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: April 10, 2018 in Toronto, Ontario
Reasons for Decision (Motion): April 23, 2018

REASONS FOR DECISION
(Motion)

Hearing Panel of the Central Regional Council:

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

Appearances:

H. C. Clement Wai	)	Counsel for the Mutual Fund Dealers Association of Canada
John MacDonnell	)	Counsel for the Respondent
Alfredo Pino	)	Respondent, in person

Motion

1. By Notice of Motion dated April 5, 2018 counsel for Alfred Pino ("Respondent") gave notice that he would bring a motion commencing on April 10, 2018, being the date scheduled for the commencement of the hearing on the merits in this matter, for:

a) an adjournment of the hearing for a period of not less than eight months; and
b) an abridgement of the notice period required to bring the motion.

Grounds

2. Counsel for the Respondent stated that the grounds for the motion were:

a) the moving party, Alfredo Pino, is medically unable to prepare himself, and to assist in his counsel's preparation, to give full answer and defense to the allegations and matters at issue in this proceeding.
b) the moving party, Alfredo Pino, is medically unable to participate, and to instruct and assist his counsel, in giving full answer and defense at the scheduled hearing.
c) the complainant would suffer no prejudice by virtue of an adjournment, because the complainant has been compensated by, and has assigned her interest in her civil claim for damages to, Investors Group Financial Services Inc.
d) an adjournment would entail no prejudice or risk to the public because the moving party has not been registered with the MFDA in any capacity since 2013, and has consented to a prohibition from being registered until this proceeding has been dealt with finally.

3. The following evidence and materials were relied upon at the hearing of the motion:

a) Report of Dr. AK dated March 29, 2018.
b) Statement of qualifications of Dr. AK.
c) Report of Dr. SL dated April 4, 2018.
d) Statement of qualifications of Dr. SL.

e) Order to Continue, Ontario Superior Court of Justice, dated February 18, 2018.

Abridgement of the notice period

4. No evidence was adduced to justify why the notice period should be abridged, although counsel for the Respondent argued that the lateness of the request for the motion was because the two doctors that had been consulted were not timely in getting their requested reports to him to support the reasons for an adjournment. However, there was no suggestion, either in the medical reports or otherwise, that new circumstances had come to light after the deadline for bringing the adjournment motion that might justify an abridgement of the notice period. The dates for the hearing on the merits were set more than five months ago.

5. Because of the short notice period, it was not possible to schedule a hearing of the motion in advance of the date scheduled for the commencement of the hearing on the merits. As a result, witnesses, staff, the Respondent and others were required to be ready to proceed in person, in Toronto, for the hearing, in case the matter was not adjourned.

6. Nevertheless, because we were all assembled and ready to go, and had all the evidence to make a decision, and staff did not object, we decided to hear the motion, thereby abridging the notice period.

Staff's position on adjournment

7. At the previous adjournment hearing last October Staff opposed the adjournment request and put forward persuasive arguments why an adjournment at that time was not in the public interest, and was not necessary to protect the Respondent's right to defend himself.

8. However, in order to give the Respondent more time to prepare his case and instruct his counsel, we determined "that a short adjournment was appropriate under the circumstances at this time. An adjournment until April 10, 11, and 12 will give him more time to instruct counsel and prepare his defense as his health permits and/or as it, hopefully, improves". We also ordered, on

consent, that the Respondent be prohibited from being registered with the MFDA until the matter has been finally dealt with.

9. We were surprised at the current motion hearing that staff did not oppose the adjournment request- stating that staff took no position on the motion- especially when in our view nothing had changed for the worse regarding the Respondent, and that an additional five months had elapsed, and staff's original concerns of losing an elderly witness had not changed.

10. The panel mentioned that a hearing on the merits progressed in stages, with opening statements, staff's evidence, the respondent's case, and submissions (which could be in writing), and, if necessary, a penalty hearing.

11. The panel suggested to the parties that the best way forward might be to reject the adjournment request and have staff put in its case, and then be open to adjournment requests to accommodate Respondent requests for breaks and downtime as may be helpful during the time Respondent presented his case.

12. Staff argued that a bifurcated hearing could be prejudicial to staff because, if a subsequent adjournment before the Respondent put in his case lasted for several months, the panel would have, in its time of deliberation, a more fresh recollection of the Respondent's case than it would of staff's case.

