

Re Small

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Ryan Todd Small

New Self-Regulatory Organization of Canada
Hearing Panel (Ontario District)

Heard: February 23, 2023 by electronic hearing in Toronto, Ontario

Decision: February 23, 2023

Reasons for Decision: March 20, 2023

Hearing Panel:

Frederick W. Chenoweth, Chair

Samuel Mah, Industry Representative

Craig Woolford, Industry Representative

Appearances:

Brendan Forbes, Enforcement Counsel for the New Self-Regulatory Organization of Canada

Zack Pringle, Counsel for the Respondent

Ryan Todd Small, The Respondent

REASONS FOR DECISION

BACKGROUND

¶ 1 By Notice of Settlement Hearing dated the 7th day of December, 2022, a Hearing Panel of the Ontario District Hearing Committee (the “Hearing Panel”) was convened to consider whether pursuant to Mutual Fund Dealer Rule 7.4.4, the Hearing Panel should accept the settlement agreement (“the “Settlement Agreement”) entered into between Staff of the Corporation and Ryan Todd Small (the “Respondent”).

¶ 2 Effective January 1st, 2023 the MFDA and the Investment Industry Regulator Organization of Canada (“IIROC”) were consolidated to form the New Self-Regulatory Organization of Canada (the “Corporation”).

¶ 3 At the outset of the proceeding, the Panel considered a joint motion by Staff and the Respondent to move the proceedings “in camera”. The Panel granted the motion. The Panel then considered the provisions of the Settlement Agreement, aided by submissions as to the applicable law, which should guide the Panel in determining whether or not to accept or reject the Settlement Agreement. The Panel unanimously accepted the Settlement Agreement and issued an Order accordingly. These are the Panel’s reasons for doing so.

CONTRAVENTIONS

¶ 4 Staff of the MFDA, now Staff of the Corporation (“Staff”) and the Respondent have entered into a Settlement Agreement dated December 5, 2022 (the “Settlement Agreement”) in which the Respondent admits that:

- a) between June 2017 and December 2020, the Respondent engaged in unapproved outside activities when:

- i) he solicited clients and other individuals to invest in an investment which he had a direct interest in and which was not approved for sale by the Member; and
 - ii) he incorporated a company and acted as a director for the company, without the knowledge or approval of the Member, contrary to the Member's policies and procedures and MFDA Rules 1.3.2, 2.1.1 and 1.1.2 (as it relates to MFDA Rule 2.5.1) (now Mutual Fund Dealer Rules 1.3.2, 2.1.1, 1.1.2 and 2.5.1); and
- b) between October 2020 and December 2020, the Respondent solicited clients and other individuals to invest in an investment which was not approved for sale by the Member, thereby engaging in securities related business that was not carried on for the account of the Member or through the facilities of the Member, contrary to MFDA Rules 1.1.1, 2.1.4, 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1) (now Mutual Fund Dealer Rules 1.1.1, 2.1.4(2), 2.1.1, 1.1.2 and 2.5.1).

¶ 5 At the outset of the proceeding, the Panel considered a joint motion by Staff and the Respondent to move the proceedings "in camera". The Panel granted the motion. The Panel then considered the provisions of the Settlement Agreement, aided by submissions as to the applicable law, which should guide the Panel in determining whether or not to accept or reject the Settlement Agreement. The Panel unanimously accepted the Settlement Agreement and issued an Order accordingly. These are the Panel's reasons for doing so.

THE FACTS

¶ 6 In Sections II and IV of the Settlement Agreement, Staff and the Respondent agreed to the existence of a series of facts. The Settlement Agreement containing the above mentioned factual sections is attached as Appendix "A" to these Reasons.

¶ 7 From September 2002 to December 2, 2020, the Respondent was registered in the securities industry. Between April 5, 2011 and December 2, 2020, the Respondent was registered in Ontario as a dealing representative with Royal Mutual Funds Inc. (the "Member"), a member of the MFDA. On December 2, 2020, the Respondent resigned from the Member and at the time of the Hearing, was not registered in the securities industry in any capacity. At all material times, the Respondent conducted business in the Mississauga, Ontario area.

DISCUSSION

¶ 8 The Hearing Panel was aware that prior to accepting a Settlement Agreement, a Hearing Panel must be satisfied that:

- a) The facts admitted by the Respondent constitute misconduct in contravention of the By-law, MFDA Rules or policies, or provincial securities legislation; and
- b) The penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness, bearing in mind the nature and extent of the misconduct and all the circumstances.

¶ 9 The Panel accepted that the role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, citing the I.D.A. Ontario District Council in *Milewski (Re)*:

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 a reasonable range of appropriateness." [Emphasis added].

Sterling Mutual Inc. (Re), MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at para. 37.

Milewski (Re), [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999.

¶ 10 The Panel also considered the principle that a Hearing Panel will not reject a settlement agreement unless the proposed penalty clearly falls outside the reasonable range of appropriateness. Settlements are necessary to assist the MFDA to fulfill its regulatory objective of protecting the public. Settlements advance this regulatory objective by proscribing activities that are harmful to the public, while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent.

British Columbia (Securities Commission) v. Seifert, [2006] B.C.J. No. 225 at paras. 48-49 (S.C.), *aff'd*, [2007] B.C.J. No. 2186 at para. 31 (C.A) [*“British Columbia (Securities Commission)”*].

