Re Reid

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Ann Marie Reid

2024 CIRO 30

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: February 5, 2024, in Toronto, Ontario (via videoconference)
Decision and Reasons: February 29, 2024

Hearing Panel:
Thomas J. Lockwood, K.C., Chair
Brigitte Geisler, Industry Representative
Timothy Pryor, Industry Representative

Appearances:
Paul Blasiak, Senior Enforcement Counsel, and Samantha Wu, Enforcement Counsel, Canadian Investment Regulatory Organization (CIRO)
Ann Marie Reid, Respondent

DECISION AND REASONS (PENALTY)

I. INTRODUCTION

¶ 1 By Decision and Reasons (Misconduct), dated December 13, 2023, we, unanimously, found, on clear, convincing and cogent evidence, on a balance of probabilities, that Ann Marie Reid ("Respondent") had engaged in the following misconduct:

> **Contravention #1**: Between January 2016 and September 2017, the Respondent accepted a power of attorney for property from client MW, contrary to the Member's policies and procedures and MFDA Rules 2.3.1, 2.1.1 and 1.1.2 (as it relates to MFDA Rule 2.5.1).
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> **Contravention #2**: Between April 2016 and September 2017, the Respondent accepted an appointment to act as executor and trustee of client MW's estate, and between March 2018 and July 2020 accepted an appointment to act as co-executor and co-trustee of client MW's estate, contrary to the Member's policies and procedures and MFDA Rules 2.3.1, 2.1.1 and 1.1.2 (as it relates to MFDA Rule 2.5.1).
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> **Contravention #3**: The Respondent failed to disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, conflicts or potential conflicts of interest that arose between her and client MW when she became aware:
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> (a) between January 2016 and September 2017 that she was or would be appointed as a power of attorney for property of client MW;
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> (b) between January 2016 and September 2017 that she was or would be appointed as an executor and trustee of client MW's estate;

(c) between March 2018 and July 2020 that she was or would be appointed as a co-executor and co-trustee of client MW's estate; and

(d) between January 2016 and July 2020 that she was or would be designated as a beneficiary of client MW's estate,

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 MFDA Rule 2.5.1).

Contravention #4: Between April 2016 and November 2019, the Respondent provided false or misleading responses to questions on compliance information forms that she submitted to the Member, contrary to MFDA Rule 2.1.1.

Contravention #5: Between December 2019 and January 2020, the Respondent borrowed monies from client ME, which gave rise to a conflict or potential conflict of interest which the Respondent failed to disclose to the 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 Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1).

Contravention #6: Between January 2018 and May 2018, the Respondent obtained, possessed, and in some instances used to process transactions, 18 pre-signed account forms in respect of 7 clients, contrary to MFDA Rule 2.1.1.

¶ 2 An Interim Appearance took place before the Hearing Panel on December 20, 2023. At the Interim Appearance, the parties agreed to a scheduling Order with respect to the filing of Written Submissions. The parties agreed that the Penalty Hearing would take place, by videoconference, on February 5, 2024. An Order was made to this effect.

¶ 3 The parties filed their respective Written Submissions in conformity with the terms of the Order.

¶ 4 The Penalty Hearing was conducted before the Hearing Panel on February 5, 2024. At the conclusion of the evidence and the oral submissions, the Hearing Panel reserved its Decision on Penalty.

II. THE EVIDENCE

¶ 5 In her Written Submissions, the Respondent stated as follows:

> "A. At 76 it is highly unlikely that I will be seeking employment.
>
> B. I have already been blead (sic) dry over the past 4 years, and have no way of earning an income – therefore it is my thought that penalty has already imposed." (sic)

¶ 6 In its Reply Submission, Staff quoted the above statements and then submitted that:

> "If the Respondent is asserting an inability to pay a fine, then, as stated in the CIRO Sanction Guidelines: The burden is on the respondent to raise the issue and provide evidence of financial hardship. Evidence of financial hardship should be in the form of sworn affidavits or declarations, along with standard or commonly accepted documents, such as tax returns, bank, and investment account statements, audited financial statements, or other externally verified financial statements."

¶ 7 At the Penalty Hearing, the Respondent did not submit sworn affidavits or declarations. Instead, she produced what purported to be her statement from TD Canada Trust for the period October 31, 2023 to November 30, 2023. It was marked as an Exhibit to the proceedings. Also marked as Exhibits were a list of all of the Respondent's Canada Revenue Agency slips for the 2021 and 2022 tax years.

¶ 8 Staff produced and had marked as an Exhibit, on consent, a land titles search document with respect to 71 Hamilton Street in Toronto.

¶ 9 In cross-examination, the Respondent confirmed that she purchased this property in 2003 for

$288,000. She testified that, in her view, it is worth $1.1 to $1.2 million today. In 2012, she obtained a mortgage on this property for a little over $400,000, on which the balance is, currently, under $300,000.

¶ 10 The Respondent testified that 71 Hamilton Street is a row house. She lives in Unit 2 and has rented out the other unit since 2004. She testified that she currently receives $2,400 in rent per month.

