Re Ristovski

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Dejan Ristovski

2024 CIRO 15

Canadian Investment Regulatory Organization
Hearing Panel (Alberta District)

Heard: August 30-31, 2023, in Calgary, Alberta (via videoconference)
Decision (Misconduct): August 31, 2023
Decision (Penalty) and Reasons: January 22, 2024

Hearing Panel:
Robert Stack, Chair
Sean Shore, Industry Representative
Gregory Wiebe
Appearances:
Molly McCarthy, Enforcement Counsel
Dejan Ristovski, Respondent, not in attendance or represented by counsel

DECISION AND REASONS

I. INTRODUCTION

¶ 1 Below we set out reasons for decision of a Canadian Investment Regulatory Organization ("CIRO") hearing panel (the "**Hearing Panel**") assembled to rule on allegations that CIRO staff ("**Staff**") have made against Dejan Ristovski (the "**Respondent**" or "**Mr. Ristovski**").

¶ 2 Mr. Ristovski did not participate at the hearing into this matter. Based on the evidence provided, the Hearing Panel made an oral decision at the hearing that confirmed the allegations against Mr. Ristovski. We provide reasons for that decision below.

¶ 3 At the hearing, Staff also made submissions regarding penalties that should apply to Mr. Ristovski. The Hearing Panel reserved on the issue of penalty. Below the Panel provides its decision on that issue as well.

¶ 4 We note that this proceeding was commenced by the New Self–Regulatory Organization of Canada ("**SROC**"). The SROC was created on January 1, 2023, as a consolidation of the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association of Canada (the "**MFDA**"). SROC later became CIRO. We refer to these entities globally as the "Corporation" unless it is necessary to refer to a particular one of these continued corporations. Under its Bylaw 1, CIRO retains jurisdiction over members of the MFDA in relation to violations of the MFDA by-laws or rules that predate the merger described above.[1]

ALLEGATIONS

[1] Amended and Restated By-law No. 1, being a General By-law of the Canadian Investment Regulatory Organization, Section 14.6

¶ 5 An Amended Notice of Hearing in this matter set out the following allegations against the Respondent:

Allegation #1: Between August 17, 2017 and March 2, 2021, the Respondent misappropriated or otherwise failed to account for monies, contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1).

Allegation #2: Between ~~June 1, 2017 and October 18, 2018~~ June 28, 2017 and October 26, 2018, the Respondent engaged in personal financial dealings with a client which gave rise to a conflict or potential conflict of interest that he failed to disclose to the Dealer Member or otherwise ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the policies and procedures of the Dealer Member and Mutual Fund Dealer Rules 2.1.4, 2.1.1, and 1.1.2 (as it relates to Mutual Fund Dealer Rule 2.5.1) (formerly MFDA Rules 2.1.4, 2.1.1, 1.1.2, and 2.5.1, respectively).

Allegation #3: Commencing June 18, 2021, the Respondent failed to cooperate with an investigation by MFDA Staff into his conduct, contrary to Mutual Fund Dealer Rule 6.2.1 (formerly section 22.1 of MFDA By-Law No. 1).

II. SERVICE AND NON-PARTICIPATION IN HEARING:

¶ 6 Mr. Ristovski did not attend the first appearance in this matter. Staff requested an abridgement for the time for service, permission to serve an Amended Notice of Hearing and an order that it could serve the Respondent at his last known email address. It brought a formal application for this relief and an order was issued. It stated that Staff could serve the Respondent with an Amended Notice of Hearing at the last email address he provided to the dealer member. The order further permitted Mr. Ristovski 10 days to file a reply or otherwise indicate an intention to participate in the proceeding.

¶ 7 The Respondent did not file a reply or appear at the actual oral hearing. The hearing proceeded in his absence pursuant to Rule 7.3. of the Mutual Fund Dealer Rules of Procedure.

