

Re Dudding

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Guy Edward Dudding

2023 CIRO 27

Canadian Investment Regulatory Organization
Hearing Panel (Alberta District)

Heard (Misconduct): December 1-2, 2021, in Calgary, Alberta

Decision (Misconduct): December 2, 2021

Heard (Penalty): December 17, in Calgary, Alberta

Decision (Penalty): December 17, 2021

Reasons for Decision: November 9, 2023

Hearing Panel:

Richard L. Yaffe, K.C., Chair

Sean Shore, Industry Representative

Birju Shah, Industry Representative

Appearances:

Justin Dunphy, Enforcement Counsel for CIRO

Guy Edward Dudding, Respondent (present on December 2, 2021)

REASONS FOR DECISION ON MERITS AND PENALTY

¶ 1 The Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a disciplinary hearing in respect of Guy Edward Dudding (the “Respondent”) by Notice of Hearing dated May 18, 2021, as amended on September 24, 2021. A hearing on the merits was held electronically by videoconference on December 1 - 2, 2021. A penalty hearing was held electronically by videoconference on December 17, 2021.

¶ 2 This matter relates to serious contraventions committed by the Respondent that involved obtaining funds from the client accounts of four clients and depositing them into his own account or the account of another client, as well as falsifying a client account statement.

PROCEDURAL MATTERS

¶ 3 The Respondent was present and was not represented by counsel at the first appearance, which was held on June 24, 2021. The Respondent was not present, and was not represented by counsel, at the second appearance, which was held on September 24, 2021. The Respondent was not present, and was not represented by counsel, on the first day of the Hearing on the Merits, which was held electronically by videoconference on December 1, 2021. The Respondent was present and was not represented by counsel on the second day of the Hearing on the Merits, which was held electronically by videoconference on December 2, 2021. The Respondent was not present and was not represented by counsel at the Penalty Hearing, which was held electronically by videoconference on December 17, 2021.

¶ 4 Pursuant to section 20(4) of MFDA By-law No. 1, if a Member or person summoned before a hearing of a hearing panel by way of Notice of Hearing fails to serve a reply in accordance with section 20.2 of By-law No. 1, the hearing panel may proceed with the hearing of the matter on the date and at the time and place set out in the Notice of Hearing and the hearing panel may accept the facts alleged by the MFDA in the Notice of Hearing as having been proven by the MFDA and may impose any of the penalties described in section 24.1.

¶ 5 Pursuant to MFDA Rule 8.4(1)(b), where a respondent fails to serve and file a Reply in accordance with the requirements of Rules 8.1 and 8.2, the hearing panel may proceed with the hearing without further notice to and in the absence of the respondent and may accept the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing as proven.

FACTS

¶ 6 The facts, as presented by Enforcement Counsel, are as follows:

Registration History

¶ 7 From April 2007 to May 2019, the Respondent was registered in Alberta as a dealing representative with Investors Group Financial Services Inc. (the “Member”), a Member of the MFDA. The Respondent was also registered in Saskatchewan, British Columbia, and Ontario until May 2019.

¶ 8 Between March 2014 and September 2017, the Member designated the Respondent as a branch manager.

¶ 9 On May 3, 2019, the Member terminated the Respondent as a result of the conduct described below, and he is not currently registered in the securities industry in any capacity.

¶ 10 At all material times, the Respondent carried on business in the Lloydminster, Alberta area.

Overview

¶ 11 As described below, the Respondent engaged in misconduct which included obtaining approximately \$705,000 from four clients for investment that he deposited into either his own accounts or the investment account of another client. The Respondent failed to repay or otherwise account for approximately \$645,300 obtained from these clients. The Respondent also provided a falsified account statement to a client, which misrepresented that the client had investments at the Member when in fact the Respondent had deposited the clients’ monies into his own accounts.

¶ 12 In addition, the Respondent misled the Member about the sources of the client monies deposited into his accounts, made further false or misleading statements during the course of investigations into his conduct, and failed to cooperate with MFDA Staff’s investigation.

Client SW

¶ 13 At all material times, client SW was a client of the Member whose accounts were serviced by the Respondent.

¶ 14 On or about June 1, 2015, client SW provided the Respondent with a bank draft made payable to the Member for \$115,000 for investment to be deposited into her investment accounts held at the Member.

¶ 15 Rather than depositing client SW’s monies into her investment accounts at the Member, on or about June 3, 2015, without client SW’s knowledge or authorization, the Respondent deposited the \$115,000 bank draft into his own investment account with the Member.

