IIROC OCRCVM

MFDA

Now New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA

IN THE MATTER OF

THE MUTUAL FUND DEALER RULES

and

Hope Moira Donna Thomas

Heard: January 31, 2023 by electronic hearing in Vancouver, British Columbia
Decision and Reasons: April 25, 2023

DECISION AND REASONS

Hearing Panel of the British Columbia District Hearing Committee:

Michael Carroll, K.C.	Chair
Barbara Fraser	Industry Representative
Susan Monk	Industry Representative

Appearances:

Samantha Wu	)	Enforcement Counsel for the New Self-Regulatory Organization of Canada (Mutual Fund Division)
Hope Moira Donna Thomas	)	Respondent, not in attendance

I. CHRONOLOGY OF PROCEEDINGS

1. On November 22, 2021, the Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding against Hope Moira Donna Thomas (the "Respondent") by virtue of a Notice of Hearing.

2. The Notice contained the following allegations:

a) Between February 2019 and August 2019, the Respondent misappropriated or failed to account for monies obtained from a client or in the client's name, contrary to MFDA Rule 2.1.1.

b) Between February 2019 and August 2019, the Respondent submitted for processing unauthorized redemptions in the account of a client, contrary to the Member's policies and procedures and MFDA Rules 2.1.1, 2.5.1, and 1.1.2.

3. A first appearance was scheduled for April 22, 2022. The Respondent failed to attend. At the first appearance, a second appearance was scheduled for June 14, 2022.

4. At the second appearance, the Panel Chair issued an order finding that the Respondent had been properly served with the Notice of Hearing and location, purpose and timing of the first appearance and directed the MFDA provide disclosure of its file to the Respondent upon request.

5. The hearing on the merits was originally scheduled for October 18, 2022. On September 22, MFDA Staff requested an adjournment of the hearing date until January 31, 2023 which was granted by the Panel Chair.

6. The panel is satisfied that all reasonable efforts have been made to notify the Respondent of her rights to contest this proceeding but has failed to respond in any way.

7. Effective January 1, 2023 the MFDA and the Investment Industry Regulatory Organization of Canada ("IIROC") were consolidated to form the New Self- Regulatory Organization of Canada (the "NewSRO").[1]

8. Staff has continued the prosecution of this matter before us today.

1. References to the MFDA are intended to refer as well to the NewSRO. References to Staff include Staff of the New SRO.

II. FACTS ALLEGED IN NOTICE OF HEARING

9. From December 7, 2012 until October 25, 2019 the Respondent was registered In British Columbia as a dealing representative with CIBC Securities Inc. (the "Member") a former member of the MFDA.

10. The Respondent at all material times was employed by the Canadian Imperial Bank of Commerce a bank affiliated with the Member (the "Bank").

11. On October 25, 2019, the Bank terminated the Respondent's employment and the Member terminated the Respondent's mutual fund registration. The Respondent is not currently registered in the securities industry in any capacity.

12. The client TR (the "Client") was a client of the Member whose account was serviced by the Respondent. In January 2018, the client was 79 years old and by virtue of her age was a vulnerable client.

13. On or about January 18, 2018 the Client opened a tax-free savings account ("TFSA") at the Member and purchased mutual funds totalling approximately $56,316. The Respondent processed the opening of the TFSA.

14. Between February and August 2019, without the Client's knowledge or authorization, the Respondent processed 12 redemptions from the Client's TFSA account totalling $59,000 (collectively the "TFSA Redemptions").

15. In or around December 2018, without the Client's knowledge or authorization, the Respondent opened a bank account with an overdraft facility in the name of the Client (the "Fake Account") and deposited the proceeds of the TFSA Redemptions to the Fake Account. The Respondent subsequently used the bank card to withdraw, monies from the Fake Account.

16. The Respondent ran up an overdraft in the Fake Account that amounted to $5,188.95 by March 31, 2020.

17. The Respondent changed the client's account statement delivery method, so it would be delivered online and changed the address associated with the Client's TFSA to the Respondent's address, which concealed the unauthorized TFSA Redemptions from the Client.

18. Between September 2018, and March 2019, the Respondent also misappropriated monies obtained from a bank account that the Client held with her spouse in the amount of approximately $34,000.

19. Commencing in August 2019, the Respondent, without the Client's authorization, applied for and obtained loans and a line of credit in the Client's name, and as a result received $59,000 from the Bank.

20. The Respondent used the monies she obtained from the Client's TFSA, and loan and line of credit that she obtained in the Client's name for her personal use. She has failed to pay or otherwise account for the monies. The Respondent subsequently admitted that she took the monies from the Client because the Client trusted her and was elderly.

21. The Member and the Bank have subsequently paid the Client a total of $93,000 as compensation for the monies stolen from her by the Respondent.

