

# Re Hogg

IN THE MATTER OF:

**The Mutual Fund Dealer Rules**

**and**

**Charles Leigh Hogg**

2023 CIRO 31

Canadian Investment Regulatory Organization  
Hearing Panel of the Ontario District Hearing Committee

Heard: May 16, 2023 by electronic hearing

Decision: May 16, 2023

Reasons for Decision: November 29, 2023

**Hearing Panel:**

Joan Smart, Chair

Linda Anderson, Industry Representative

Joseph Yassi, Industry Representative

**Appearances:**

Paul Blasiak, Senior Enforcement Counsel for CIRO

Ellen Bessner, Counsel for Respondent

Charles Leigh Hogg, Respondent, in attendance

---

## REASONS FOR DECISION

---

### I. INTRODUCTION

¶ 1 On September 6, 2022, the Mutual Fund Dealers Association of Canada (the “MFDA”), which became the New Self-Regulatory Organization of Canada (“New SRO”) effective January 1, 2023 (now renamed the Canadian Investment Regulatory Organization), commenced a disciplinary proceeding against Charles Leigh Hogg (the Respondent”) by Notice of Hearing.

¶ 2 On April 19, 2023, New SRO announced that, as a result of a settlement agreement entered into between Staff of New SRO (“Staff”) and the Respondent, dated March 9, 2023 (the “Settlement Agreement”), a hearing to consider the settlement would take place electronically by videoconference before a Hearing Panel of New SRO’s Ontario District Hearing Committee on May 16, 2023.

¶ 3 At the conclusion of the hearing, the Hearing Panel decided to accept the Settlement Agreement. These are our Reasons for that decision.

### II. CONTRAVENTIONS ADMITTED

¶ 4 In the Settlement Agreement the Respondent admitted that:

- a) on or about April 1, 2019 and May 27, 2019, he provided login credentials to third parties to enable them to access the Member’s system containing confidential client information without the knowledge or consent of the Member, contrary to MFDA Rules 2.1.3 and 2.1.1 (now Mutual Fund Dealer Rules 2.1.3 and 2.1.1); and
- b) between about April 2019 and June 2019, he sent, or arranged to send, confidential

client information to a third party, without the prior consent of the clients, contrary to the Member's policies and procedures and MFDA Rules 2.1.3, 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1) (now Mutual Fund Dealer Rules 2.1.3, 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1)).

### III. PROPOSED SANCTION

- ¶ 5 The Respondent agreed, as part of the Settlement Agreement, to:
- a) be prohibited from conducting securities related business in any capacity while in the employ of or associated with any Dealer Member registered as a mutual fund dealer for 9 months from the date the Settlement Agreement is accepted by a Hearing Panel pursuant to section 24.1.1(e) of MFDA By-Law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(e));
  - b) pay a fine of \$27,500, pursuant to section 24.1.1(b) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(b));
  - c) pay costs of \$5,000 pursuant to section 24.2 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.2); and
  - d) successfully complete the Ethics and Professional Conduct Course offered by the IFSE Institute, or an ethics course acceptable to Staff, prior to being re-registered as a dealing representative with a Dealer Member registered as a mutual fund dealer; and
  - e) in the future comply with Mutual Fund Dealer Rules 2.1.3, 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1).

¶ 6 The fine and costs were to be paid by certified funds on the date of acceptance of the Settlement Agreement by a Hearing Panel.

¶ 7 Hereinafter in these Reasons for Decision we will refer only to the subject Rules in place at the relevant time.

### IV. AGREED FACTS

¶ 8 Below is a summary of the agreed facts set out in the Settlement Agreement.

#### Registration History

¶ 9 The Respondent had been registered in the securities industry since 1982 and at all material times was registered in Ontario as a dealing representative with Assante Financial Management Ltd. ("Assante"), a Member of the MFDA.

¶ 10 On October 28, 2019, Assante terminated the Respondent as a result of the conduct described herein and he has not since been registered in the securities industry.

#### Wealthsimple's On-boarding Process

¶ 11 In early 2019, the Respondent had discussions with Wealthsimple Advisor Services Inc. ("WASI"), a Member of the MFDA, regarding the transfer of his registration and book of business to WASI.

¶ 12 At all material times, WASI maintained an onboarding process (the "Onboarding Process") for Approved Persons of other Members who intended to transfer their registration and book of business to WASI.