¶ 16 On or about June 12, 2015, the Respondent redeemed \$15,000 from his own investment account and invested the proceeds into client SW’s tax-free savings account at the Member.

¶ 17 On or about June 18, 2015, the Respondent redeemed \$100,000 from his own investment account and deposited the proceeds into his own bank account.

¶ 18 On or about August 4, 2015, the Member queried the Respondent about the source of the \$115,000 deposit into the Respondent's investment account described above at paragraph 15. The Respondent stated to the Member that the deposit was related to an inheritance that he had received. The Respondent's statement to the Member was false, as the source of the deposit was monies obtained from client SW, as described above at paragraph 14.

¶ 19 On or about March 18, 2017, client SW contacted the Respondent to inquire about the unaccounted for amount of \$100,000 that she had provided to the Respondent for investment at the Member.

¶ 20 At this time, client SW pointed out that this investment did not appear on the account statements that she had previously received from the Member.

¶ 21 On March 18, 2017, the Respondent represented to client SW that her monies were "safe" and in a cash position.

¶ 22 On or about May 9, 2017, the Respondent provided client SW with a false account statement that indicated that client SW had \$110,000 in a non-registered account at the Member when, in fact, no such account or investment existed. The false account statement the Respondent provided to client SW misrepresented the amounts and whereabouts of client SW's monies.

¶ 23 The Respondent failed to repay or otherwise account for approximately \$100,000 that he obtained from client SW.

Client KF

¶ 24 At all material times, client KF was a client of the Member whose accounts were serviced by the Respondent.

¶ 25 In July 2015, the Respondent recommended an investment opportunity to client KF, where the client would invest monies for a one-year term and receive a 5% rate of return.

¶ 26 On or about July 22, 2015, client KF redeemed approximately \$150,000 from his investment account at the Member, obtained a bank draft for \$150,000 made payable to the Member, and on or about July 27, 2015, provided the bank draft to the Respondent. Client KF understood that his monies would be invested with the Member.

¶ 27 On or about July 28, 2015, without client KF's knowledge or authorization, the Respondent deposited the \$150,000 bank draft into his own investment account at the Member.

¶ 28 On or about August 4, 2015, the Member queried the source of the \$150,000 deposit into the Respondent's own investment account described above at paragraph 27. The Respondent stated to the Member that the source of the deposit was an inheritance. The Respondent's statement to the Member was false or misleading, as the source of the deposit was monies obtained from client KF, as described above at paragraph 26.

¶ 29 On or about August 5, 2015, the Respondent redeemed the \$150,000 from his own investment account and deposited the proceeds into his own bank account.

¶ 30 On or about March 31, 2016, the Respondent provided client KF with \$160,000, the source of which was monies that the Respondent obtained from client CG, as described in further detail below.

¶ 31 The Respondent failed to account for the \$150,000 client KF provided to the Respondent for investment.

Client CG

¶ 32 At all material times, client CG was a client of the Member whose accounts were serviced by the Respondent.

¶ 33 In March 2016, the Respondent recommended an investment opportunity to client CG. Based on her conversations with the Respondent, client CG believed that her monies were being invested in a “private equity account” held at the Member.

¶ 34 On March 28, 2016, client CG redeemed \$200,000 from her investment account at the Member and obtained two bank drafts made payable to the Member for \$160,000 and \$40,000, respectively.

¶ 35 On or about March 30, 2016, client CG provided the bank drafts to the Respondent to invest in the “private equity account”.

¶ 36 On or about March 31, 2016, without client CG’s knowledge or authorization, the Respondent deposited the \$160,000 bank draft into client’s KF’s investment account at the Member, as described in paragraph 30 above.

¶ 37 On or about April 1, 2016, without client CG’s knowledge or authorization, the Respondent deposited the \$40,000 bank draft into his own investment account at the Member.

¶ 38 Between April 4, 2016 and April 19, 2016, the Respondent redeemed approximately \$36,000 from his own investment account and deposited the proceeds into his own bank account.

¶ 39 On or about April 6, 2016, the Member queried the source of the \$160,000 and \$40,000 deposits into client KF’s and the Respondent’s investment accounts, respectively. The Respondent stated to the Member that:

- a) the \$160,000 deposit into client KF’s investment account related to a real estate deal between clients KF and CG; and
- b) the \$40,000 deposit into the Respondent’s investment account related to a vehicle that the Respondent had sold to client CG.

