Re Jindal

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Vikram Jindal

2023 CIRO 29

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: October 27, 2023 in Toronto Ontario
Decision: October 27, 2023
Reasons for Decision: December 23, 2023

Hearing Panel:
Frederick H. Webber Chair
Cas Litwin, Industry Representative
Kenneth Mann, Industry Representative

Appearances:
Molly McCarthy, Enforcement Counsel
Vikram Jindal, Respondent

REASONS FOR DECISION

INTRODUCTION

¶ 1 This was a settlement hearing pursuant to a Settlement Agreement between the Canadian Investment Regulatory Organization ("CIRO") and Vikram Jindal ("the Respondent") dated October 4, 2023 (the "Settlement Agreement"), a copy of which is attached hereto, in which the Respondent admitted to the following contravention of the Mutual Fund Dealer Rules:

> Between July 28, 2017 and September 28, 2021, the Respondent permitted their licensed assistant to conduct trading activity in respect of 15 clients who resided in provinces where the licensed assistant was not registered, contrary to the Dealer Member's policies and procedures and Mutual Fund Dealer Rules 1.1.5, 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1) (formerly MFDA Rules 1.1.5, 2.1.1, 1.1.2 and 2.5.1)

¶ 2 Pursuant to the Settlement Agreement, the Respondent accepted the following sanctions:

(a) a fine in the amount of $5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b);

(b) costs in the amount of $2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to Mutual Fund Dealer Rule 7.4.2;

(c) the Respondent shall in the future comply with Mutual Fund Dealer Rules 1.1.5, 2.1.1, 1.1.2 and 2.5.1 (formerly MFDA Rule 1.1.5, 2.1.1, 1.1.2 and 2.5.1); and

(d) the Respondent shall attend on the date set for the Settlement Hearing.

¶ 3 The relevant facts are set out in section IV of the Settlement Agreement.

ANALYSIS

STANDARD OF CONDUCT- RULE 2.1.1

¶ 4 Mutual Fund Dealer Rule 2.1.1 prescribes the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires, among other things, that:

> Each Member and Approved Person of a Member shall: deal fairly, honestly and in good faith with its clients; observe high standards of ethics and conduct in the transaction of business; and not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.

TRADING OUTSIDE JURISDICTION- RULE 1.1.5(a)

¶ 5 Pursuant to Mutual Fund Dealer Rule 1.1.5(a), Approved Persons (such as the Respondent) are only permitted to conduct securities related business on behalf of a Dealer Member if they are registered or licensed in the manner necessary, and are in good standing, under the applicable legislation in the province or territory where the Approved Person proposes to act.

¶ 6 At all material times, the Respondent was registered with Quadrus Investment Services Ltd. (the "Dealer Member") to conduct securities related business in eight Canadian provinces. The Respondent was registered in provinces where clients whose accounts the Respondent serviced resided.

¶ 7 EF was the Respondent's licensed assistant. However, unlike the Respondent, EF was only registered to conduct securities related business on behalf of the Dealer Member in the province of Ontario.

¶ 8 MFDA Panels have held that engaging in securities related business beyond the terms of the dealing representative's registration is a breach of Mutual Fund Dealer Rules 1.1.5 and 2.1.1 (formerly MFDA Rules 1.1.5 and 2.1.1) and circumvents the Dealer Member's ability to supervise the activities of its Approved Persons.

> *Potter (Re)* [2012] Hearing Panel of the Central Regional Council, MFDA File No. 201038, Panel Decision dated January 24, 2012;
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> *Martin (Re)* [2016] Hearing Panel of the Central Regional Council, MFDA File No. 201627, Panel Decision dated November 11, 2016;
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> *Simmons (Re)* [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201894, Panel Decision dated January 25, 2019.

¶ 9 As reflected in paragraphs 14-16 of the Settlement Agreement, the Respondent permitted EF to contact clients that were serviced by the Respondent to obtain trading instructions and process transactions under the Respondent's representative code even though he knew or ought to have known that some of those clients resided in provinces where EF was not registered.

DEALER MEMBER POLICIES AND PROCEDURES- RULE 2.5.1

¶ 10 Mutual Fund Dealer Rule 2.5.1 requires Dealer Members to establish policies and procedures to ensure the handling of their business is in compliance with CIRO by-laws, rules, and policies and applicable securities legislation. It is well established that Approved Persons have a corresponding obligation to comply with those policies and procedures pursuant to Mutual Fund Dealer Rule 1.1.2.