¶ 13 Pursuant to the Onboarding Process, Approved Persons provided confidential client information regarding clients whose accounts they serviced at the other Members to Wealthsimple Technologies Inc. ("WSTI"), a company affiliated with WASI, prior to the Approved Persons transferring their registration to WASI.

¶ 14 The confidential client information included, among other things, client names, social insurance numbers, dates of birth, addresses, email addresses, phone numbers, account numbers, account types, and types and amounts of investments held ("Client Information").

¶ 15 In 2019, the Respondent agreed to participate in WASI's Onboarding Process, and signed an

agreement to send Client Information to WSTI with the intention that he would subsequently transfer his registration and book of business from Assante to WASI and become an Approved Person of WASI.

### **Unauthorized Access to Assante's System**

¶ 16 At all material times, Assante's policies and procedures prohibited its Approved Persons from disclosing client information to a third party without the client's prior written consent.

¶ 17 At all material times, ST was an Approved Person registered with a different MFDA Member (neither Assante nor WASI) who had also agreed to participate in WASI's Onboarding Process. The Respondent and ST were acquainted and both intended to transfer their registration to WASI.

¶ 18 During the Onboarding Process, the Respondent experienced technical difficulties when attempting to send Client Information to WSTI, and requested that ST assist him in sending Client Information to WSTI.

¶ 19 On or about April 1, 2019, the Respondent provided ST with the Respondent's login credentials including his username and password which enabled ST to access Assante's customer relationship management ("CRM") system so that he could send Client Information to WSTI on behalf of the Respondent.

¶ 20 On or about April 1, 2019:

- a) ST used the Respondent's username and password to log into Assante's CRM system;
- b) while logged into the CRM system, ST shared his screen remotely with WSTI staff;
- c) during the screen-sharing session, WSTI staff viewed the contents of Assante's CRM system and three reports (the "Reports") were generated from the system which contained Client Information; and
- d) ST saved the Reports on his computer and then emailed them to WSTI staff on behalf of the Respondent.

¶ 21 On or about May 27, 2019, the Respondent provided a WSTI staff member with the Respondent's username and password for Assante's CRM system so that the WSTI staff member could access the system and obtain additional Client information, which the WSTI staff member did that day.

¶ 22 Between about April and June 2019, the Respondent sent, or arranged to send, additional Client Information to WSTI as part of the Onboarding Process.

¶ 23 The Client Information referenced above pertained to approximately 576 clients whose accounts the Respondent serviced at Assante.

¶ 24 The Respondent did not obtain prior consent from the clients authorizing the disclosure of their Client Information to WSTI.

¶ 25 The Respondent did not inform Assante that the Client Information was being provided to WSTI and Assante did not provide authorization for the activity.

¶ 26 By providing ST and WSTI staff with his username and password, the Respondent:

- a) facilitated unauthorized access to Assante's system;
- b) prevented Assante from safeguarding the Client Information contained in the system; and
- c) compromised the confidentiality of the Client Information.

¶ 27 The Respondent thereby:

- a) failed to observe high standards of ethics and conduct in the transaction of business, and engaged in conduct which was unbecoming and detrimental to the public interest, contrary to MFDA Rules 2.1.3 and 2.1.1; and
- b) contravened Assante's policies and procedures, contrary to MFDA Rules 2.1.3, 2.1.1 and 1.1.2 (as it relates to 2.5.1).

¶ 28 In late 2019, WASI discontinued its Onboarding Process and ceased accepting new Approved Persons.

¶ 29 The Respondent ultimately did not become registered with WASI.

¶ 30 Following termination by Assante, the Respondent sold his book of business. He believed he would have recovered more from the sale had he not been terminated.

## V. ANALYSIS

### Role of the Hearing Panel

¶ 31 Pursuant to section 24.4.3 of MFDA By-law No. 1, a hearing panel may only accept or reject a settlement agreement. It cannot substitute its own decision.

¶ 32 It is generally accepted that a hearing panel will not lightly interfere with a settlement agreement reached between Staff and a respondent, and will not reject it unless it views the penalty as clearly falling outside a reasonable range of appropriateness. See, for example, *Sterling Mutuals Inc. (Re)*, [2008] LNCMFDA16 at para 37.

¶ 33 In determining whether to accept the Settlement Agreement, the Hearing Panel considered primarily whether it: was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's misconduct and previous MFDA cases; would serve as a specific and general deterrent; and was aligned with regulatory objectives to protect investors and strengthen public confidence in the mutual fund industry.

