

Re Luciano

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Antonio Luciano

2023 CIRO 35

Heard: May 19, 2023

Decision: May 19, 2023

Reasons for Decision: December 6, 2023

Hearing Panel

Frederick W Chenoweth, Chair

Guenther Kleberg, Industry Representative

Timothy Pryor, Industry Representative

Appearances:

Maria Abate, Enforcement Counsel for the Canadian Investment Regulatory Organization

Antonio Luciano, Respondent, not in attendance nor represented by counsel

REASONS FOR DECISION

BACKGROUND

¶ 1 By Notice of Hearing dated the 6th day of December, 2022 (“Notice of Hearing”), a Hearing Panel of the Ontario District Hearing Committee (the “Hearing Panel”), was convened to hear evidence and submissions with respect to allegations against Antonio Luciano (the “Respondent”) set out in the Notice of Hearing.

¶ 2 The Notice of Hearing alleges as follow:

Allegation #1: Between June 2020 and December 2020, the Respondent cut and pasted client signatures from copies of account forms onto 8 new account forms previously signed by 4 clients, and submitted some of the account forms to the Member for processing, contrary to MFDA Rule 2.1.1.

Allegation #2: Between June 2020 and November 2020, the Respondent altered and used to process transactions, 2 account forms in respect of 2 clients by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

Allegation #3: In December 2020, the Respondent obtained, possessed, and used to process transactions, 3 pre-signed account forms in respect of 2 clients, contrary to MFDA Rule 2.1.1.

The Contraventions

¶ 3 On February 23rd, 2022, the first appearance in this Hearing was held by video conference before one public representative of a hearing committee (the Chair of the Hearing Panel) acting on behalf of a hearing panel of the Ontario District Hearing Committee of the Corporation (the “Hearing Panel”) pursuant to s. 19.1.13(b) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.2.4(b)) which permits one public representative to be designated to act on behalf of a Hearing Panel for the purpose of hearing and determining

any procedural matter. A schedule was also set for the balance of the proceeding.

¶ 4 No one attended the first appearance on behalf of the Respondent although properly served with the Notice of Hearing by regular and registered mail on December 16, 2022.

¶ 5 Following the first appearance, Staff of the Corporation, (“Staff”) made multiple attempts to contact the Respondent by email and by telephone to inform the Respondent about the schedule that was established by the Chair of the Hearing Panel at the first appearance, but the Respondent did not respond to the messages from Staff and did not engage in the proceeding.

¶ 6 On April 19, 2023, Staff brought a motion at an interim appearance that was held by video conference before the Chair of the Hearing Panel to amend the order dated February 23, 2023, all as a result of the Respondent’s failure to deliver a Reply or otherwise engage in the hearing process.

¶ 7 In accordance with the order of the Chair of the Hearing Panel dated April 19, 2023, Staff arranged for a copy of the order dated April 19, 2023, to be personally served on the Respondent.

¶ 8 The Orders issued by the Chair of the Hearing Panel on February 23, 2023, and on April 19, 2023 stated, among other things, that the hearing of this matter on its merits would take place by videoconference on May 19, 2023.

¶ 9 On May 19, 2023, a hearing on the merits was conducted by videoconference before a hearing panel of the Ontario District Hearing Committee (the “Hearing Panel”) and neither the Respondent nor anyone acting on his behalf attended the hearing on the merits, although duly served with notice of same. It being also noted that the Respondent had failed to deliver or serve a Reply to the Notice of Hearing.

¶ 10 Given the numerous failures of the Respondent to respond in this proceeding as set out above, the Panel made an order pursuant to MFDA Rules of Procedure 13.5 and 7.3 (a), that it would proceed with the hearing on the merits without further notice and in the absence of the Respondent.

The Facts

¶ 11 The allegations as against the Respondent were set out in paragraphs 1 to 19 of the Notice of Hearing, which is attached hereto as Appendix “A” to these Reasons.

¶ 12 In order to prove the above mentioned allegations against the Respondent, Staff filed:

- (a) The Affidavit of Murray Forrester sworn on May 17, 2023 with attached exhibits (the “Forrester Affidavit”); and
- (b) The Affidavit of Robert Lamshead sworn on May 18, 2023 with attached exhibits (the “Lamshead Affidavit”).

