

# Re Khaldi

IN THE MATTER OF:

**The Mutual Fund Dealer Rules**

**and**

**Adib Khaldi (also known as “Deebo”)**

2024 CIRO 10

Canadian Investment Regulatory Organization  
Hearing Panel (Nova Scotia District)

Heard: September 26, 27 and December 8, 2023, in Halifax, Nova Scotia (via videoconference)  
Decision (Misconduct): December 8, 2023  
Reasons for Decision (Misconduct): January 15, 2024

**Hearing Panel:**

R. Scott Peacock, Chair  
Jason P. Downey, Industry Representative  
Patrick Galarneau, Industry Representative

**Appearances:**

Paul Blasiak, Senior Enforcement Counsel, CIRO  
Tyler Beazer, Enforcement Counsel, CIRO  
Adib Khaldi, Respondent (present)

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## REASONS FOR DECISION

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### INTRODUCTION

¶ 1 By Notice of Hearing dated October 5, 2022, a proceeding was commenced in respect to Adib Khaldi alleging three violations of the By-Laws, Rules or Policies of the MFDA:

**Allegation #1:** Between July 2020 and September 2020, the Respondent engaged in securities related business outside the Member by providing investment advice to individuals in respect of non-mutual fund securities through the use of an online forum, contrary to MFDA Rules 1.1.1, 2.1.1, and 1.1.2 (as it relates to Rule 2.5.1).

**Allegation #2:** Between July 2020 and September 2020, the Respondent engaged in an unapproved outside activity by receiving monthly subscription payments in relation to an online forum where he provided investment advice to individuals, contrary to the Member’s policies and procedures and MFDA Rules 1.3, 2.1.1, and 1.1.2 (as it relates to Rule 2.5.1).

**Allegation #3:** Between July 2019 and January 2020, the Respondent processed 18 transactions in respect of 13 clients as redemptions and purchases, rather than as switches, thereby:

- a) Engaging in conduct which gave rise to a conflict of interest the Respondent failed to disclose to the Member, or ensure was addressed by the exercise of responsible business judgement influenced only by the best interest of the client, contrary to MFDA Rules 2.1.4 and 2.1.1; or

b) Failing to comply with the Members policies and procedures with respect to the processing of trades as switches contrary to MFDA Rules 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1).

¶ 2 The Respondent filed a Reply on 3 January 2023 denying the allegations in the Notice of Hearing. In Reply the Respondent “partially agreed” with Allegation #3 saying he had not acted in self-interest but rather in the client’s best interest.

¶ 3 The Respondent was registered between 11 December 2018 and 16 September 2020 as a dealing representative in Nova Scotia with Scotia Securities Inc. (“SSI”) a former member of the MFDA and currently a dealer member of the Canadian Investment Regulatory Organization (“CIRO”). Having been terminated by SSI the Respondent has not been registered in any capacity since 16 September 2020.

¶ 4 The issue for the panel’s determination was whether the allegations were borne out by the evidence presented and whether Staff had established upon the balance of probability the facts found by the panel warranted a finding that the Respondent had committed the alleged allegations.

### BACKGROUND

¶ 5 A first appearance was held by video conference before a public member of the Atlantic Regional Council of the MFDA on 1 December 2022. Interim appearances were held on 4 April 2023 and 19 June 2023 addressing scheduling and procedural matters.

¶ 6 By Notice of Motion dated 8 September 2023 Staff sought leave to amend the Notice of Hearing and an order abridging time for service of the Notice of Motion. A hearing was conducted on 13 September 2023. Upon hearing the parties and consideration of their submissions and the affidavit of the investigator Tim Fallows; the Respondent having declined to cross examine; an order was made granting the relief sought.

¶ 7 The amendment sought to the Notice of Hearing did not materially effect the ability of the Respondent to make full answer and defence to the allegations and related to correcting dates and the number of clients and transactions. The Respondent sought an adjournment. The motion was denied as there was no new materials effecting full answer and defence arising from the amendments.

¶ 8 The Hearing on the Merits was heard on the 26th and 27th of September 2023. Written submissions and reply to be filed before the 8th of December date for oral submissions. The Hearing on the Merits concluded on the 8th of December 2023.

¶ 9 After hearing and consideration of the affidavit and viva voce evidence of Staff, Respondent, and witnesses together with oral and written submissions the panel deliberated. The panel returned a finding that Staff had made out all three of the allegations. The Respondent had violated MFDA By-Laws, Rules, and Procedures as alleged. The matter was adjourned to 15 February 2024 for submissions in respect to an appropriate penalty.