III. EVIDENCE

Affidavits and Evidence

¶ 8 The Panel received into evidence two affidavits. One was an affidavit of Allison Howse, Manager of Investigations in the Enforcement Department of the Mutual Fund Dealer Division of CIRO, sworn on August 16, 2023 ("**Howse Affidavit**"). The second was an affidavit of Daren Gerlitz, senior consultant in the Corporate Security department of the Canadian Imperial Bank of Commerce (the "**Bank**"), sworn on August 16, 2023 ("**Gerlitz Affidavit**").

¶ 9 The Respondent did not himself participate in the hearing or provide other evidence. The Respondent also did not make himself available to be interviewed by Staff before the Hearing. Allegation #3 relates to the failure of Mr. Ristovski to cooperate with the investigation of Staff into his conduct. His lack of cooperation did make it difficult for Staff to establish exactly what occurred in some circumstances, as we will more fully describe below.

¶ 10 However, the Gerlitz Affidavit attached a transcript of a brief interview of the Respondent that Mr. Gerlitz conducted. Many of the statements that Mr. Ristovski made to Mr. Gerlitz constituted short admissions of misconduct of one kind or another. The Hearing Panel accepted these statements as admissions against interest and therefore consider them as reasonably accurate and reliable. Where necessary, the Panel made inferences based on the circumstances described in the Gerlitz Affidavit and the Howse Affidavit regarding the conduct of the Respondent. In doing so, we took into consideration the fact that Rule of Procedure 8.4(1)(b) would have permitted the Panel to adopt the allegations set out in the Notice of Hearing as fact.

Registration and Employment History

¶ 11 The Howse Affidavit included information gathered from the National Registration Database ("**NRD**") operated by the Canadian Securities Administrators ("**CSA**"). According to NRD, the Respondent was registered in Alberta between June 14, 2011, and March 2, 2021, as a dealing representative with CIBC Securities Inc. (the

"**Dealer Member**"). After the Dealer Member terminated his registration, Mr. Ristovski ceased to be registered in the securities industry in any capacity.

¶ 12 Before this termination, the Respondent had also been an employee of the Bank.

Creation of Bank Accounts

¶ 13 One of Mr. Ristovski's clients was identified in the two affidavits as investor "TM". She had opened in 2016 two accounts with the Dealer Member: a Registered Retirement Savings Plan and a Locked-In RRSP. The Respondent reported to the Bank when interviewed that he had known TM for around six years before the interview took place in 2021. They had worked together for a time.

¶ 14 TM had never been a client of the Bank itself; according to the findings of a Bank investigation, she had bank accounts elsewhere. Despite that, she reported to Staff that she had received an e-mail on December 2, 2021, indicating that a line of credit account at the Bank in her name had an overdue payment. This apparently led to the discovery that a number of banking products had been opened in her name with the Bank. It was determined that her name had been used to create the following bank products:

a. A line of credit (the "**LOC**") created in August of 2017.

b. a debit card (the "**Debit Card**") created August of 2017.

c. a chequing account (the "**Chequing Account**") opened in November of 2019.

d. a visa card (the "**Credit Card**") created in January of 2021.

(collectively the "**Bank Products**")

¶ 15 An investigation conducted by Mr. Gerlitz concluded that in August of 2017 Mr. Ristovski had forged TM's signature in order to open the LOC and then used his status as a Bank employee to have a debit card linked to the LOC issued. In November 2019, the Respondent used his position to open the Chequing Account and linked it to the Debit Card. Finally, in January 2021, the Respondent again used his position to have the Credit Card issued in the name of TM. He again forged TM's signature on the account opening documents for this product.

¶ 16 The Bank interviewed the Respondent on March 2nd, 2021, and he generally admitted to opening the Bank Products fraudulently. The Bank investigator found the Respondent had forged TM's signature on the application forms for the LOC and the Credit Card, while his "operating ID" was used to open the Chequing Account and issue the Debit Card.

¶ 17 The Bank investigation also indicated that the Respondent supplied his own home addresses on the Bank Products in order to avoid detection of the scheme. He also admitted during the Bank interview to using this tactic.

