

# Re He

**IN THE MATTER OF:**

**The Mutual Fund Dealer Rules**

**and**

**Jingshan (Sarah) He**

2023 CIRO 44

Canadian Investment Regulatory Organization  
Hearing Panel (Pacific District)

Heard: February 14, 2023  
Decision: February 14, 2023  
Reasons for Decision: December 16, 2023

**Hearing Panel:**

Michael Carroll, K.C., Chair  
Barbara Fraser, Industry Representative  
Tammi Walsh, Industry Representative

**Appearances:**

Justin Dunphy, Senior Enforcement Counsel, Canadian Investment Regulatory Organization  
Patricia Taylor, Counsel for the Respondent  
Jingshan (Sarah) He, Respondent

---

## REASONS FOR DECISION

---

**Background**

¶ 1 On December 22<sup>nd</sup>, 2021 Staff of the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced disciplinary proceedings against Jingshan (Sarah) He (the “Respondent”) by a Notice of Hearing containing the following allegations:

Allegation #1: Between January 2018 and November 6, 2019, the Respondent engaged in unapproved outside activities contrary to the Member’s policies and procedures and MFDA Rules 1.3, 2.1.1, 2.5.1, and 1.1.2

Allegation #2: Between January 2018 and November 2019, the Respondent engaged in personal financial dealings with clients, which gave rise to a conflict, or potential conflict of interest that she failed to disclose to the Member or otherwise address by the exercise of responsible business judgement influenced only by the best interests of the client, contrary to MFDA Rules 2.1.4 and 2.1.1

Allegation #3: In or about January 2019, the Respondent made false representations to the Member on an annual compliance questionnaire contrary to MFDA Rule 2.1.1.

¶ 2 As of January 1, 2023, the MFDA and the Investment Industry Regulatory Organization of Canada (“IIROC”) were consolidated into the New Self-Regulated Organization of Canada (the “Corporation”) and staff of the MFDA became staff of the Corporation (“Staff”).

¶ 3 On February 13, 2023 Staff and the Respondent, who has been represented by counsel throughout, entered into a Settlement Agreement in which the Respondent admits to the following misconduct:

- a. Between January 2018 and November 6, 2019 the Respondent engaged in unapproved outside activities, contrary to the Member's policies and procedures and MFDA Rules 1.3, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1) (now Mutual Fund Dealer Rules 1.3, 2.1.1, 1.1.2, and 2.5.1)<sup>1</sup>.
- b. Between January 2018 and November 2019, the Respondent engaged in personal financial dealings with clients, which gave rise to a conflict or potential conflict of interest that she failed to disclose to the Member or otherwise address by the exercise of reasonable business judgement influenced only by the best interests of the client, contrary to MFDA Rules 2.1.4 and 2.1.1.
- c. In or about January 2019, the Respondent made false representations to the Member on an annual compliance questionnaire, contrary to MFDA Rule 2.1.1.

¶ 4 Staff and the Respondent through counsel appear before the panel at this hearing to seek approval of the Settlement Agreement in which the Respondent has agreed to the following penalties;

- a. A prohibition from acting in a securities related industry for a period of 2 years;
- b. A fine of \$20,000;
- c. Costs of \$5,000; and
- d. Compliance with Mutual Fund Dealer Rules 1.3, 2.1.1, 2.1.4, 1.1.2 and 2.5.1 in the future.

## Facts

### *Registration History*

¶ 5 From July 2017 until November 6, 2019 the Respondent was registered in British Columbia as a dealing representative with CIBC Securities Inc. (the "Member"), a Member of the MFDA.

¶ 6 On or about November 6, 2019, the Member terminated the Respondent's registration and she is not currently registered in the securities industry in any capacity. At all material times she conducted business in the Burnaby area.

### *Outside Activities and Personal Financial Dealings with Member's Clients*

¶ 7 At all material times the Member's policies and procedures required its Approved Persons to seek its approval prior to engaging in outside business activities, as well as to adhere to a code of conduct that included requiring Approved Persons to identify and avoid conflicts of interest.