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

¶ 11 As the Hearing Panel stated in *Franco (Re)*:

> The obligation of Approved Persons to comply with the policies and procedures of the Member that they are registered with is a cornerstone of the self-regulatory system. When Approved Persons disregard those obligations, the Member's ability to supervise the conduct of such Approved Persons and protect the interests of clients and the public is undermined.
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> *Franco (Re)* [2011] Hearing Panel of the Prairie Regional Council, MFDA File No. 201016, Panel Decision

dated May 6, 2011 at para. 38.

¶ 12 The failure to comply with the Dealer Member's policies and procedures also constitutes a contravention of the standard of conduct, and its requirements that an Approved Person observe high standards of ethics and conduct in the transaction of business and not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.

Franco (Re), *supra* at para. 43, Misconduct.

¶ 13 In *Botha (Re)*, 2021 ABASC 11 (CanLii), at paras. 113, 152 – 155, the Alberta Securities Commission dismissed an appeal of a MFDA decision and upheld the MFDA's position that the interaction between Rules 2.5.1 and 1.1.2 establish that an Approved Person must comply with the Dealer Member's policies and procedures.

¶ 14 In the current matter, at all material times, the Dealer Member's policies and procedures required assistants who are registered to conduct securities related business to only place trades in jurisdictions in which they are registered.

¶ 15 As such, by conducting securities related business in jurisdictions in which EF was not registered, EF contravened the Dealer Member's policies and procedures.

¶ 16 The Respondent permitted EF to conduct securities related business in jurisdictions where EF was not registered and as such, the Respondent also contravened the Dealer Member's policies and procedures.

¶ 17 Prior Hearing Panels have held that, where an Approved Person has contravened the policies and procedures of the Dealer Member, the Approved Person has contravened Mutual Fund Dealer Rules 1.1.2 and 2.5.1.

Collymore (Re) [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202214, Panel Decision dated December 14, 2022 at para. 14,

Frank, *supra* at paras. 56-58.

Pekel (Re) [2021] Hearing Panel of the Central Regional Council, MFDA File No. 202007, Panel Decision dated January 7, 2021, supra at para. 36.

¶ 18 By contravening the Dealer Member's policies and procedures by failing to ensure EF was only conducting securities related business in jurisdictions in which EF was registered, the Respondent contravened Mutual Fund Dealer Rule 1.1.2 (as it relates to 2.5.1).

GENERAL PRINCIPLES RE ACCEPTANCE OF SETTLEMENT AGREEMENTS

¶ 19 Pursuant to Mutual Fund Dealer Rule 7.4.4.3, a Hearing Panel has two options with respect to a settlement agreement. It may either accept the settlement agreement or reject it.

¶ 20 The Panel agrees that it ought to accept the Settlement Agreement as the proposed resolution falls within the reasonable range of appropriateness having regard to the nature of the conduct admitted by the Respondent and CIRO's regulatory objective of protecting the public.

¶ 21 The role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As was stated by the Hearing Panel in *Sterling Mutuals Inc. (Re)*, quoting the reasoning 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.
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> *Sterling Mutuals Inc. (Re)*, [2008] Hearing Panel of the Central Regional Council, MFDA File No. 200820, Reasons for Decision dated September 3, 2008, at para. 37, *Milewski (Re)*, [1999] I.D.A.C.D. No. 17,

Ontario District Council Decision dated July 28, 1999, at p. 10.

¶ 22 The British Columbia Securities Commission has expressed approval of settlements as a practical and efficient manner of addressing misconduct in the securities industry, stating:

> Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. . . . . [Settlements] provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation. Enforcement is rarely a concern because the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing. Or, they can settle some matters, and direct their resources to the matters that are in dispute, and therefore to be resolved by way of a [contested] hearing.
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> *British Columbia Securities Commission v. Seifert*, 2007 BCCA 484 at para. 31.

GENERAL CONSIDERATIONS RE ACCEPTANCE OF SETTLEMENT AGREEMENTS

¶ 23 Hearing Panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

(a) whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;

(b) whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;

(c) whether the settlement agreement addresses the issues of both specific and general deterrence;

(d) whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;

(e) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;

(f) whether the settlement agreement will foster confidence in the integrity of the MFDA (now CIRO); and

(g) whether the settlement agreement will foster confidence in the regulatory process itself.