¶ 40 The Respondent’s statements to the Member were false, as the Respondent obtained the monies from client CG for the purpose of investment, as described above at paragraphs 26-27.

¶ 41 In March 2019, after having not received any account statements with respect to her \$200,000 investment, client CG contacted the Member to obtain her account statements. The Member provided account statements to client CG which did not show the \$200,000 investment.

¶ 42 Client CG subsequently contacted the Respondent in order to determine the location of her \$200,000 investment. The Respondent informed client CG that the investment in her “private equity account” had increased to \$208,000, and that it would not show on Member account statements as the investment was outside the Member.

¶ 43 Client CG subsequently requested that the Respondent redeem her investments in the “private equity account” and deposit the proceeds into her bank account.

¶ 44 In response to client CG’s requests, on April 2, 2019 and April 5, 2019, the Respondent redeemed \$44,700 held in his own investment accounts and deposited the proceeds into client CG’s bank account.

¶ 45 On April 11, 2019, after not receiving any further payments from the Respondent, client CG complained to the Member regarding the Respondent’s conduct, including that her monies had been invested outside the Member and that she had not received the full amount of what had been invested with the Respondent.

¶ 46 Of the \$200,000 that client CG initially invested, the Respondent failed to repay or otherwise account for approximately \$155,300.

Client Y

¶ 47 At all material times, client Y was a client of the Member whose accounts were serviced by the Respondent.

¶ 48 In April 2018, the Respondent recommended an investment opportunity to client Y where the client would invest his monies for a one-year term and make an approximate 8% rate of return. Client Y believed his monies would be invested with the Member.

¶ 49 On or about May 2, 2018, client Y redeemed approximately \$240,000 from his investment account. On or about May 4, 2018, as instructed by the Respondent, client Y wrote a cheque for \$240,000 made out to the Respondent personally, which was deposited into the Respondent's personal bank account, and which was to be invested further to the Respondent's purported investment opportunity with the Member as described in paragraph 48, above.

¶ 50 At no time following the May 4, 2018 deposit was client Y's \$240,000 investment held with the Member. Client Y received no statements or other documentation with respect to the purported investment.

¶ 51 On or about June 14, 2021, client Y complained to the Member regarding the Respondent's conduct.

¶ 52 The Respondent failed to repay or otherwise account for the \$240,000 client Y provided to the Respondent for investment.

Client X

¶ 53 At all material times, client X was a client of the Member whose accounts were serviced by the Respondent.

¶ 54 On or about November 14, 2016, the Respondent entered into a loan agreement with client X and her husband, pursuant to which the Respondent borrowed \$61,000.

¶ 55 The terms of the loan agreement specified that the full amount of the loan would be repaid by no later than February 1, 2017.

¶ 56 In or around February 1, 2017, the Respondent repaid client X the full amount of the loan.

CONTRAVENTIONS

¶ 57 The allegations against the Respondent are as follows:

a) Allegation #1 – Misappropriation or Failure to Account

- a. At all material times, the Member's policies and procedures prohibited its Approved Persons from misappropriating client money and becoming involved with clients in investment arrangements.
- b. By engaging in the conduct with respect to clients SW, KF, and CG as described above at paragraphs 14-17, 25-27, and 33-38, the Respondent misappropriated or otherwise failed to account for monies that he obtained from the clients, contrary to MFDA Rules 2.1.1, 2.5.1, and 1.1.2.

b) Allegation #2 – Personal Financial Dealings with a Client

- a. At all material times, the Member's policies and procedures prohibited its Approved Persons from borrowing from or lending to a client.
- b. By borrowing monies from client X as described above at paragraphs 54-56, the Respondent engaged in personal financial dealings with a client which gave rise to a conflict or potential conflict of interest that he failed to disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to the policies and procedures of the Member and MFDA Rules 2.1.4, 2.1.1, 2.5.1 and 1.1.2.

c) Allegation #3 – Providing a Falsified Account Statement to a Client

- a. As described above at paragraph 22, the Respondent provided a falsified account statement to client SW that misled client SW about the whereabouts of her investments and monies.
- b. By engaging in the conduct described above, the Respondent failed to deal fairly, honestly and in good faith with the client, observe high standards of ethics and conduct in the transaction of business, and engaged in business conduct or practice which is unbecoming or detrimental to the public interest, contrary to MFDA Rule 2.1.1.

d) Allegation #4 – Misleading the Member or MFDA Staff

Misleading Statements to the Member During Supervisory Trade Inquiries

- a. As described above at paragraphs 18, 28, and 39, the Respondent misled the Member in responses to supervisory queries about the source of the deposits into his own accounts at the Member and the account of client KF.
- b. By making false or misleading statements to the Member in response to supervisory inquiries, the Respondent concealed his misconduct, undermined the Member's efforts to review and supervise his conduct, and engaged in conduct contrary to MFDA Rule 2.1.1.