### Misconduct

#### Rules 2.1.3 and 2.1.1

¶ 34 MFDA Rule 2.1.3 stated, in part,

- (a) All information received by a Member relating to a client or the business and affairs of a client shall be maintained in confidence by the Member and its Approved Persons ... No such information shall be disclosed to any other person or be used for the advantage of...Approved Persons without the prior written consent of the client....
- (b) Each Member shall develop and maintain written policies and procedures relating to confidentiality and the protection of information held in respect of its clients.

¶ 35 MFDA Rule 2.1.1 required that each Approved Person: deal fairly, honestly, and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

¶ 36 When confidential client information is released without the client's consent, the client's privacy interests are compromised; the Member and the subject client cease to have control over where the client's confidential information resides, or may go next, and the purpose for which the client information was collected; and may expose the information to unauthorized access, and possibly theft, that could not be detected by the Member.

*Wealthsimple Advisor Services Inc. (Re)*, [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202238, Panel Reasons for Decision dated December 22, 2022, at para. 20

*Roche (Re)*, [2014] Hearing Panel of the Prairie Regional Council, MFDA File No. 201420, Panel Reasons for Decision dated November 17, 2014, at para. 12

*Wighton (Re)*, Hearing Panel of the Central Regional Council, MFDA File No. 2018123, Panel Reasons for Decision dated February 19, 2020, at para. 19

*Wang (Re)*, [2021] Hearing Panel of the Prairie Regional Council, MFDA File No. 202114, Panel Reasons for Decision dated February 7, 2022, at para. 28

¶ 37 To facilitate servicing of their accounts, clients provide extensive confidential personal and financial

information to their advisor which is typically stored on the Member's system, such as their social insurance number, investment and bank account numbers, their sources and amounts of income, their liabilities and net worth. As a result, it is vital that the information only be accessed by those parties authorized by the client to receive it for the purposes intended. Otherwise, the confidential information may be vulnerable to misuse or unauthorized dissemination.

¶ 38 It is improper for an Approved Person to presume that a client will consent to another Member having access to their confidential information when the Approved Person intends to transfer their business to that Member.

¶ 39 We found that, as admitted by the Respondent, he breached MFDA Rules 2.1.3 and 2.1.1 when he:

- a) provided login credentials to third parties to enable them to access Assante's system containing Client Information without the consent of Assante; and
- b) sent, or arranged to send, Client Information to a third party without the clients' consent.

#### **Rules 2.5.1 and 1.1.2**

¶ 40 MFDA Rule 2.5.1 required Members to establish, implement and maintain policies and procedures to ensure compliance with the By-laws and Rules and applicable securities legislation.

¶ 41 In this case, Assante's policies and procedures prohibited its Approved Persons from disclosing client information to a third party without the prior written consent of the client.

¶ 42 MFDA Rule 1.1.2 required that Approved Persons who participate in securities related business in respect of a Member, comply with the By-laws and Rules as they relate to the Member. Rule 1.1.2 should be read in conjunction with Rule 2.5.

¶ 43 We have found, as admitted by the Respondent, that in failing to comply with Assante's policies and procedures relating to client information, he contravened MFDA Rule 1.1.2 (as it relates to Rule 2.5.1) as well as the standard of conduct in Rule 2.1.1.

#### **Penalty**

¶ 44 In our view, the Respondent engaged in serious misconduct as described above.

¶ 45 By providing ST and WSTI staff with his username and password to Assante's CRM system and sending Client Information to WSTI, the Respondent:

- a) facilitated unauthorized access to Assante's system by ST and WSTI staff;
- b) prevented Assante from safeguarding the Client Information that was contained in the CRM system; and
- c) compromised the confidentiality of the clients' Client Information.

¶ 46 The Client Information pertained to approximately 576 clients whose accounts the Respondent serviced at Assante.

¶ 47 We note that the Respondent had been registered in the securities industry for approximately 37 years and ought to have been aware of the applicable rules relating to client confidentiality.

¶ 48 In determining whether to accept the Settlement Agreement, the Hearing Panel took into account certain mitigating factors including the following:

- a) the Respondent had already been penalized to the extent that his employment at Assante was terminated as a result of the subject misconduct and he has not been employed in the industry since that time;
- b) there was no evidence of client financial loss arising from the misconduct at issue;
- c) the Respondent had not previously been the subject of MFDA disciplinary proceedings; and
- d) by entering into the Settlement Agreement, the Respondent accepted responsibility for his

misconduct and saved New SRO the time, resources, and expenses associated with conducting a contested hearing of the allegations.