### ANALYSIS:

¶ 10 During the proceedings, the Respondent repeatedly claimed and emphasised that Simple Picks was a private journal to record his own investments activities. Not only was it a private journal but he operated it anonymously using the pseudonym “Deebo.” He had not intended the Simple Picks site to be associated with him personally. The Respondent alleged that the unmasking of himself as the operator of Simple Picks was a breach of his privacy rights and a breach of the Charter of Rights and Freedoms.

¶ 11 CIRO and its predecessor the MFDA are creatures of contract and not of statute. The Charter does not apply in situations where the individual by contracts accepts certain responsibilities and obligations to gain access to a self-regulated industry. The individual also undertakes and accepts to be bound by the rules and regulations of the self-regulated industry. This issue was considered in *Re: Castonguay*.<sup>1</sup> The Panel stated:

“Indeed, The Charter, according to its s. 32, applies to the Parliament of Canada and the provincial

<sup>1</sup> 2012 IIROC 42 pp 14

legislatures. It also applies to bodies created by federal or provincial statute, even those independent of government when exercising a statutory authority.”

In the matter of *IIROC v Marc Beaudoin* the Quebec Court of Appeal addressed the contractual nature of the Respondents relationship with the regulator:

“In the case at hand, the SRP’s powers to govern and discipline its members has a contractual foundation which becomes enforceable under the effect of recognition.”<sup>2</sup>

The Respondent’s position in respect to an alleged Charter violation is not tenable nor applicable.

### **ALLEGATION #1**

¶ 12 The issue to be decided was whether the Respondent ‘s conduct in respect to Simple Picks was securities related business outside the Member. What constitutes securities related business is defined by MFDA By-Law No 1, now Mutual Fund Dealer 1A:

“...any business or activity (whether or not carried on for gain) engaged in directly or indirectly, which constitutes trading or advising in securities for the purposes of applicable securities legislator in any jurisdiction of Canada.”

The Panel considered whether the Respondent was engaged in activity which was proscribed by the By-Laws. Further was any such activity in respect to advising or trading in securities.

¶ 13 Staff received a METS report from SSI that indicated that the Respondent was operating an online site through the platform Discord. Staff investigators completed an online search and found the Web Site Super Picks. Investigator Tim Fallows’ affidavit (“Fallows Affidavit”); received in evidence without objection; sets forth in detail his findings. Of note for the Panel were screen shots stating the following:

- a) “Simple Picks beats the market Gave commentary whole way. Recognized over 20% profits on this play.”
- b) “Weekly stock market tips and analysis “10+ years using algorithmic trading” join our discord to learn from our advanced trading strategies.”
- c) “Our discord link is our bio. Please DM me for access if you’d like to Join.”
- d) “Welcome to Simple Picks we provide live investment services for our client base in real time.”<sup>3</sup>

¶ 14 During Staff counsel’s cross examination of the Respondent he confirmed, under affirmation, that he was “Deebo” and that the postings on the Simple Picks Discord site were his.<sup>4</sup> The Respondent admitted in response to cross examination that he had charged a fee for persons to obtain a subscription to access Simple Picks; payment made through his personal PayPal account:

Q. “...while you were registered with SSI you charged subscribers of Simple Picks \$49.99 per month to access Simple Picks, is that correct?”

A. “As a donation, correct.”

¶ 15 Contrary to Mr. Khalid’s assertion that Simple Picks was a personal journal and for entertainment purposes, the Panel finds that the inclusion of buy and sell advice together with stop loss instructions constitutes giving advice to any person who accessed the site. The Panel notes that the posts were addressed to “@everyone” on the Discord web site, giving broad access to his advice and opinions. The Fallows Affidavit and the Respondent’s evidence under cross examination cannot reasonably nor credibly construed as a personal journal but rather as advice to anyone who accessed the Simple Picks. The Respondent in his answer during

<sup>2</sup> 2011 QCCA 2247 p. 35

<sup>3</sup> Affidavit of Tim Fallows, exhibit 9, ex. 5.

<sup>4</sup> Transcript of Proceedings 27 September 2023 pp 61/62

cross examination was that he used the word “recommended” in his communications on the Simple Picks site:

A.” ...Because let’s just say, for example, the one I can see in front of me here, August 13th BUY ROKU at 147. Well, if one of the subscribers or people on the platform looked at ROKU at the time and it was at 150, I—that—whatever I recommended is now null to them because they didn’t see that specific message at the time it was sent out.”

¶ 16 The Respondent was questioned about a post, dated July 29th, 2020 with a subscriber:

Q. “... Part of all this is you don’t need to stress/or make your own decisions. I handle the trades from start to finish?”