22. The total amount misappropriated by the Respondent from the Client and the Bank amounts to approximately $157,000.

III. MFDA JURISDICTION OVER THE RESPONDENT

23. The Respondent is no longer an Approved Person normally subject to the jurisdiction of the MFDA. However, pursuant to s. 24.1.4 of MFDA By-law No. 1, (now Mutual Fund Dealer Rule 7.4.1.4)[2], an Approved Person remains subject to the jurisdiction of the MFDA, notwithstanding, the fact that such an individual ceases to be an Approved Person.

Taub v Investment Dealers Association of Canada, 2009 ONCA628 at para.46.

IV. RESPONDENT'S FAILURE TO DELIVER A REPLY AND ATTEND HEARING

24. MFDA Rule of Procedure 8.4 states that where a respondent fails to serve and file a reply to a Notice of Hearing the hearing panel may, inter alia, accept the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing as proven, and impose any of the penalties and costs described in sections 24.1 and 24.2 of MFDA By-law No. 1.

[2] In these Reasons we will refer to the former MFDA Rule number which will include by reference the new Mutual Fund Dealer Rule.

25. Similarly, MFDA Rule of Procedure, 7.3 provides that a hearing panel may proceed with a hearing on the merits in the absence of a respondent and where a respondent fails to attend the hearing on the date, and at the time and location specified in the notice of hearing, accept the facts alleged, and the conclusions drawn by the corporation in the Notice of Hearing as proven and impose, any of the penalties and costs described in sections, 24.1 and 24.2 of MFDA By-law No.1.

26. The Respondent has failed to file a reply to the Notice of Hearing, has failed to participate in the first and second appearances, did not request disclosure in response to offers from Staff, and failed to attend the hearing.

27. We find that the Respondent received proper notification of the appearances and hearings as scheduled. We accept the facts alleged in the Notice of Hearing as proven and find that the Respondent misappropriated monies wrongfully obtained from the Client in the amount of $93,000 and misappropriated a further $64,188.95 from the Bank being the amount of the overdraft in the Fake Account and the conversion of the proceeds of the loan wrongfully obtained from the Bank.

28. It should be noted that Staff, presumably out of an abundance of caution, presented evidence by way of affidavits from Brenda Oue and Christine Petit to confirm the facts alleged in the Notice of Hearing. Given that we accept as proven those facts, we do not find it necessary to review that evidence. Had we done so we would have accepted it pursuant to MFDA Rules of Procedure 1.6 and 13.4 despite the fact that some of it was hearsay.

V. MISCONDUCT

Misappropriation of Funds belonging to the Client and the Bank

29. The misappropriation of $157,188.95 by the Respondent from the Client and the Bank contravenes MFDA Rule 2.1.1. That Rule requires each Member and Approved Person to deal fairly, honestly, and in good faith with clients, and to refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

30. MFDA hearing panels have held that misappropriation from clients is a contravention of MFDA rule 2.1.1.

31. It goes without saying that the misappropriation of funds belonging to the Client and the Bank in the present case fails to meet the high standards of ethics and conduct demanded of the Respondent in the transaction of business and is unbecoming and detrimental to the public interest.

Unauthorized Redemptions

32. The Respondent submitted for processing unauthorized redemptions in the account of the Client, contrary to the Member's policies and procedures, and MFDA Rules, 2.1.1, 2.5.1, and 1.1.2.

33. Hearing Panels have found that when Approved Persons process transactions without client authorization, such conduct is inconsistent with the standard of conduct that Approved Persons are required to uphold and contravenes MFDA Rule, 2.1.1.

> *Schwartz (Re),* 2018 LNCMFDA 135, at paras. 3, 5, and 10.

34. According to MFDA Rule 1.1.2, Approved Persons have an obligation to comply with the Policies and Procedures which a Member is obliged to establish in order to ensure that the handling of their business is in compliance with MFDA By-laws, rules, policies and applicable securities legislation.

> *Frank (Re)* MFDA File No.201407, Hearing Panel of the Central Regional Council, Decision and Reasons (Misconduct) dated May 5, 2015 at paras. 56-58.

35. We find that the allegations set out in the Notice of Hearing have been established and that the Respondent contravened MFDA Rules 2.1.1, 2.5.1, and 1.1.2.

VI. PROPOSED PENALTIES

36. In the present case, Staff seeks the following penalties against the Respondent;

a) A permanent prohibition of the authority of the Respondent to conduct securities related business, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

b) A fine of at least $208,000 pursuant to section 24.1.1 (b) of MFDA By-law No. 1;

c) Costs of $10,000 pursuant to section 24.2 of MFDA By-law No. 1.

VII. FACTORS CONCERNING THE APPROPRIATENESS OF THE PROPOSED PENALTY

37. The primary goal of securities regulation is the protection of the investor. The goals of securities regulation also include fostering public confidence in the capital markets and securities industry.

> *Pezim v British Columbia (Superintendent of Brokers)* [1994] 2 SCR at paras. 59 and 68.

38. To determine whether a penalty is appropriate, a 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.

> *Tonnies (Re*) MFDA File No. 200503, Hearing Panel of Prairie Regional Council, Decision dated June 27, 2005 at pp. 6-7.

