanctions was reasonable. The conduct of the Respondent was clearly serious, but she appeared to acknowledge that fact through her acceptance of the Settlement Agreement. While the conduct of the Respondent was detrimental to the reputation of the Capital Markets, there is no evidence of investor harm and no clear evidence of financial gain. In the context of her limited ability to pay, the proposed penalty and costs are likely to affect specific performance and are sufficiently high to deter others in similar circumstances.

¶ 17 In terms of general consistency with other cases, Staff provided a number of decisions from hearing panels of the Corporation. While each of those cases involved activities somewhat different from the current circumstance, they collectively indicate that the proposed set of sanctions is within the range of reasonable outcomes in a case of this sort.

#### **VI. CONCLUSION:**

¶ 18 The Hearing Panel therefore exercised its jurisdiction under Mutual Fund Dealer Rule 7.4.4.3. to approve the Settlement Agreement. It then directed that the hearing be again open to the public and marked the Settlement Agreement as an exhibit.

Dated at Winnipeg, Manitoba this 8 day of December, 2023.

“Robert Stack”  
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Robert Stack, Chair

“James Samantha”  
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James Samanta, Industry Member

“Kathleen Jost”

Kathleen Jost, Industry Member

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