¶ 49 The proposed penalties should act as a general deterrent and reinforce the message to others in the industry that the misconduct described herein is serious and will not be tolerated by New SRO.

¶ 50 The proposed penalties should also act as a specific deterrent preventing the Respondent from engaging in misconduct in the future.

¶ 51 The proposed resolution is within the reasonable range of appropriateness having regard to other decisions made by Hearing Panels in similar circumstances, as set out in the chart below.

CASE	FACTS	PENALTIES
<i>Wealthsimple Advisor Services Inc. (Re), supra</i>	The Respondent: <ul style="list-style-type: none"> <li>• implemented a process for onboarding Approved Persons of other MFDA Members and Investment Dealers which failed to ensure that potential clients had consented to the disclosure of their confidential information to a company affiliated with the Respondent; and</li> <li>• failed to implement an adequate system of controls and supervision over its process for onboarding Approved Persons of other MFDA Members and Investment Dealers by failing to prevent staff of an affiliated company from viewing and accessing the system of another MFDA Member to assist an incoming Approved Person to transfer confidential client information without the other MFDA Member's knowledge or consent.</li> </ul>	Settlement Agreement: <ul style="list-style-type: none"> <li>• Fine of \$100,000</li> <li>• Costs of \$20,000</li> </ul>

CASE	FACTS	PENALTIES
<p><i>Clairmont (Re)</i>, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 2018109, Panel Reasons for Decision dated February 11, 2019</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> <li>• arranged for 344 clients to execute NAAFs and KYC forms to transfer the clients to a new Member, when he was not registered with the new Member;</li> <li>• had 344 clients execute 829 undated NAAFs, KYC forms, and transfer authorizations, which were later signed by another Approved Person (DP) registered with the new Member to effect transfers;</li> <li>• obtained, maintained, and/or used at least 46 pre-signed account forms, 16 account forms which were altered after the client had signed the form, and one account form on which the client's signature had been copied and pasted from another form;</li> <li>• from 2012 to 2016, falsely certified on the Member's annual registration renewal that he did not possess or control any pre-signed forms; and in 2016, failed to disclose to his Member on an Annual Audit Questionnaire his arrangement to share office space with another Approved Person; and</li> <li>• engaged in 129 instances of discretionary trading (he had clients sign undated trade forms, so he could later submit them at a time of his choosing).</li> </ul> <p>*Case deals with the improper transfer of client accounts to a new Member.</p> <p>*In order to obtain the NAAFs and KYC forms for the 344 clients, the Respondent (or his unlicensed assistant for whom he was responsible) accessed the back office system of the other Member, despite the Respondent not being registered with the other Member. DP had provided the Respondent with his password to the other Member's back office system to facilitate the transfer of the Respondent's clients to the other Member.</p> <p>*The Respondent intended to become registered with the other Member, and serve as DP's licensed assistant to assist with servicing the transferred clients. The Respondent never became registered with the other Member.</p> <p>*The Respondent received previous cautionary letters from his Member (1 in respect of pre-signed forms and 1 in respect of discretionary trading).</p>	<p>Settlement Agreement:</p> <ul style="list-style-type: none"> <li>• 18 month prohibition</li> <li>• Fine of \$50,000</li> <li>• Costs of \$5,000</li> <li>• Ethics course</li> </ul>