39. Hearing panels also frequently, consider other factors when determining whether a penalty is appropriate: including inter alia:

a) the seriousness of the allegations proved;
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 need to deter others from engaging in similar activities;
i) previous decisions in similar circumstances.

Seriousness of the Misconduct

40. Misappropriation is among the most serious types of misconduct encountered by securities regulators as it usually involves a serious breach of trust, causes real harm to the clients affected,

and undermines the reputation and integrity of the securities industry. Here the Respondent misappropriated $157,000 from the Client and the Bank. She held a position of trust with the Client who was elderly and vulnerable, whom she exploited in order to steal money for her own personal use.

41. Unauthorized redemptions also amount to serious misconduct. In such cases, Approved Persons substitute their decisions for those of clients, undermining clients' rights to make informed decisions about their financial affairs.

> *Rounthwaite (Re),* [2012] Hearing Panel of the Central Regional Council, MFDA File No. 201123, Decision dated July 30, 2012, at para.7.

Respondent's Past Conduct and Experience in the Capital Markets

42. Although there is no evidence of any prior disciplinary history by the MFDA, this is not a significant mitigating factor in the present case. The Respondent was registered as a dealing representative with the Member for approximately seven years. She was experienced in the mutual fund industry, and had to have been aware of regulatory obligations. All Approved Persons ought to know that misappropriating client monies and processing unauthorized redemptions from a client account are inconsistent with the required standard of conduct, detrimental to the public interest, and contrary to the interest of clients.

Recognition by the Respondent of the Seriousness of the Improper Activity

43. The Respondent has not demonstrated that she recognizes the seriousness of her misconduct, and has not expressed remorse for her actions. She has refused to participate in the hearing process or otherwise accept responsibility for her misconduct.

Harm Suffered by the Investors and Benefit Received by the Respondent

44. Although the Member and the Bank compensated the Client for her losses, the Respondent did not. She has failed to repay or otherwise account for the stolen monies. She retained full financial benefit of her misconduct.

Risk to Investors and Markets, if the Respondent Continues Operating in the Industry

45. We agree with Staff that the Respondent poses a significant risk to other investors. The misconduct in the present case is egregious. She stole money from an elderly client who trusted

her and also defrauded the Bank by obtaining a loan in the Client's name and using the proceeds for her personal use. She cannot be trusted with clients' monies in the future.

Deterrence

46. Deterrence is intended to capture both specific deterrence of the wrongdoer, as well as general deterrence of other participants in the capital markets in order to protect investors

> *Cartaway Resources Corp. (Re)* [2004]1 S.C.R., 672 at para. 52.

47. General and specific deterrence has heightened importance in cases involving vulnerable investors, including ageing clients

> *Smith (Re),* [2021] Hearing Panel of the Central Regional Council, MFDA File No. 201123, Decision dated September 24, 2021 at paras. 13–14, 19–20, and 25–26.

Previous Decisions Made in Similar Circumstances

48. Counsel referred us to the following cases similar in nature to the present one:

> *Derksen* [2022] Hearing Panel of the Pacific Regional Council, MFDA File No. 202222, Order dated December 7, 2022.
>
> *Levesque (Re),* [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202113, Decision dated July 19, 2022.
>
> *Ramgolan (Re)* [2021] Hearing Panel of the Central Regional Council, Decision (Penalty) dated June 28, 2021.
>
> *Schwartz, supra.*
>
> *Roskaft* [2014], Hearing Panel of the Central Regional Council, MFDA File No. 201317, Decision dated May 14, 2014.
>
> *Puri* [2007] Hearing Panel of the Pacific Regional Council, MFDA File No. 200715, Decision dated October 22, 2007.
>
> *Cox, supra.*
>
> *Hon Ting (Patrick) Yung,* [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202148, Decision dated July 29, 2022.

49. In all of the above cases the Approved Person misappropriated clients' monies in varying amounts. In each of them the Approved Person was permanently prohibited from conducting securities related business in the future.

50. Similarly, in each of them the Approved Person was ordered to pay as part of the penalty, amounts significantly higher than the amount of personal benefit obtained as a result of the misappropriation. In several of these cases a component of the fine was imposed as a result of a failure to cooperate by the Respondent. Although In the present case Staff does not seek to identify a component of the fine resulting from the Respondent's failure to cooperate, we have considered it as a factor in assessing the overall amount of the penalty sought.

VIII. CONCLUSION

51. After reviewing all of the factors above including the cases referred to us, we have concluded that the following penalties are appropriate to impose upon the Respondent:

a) A permanent prohibition of the authority of the Respondent to conduct securities related business;
b) A fine in the amount of $300,000;and
c) Costs in the amount of $10,000.

DATED this 25th day of April, 2023.

"Michael Carroll"
Michael Carroll, K.C.
Chair

"Barbara Fraser"
Barbara Fraser
Industry Representative

"Susan Monk"
Susan Monk
Industry Representative

DM 902926