File No. 202246

Re Yamamoto

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

George Yamamoto

2023 CIRO 25

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: October 25, 2023 in Toronto, Ontario via videoconference
Decision: October 25, 2023
Reasons for Decision: November 27, 2023

Hearing Panel:
Susan Lang, Chair
Linda Anderson, Industry Representative
Robert White, Industry Representative
Appearances:
Paul Blasiak, Senior Enforcement Counsel, CIRO
Ellen Bessner, Counsel for George Yamamoto
George Yamamoto, Respondent (Present)

REASONS FOR DECISION

INTRODUCTION

¶ 1 This hearing concerns a Settlement Agreement entered into by Staff and George Yamamoto. In the Settlement Agreement, Mr. Yamamoto acknowledges conflicts of interest continuing over many months arising from the fact that, to his knowledge, he was named as the recipient of legacies by two of his clients (husband and wife); that he solicited funds from the same clients over a period of about ten days; and that on one occasion he disclosed his clients' confidential information to their son without their consent. The Settlement Agreement provides for a permanent prohibition from conducting securities related business; a fine of $100,000, and costs of $5,000. Following submissions from counsel, and on their joint recommendation, the hearing panel accepted the Settlement Agreement with reasons to follow. These are those reasons.

BACKGROUND

¶ 2 This is not the first time a hearing panel has considered a Settlement Agreement in this matter. Another hearing panel considered an earlier Settlement Agreement proposed by the parties. After two hearings, the earlier panel rejected the then proposed Agreement. In doing so, the panel requested that their reasons not be disclosed to a subsequent hearing panel. Before this panel, the parties jointly submit that the Settlement Agreement under our consideration addresses the concerns raised by the earlier hearing panel. Considering those circumstances, we do not consider the earlier Settlement Agreement. We turn to the circumstances underlying the current Settlement Agreement.

¶ 3 From 1996, Mr. Yamamoto (the Respondent) was registered in the securities industry. From 2017, he

was registered with Investia Financial Services Inc. (Toronto) (Investia). In August 2020, soon after Investia began investigating his impugned conduct, the Respondent resigned and is not currently registered in the securities industry.

¶ 4 During his time with Investia, its policy and procedures required Approved Persons (APs) to disclose conflicts and potential conflicts and prohibited APs from receiving monetary benefits or compensation directly or indirectly from clients.

AGREED UPON FACTS IN SETTLEMENT AGREEMENT

¶ 5 According to the Settlement Agreement, in 2018 the Respondent's clients, spouses of each other and immigrants to Canada, were 77 and 69 years of age. The Respondent was a family friend of both clients and spoke their first language. Although both generally understood and could communicate in English, the Respondent frequently accompanied the clients on their personal business and acted as their translator. The Settlement Agreement acknowledges the vulnerability of the clients.

¶ 6 While the clients independently selected and retained a lawyer to update their wills in 2018, the Respondent acted as their liaison with that lawyer. He arranged and attended their meetings with their lawyer, provided their financial information to the lawyer, asked questions of the lawyer on their behalf, and conveyed their responses. In November 2018, the Respondent was informed that the clients intended to leave him legacies of $350,000 and $150,000 respectively. The Respondent conveyed their instructions to the lawyer and requested of them that their wills not refer to him as their "financial advisor", and instead refer to him as their "friend". In December 2018, the Respondent attended with their clients at their lawyers. The clients executed their wills, although not in the Respondent's presence. Later that month the lawyer wrote to the Respondent summarizing the contents of their wills, including the legacies to the Respondent. The Respondent did not inform Investia of the legacies then or until August 6, 2020, when he renounced the legacies. Later in August 2020, the clients executed new wills, which did not name the Respondent in any capacity. Accordingly, from November 2018 until August 2020, the Respondent knew he was or would be named as a beneficiary and did not disclose this to Investia or otherwise address his conflict of interest.[1]

¶ 7 In July 2020, the clients sold their home for approximately $5 million. The Respondent met with the clients with documents requesting that they immediately provide him with $500,000 to enable him to purchase a home for himself. The clients declined to do so. On August 6, 2020, the Respondent met with the clients and provided them with a letter to their lawyer to remove him as their beneficiary. He also presented them with two invoices: the first was for $67,800 plus HST for his "personal services", including in respect of their real estate transactions. The second invoice was for $588,224 plus HST for unspecified services. These invoices were solicitations for payments and thus gave rise to conflicts and potential conflicts of interests. The Respondent did not disclose those circumstances to Investia or otherwise address his conflicts. Ultimately, the clients did not pay either of the invoiced amounts. Accordingly, from July 2020 to August 2020, The Respondent improperly solicited funds from his clients giving rise to and not addressing conflicts.[2]

¶ 8 On August 7, 2020, contrary to Investia's policies and procedures, the Respondent sent text messages to the clients' son informing him of financial transactions by the clients. He did so without the clients' consent. Accordingly, The Respondent failed to maintain his clients' information in confidence.[3]

¶ 9 On August 10, 2020 the clients met with an assistant from the Investia branch and showed the assistant the documents provided to them by the AP. Investia launched an investigation. The Respondent resigned from Investia on August 25 effective August 28. In the course of its investigation, Investia contacted other clients about their financial transactions and dealings with the Respondent. None of those other clients raised

[1] Contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1) (now Mutual Fund Dealer Rules 2.1.4, 2.1.1, 1.1.2 and 2.5.1 and MFDA Staff Notice 0047

[2] Contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1) (now Mutual Fund Dealer Rules 2.1.4, 2.1.1, 1.1.2 and 2.5.1).

[3] 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, 1.1.2 and 2.5.1).

concerns.