A. “Correct. In terms of identifying the security and providing my opinion, I handle my own trade, from start to finish, if you want to listen to my opinion, good luck, I make my own. You don’t need to make your own decision because you’re listening to my opinion.”<sup>5</sup>

¶ 17 The Respondent filed several “affirmations” of subscribers which were received in evidence by consent notwithstanding that notice had not been properly provided. He called Mr. Ayman Nagi in respect to his affirmation entered in evidence as exhibit #15, dated 26 September 2023. During his cross-examination Mr. Nagi was asked how he became aware of Simple Picks:

Q. “How did you stumble upon Simple Picks?”

A. “we have each other on social media, so he had advertised it or something on one off his stories.”<sup>6</sup>

Advertising the Simple Picks site and soliciting subscription fees is not consistent with Simple Picks being a personal journal. The Panel finds the Respondent’s evidence on this point not to be credible.

¶ 18 The Panel has difficulty assigning weight to the attestations submitted by the Respondent in his defence.<sup>7</sup> The witnesses were geographically diverse in different countries and continents. They were all friends or associates of the Respondent. The attestations were almost identical in wording and format. The attestations were signed the night before or the day of the hearing. Mr. Tariq Khaldi, a cousin of the Respondent being in the UK stated in cross-examination:

Q. “Okay. So, now your—so you’re changing your evidence it started with you wrote everything and not its Adib has written one of the paragraphs.”

A. “I said earlier that we co-wrote it. And no yeah, fair enough at the beginning yeah, I did say I wrote it, but you know, it, it’s a co-written document based on his knowledge and also based on the situation that he’s in that its providing testimony for...”<sup>8</sup>

The Respondent also called Mr. Fawzi Ayoub as a witness in respect to his affirmation dated 27 September 2023. In cross examination Mr. Ayoub was questioned about the circumstance surrounding his affirmation. Mr. Ayoub responded to staff’s question:

Q. “You swore, an affirmation dated September 27, 2023, regarding this case?”

A. “I’m not sure what an affirmation means.”

Q. “Who gave you that document?”

A. “Adib.”

Q. “Did you just sign it, or did you change anything on it?”

A. “I read it and signed it.”

Q. “No - I know you signed it, but did you write it? Did you change anything on it after Adib gave it to

<sup>5</sup> Transcript of Proceedings 27 September 2023 pp 90/91

<sup>6</sup> Transcript of proceedings 27 September 2023 pp 133/144 l. 22/1

<sup>7</sup> Exhibits 15, 16, 17, 18

<sup>8</sup> Transcript of proceedings 27 September 2023 p 148 l. 4/21

you?”

A. “No, no I did not”<sup>9</sup>

The Panel finds these attestations do not lend any credible support to the Respondent’s response to the allegations, The Panel finds that the Simple Picks activity of the Respondent, his making specific recommendations for stock purchases and sales, investing strategies and receipt of remuneration however modest, constitutes business activities outside the Member in violation of MFDA Rule 1.1.1, 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1).

## ALLEGATION #2

¶ 19 The second allegation of the Respondent engaging in unapproved activity is closely related to the factual findings made in respect to allegation number one. The issue is having found that there was business activity outside the member, was the business activity unapproved?

¶ 20 Enforcement Counsel called Neal Huntley Weston, Chief Compliance Officer for SSI to testify. Mr. Weston testified that at all material times the Respondent was registered with SSI as a mutual fund representative. The Respondent was not registered to provide advice in respect to non-mutual fund products.

¶ 21 Mr. Weston’s testimony was that SSI had no connection to Simple Picks operated by the Respondent and that no securities related business was done for the accounts of SSI nor was SSI aware that the Respondent was operating Simple Picks.

¶ 22 Mr. Weston’s evidence was that the Respondent never disclosed or sought approval for Simple Picks:

Q. “Did Mr. Khaldi ever disclose to or seek approval from Scotia Securities to engage in any outside activities in respect to Simple Picks?”

A. “No, he did not,”<sup>10</sup>

Further Mr. Weston stated that SSI would not have approved outside activity for a stock picking service.<sup>11</sup>

¶ 23 In response to a question posed by Mr. Blasiak during the course of the investigation the Respondent admitted that he had not sought the approval of the Member for an outside business activity:

“Mr. Blasiak: on that note, did you ever disclose Simple Picks to anyone at Scotia?

Mr. Khaldi: Never, ever, ever...:”<sup>12</sup>

¶ 24 Having considered the evidence and accepting the evidence that the Respondent had engaged in securities related business outside the Member; the evidence of Mr. Weston’s and the Respondent; the Panel finds as fact that the Respondent engaged in unapproved activities as set forth in Allegation number two.

## ALLEGATION #3

¶ 25 The third allegation is that the Respondent between May 2019 and May 2020 processed transactions for twenty-three clients as redemptions and purchases rather than as switches giving rise to a conflict of interest and failing to comply with the Member’s policies and procedures.