Misleading Statements to the Member or MFDA Staff During an Investigation

- c. The Member commenced an investigation into the Respondent's conduct following client CG's complaint to the Member as described above at paragraph 45. On April 11, 2019, during an interview with the Member, the Respondent stated that:
 - i. client CG's \$160,000 deposit was used by the Respondent to repay a loan that he had with client KF; and
 - ii. client CG's investment, totaling \$200,000, was invested with an individual named GH
- d. On March 10, 2020, the Respondent attended an interview with MFDA Staff during its investigation into his conduct. During the interview, contrary to his previous statements to the Member on April 11, 2019, the Respondent stated to MFDA Staff that:
 - i. client CG's \$160,000 deposit was not used by the Respondent to repay a loan to client KF, but was used to buy out client KF's purported investment; and
 - ii. client CG's investment, totaling \$200,000 was not invested with individual GH, and individual GH had no involvement in this matter.
- e. The Respondent's statements described at paragraphs 57d)c. and 57d)d. above were contradictory, and the Respondent thereby made false or misleading statements to the Member or MFDA Staff during the investigation into his conduct as described above, contrary to MFDA Rule 2.1.1.

e) Allegation #5 – Failure to Cooperate with MFDA Staff's Investigation

- a. On March 10, 2020, during the course of MFDA Staff's interview of the Respondent, he represented to MFDA Staff that monies that he obtained from client CG and KF were invested in real estate in British Columbia and Saskatchewan. MFDA Staff asked the Respondent to identify the names of the individuals involved in the purported real estate investments. The Respondent refused to provide this information which was requested by MFDA Staff. MFDA Staff advised the

Respondent that failing to answer MFDA Staff's questions with respect to matters under investigation would be considered a failure to cooperate with MFDA Staff's investigation.

- b. During the interview, MFDA Staff also requested that the Respondent provide copies of his bank statements in order to, among other things, verify the amounts that he had obtained from clients SW, KF and CG that had been deposited into his personal bank account as described above in paragraphs 17, 29 and 38 and to determine how the monies were used.
- c. On March 11, 2020 and March 13, 2020, MFDA Staff sent letters to the Respondent, requesting that the Respondent provide the bank statements described in paragraph 57e)b. by no later than April 10, 2020. The Respondent failed to provide the requested documentation by April 10, 2020.
- d. On April 13, 2020, MFDA Staff sent an email to the Respondent asking him to provide copies of his bank statements which were due on April 10, 2020. The Respondent did not reply to MFDA Staff.
- e. On April 16, 2020 and on June 1, 2020, MFDA Staff left voice messages for the Respondent reiterating its requests that the Respondent provide copies of the previously requested bank statements.
- f. On June 3, 2020, the Respondent informed MFDA Staff that he would contact his bank in order to obtain the requested bank statements.
- g. The Respondent failed to provide MFDA Staff with the requested bank statements.
- h. Due to the Respondent's failure to cooperate with MFDA Staff's investigation, MFDA Staff was unable to determine the full nature and extent of the Respondent's conduct, including:
 - i. the use and current location of the monies that he obtained from the clients described above; and
 - ii. whether he engaged in similar conduct with other individuals.
- i. By virtue of the foregoing, the Respondent failed to cooperate with an investigation by MFDA Staff into his conduct, contrary to section 22.1 of MFDA By-Law No. 1.
- j. The submissions presented by MFDA Enforcement Staff were comprehensive and compelling. Although the Respondent did not attend the first day of the Hearing on the Merits held on December 1, 2021, he did attend, unrepresented by counsel, on December 2, 2021. Despite the Hearing Panel's repeated invitations to the Respondent to present evidence or, at the very least, to offer information, explanation or argument that might serve to mitigate the severity of the allegations against him, he made only a brief statement which offered no substantive reply to the allegations or mitigating evidence.
- k. The Hearing Panel found that each of the allegations was proved.

PENALTY HEARING

¶ 58 A Penalty Hearing was held by video teleconference on December 17, 2021. The Respondent did not attend and was not represented by counsel.