Jacobson (Re), [2007], Hearing Panel of the Prairie Regional Council, MFDA File No. 200712, Panel decision dated July 13, 2007, at para. 68.

¶ 24 The Hearing Panel agrees that, in this case, it should accept the proposed settlement based upon these principles.

SPECIFIC FACTORS RE APPROPRIATENESS OF PENALTY

¶ 25 Factors which Hearing Panels frequently consider 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 Ontario Regional Council, MFDA File No. 200509, Reasons for Decision dated February 21, 2006, at para. 85.

¶ 26 The Panel also referred to the MFDA's Sanction Guidelines, which came into effect on November 15, 2018 and continue to apply to proceedings conducted by Hearing Panels of CIRO. The Guidelines are not mandatory or binding on the Panel, but provide a summary of the key factors upon which discretion can be exercised consistently and fairly. The Guidelines recommend consideration of many of the same factors that have been applied in previous cases and are listed and applied above.

¶ 27 The Panel agreed with CIRO that emphasis should be placed upon the following factors:

Nature of the Misconduct

¶ 28 For the reasons described above, trading outside one's jurisdiction is a serious breach of Mutual Fund Dealer Rules 1.1.2, 1.1.5, 2.1.1 and 2.5.1. Similarly, permitting a licensed assistant to engage in trading activity outside one's jurisdiction warrants disciplinary penalties.

¶ 29 Rule 1.1.5 restricts Dealer Members' reliance on Approved Persons who are properly registered to conduct business on their behalf. Accordingly, by permitting EF to service clients in provincial jurisdictions where EF was not registered, the Respondent undermined compliance by the Dealer Member with its regulatory obligations.

The Respondent's Recognition of the Seriousness of the Misconduct

¶ 30 The Respondent has acknowledged that the admitted misconduct constitutes a serious contravention of the Dealer Member's policies and procedures and CIRO's rules.

¶ 31 By entering into this Settlement Agreement, the Respondent has accepted responsibility for their misconduct and has saved the Corporation the time, resources and expenses associated with a contested disciplinary hearing.

The Respondent's Past Conduct

¶ 32 The Respondent has not previously been the subject of MFDA or CIRO disciplinary proceedings.

Deterrence

¶ 33 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. As stated by the Supreme Court of Canada in *Cartaway Resources Corp. (Re)*:

> The Oxford English Dictionary (2nd ed. 1989), vol. XII, defines "preventive" as "[t]hat anticipates in order to ward against; precautionary; that keeps from coming or taking place; that acts as a hindrance or obstacle". A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction under s. 162. The respective importance of general deterrence as a factor will vary according to the breach of the Act and the circumstances of the person charged with breaching the Act.
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> *Cartaway Resources Corp. (Re)*, 2004 SCC 26 at para. 61

¶ 34 The proposed penalty will specifically deter the Respondent from engaging in similar activity by imposing a meaningful sanction upon the Respondent which reflects the seriousness of the misconduct at issue.

¶ 35 The proposed penalty will also act as a general deterrent by reinforcing the message that dealing representatives must be aware of the limits of their registerable activity and must conduct securities related business only within their registered jurisdiction.

PREVIOUS DECISIONS MADE IN SIMILAR CASES

¶ 36 The Panel reviewed the following previous cases referred to it by CIRO counsel and agreed that the proposed penalties are consistent with the penalties imposed by hearing panels in those cases. This conclusion takes into account that the Respondent repaid $2400 to their Member:

Collymore, *supra*

Park (Re) [2023], Hearing Panel of the Pacific District, CIRO File No. 202260, Panel decision dated August 28, 2023.

Meunier (Re) [2016] Hearing Panel of the Prairie Regional Council, MFDA File No. 201657, Panel Decision dated December 5, 2016.

Barak (Re) [2016] Hearing Panel of the Central Regional Council, MFDA File No. 201635, Panel Decision dated September 9, 2016.

CONCLUSION

¶ 37 Having regard to the nature of the misconduct at issue in this proceeding and the application of the legal principles and factors described above, the Panel has concluded that the Settlement Agreement is within the reasonable range of appropriateness and is therefore accepted.

Dated at Toronto, Ontario this 23 day of December 2023.

"Frederick H. Webber"

Frederick H. Webber, Chair

"Cas Litwin"

Cas Litwin, Industry Representative

"Kenneth Mann"

Kenneth Mann, Industry Representative

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