¶ 18 The Howse Affidavit indicates that Staff communicated with TM. She reported that the Respondent had asked her to dinner shortly after she complained to the Bank. According to TM, the Respondent again admitted to opening the Bank Products. TM otherwise declined a more extensive interview by Staff.

Activity in the Bank Products

¶ 19 Evidence was presented that the Respondent engaged in considerable activity in the Banking Products. An analysis conducted by Staff based on banking records indicates that the Respondent withdrew $29,300.35 between August 2, 2017, and February 21, 2021, from the LOC account. In the same time period he deposited $24,669.30 into the LOC. The Respondent explained to Mr. Gerlitz that he made withdrawals because he could not keep up with divorce payments, while he made payments to the account to meet monthly interest requirements so that the LOC did not go into default. It appears that $8,226.92 was left owing in the LOC account when the Bank closed it.

¶ 20 There is little reason to doubt that the Respondent was responsible for these transactions. Mr. Gerlitz located a Bank photo of the Respondent withdrawing funds from the LOC using the Debit Card. Further, it appears from the Gerlitz Affidavit that these transfers were associated with Mr. Ristovski's Bank ID. Finally, the

Respondent admitted making such transfers in his brief Bank interview and there is no evidence that anyone else knew about the LOC account when these transactions were happening.

¶ 21 Similarly, $508.00 was charged to the Credit Card in the early part of 2021. The evidence indicates that the Respondent created this card, as set out above, and there is no indication anyone else had access to the card. Finally, again, the Respondent admitted to Mr. Gerlitz using the Credit Card. The $508.00 remained owing when the card was cancelled.

¶ 22 In relation to the Chequing Account, the evidence indicates the Respondent began by making a withdrawal on overdraft in December of 2019 of $1,600.00 and he then made total withdrawals of $9,500.00 up to December 31st, 2021. However, deposits of $10,810.00 were also made over that time. The Respondent again admitted engaging in these transactions when interviewed by Mr. Gerlitz. He provided as an explanation for the series of withdrawals and deposits that the deposits were necessary to cover the overdraft.

Other Personal Financial Dealings

¶ 23 When conducting his investigation, Mr. Gerlitz looked at the personal bank account of the Respondent. He noticed transfers from the Respondent to TM that occur between June 28, 2017, and October 26, 2018. These transfers amounted to $10,925. When he asked the Respondent about these transfers, Mr. Ristovski indicated that he had borrowed money from TM and was repaying her.

¶ 24 The Respondent admitted that at the time of these transfers he was aware that he was not "supposed to" borrow money from clients. The Howse Affidavit attaches an extract from a March 2017 Compliance Policy Manual of the Member. It required Approved Persons to disclose to their manager any potential conflicts of interest with clients. An extract from a September 2018 Compliance Policy Manual went further and specifically prohibited personal financial dealings, such as borrowing funds from a client of the Member.

¶ 25 The Respondent did not appear at the hearing to put in any evidence to suggest that he had notified his manager that he had borrowed funds from TM. The Panel can only infer that he did not.

IV. Analysis

Analysis re: Allegation #1

¶ 26 Staff asserted in Allegation #1 that the creation of the Bank Products and the activities in them constitute a misappropriation or failure to account for monies contrary to Mutual Fund Dealer Rule 2.1.1, formerly MFDA Rule 2.1.1. This Rule reads as follows:

> 2.1.1 Standard of Conduct
>
> Each Member and each Approved Person of a Member shall:
>
> (a) deal fairly, honestly and in good faith with its clients;
>
> (b) observe high standards of ethics and conduct in the transaction of business;
>
> (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and
>
> (d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

¶ 27 This provision requires ethical conduct on the part of Approved Persons. Staff cited several authorities from MFDA panels indicating that the misappropriation of funds from a client constitutes a violation of Rule 2.1.1. This principle applies even when the funds are taken from a bank account and not a mutual fund account.[2]

[2] *Hothi, (Re)* [2020] Hearing Panel of the Prairie Regional Council, MFDA File No. 202012, Panel Decision dated September 29, 2020, SBA. See paragraphs 22 and 23.