13. We did not agree with staff's concern on this. This matter was originally estimated to take 2 days. In order to accommodate breaks and a more leisurely pace for the Respondent, staff increased the estimated time for the matter to three days. Either way, we are not faced with a lengthy hearing. Even if there were months between the time that staff put in its case and the Respondent put in his case, this would be followed by counsels' arguments and submissions. Furthermore, the panel could order transcripts to assist its recollection of earlier days in the hearing if it needed to. It is not a valid concern that any so-called bifurcation of this hearing might be prejudicial to staff. And breaks or adjournments might be warranted from time to time. The alternative of waiting until the Respondent felt he had made a full recovery from his car accident

could be prejudicial to the justice system: justice unreasonably delayed could result in justice denied.

Assignment of complainant's interest

14. The Respondent argued that since the complainant has been compensated by the Respondent's Member and has assigned her claims in a civil suit against the Respondent to the Member, there would be no prejudice to the complainant if the adjournment were granted.

15. However, the proceeding before us is not on behalf of a complainant. Indeed, we have no actual knowledge of civil proceedings, or other proceedings, that may exist against the Respondent. The MFDA's mandate is to supervise and protect the integrity of the mutual fund industry. The assignment of a complaint by a complainant of the Respondent, even if concerning the same events that are the subject matter of our matter, is not relevant to the issue of whether an adjournment would or would not be in the public interest.

Medical concerns

16. We examined the medical reports of the two doctors provided by Respondent's counsel. Neither doctor is an expert in concussions or cognitive ability. They were not under oath or available for questioning. Even so, we accepted the reports at face value.

17. One stated that the Respondent told him that the Respondent was able to have meetings with his lawyer for up to 40 minutes. He also stated that "I am not specifically aware of what 'time and effort' would be required to prepare for this process" [the process of preparing for a three day hearing].

18. In seeking one of the doctor's advice counsel for the Respondent stated, "To give you an idea of the amount of preparation work required, in 2017 I sent you a photo of the two binders of information the MFDA has disclosed to us in preparation for the hearing. This is only part of the evidence which Mr. Pino will have to participate in organizing and internalizing."

19. Counsel did not mention that the issues of fact and law that will be dealt with at the hearing have been narrowed and specified by the pleadings (in the Notice of Hearing and the Respondent's Reply), that the Reply was prepared by the Respondent and his counsel before the accident happened , that staff's disclosure documents have been and will be available long before the actual hearing, that staff's evidence, including particulars and what will come from staff's witnesses, have been made available to the Respondent long before the hearing, and that staff will not be entitled to advance new evidence or introduce new issues that have not been properly disclosed in advance. In summary, he did not explain how our system is designed to require parties to disclose their case in advance and to prevent surprises or last minute scrambling.

20. Respondent's counsel advised that in his view the Respondent has made the disclosure to staff of its case in advance of the hearing as required under our Rule 11. In other words, this is not something still to be prepared.

21. The Respondent has had more than an additional 5 months to further his preparation for the actual hearing.

22. He is represented by counsel.

23. He is physically able to attend the hearing.

24. Respondent's counsel argued that there were two aspects we needed to consider. One was the ability of the Respondent to prepare in advance for the hearing. But the other was that the Respondent needed to be able to instruct his counsel and follow the presentation of evidence as it unfolded at the hearing.

25. We concluded that, based on everything we were aware of and what we have indicated about the process above, and with breaks and recesses where appropriate and a leisurely pace, the Respondent would not be unduly prejudiced if we refused the adjournment request and proceeded with the hearing on the merits.

Our ruling

26. We felt that to a certain extent our hands were tied since we knew that staff was acting in what it perceived as the public interest.

27. In addition, Counsel for the Respondent argued that it would be unusual for a panel not to grant an adjournment where staff did not oppose the adjournment.

28. We were not so sure of what we perceived to be the public interest as to ignore the position of staff in this instance. Although there is a risk that the public interest could be harmed by delay in proceeding with a matter where the events giving rise to it took place more than five years ago, there is no risk, because of our earlier order, that the Respondent will continue in the business before the matter is resolved finally.

29. Accordingly, against what we believe was our better judgment, we granted an adjournment to October 22, 23, and 24. These dates are peremptory.

30. This will provide the Respondent and his counsel with an additional six months to prepare for the hearing.

31. If for some unforeseen reason another adjournment is requested, the request must be timely and in compliance with MFDA rules.

DATED this 23rd day of April, 2018.

"Paul M. Moore"

Paul M. Moore, QC
Chair

"Vlasi Kardaras"

Vlasi Kardaras
Industry Representative

"Robert C. White"

Robert C. White
Industry Representative

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