¶ 26 The standard of conduct required of representatives is set out in Rule 2 Business Conduct, requiring each member and approved person to:

- a) deal fairly, honestly and in good faith with clients,
- b) observe high standards of ethics and conduct,
- c) not to engage in practices detrimental or unbecoming to the public interest, and

<sup>9</sup> Transcript of proceedings 27 September 2023 pp 167/168

<sup>10</sup> Transcript of Proceedings 26 September 2023 p 85 l. 4/7

<sup>11</sup> Transcript of Proceedings 26 September 2023 p 89 l. 11/16

<sup>12</sup> Tim Fallows Affidavit, exhibit 5, exhibit 3 p 150 l. 11/16

d) to be consistent with standards set forth in Rule 2.1.1 or as may be prescribed by the Corporation.

¶ 27 Rule 2.5.1 requires each Member to establish and maintain policies and procedures that ensure compliance with the By-Laws, Rules, and Policies. Rule 1.1.2 requires each approved person to comply with the operational standards of practice and business conduct of each Member and securities legislation. The issue for determination in respect to allegation #3 is whether the Member had such standards of practice and policies. Were those standards and policies communicated to and made available to the representative Approved Person? Did the Respondent fail to comply and meet the standards of practice and adhere to the policies as required by the Rules?

¶ 28 It was the evidence of Mr. Weston that SSI had policies in place for several years requiring transactions be conducted as switches not as redemptions and purchases within the same fund family.<sup>13</sup> The policy having been in place and communicated during the time the Respondent was employed by Scotia Bank.

¶ 29 Mr. Weston testified that a notice had been sent to all representatives in respect to transactions of clients to ensure that representatives proceeded in accordance with member policy and procedure. The policy in effect at all material times was that representatives must execute the transactions as a switch rather than a redemption and purchase.<sup>14</sup> These policies and standards of practice were communicated to representatives by email and posted on the bank's intranet for employees' attention. Representative's onboard training, 90- and 180-days training as a new registrant covered the policy as well as annual Mutual Fund Representative Certification training.

¶ 30 During the course of an interview with Staff investigator the Respondent admitted that he knew that the transactions within the same family of funds were to be executed as switches rather than redemptions and purchases. He also admitted to knowing a switch would not provide CARS credit; enhancing his performance rating and possible bonus remuneration.<sup>15</sup>

¶ 31 The evidence of Ms. Paradis, investigator for SSI provided clear and cogent evidence that the Respondent violated policy in respect to twenty-three clients, exposing the clients to market risks and earning Customer Advice Results ("CARS") credits. The clients being exposed to market risks while their investments were out of the market between redemption and purchase dates:

"... all of the mutual funds listed in the table below are of the same fund family (i.e. they are all Scotia Funds), and there were no system limitations which would have prevented the Respondent from processing switches between any of these mutual funds."<sup>16</sup>

¶ 32 The Panel notes from the evidence of New Weston, Chief Compliance Officer for SSI that the Respondent's actions in redemption and purchase within the same fund family would increase his opportunity to earn a bonus in compensation. SSI dealing representatives are salaried employees. The representative can earn performance credits (CARS) if the representative meets or exceeds their sales targets.<sup>17</sup>

¶ 33 Khaldi's actions in not processing the transactions as switches rather than redemptions and purchases exposed his clients to market risk and losses and increased the likelihood, he would earn a bonus. His conduct placed him in a clear conflict of interest.

## CONCLUSION

¶ 34 The Panel has heard the evidence of the parties, reviewed, and considered the exhibits tendered and entered as evidence for the hearing together with the written and oral submissions of Staff and the Respondent. The Panel finds that Adib Khaldi (also known as "Deebo") committed misconduct as set forth in the amended Notice of Hearing.

<sup>13</sup> Transcript 26 September 2023 p 92 l. 5/16

<sup>14</sup> Exhibit 6 Affidavit of Neal Weston 25 September 2023d ex. #5

<sup>15</sup> Tim Fallows Affidavit, exhibit #5 pp 14/16

<sup>16</sup> Melodie Paradis Affidavit 23 September 2023 ex. # 11 pp 3/11

<sup>17</sup> Neal Weston Affidavit, ex. # 6 25 September 2023 p. 5

¶ 35 The Sanctions Hearing was adjourned on consent of the parties until 15 February 2024 at 10:00 a.m. (Atlantic) for submissions in respect to penalty.

Dated at Halifax, Nova Scotia this 15 day of January 2024.

“R. Scott. Peacock”

R. Scott Peacock, Chair

“Jason P. Downey”

Jason P. Downey, Industry Representative

“Patrick Galarneau”

Patrick Galarneau, Industry Representative

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