¶ 59 Enforcement Staff presented written and oral submission as to appropriate penalties in this matter, including the scope of penalties prescribed in section 24.1.1 (a)-(t) of MFDA By-law No. 1. These include a permanent prohibition of the authority of a respondent to conduct business and a fine not exceeding

\$5,000,000.

¶ 60 Enforcement Counsel reviewed the usual factors to be considered when determining sanctions, including the goals of investor protection and the fostering of public confidence in the industry, as well as the element of deterrence. Enforcement counsel also reviewed similar cases previously heard by MFDA hearing panels and the penalties imposed in those cases. In his submissions, Enforcement counsel focused on the number of clients affected and the dollar value of client monies involved.

¶ 61 Enforcement Counsel submitted that the proven misconduct in the present case is among the most serious type of misconduct in which an Approved Person may engage. The Respondent misappropriated \$705,000 from four clients, and failed to repay or otherwise account for \$645,300 of that amount. The combination of misappropriation and failure to account render this a particularly egregious case.

¶ 62 Exacerbating the Respondent's acts of misappropriation and failing to account are his efforts to mislead the Member in response to supervisory queries about the source of deposits into his personal accounts at the Member and a client's account. Moreover, the Respondent failed to co-operate with Staff during its investigation.

¶ 63 Enforcement Counsel recommended an aggregate minimum fine, for the five allegations, totaling \$840,300. Enforcement Counsel reviewed previous MFDA cases involving similar contraventions.

ANALYSIS

¶ 64 The Hearing Panel took steps throughout the process to give the Respondent every opportunity to provide evidence and/or submissions that could ameliorate the gravity of his conduct. We proceeded in a manner that would ensure a fair and objective hearing.

¶ 65 Of particular note and concern to the Hearing Panel are the failure of the Respondent to recognize and acknowledge the gravity of his misconduct or express remorse, and his refusal to participate substantively in the investigative or hearing processes.

¶ 66 The Hearing Panel recognizes the importance of deterrence in the penalty imposed – both specific and general - as well as the need to minimize any ongoing risk to investors that may result from the Respondent's continued authority to participate as an Approved Person in the capital markets system. The Respondent has caused significant damage to the integrity of the system and the element of trust that is at its core.

¶ 67 The Respondent used his position as an Approved Person to enrich himself to the detriment of his clients. His pattern of misleading the Member and failing to cooperate with MFDA Staff demonstrate an unwillingness to submit to being regulated, which is incompatible with the capital markets regulatory system. We agree with Enforcement Counsel that specific deterrence requires that the Respondent be permanently prohibited from conducting securities related business.

¶ 68 In determining the appropriate fines to be imposed in this matter, the Hearing Panel carefully reviewed the cases presented by Enforcement Counsel in his submission. We unequivocally believe that his case is one that requires that the fines imposed reflect the deliberate and wilful nature of the Respondent's misconduct, the harm to the clients involved, and the failure of the Respondent to cooperate or acknowledge the extent of his wrongdoing.

¶ 69 The Hearing Panel agreed with the recommendations of Enforcement Counsel as to penalty on each of the allegations, with one exception. Whereas Enforcement Counsel recommended a fine of \$695,300 with respect to Allegation #1 (misappropriation), the Hearing Panel unanimously believes that a fine of \$845,600 for Allegation #1 is appropriate. This brings the aggregate fine to \$990,600.

DISPOSITION

¶ 70 Accordingly, pursuant to its Order dated December 17, 2021, the Hearing Panel ordered as follows:

- a) The Respondent be permanently prohibited from conducting securities related business in any capacity while in the employ of, or associated 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 \$990,600 pursuant to section 24.1.1 (b) of MFDA By-law No. 1, as follows:
- i. \$845,600 with respect to Allegation #1 (misappropriation);
 - ii. \$20,000 with respect to Allegation #2 (borrowing from a client);
 - iii. \$25,000 with respect to Allegation #3 (falsified account statement);
 - iv. \$50,000 with respect to Allegation #4 (misleading the Member and/or Staff);
 - v. \$50,000 with respect to Allegation #5 (failure to cooperate).
- c) The Respondent pay costs in the amount of \$20,000 pursuant to section 24.2 of MFDA By-law No. 1

Dated at Calgary, Alberta this 9 day of November 2023.

“Richard Yaffe”

Richard Yaffe, K.C., Chair

“Sean Shore”

Sean Shore, Industry Representative

“Birju Shah”

Birju Shah, Industry Representative

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