¶ 28 The present scenario is an unusual case in the sense that TM was never in possession of the funds in question. Having said that, the Respondent essentially borrowed on TM's credit via the LOC and the Credit Card. Both accounts were in deficit when the Bank stepped in to stop activity. These activities may be called a form of misappropriation and could be said to trigger an obligation to account for funds. They may also be viewed as a form of identity theft, particularly in relation to the creation of and transactions within Chequing Account. In any case, the creation and use of the Banking Products was grossly unethical, and the Panel confirmed the allegation of a breach of Rule 2.1.1.

Analysis re: Allegation #2

¶ 29 Allegation #2 relates to evidence of financial dealings during the period June 28, 2017 and October 26, 2018, between the Respondent and TM. The general allegation is that the Respondent's financial dealings created an undisclosed conflict of interest that was not dealt with in a manner consistent with either Member or Corporation requirements.

¶ 30 Clause 2.1.4 of the Mutual Fund Dealer Rules deals with conflicts of interest. The version of 2.1.4 in the MFDA Rules applicable at the time of the conducts read slightly differently than it does now and required that Approved Persons:

(a) Be aware of actual or potential conflicts of interest with clients;

(b) Disclose such conflicts or potential conflicts to the Member;

(c) Ensure that the conflict is "addressed by the exercise of responsible business judgment influenced only by the best interests of the client.

¶ 31 At the time of the conduct there was no blanket prohibition against borrowing from clients that we now see in Mutual Fund Dealer Rule 2.1.5. However, guidance from the Corporation in MSN-0047 stated:

> Responsible business judgment requires the use of reasonable care and diligence as necessary in the circumstances to address the conflict or potential conflict in the best interests of the client. The appropriate course of action will depend on the nature of the conflict of interest and the client's circumstances. In situations involving a potentially significant conflict of interest, the exercise of responsible business judgment *may require a prohibition on the type of transaction giving rise to the conflict.*" [Emphasis added].
>
> Specific Situations
>
> a) Borrowing from Clients
>
> Borrowing from a client by either the Member or Approved Person raises a significant and direct conflict that in almost all cases will be impossible to resolve in favour of the client.
>
> While such activity is not explicitly prohibited under MFDA Rules, MFDA staff are not aware of any circumstances where Members or Approved Persons proposing to enter into any such arrangements would be able to demonstrate that the conflict has been properly dealt with.

¶ 32 The Respondent stated in his interview that the purpose of the transactions was to satisfy a debt he had incurred to TM. Because he did not cooperate with Staff, the exact nature of the dealings between the parties is obscure. However, we are willing to accept the admission that the Respondent made as accurate and he was indebted to TM.

¶ 33 We find that the debt created a conflict of interest between the Respondent and TM. The debt put Mr. Ristovski in a position where he may have had to choose between TM's interest in repayment and his interest in satisfying other obligations. In so much as Mr. Ristovski appears to have been struggling financially, TM was at risk of losing the amount loaned. We find that the onus was on Mr. Ristovski to show that he took steps to resolve this conflict in the best interests of the client and he did not appear at the hearing to do so. Finally, he did not show that the existence of the loan and the efforts to pay it off were disclosed to the Member.

¶ 34 For these reasons, we find there was a violation of Rule 2.1.4. The conduct fell below professional standards for Approved Persons and therefore represented a violation of Rule 2.1.1 as well.

¶ 35 Further, the Member had policies in place that required, first, the disclosure of any potential conflict to Mr. Ristovski's manager and, later, banned personal financial dealings between clients and Approved Persons. A policy dating from March of 2017 required disclosure of conflicts and potential conflicts to the Member so it could be involved in resolving them. There is no evidence of such disclosure in this case. A policy dating from September of 2018 went further and prohibited borrowing from clients. At this point the loan would have been in existence, but that is all the more reason it should have been disclosed along with any transfers of funds between the parties.