¶ 8 At all material times A and B were clients of the Member (the "Member's Clients"). However, the Respondent did not service their accounts.

¶ 9 Commencing in 2018, the Respondent, along with the Member's Clients and another Approved Person at the Member, invested in a daycare business to be operated in Burnaby B.C. (the "Daycare Business").

¶ 10 In or around January 2019, the Respondent incorporated 119736 B.C. Ltd. in order to operate the Daycare Business (the "Daycare Company"). The Respondent was also a director of the Daycare Company. The Respondent held 51% of the shares of the Daycare Company and the Member's Clients held 29% and 10% respectively.

¶ 11 The Respondent and the Member's Clients jointly contributed monies towards the payment of expenses relating to the establishment of the Daycare Business. Client A contributed at least \$50,561 and Client B contributed at least \$17,435. The Respondent contributed at least \$87,175.

---

<sup>1</sup> In these Reasons a reference to an MFDA Rule is also a reference to the same number of the new Mutual Fund Dealer Rules following the consolidation of the MFDA and IIROC.

¶ 12 The Member's Clients provided the monies to the Respondent who subsequently transferred them to her personal bank account with their authorization in order to finance the start-up costs and operation of the Daycare Business.

¶ 13 The Respondent did not obtain approval from the Member to :

- a. Establish or operate the Daycare Business;
- b. Incorporate the Daycare Company;
- c. Hold the position of director in the Daycare Company; or
- d. Accept monies from the Member's Clients to finance the start-up costs of the Daycare Company.

¶ 14 By failing to seek approval from the Member regarding the conduct described above, the Respondent engaged in an unapproved outside activity in contravention of MFDA Rules.

¶ 15 Engaging in personal financial dealings with the Member's Clients created conflicts or potential conflicts of interest that the Respondent failed to disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the Member's Clients in contravention of MFDA Rules and the Member's policies and procedures.

#### *False Annual Attestation*

¶ 16 In January 2019 the Respondent completed an annual attestation that she submitted to the Member in which she falsely stated that she had sought and obtained approval from the Member to engage in outside activities and that all relevant information regarding any such activities was up to date.

¶ 17 This statement was false because the Respondent became engaged in the Daycare Business commencing in 2018 without having informed or obtained prior approval from the Member.

¶ 18 The Respondent says that at the time she made the annual attestation she did not understand that she was required to obtain approval from the Member before becoming engaged in the financing and operation of the Daycare Business. However, she acknowledges and now understands that this was contrary to the Member's policies and procedures.

#### **Applicable Rules and Provisions**

¶ 19 Rule 1A(1)(ii) of the Corporation's Mutual Fund Dealer Rules confirms that any person who was subject to the jurisdiction of the MFDA prior to January 1, 2023 remains subject to the jurisdiction of the Corporation in respect of any action or activity that occurred while that person was subject to the jurisdiction of the MFDA at the time of such action or activity. Accordingly, this Panel and the Corporation have jurisdiction to proceed with this Settlement Hearing in respect of the Respondent.

#### **Hearing Panels have Limited Jurisdiction Regarding Settlement Agreements**

¶ 20 Pursuant to s. 24.4.3 of MFDA By-law No. 1, a Hearing Panel must either accept or reject a settlement agreement.

¶ 21 This differs from the role of a Hearing Panel in a contested hearing.

We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel "will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside the reasonable range of appropriateness." [Emphasis added]

*Sterling Mutuals Inc. (Re)*, 2008 LNCMFDA 16 at para. 37

*Milewski (Re)* [1999] IDACD No. 17 at p. 10, Ontario District Council Decision dated July 28, 1999

¶ 22 Hearing Panels have also held that settlements worked out by the parties should be respected, as panels

do not know what led to the settlement or what was compromised by the parties as part of the settlement. The presence of legal counsel on both sides of the negotiation is also a factor for consideration.