¶ 10 By way of additional facts, the Settlement Agreement provides that the Respondent is not licensed to sell insurance; he is not currently employed; and ultimately did not receive any financial benefit and the clients did not suffer a financial loss. In addition, the $500,000 impugned legacies constituted a small percentage of the clients' total assets and far less than the value of their investments at Investia. However, the Respondent delivered invoices to the clients after they declined his request to provide him with $500,000 to finance the purchase of a home for himself. On the other hand, the Respondent has no previous disciplinary proceeding at MFDA or CIRO. By entering into the Settlement Agreement, the Respondent saved CIRO from conducting a contested hearing.

PROPOSED SANCTION

¶ 11 As a consequence of the agreed facts, the parties jointly propose the following terms of settlement providing that the Respondent would:

a) *be permanently prohibited from conducting securities related business while in the employ of or associated with any Dealer Member of CIRO that is registered as a mutual fund dealer;*

b) *pay a fine in the amount of $100,000; and*

c) *pay costs in the amount of $5,000.*

ANALYSIS

THE ISSUE

¶ 12 A hearing panel may either accept or reject a settlement agreement: s. 24.4.3 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.4.3). It may not modify a settlement agreement.

¶ 13 Accordingly, the sole issue before this hearing panel is whether to accept or reject the proposed settlement. That issue turns on whether the proposed terms are reasonable in the circumstances of the case. In determining this issue, a hearing panel "will not reject the settlement unless it falls outside a reasonable range of appropriateness" having regard to the conduct at issue and "taking into account the settlement process and the fact that the parties have agreed": *Milewski (Re)*, [1999] I.D.A.C.D. No. 17, Ontario District Council Decision dated July 28, 1999.

¶ 14 Factors to be considered relevant to this case include whether the terms would be in the public interest and protect investors; whether the terms of agreement are reasonable and proportionate; whether they address both specific and general deterrence; whether the terms foster confidence in the integrity of the markets and of the MFDA and the regulatory process; whether they are proportionate to the impugned conduct and the impact of the proposed penalties on the respondent: *Jacobson (Re)*, 2007 LNCMFDA 27, at paras. 68-70.

¶ 15 In addition, Staff points to other circumstances reflecting on the appropriateness of the penalty as reviewed in *Headley (Re)*, 2006 LNCMFDA 3, at para. 85:

a) *The seriousness of the allegations proved against the respondent;*

b) *The respondent's past conduct, including prior sanctions;*

c) *The respondent's experience in the capital markets;*

d) *The level of the respondent's activity in the capital markets;*

e) *Whether the respondent recognizes the seriousness of the improper activity;*

f) *The harm suffered by investors as a result of the respondent's activities;*

g) *The benefits received by the respondent as a result of the improper activity;*

h) *The risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;*

i) *The damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;*

j) *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;*

k) *The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and*

l) *Previous decisions made in similar circumstances.*

¶ 16 Similarly, the MFDA Sanction Guidelines set out similar factors for consideration, including totality. Those factors include the respondent's ability to pay. Ability to pay was not raised as an issue in this case.

¶ 17 In relation to previous decisions, counsel referred to cases involving somewhat similar circumstances, including *Marrone* (*Re*), 2022 ONCMT 13 and 2023 ONCMT 9; *Plentai* (*Re*), 2022 LNIIROC 4; *Gebhardt (Re)*, [2023] Hearing Panel of the Central Regional Council, MFDA File No. 202072, Panel Decision dated January 26, 2023; McCullough (Re) 2017 IIROC 27, Fairclough (Re) 2020 IIROC 20; *Salina (Re)*, [2022] Hearing Panel of the Pacific Regional Council, MFDA File No. 202081, Panel Decision dated August 30, 2022; *Karasick (Re)*, [2015] Hearing Panel of the Pacific Regional Council, MFDA File No. 201427, Panel Decision dated June 18, 2015; and *Sukman (Re)*, [2016] Hearing Panel of the Central Regional Council, MFDA File No. 201519, Panel Decision dated May 9, 2016 as well as other cases dealing with the misconduct in disclosure of client's confidential information.

¶ 18 The 2015 and 2016 decisions in *Karasick* and *Sukman* imposed fines of only $10,000 and costs of $2,500. However, the more recent decisions have imposed a broader range of fines from $30,000 to $500,000 and costs ranging from $5,000 to $85,000. They also involved suspensions ranging from two years to a permanent prohibition. Obviously, the ranges are broad and turned on the specific misconduct and relevant factors in each individual case.

¶ 19 In considering the reasonableness of the proposed sanctions, we observe that each of the three allegations (conflict of interest as beneficiary, soliciting funds, and breach of confidentiality) involved misconduct that was serious in nature. The nature of the serious misconduct was aggravated by the clients' vulnerability, by the Respondent's conduct in conveying their instructions to their lawyer, by the Respondent's conduct in providing direction that he be referred to as a "friend" rather than as a "financial advisor", by the significant amounts at issue and by the Respondent's conduct in soliciting funds and on more than one occasion. It is not a mitigating factor that the Respondent requested to be removed as a beneficiary given its proximity to his delivery of invoices to the clients for even greater amounts. However, it is relevant that the Respondent's admissions saved CIRO from the consequences of a contested hearing.

¶ 20 In the circumstances and factors of this case, we are satisfied that the sanctions proposed in the Settlement Agreement do not fall "outside a reasonable range of appropriateness" having regard to the conduct at issue and "taking into account the settlement process and the fact that the parties have agreed": *Milewski, supra.*

CONCLUSION

¶ 21 For these reasons, the panel accepted the Settlement Agreement at the conclusion of the hearing on October 25, 2023.

Dated at Toronto, Ontario this 27 day of November 2023.

"Susan Lang"

Susan Lang, Chair

"Linda Anderson"

Linda Anderson

"Robert White"

Robert White

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