¶ 13 The two above mentioned Affidavits which were filed as Exhibits 8 and 9 in the proceedings, provided evidence that allowed the Panel to conclude that:

- (a) The Respondent was a long-standing registrant in the securities industry and had been registered in the industry since approximately 1990, and that among other registrations, between January 18, 2021 and January 21, 2021, the Respondent was registered as a dealing representative with Credential Asset Management Inc. (“Credential”), a Member of the MFDA.
- (b) Effective on January 21st, 2021, the Member terminated the Respondent’s registration as a result of the conduct described in the Notice of Hearing and in Exhibits 8 and 9. At the time of the hearing, he was not registered in the securities industry in any capacity.

¶ 14 The above Affidavits also allowed the Panel to conclude that at all material times, the Member’s policies and procedures prohibited cutting and pasting a signature from one form to another, but in any event of those prohibitions, between June 2020 and December 2020, the Respondent cut and pasted client’s signatures from copies of account forms onto eight new account forms previously signed by four clients and

submitted some of the account forms to the Member for processing.

¶ 15 Further, as a result of the Affidavits marked as Exhibits 8 and 9, the Panel was able to conclude that at all material times, the Member's policies and procedures prohibited altering any information on a signed document without the client initialing the document to show the change was authorized, but in any event of that prohibition, and between June 2020 and November 2020, the Respondent altered and used to process transactions, two account forms in respect of two clients by altering the information on the account forms without having the client initial the alterations.

¶ 16 Again, as a result of the above-mentioned Affidavit materials, the Panel was able to conclude that the Member's policies and procedures prohibited having a client sign a form which is blank or partially completed and that in any event of that prohibition, in December 2020, the Respondent obtained, possessed and used to process transactions 3 pre-signed account forms in respect of two clients.

¶ 17 By virtue of the foregoing findings, the Panel concluded that the Respondent had failed to observe a high standard of conduct and ethics in the transaction of business and engaged in conduct unbecoming an approved person contrary to MFDA Rule 2.1.1 and that accordingly, all three contraventions against the Respondent had been proven.

¶ 18 In weighing the facts set out in Exhibits 8 and 9, the Panel understood that standard of proof in the case before it was the balance of probability. The Panel also considered the submissions of Staff, the Rules of the MFDA and the numerous cases to which it was referred. Again, after having done so, the Panel unanimously concluded that Allegations No. 1, Allegation No. 2 and Allegation No. 3 had been proven as against the Respondent.

Penalty: Law and Findings

¶ 19 In coming to its conclusion, with respect to appropriate penalties, the Panel was mindful that the primary goal of Securities Regulation is the protection of the investor.

Pezim v British Columbia (Superintendent of Brokers), [1994] 2 SCR 557.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007.

¶ 20 The Panel further considered that in addition to protection of the public, the goals of Securities Regulation also included fostering public confidence in the capital markets and the securities industry.

Pezim v British Columbia (Superintendent of Brokers), *supra*

Tonnies (Re), MFDA File No. 200503, Hearing Panel of Prairie Regional Council, Decision and Reasons dated June 27, 2005.

¶ 21 The Panel concluded that sanctions imposed by a Hearing Panel should therefore be protective and be exercised to prevent likely future harm to the markets.

¶ 22 The Panel was also aware that when determining whether a penalty 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*

¶ 23 The Panel further considered the penalty guidelines as an additional source that might be consulted when determining the appropriateness of penalty to be imposed, understanding at all times, that the guidelines are not mandatory, but set out penalty types and ranges that are designed to assist the Panel.

¶ 24 Based on the above, the Panel concluded that each of the allegations proven against the Respondent were of a serious nature and required onerous penalties. In addition, the Panel considered that the Respondent had never previously been the subject of an MFDA disciplinary proceeding. However, the Respondent, had been a dealing representative since approximately 1990 and should have known that he was engaging in serious misconduct.

Result

¶ 25 For all the above reasons, the Panel imposed the following penalties:

- (a) The Respondent is prohibited from conducting securities related business in any capacity while in the employ of or associated with any Dealer Member of the Corporation that is registered as a mutual fund dealer, for a period of one year commencing on the date of this Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(e));
- (b) The Respondent shall pay a fine of \$25,000 in certified funds on the date of this Order, pursuant to s. 24.1.1(b) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(b));
- (c) The Respondent shall pay costs in the amount of \$7,500 in certified funds on the date of this Order, pursuant to s. 24.2 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.2).

Dated at Toronto, this 6 day of December, 2023.

“Frederick W. Chenoweth” _____

Frederick W. Chenoweth

Chair

“Guenther Kleberg” _____

Guenther Kleberg

Industry Representative

“Timothy Pryor” _____

Timothy Pryor

Industry Representative

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