*Fike (Re)*, MFDA 2017, LNCMFDA 279 at paras. 22-23

### **General Criteria to Consider in Determining whether a Proposed Settlement should be Accepted**

¶ 23 Some general criteria to consider in determining whether a proposed settlement should be accepted are;

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

*Sterling Mutuals Inc. (Re)*, *supra* at pp. 8-9

*In (Re) Leer* [2007] MFDA Hearing Panel of the Pacific Regional Council, File No. 200710

*In (Re) Zollo* [2007] MFDA Hearing Panel of the Ontario Regional Council, File No. 200610

*In (Re) Investors Group Financial Services*, [2005] MFDA Hearing Panel of the Ontario Regional Council, File No. 200401

### **Specific Factors to Consider in Determining whether a Proposed Penalties are Appropriate**

¶ 24 Hearing Panels frequently consider the following factors in determining whether a penalty is appropriate:

- a. The seriousness of the allegations proved against the Respondent;
- b. The Respondent's past conduct;
- c. The Respondent's experience and level of activity in the capital markets;
- d. Whether the Respondent recognizes the seriousness of the misconduct;
- e. The harm suffered by the investors as a result of the Respondent's activities;
- f. The benefits received by the Respondent as a result of the misconduct;
- 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;
- k. Previous decisions made in similar circumstances.

*Breckenridge (Re)* 2007 LNCMFDA 38 at para. 74

¶ 25 Hearing Panels may also refer to the MFDA's Sanction Guidelines. While they are not binding on the Panel, they provide a summary of factors for panels to consider including many of those cited above. In the present case, counsel for the Corporation has referred us to the following factors as set out in the Guidelines as being relevant in this case:

- a. General and Specific Deterrence;
- b. Public Confidence;
- c. Seriousness of the allegations proved against the Respondent;
- d. Harm suffered by the client and benefits received by the Respondent;
- e. The Respondent's recognition of the seriousness of the misconduct; and
- f. Previous decisions made in similar circumstances.

### **Relevant Factors to consider in the Present Case**

#### Seriousness of the Misconduct

*Respondent had a conflict of interest by participating with the Member's Clients in the Daycare Business*

¶ 26 Pursuant to MFDA Rule 2.1.4 Members and Approved Persons must be aware of the possibility of conflicts of interest arising in connection with dealings with clients. The Rule requires the Approved Person to immediately disclose the conflict to the Member, and requires the Approved Person and the Member to ensure the conflict is addressed by the exercise of responsible business judgement influenced only by the best interest of the Client.

¶ 27 Previous panels have held that where an Approved Person engages in personal financial dealings with a client, such as borrowing money, a conflict of interest arises within the meaning of Rule 2.1.4. In most cases personal financial dealings of any kind with a client will constitute a breach of the standard of conduct under Rule 2.1.1.

*Nunweiler (Re), 2012 LNCMFDA 46*

*Rahman (Re), 2021 LNCMFDA 75*

¶ 28 Where Approved Persons solicit and accept money from a client for investment in businesses that they control or have an interest in, a conflict of interest arises which cannot be addressed by the exercise of responsible business judgment influenced only by the best interest of the client, contrary to MFDA Rules 2.1.4 and 2.1.1.

*Nunweiler (Re), supra, at paras.15-23*

*Frank (Re), 2015 LNCMFDA 75 at paras.75-77*

*Failure to Disclose or Obtain Member's Approval for Participation in Outside Activities*

¶ 29 The Respondent has admitted that she engaged in outside activities and failed to disclose them to the Member or obtain prior approval to:

- a. Establish or operate the Daycare Business;
- b. Incorporate the Daycare Company;
- c. Hold the position of Director in the Daycare Company; or
- d. Accept monies from the Member's Clients to finance the start-up costs of the Daycare Business.