CASE	FACTS	PENALTIES
<p><i>Pender (Re)</i>, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 2018108, Panel Reasons for Decision dated February 11, 2019</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> <li>• enabled Approved Person EC to complete NAAFs and KYC forms to facilitate the transfer of 344 clients to the Respondent's Member when EC was not registered with the Member; and</li> <li>• executed NAAFs and KYC forms for 344 clients as the Approved Person of record for the Member without meeting any of the clients and falsely represented that he had met with the clients.</li> </ul> <p><u>*The Respondent provided EC with his password to the Member's back office system. EC was thus able to access the Member's system and generate and pre-populate NAAFs and other account forms for the 344 clients.</u></p> <p><u>*Case deals with the improper transfer of client accounts to a new Member.</u></p> <p><u>*The Respondent entered into an arrangement with EC to buy EC's book of business. As a result of the Respondent's misconduct, he was able to transfer 344 clients from EC to himself more quickly.</u></p>	<p>Settlement Agreement:</p> <ul style="list-style-type: none"> <li>• 3 month prohibition</li> <li>• Fine of \$25,000</li> <li>• Costs of \$5,000</li> <li>• Ethics course.</li> </ul>
<p><i>Wang (Re)</i>, <i>supra</i></p>	<p>The Respondent:</p> <ul style="list-style-type: none"> <li>• in April and November, 2019, <u>sent confidential client information to his personal email address for his personal advantage without obtaining the prior written consent of the clients;</u></li> <li>• on May 10, 2019, resigned from RMFI to pursue an opportunity to transfer his registration to SSI;</li> <li>• on or about April 30, 2019, sent an email from his RMFI email address to his personal email address that attached an Excel workbook containing personal information relating to 32 clients of RMFI (the "Spreadsheet");</li> <li>• subsequently became registered with SSI; and</li> <li>• prior to resigning from SSI, on or about November 8, 2019, sent an email from his business email address at SSI to his personal email address and attached the Spreadsheet, which was updated with a second worksheet containing personal information relating to 4 clients of SSI.</li> </ul>	<p>Settlement Agreement:</p> <ul style="list-style-type: none"> <li>• 6 month prohibition</li> <li>• Fine of \$5,000</li> <li>• Costs of \$2,500</li> </ul>

CASE	FACTS	PENALTIES
<p><i>Mitha (Re)</i>, [2021] Hearing Panel of the Central Regional Council, MFDA File No. 202073, Panel Reasons for Decision dated May 14, 2021</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> <li>• <u>sent emails from her business email address to her personal email address attaching documents containing confidential information of clients of the Member without consent of the clients</u> (she sent the emails the day prior to submitting her resignation to the Member); and</li> <li>• altered her manager's written assessment of her performance on a performance review document, inserted the electronic initials of her manager and Regional Vice President on the document and submitted it to another financial institution in support of an application for employment</li> </ul> <p>*Number of clients not specified.</p>	<p>Settlement Agreement:</p> <ul style="list-style-type: none"> <li>• 12 month prohibition</li> <li>• Fine of \$5,000</li> <li>• Costs of \$2,500</li> </ul>
<p><i>Pu (Re)</i>, [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202216, Panel Reasons for Decision dated August 23, 2022</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> <li>• <u>posted a portion of a client's quarterly investment statement to a social media and messaging application without the client's consent</u> to promote her profile in the financial services industry.</li> </ul> <p>*The client was a vulnerable client due to his age.</p>	<p>Settlement Agreement:</p> <ul style="list-style-type: none"> <li>• Fine of \$5,000</li> <li>• Costs of \$2,500</li> <li>• Ethics course</li> </ul>
<p><i>Wong (Re)</i>, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 200709, Panel Reasons for Decision dated June 20, 2007</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> <li>• <u>while an Approved Person of one Member, accessed the confidential client database of another Member, without the knowledge or approval of either Member and used the information obtained to solicit clients.</u></li> </ul> <p>*The other Member had inadvertently provided the Respondent with a logon that enabled him to access numerous confidential client accounts, and the Respondent identified 24 high net worth clients to whom he sent solicitation letters.</p> <p>*The Respondent falsely advised his Member that the solicitation letters had been sent to individuals that the Respondent had identified from a list of donors in a publication. The Respondent then admitted his conduct to the Member and was terminated.</p>	<p>Agreed Statement of Facts:</p> <ul style="list-style-type: none"> <li>• 3 year prohibition from acting in a supervisory capacity</li> <li>• Proficiency examination prior to acting in a supervisory capacity</li> <li>• Ethics course</li> <li>• Fine of \$7,000</li> <li>• Costs of \$1,000</li> </ul>

**VI. CONCLUSION**

¶ 52 We concluded that the proposed sanction was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's conduct and previous MFDA cases. It should serve as a specific and general deterrent. We were also of the view that it is aligned with regulatory objectives. Accordingly, we decided to accept the Settlement Agreement.

Dated at Toronto, Ontario this 29 day of November 2023.

"Joan Smart" \_\_\_\_\_

Joan Smart, Chair

"Linda Anderson" \_\_\_\_\_

Linda Anderson, Industry Member

"Joseph Yassi" \_\_\_\_\_

Joseph Yassi, Industry Member

**Copyright © 2023 Canadian Investment Regulatory Organization. All Rights Reserved**