¶ 36 Section Rules 2.5.1 of the MFDA Rules (now the Mutual Fund Dealer Rules) requires members to establish and implement policies and procedures to ensure business is conducted "in accordance with the By-laws and Rules and with applicable securities legislation". Rule 1.1.2 states:

> 1.1.2. Compliance by Members and Approved Persons
>
> (a) Each Member shall comply with:
>
> (i) the By-laws,
>
> (ii) The Rules, and
>
> (iii) applicable securities legislation relating to the operations, standards of practice and business conduct of Members.
>
> (b) Each Approved Person who conducts or participates in any securities related business in respect of a Member in accordance with Rule 1.1.1(c)(i) or (ii) shall comply with the By-laws and Rules as they relate to the Member or such Approved Person.
>
> (i) the Bylaws,
>
> (ii) the Rules, and
>
> (iii) applicable securities legislation relating to:
>
> (A) the operations, standards of practice and business conduct of each Member; and
>
> (B) such Approved Person's operations, standards of practice and business conduct.

¶ 37 Corporation Panels have interpreted the interplay of these provisions to require Approved Persons to follow Member policies and procedures. The Alberta Securities Commission endorsed this view in *Botha (Re)*, 2021 ABASC 11 paras. 113, 152 – 155 (CanLii). Therefore, at the very least, the failure of the Respondent to disclose the debt and the repayment transfers to the Member violated Rules 1.1.2 and 2.5.1.

Analysis re: Allegation #3

¶ 38 The Howse Affidavit provides details of nine separate attempts to contact the Respondent via regular mail, registered mail, telephone or e-mail with demands that he provide information or appear to be interviewed in relation to his dealings with the Bank Products and TM. The residential address used came from an NRD search, while the e-mail address was provided by the Member.

¶ 39 The first of these attempts dated from May 27, 2021, and was a letter sent by registered mail to the Respondent at his last known address on NRD; Staff requested a written statement and supporting information and documentation from Mr. Ristovski relating to the issues raised by TM. The Respondent did not reply to any of these communications. He did sign for the first piece of registered mail. Thereafter, registered mail went unclaimed, but regular mail was not returned through 2021.

¶ 40 On January 14, 2022, Ms. Howse sent the Respondent a letter indicating that an interview would take place on March 11, 2022 and warning him that he may be subject to penalties if he did not attend. The letter was sent by regular mail and a process server made several attempts to deliver it personally at Mr. Ristovski's last known address. This residence appears to be in a condominium or apartment building. The process server used the intercom to request access to the Respondent's unit and left a voicemail when no one replied. Similarly, no one responded to the request for a call back that the process server left on the voicemail. On her last visit, the voicemail was no longer operating.

¶ 41 The Respondent did not attend the March 11, 2022, interview. Several letters sent by regular mail in late 2021 and early 2022 were returned on March 18, 2022, with an indication that the addressee had moved.

¶ 42 Two attempts by Staff to e-mail the Respondent were made in 2022 at his last known e-mail address. He did not respond.

¶ 43 On the balance of probabilities, we conclude that the Respondent was aware of some of these communications and willfully failed to respond to them. He signed for but did not respond to the first Staff inquiry. Further, in light of the admissions he made during the Bank interview, he would have been aware that a serious regulatory investigation was likely.

¶ 44 The Corporation has extensive examination and investigation powers. There has been a continuity of these powers from s. 21 of MFDA By-law No. 1 to Mutual Fund Dealer Rule 6.1. These powers include the right to demand production of documents and to examine current and former registrants, who remain subject to Corporation jurisdiction under Mutual Fund Dealer Rule 7.4.1.4. Where an Approved Person does not respond to Staff's investigation requirements, then the Approved Person has "failed to comply with the provisions of any By-law or Rules of the Corporation" and can be sanctioned under Mutual Fund Dealer Rule 7.4.1.1.