¶ 30 As a result, the Respondent has breached MFDA Rule 1.3 which requires that any outside activity conducted by an Approved Person outside of the Member;

- a. For which direct or indirect payment, compensation, consideration, or other benefit is received or expected;

- b. Involving any officer or director position and any other equivalent positions; or
- c. Involving any position of influence;

be disclosed to and approved in writing by the Member, as per the requirements in Rule 1.3.2(b) and (c).

¶ 31 The Respondent's failure to disclose her outside business activities to the Member was also a violation of the Member's policies and procedures. MFDA Rule 2.5.1 requires Members to establish policies and procedures to ensure the handling of their business was in compliance with MFDA By-laws, Rules and Policies and applicable securities legislation. Approved Persons have a corresponding obligation to comply with those policies pursuant to MFDA Rule 1.1.2.

*Frank (Re)*, *supra*, at paras. 56-58.

#### *False Annual Attestations*

¶ 32 The Respondent has admitted to falsely stating that she had disclosed her outside business activities to the Member, contrary to MFDA Rule 2.1.1. Members rely on annual attestations to ensure that their Approved Persons are acting in accordance with regulatory requirements and the policies and procedures of the Member. Failures to respond accurately to annual attestations undermine the Member's supervisory role.

#### Mitigating Factors

¶ 33 In determining whether the Settlement Agreement is appropriate in all of the circumstances of this case, the Panel has considered the following to be mitigating factors:

- a. Clients A and B were not clients of the Respondent;
- b. The Respondent was relatively inexperienced having been registered in the securities industry for approximately 2 years;
- c. While the Respondent did benefit from the funds invested by the Member's Clients in the Daycare Business, there is no evidence that they suffered any harm or loss. The Daycare Business is still operational. We note however that, although no harm has been suffered by the Member's Client's in this case, there is always potential for client harm when their money is invested in a business of the Approved Person which must be considered;  
*Harmer (Re)*, 2022 LNCMFDA 125, at paras. 47-49
- d. There is no evidence of any complaints by the Member's Clients;
- e. The Respondent has not been the subject of any previous disciplinary proceedings;
- f. By entering into the Settlement Agreement the Respondent has accepted responsibility for her misconduct and has saved the Corporation the time, resources, and expenses associated with conducting a full hearing of the allegations.

#### Deterrence

¶ 34 The Panel is satisfied that the proposed penalties will advance the goal of deterring similar misconduct by the Respondent or other Approved Persons in the future.

#### Previous Decisions in Similar Cases

¶ 35 Counsel for the Corporation has referred us to the following cases where approved persons have engaged in personal business activities with clients and failed to disclose them to the Member:

*Hsu (Re)*, 2022 LNCMFDA 139, File No. 202226, Hearing Panel of the Pacific Regional Council, Reasons for Decision dated October 24, 2022

*Chang (Re)*, 2016 LNCMFDA 59, File No. 201431, Hearing Panel of the Pacific Regional Council, Reasons for Decision dated May 28, 2016

*Notis (Re)*, 2019 LNCMFDA 193, File No. 201953, Hearing Panel of the Central Regional Council, Reasons for Decision dated December 4, 2019

*Khrahl (Re)*, MFDA File No. 202043, Hearing Panel of the Central Regional Council, Reasons for Decision dated November 3, 2021

¶ 36 The penalties imposed in these cases are dependent on the specific facts in those cases. They range from prohibitions to engage in the securities industry for periods between 6 months and 5 years and fines ranging from \$10,000 to \$35,000. In all of the cases costs were assessed at \$5,000.

¶ 37 We are satisfied that the proposed penalties in the present case are within the range imposed in the above cases and are reasonable and appropriate. The Settlement Agreement is approved.

Dated at Vancouver this 16 day of December 2023

“Michael Carroll” \_\_\_\_\_

Michael Carroll K.C., Chair

“Barbara Fraser” \_\_\_\_\_

Barbara Fraser, Industry Representative

“Tammi Walsh” \_\_\_\_\_

Tammi Walsh, Industry Representative

**Copyright © 2023 Canadian Investment Regulatory Organization. All Rights Reserved**