¶ 11 The Respondent admits that he solicited clients and other individuals to invest in a real estate development (the “Brant and Leighland Property”), in which the Respondent retained a personal interest, thereby conducting securities related business which was not carried on through the facilities of the Member. In particular, the Respondent provided potential investors with promotional materials which included: the terms, features, rates of return and potential merits of the Brant and Leighland Property and recommended the Brant and Leighland Property to potential investors

¶ 12 The Respondent’s solicitation of investments by clients in the Brant and Leighland Property also gave rise to a conflict of interest. The Respondent did not disclose the conflict to the Member or to clients, or ensure that it was addressed by the exercise of responsible business judgment influenced only by the interests of the clients.

¶ 13 The Respondent also admits that he engaged in unapproved outside activities when he incorporated a company and acted as a director for the company, without the knowledge or approval of the Member.

¶ 14 In this case, the Panel concluded, that by soliciting clients and other individuals to invest in the Brant and Leighland Property, which the Respondent had an ownership interest in and without the knowledge or approval of the Member, the Respondent: (1) engaged in securities related business that was not carried on for the account of the Member or through the facilities of the Member; (2) engaged in conduct that gave rise to a conflict of interest which was not addressed in compliance with the requirements set out in MFDA Rule 2.1.4; and (3) contravened the policies and procedures of the Member, contrary to MFDA Rules 1.1.1, 2.1.4, 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1) (now Mutual Fund Dealer Rules 1.1.1, 2.1.4(2), 2.1.1, 1.1.2 and 2.5.1).

¶ 15 The Panel also concluded that the Respondent engaged in unapproved outside activities when he solicited clients and other individuals to invest in the Brant and Leighland Property and by incorporating a company and acting as a director of that unrelated company, without the knowledge or approval of the Member and contrary to the Dealer Member’s policies and procedures. The Respondent thereby contravened MFDA Rules 1.3.2, 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1) (now Mutual Fund Dealer Rules 1.3.2, 2.1.1, 1.1.2 and 2.5.1).

PENALTY

¶ 16 The Panel was aware that factors frequently considered by Panels when determining whether a penalty is appropriate include the following:

- a) the seriousness of the allegations proved against the Respondent;
- b) the Respondent’s past conduct, including prior sanctions;
- c) the Respondent’s experience and level of activity in the capital markets;
- d) whether the Respondent recognizes the seriousness of the improper activity;
- e) the harm suffered by investors as a result of the Respondent’s activities;
- f) the benefits received by the Respondent as a result of the improper activity;
- 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; and
- k) previous decisions made in similar circumstances.

Headley (Re), [2006] Hearing Panel of the Pacific Regional Council, MFDA File No. 200509, Reasons for Decision dated February 21, 2006 at para. 85, SBA, Tab 18.

¶ 17 The Hearing Panel also referred to the MFDA's Sanction Guidelines. The Guidelines are not mandatory or binding on the Hearing Panel, but provide a summary of the key factors upon which discretion can be exercised consistently and fairly. Many of the same factors that are listed above, which have been considered in previous decisions of MFDA Hearing Panels, are also reflected and described in the Guidelines.

MFDA Sanction Guidelines, SBA.

¶ 18 The Panel took into account the factors set out above and the extensive case law to which it was referred, when reaching its decision to accept a Settlement Agreement. It also considered the following:

- a) The Panel accepted the submissions of Staff that the Respondent's misconduct should be considered serious, among other things, when engaging in securities related business that was not carried on for the account of the Member and through its facilities, the Respondent had undermined the regulatory regime in place at the time and had struck at the core of regulations which were essential to investor protection;
- b) The Respondent's conduct was regarded by the Panel, as self-serving and created a conflict of interest between the Respondent and clients which could have led to client monies being used to personally enrich the Respondent.
- c) The Panel was of the view that by entering into the Settlement Agreement, the Respondent had demonstrated that he recognizes the seriousness of his misconduct, accepted responsibility for his actions and saved the Corporation the time, resources and expenses that would have been necessary had this matter proceeded by way of a contested disciplinary hearing.
- d) The Panel was aware that the Respondent had not been the subject of disciplinary proceedings commenced by the MFDA or the Corporation at earlier times;
- e) There was no evidence that any client or individual agreed to invest in the Brant & Leighland Property based upon the solicitations of the Respondent, and accordingly, there was no evidence of financial loss by clients or other individuals;
- f) There was also no evidence that the Respondent received any financial benefits from engaging in the misconduct described in the Settlement Agreement;
- g) The requirements for both specific deterrence and general deterrence were met by the imposition of the agreed penalty.

RESULT

¶ 19 For all the above reasons, the Panel concluded that the Settlement Agreement was reasonable and proportionate and that the Settlement Agreement should be accepted. Accordingly, the following penalties were imposed upon the Respondent:

- a) The Respondent's authority to conduct securities related business while in the employ of or associated with a Member of the MFDA shall be prohibited for a period of 5 years commencing from the date of acceptance of this Settlement Agreement by a Hearing Panel, pursuant to section 24.1.1(e) of MFDA By-law No. 1.
- b) The Respondent shall pay a fine in the amount of \$20,000 in certified funds upon

- acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- c) The Respondent shall pay costs in the amount of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
 - d) The Respondent shall in the future comply with MFDA Rules 1.1.1, 1.3.2, 2.1.1, 2.1.4 and 1.1.2 (as it relates to Rule 2.5.1); and
 - e) If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure.

Dated this 20 day of March, 2023.

Frederick Chenoweth

Samuel Mah

Craig Woolford

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