V. SANCTION

¶ 45 Under Mutual Fund Dealer Rule 7.4.1.1, Staff seeks the following sanctions against the Respondent:

(a) A permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any Dealer Member of CIRO registered as a mutual fund dealer, pursuant to Mutual Fund Dealer Rule 7.4.1.1(e);

(b) a fine in the amount of at least $100,000, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b);

(c) costs of $12,587.90 per Mutual Fund Dealer Rule 7.4.2.

¶ 46 For the reasons set out below, we think these penalties should be applied.

¶ 47 Factors that panels are to consider when assessing sanction have traditionally been listed as follows:

(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.

Milewski (Re), [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999 at p. 25.

Laverdiere (Re), [2010] Hearing Panel of the Pacific Regional Council, MFDA File No. 200936, Panel Decision dated May 12, 2010, at para. 22.

¶ 48 In general, we find that most of these factors weigh against the Respondent and there are no mitigating factors we can identify in this case.

¶ 49 The conduct in question was extremely serious. The Respondent contravened basic ethical norms that the public would expect Approved Persons to follow as a matter of course. Such conduct weakens confidence in the integrity of capital markets. The Respondent was experienced enough that he should have known that what he was doing was grossly inappropriate. The conduct was flagrant and deceptive to such an extent that the Panel's view is that he would pose a serious risk were he to seek to act as a mutual fund dealing representative again.

¶ 50 As a result of the Respondent not cooperating in the investigation, it is difficult to know exactly how and to what degree he benefited from his misconduct, but the Panel concludes that on the balance of probabilities he did enjoy financial benefits by leveraging the credit of TM and borrowing money from her. As well, balances were left owing on LOC and Credit Card. His conduct at least put TM at risk of having to prove she was not liable for the Bank Products. She did not suffer a loss because the Bank did not hold her responsible for the LOC or Credit Card. However, the Bank did suffer a loss of around $8,800.00.

¶ 51 Staff cites a number of cases and points out that Corporation panels have penalized severely non-cooperation with investigations. A reason for doing so is that no one should benefit from avoiding scrutiny of his or her misconduct. Cases cited by Staff that the Panel considers similar to the current matter are as follows:

Case Name	Details	Penalty
Vanlandschoot, MFDA File No. 202024, SBA, **Tab 5**.	From May 2018 and July 2018 the Respondent misappropriated at least $5,489.00 from two clients; and failed to cooperate (FTC). The Respondent was both an Approved Person and bank employee	Uncontested Hearing Permanent prohibition $80,000.00 fine $7,500.00 costs
Lam, MFDA File No. 201856, SBA, **Tab 24**.	In July 2013, Respondent misappropriated $5,000.00 from one client and engaged in discretionary trading. The Respondent also failed to cooperate.	Uncontested Hearing Permanent prohibition $100,000.00 fine ($50k re: misappropriation and $50k re: FTC) $7,500 costs
Hothi, MFDA File No. 202012, SBA, **Tab 6**.	From October 25, 2017, and January 8, 2018, the Respondent misappropriated $27,556.59 from two clients and two other individuals; and failed to cooperate. The Respondent was both an Approved Person and bank employee	Uncontested Hearing Permanent prohibition $90,000.00 fine ($40k re misappropriation and $50k re: FTC) $6,500.00 costs

¶ 52 In the circumstances, we consider that the failure to cooperate should attract a fine of $50,000.00 and the Respondent's conduct in relation to the Bank Products and the personal financial dealings with TM merits a fine of $50,000.00. The Respondent is further prohibited permanently from conducting securities related

business in any capacity while in the employ of or associated with any Dealer Member of CIRO registered as a mutual fund dealer.

¶ 53 Staff seeks $12,587.90 of costs for investigator and counsel time spent on the file. The matter was certainly more time consuming than it needed to be as a result of the non-cooperation of the Respondent and these costs are approved. Having said that, the figure was slightly higher than we see in some of the authorities and therefore we award costs of $11,000.00.

Dated at Calgary, Alberta, this 22 day of January 2024.

"Robert Stack"

Robert Stack, Chair

"Sean Shore"

Sean Shore, Industry Representative

"Gregory Wiebe"

Gregory Wiebe