

**Decision and Reasons (Motion)**

**File No. 201691**



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A DISCIPLINARY HEARING  
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Alfredo Pino**

Heard: October 27, 2017 in Toronto, Ontario  
Decision and Reasons (Motion): October 31, 2017

**DECISION AND REASONS  
(Motion)**

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC	Chair
Vlasi Kardaras	Industry Representative
Robert C. White	Industry Representative

Appearances:

H. C. Clement Wai	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
	)	
John MacDonell	)	Counsel for the Respondent, by teleconference
	)	
Alfredo Pino	)	Respondent, by teleconference
	)	

## **Procedure**

1. The Respondent, Alfredo Pino, brought a motion to adjourn the hearing on the merits and that was heard on October 27, 2017 by teleconference.

## **Decision**

2. The panel decided that the hearing on the merits shall be adjourned from December 4, 5, and 6, 2017 to April 10, 11, and 12, 2018 or, on future agreement, such earlier three days as the parties agree and the panel may accept, or such other dates as the panel otherwise orders.

3. The panel ordered that the Respondent be prohibited from being registered with the Mutual Fund Dealers Association of Canada (“MFDA”) in any capacity until the case is dealt with finally.

## **Evidence**

4. Respondent’s counsel entered as an exhibit various emails and reports, including reports by Dr. Atif Kabir on the medical condition of the Respondent. Dr. Kabir was not available for cross-examination by Staff of the MFDA (“Staff”) or questioning by the panel. Nor was his evidence sworn.

5. Staff submitted a written version of its submission, a profile of Dr. Kabir from the Kanata Physiotherapy website and a Doctor Profile of Dr. Kabir from the College of Physicians and Surgeons of Ontario, which were entered as an exhibit, and copies of cases Staff intended to refer to. In addition, sworn testimony was given orally by the Respondent in answer to a question by Staff.

### **Objection of counsel for Respondent**

6. Counsel for the Respondent objected that Staff's written evidence, submission, and cases had been made available to him only moments before the hearing commenced and that he had not been given the opportunity to consider them. Staff argued that it was not obligated to provide these materials in advance of the hearing. We ruled against Respondent's counsel on the objection, observing that we had the whole day to conduct this motion hearing. The panel did not have the opportunity to consider the materials before the commencement of the hearing and considered what was presented orally from these materials at the hearing.

### **Submission of counsel for the Respondent**

7. Respondent's counsel made the following submissions.

8. Dr. Kabir's evidence establishes that the Respondent currently is unable to fairly and adequately defend himself because of the medical trauma, including those from a concussion, that he has resulting from his car accident on May 1, 2017. Dr. Kabir's evidence is the only medical evidence before the panel.

9. The *Darrigo* case (*Law Society of Upper Canada v. Darrigo, 2016 LNOSONS 301*) and the *Igbinuson* case (*Law Society of Upper Canada v Igbinosun, 96 O.R. (3d)*) referred to by Staff are distinguishable from the Respondent's situation considering the different medical concerns in *Darrigo* and the serious criminal allegations in *Igbinosun* and other factors.

10. A short adjournment will not be prejudicial to the public interest in having the hearing of this matter on its merits proceed expeditiously when balanced against the concerns of the Respondent.

11. The original time set aside for the hearing was two days. This was increased to three days (150%). There are a lot of materials and work that the Respondent must do to get ready for the hearing.

12. The Respondent is agreeable to an interim order prohibiting the Respondent from being registered in any capacity with the MFDA until this case is finally decided.

### **Submission of Staff**

13. Staff made the following submissions.

14. The onus of establishing that the motion for adjournment should be granted is on the requester. The evidence should be clear and convincing and prove the case for an adjournment on a balance of probabilities that the Respondent at this time cannot adequately instruct counsel and defend himself. Here the Respondent has failed.

15. Dr. Kabir is a family doctor specializing in sports injuries and physiotherapy, not concussions. He is not an expert witness. The Respondent's physician has recommended other medical experts to examine the Respondent and to report on matters relevant to a decision on the Respondent's mental ability to instruct counsel and defend himself. This is further evidence that Dr. Kabir is not an expert witness about concussions or other matters relating to the Respondent's capability to defend himself.

16. It is not in dispute that the Respondent can physically participate in the hearing with some accommodation. It is only to accommodate a more leisurely pace with frequent breaks that the two days were increased to three. There is no new material.

17. This matter started five years ago. The Notice of Hearing was issued one year ago. Staff materials for the hearing were provided to the Respondent well before his accident and he has had ample opportunity to review it. The materials consist mostly of documents, which the Respondent was involved with, and the facts in the materials are mostly about the Respondent or things he was aware of. The two binders shown to Dr. Kabir are not formidable for the Respondent. There is no clear and convincing evidence that the Respondent is unable to adequately instruct his counsel or participate in the hearing on the merits.

18. The Respondent is not alleged to be suffering from amnesia. He is alleged to have some short-term memory loss, but most of the material and facts go way back to earlier events.

19. A key witness to Staff is 74 years old. The alleged misconduct took place in 2012. If this matter is delayed further there is a risk of losing this witness. The allegations are serious. The cases cited stress the public interest in avoiding delay. There already have been several adjournments. One was based on the Respondent's claim that he would be out of the country. He never left the country. The Respondent and Dr. Kabir are both connected to the sports business. Staff would have liked to ask Dr. Kabir if he had any prior business connections to the Respondent.

20. Staff is agreeable to an interim order prohibiting the Respondent from being registered in any capacity with the MFDA until this case is finally decided.

### **Burden of proof**

21. The Respondent has the burden of proving on clear and convincing evidence that on a balance of probabilities an adjournment should be granted. We applied this standard in making our decision.

### **Reasons for the decision**

22. The medical evidence of Dr. Kabir was not controverted by other evidence. Although Dr. Kabir is a family doctor and not an expert in concussions and related matters, and although his evidence was not tested by cross-examination, we accepted that as a general practitioner specializing in dealing with sports injuries sufficient weight should be given to his evidence to balance the probabilities in the Respondent's favour that a short adjournment was appropriate under the circumstances at this time.

23. An adjournment until April 10, 11, and 12, 2018 will give him more time to instruct counsel and prepare his defense as his health permits and/or as it, hopefully, improves.

24. While the public interest arguments of Staff for proceeding without an adjournment are strong, we decided that in balancing them against the concerns of the Respondent, we should grant a short adjournment and that a risk to the public interest could be reduced in part with an order prohibiting the Respondent from being registered with the MFDA until the matter has been finally dealt with.

**DATED** this 31<sup>st</sup> day of October, 2017.

“Paul M. Moore”

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Paul M. Moore, QC  
Chair

“Vlasi Kardaras”

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Vlasi Kardaras  
Industry Representative

“Robert C. White”

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Robert C. White  
Industry Representative

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