¶ 11 The Respondent testified that she pays all of the expenses for the property and that, while her daughter's name is on title, if the property were to be sold, she, the Respondent, would receive more than half of the net proceeds. She agreed that her share would be a gross figure of $600,000 - $700,000.

¶ 12 The financial material submitted to the Hearing Panel by the Respondent was not submitted in the fashion outlined in the CIRO Sanction Guidelines. However, even accepting, at face value, the numbers put forward by the Respondent, the analysis shows that the Respondent has a significant equity stake in this one asset.

III. POSITION OF THE PARTIES

¶ 13 Staff submitted that the appropriate penalties to be imposed on the Respondent were:

(i) a prohibition of at least three years on the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any Dealer Member of CIRO that is registered as a mutual fund dealer;

(ii) a fine in the amount of $100,000; and

(iii) costs in the amount of $20,000.

¶ 14 Staff made extensive written and oral submissions in support of its position. With respect to the issue of costs, Staff filed a Bill of Costs in a total amount of $51,287.50. The Respondent took no issue with either the quantum or the contents of this Bill of Costs. The Staff request of $20,000 was for only a portion of the actual costs.

¶ 15 The position of the Respondent with respect to Penalty, in her written submissions, is reflected above in paragraph 5, namely that "I have already been blead (sic) dry over the past 4 years, and have no way of earning an income – therefore it is my thought the penalty has already imposed." (sic)

¶ 16 When it came time for the Respondent to make oral submissions as to penalty, she only questioned Staff's position on what she stood to inherit from MW's estate. The Respondent chose not to make any further oral submissions as to penalty.

IV. AUTHORITY OF THE HEARING PANEL

¶ 17 The authority of this Hearing Panel is clear. As we have found that the Respondent, while an Approved Person, has failed to comply with the provisions of certain Rules of the MFDA (now CIRO), we can impose any of the penalties set out in ss. 24.1.1(a) – (f) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1), including a permanent prohibition of the authority of the Approved Person to conduct securities business, and a fine not exceeding the greater of $5,000,000 per offence or three times the profit obtained or loss avoided by engaging in the misconduct.

¶ 18 With respect to costs, Section 24.2 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.2) grants a Hearing Panel the discretion to require an Approved Person to pay the whole or part of the costs of the proceeding before the Hearing Panel and any investigation relating to that proceeding.

V. DECISION AS TO PENALTY

¶ 19 After a thorough review of the factors by which we should be guided, and the facts of this case, as found by us in the Decision and Reasons (Misconduct), we were, unanimously, of the view that certain of the penalties, proposed by Staff, were insufficient. Consequently, the penalties which we are imposing are as follows:

(a) a permanent prohibition on the Respondent's authority to conduct securities related

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

(b) a fine in the amount of $125,000; and

(c) costs in the amount of $20,000.

VI. FACTORS CONCERNING THE APPROPRIATENESS OF THE IMPOSED PENALTIES

¶ 20 The Supreme Court of Canada decision in *Pezim v British Columbia (Superintendent of Brokers)*, cited with approval in subsequent decisions, held that the primary goal of securities regulation is the protection of investors, including ensuring efficient capital markets and public confidence in the industry.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557 at paras. 59 and 68.

Tonnies (Re), [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Panel Decision dated June 27, 2005, at P. 21-22.

Yang (Re), [2018] Hearing Panel of the Central Regional Council, MFDA File 201766, Panel Decision dated April 16, 2018, at paras. 9-11.

¶ 21 Sanctions imposed by a Hearing Panel should be protective and preventative to prevent likely future harm to the markets. To determine whether a sanction is appropriate, the Hearing Panel should consider:

(a) the protection of the investing public;

(b) the integrity of the securities markets;

(c) specific and general deterrence;

(d) the protection of the MFDA's (now CIRO's) membership; and

(e) the protection of the integrity of the MFDA's (now CIRO's) enforcement processes.

Tonnies (Re), 2005 LNCMFDA 7 at paras. 44 and 46.

¶ 22 Hearing Panels have also previously considered the following factors when determining whether a sanction is appropriate:

(a) the seriousness of the allegations 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 improper activity;

(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, from engaging in similar improper activity; and

(k) previous decisions made in similar circumstances.

Breckenridge (Re), 2007 LNCMFDA 38 at para. 77.

¶ 23 The Hearing Panel may also refer to the CIRO Sanction Guidelines, which came into effect on February 1, 2024. The Guidelines, which closely mirror the former MFDA Sanction Guidelines, are not mandatory or binding on the Hearing Panel, but provide a summary of the key factors upon which discretion can be exercised consistently and fairly. Many of the same factors that are listed above, which have been considered in previous decisions of Hearing Panels, are also reflected and described in the Guidelines.

VII. CONSIDERATIONS IN THE PRESENT CASE

(a) Nature of Misconduct

¶ 24 We agree with the written and oral submissions of Staff that the Respondent's misconduct is widespread, long-term and of an extremely serious nature.

¶ 25 The acceptance of and the failure to disclose to the Member appointments as a client's Power of Attorney, executor, trustee and/or beneficiary is, of itself, highly serious misconduct.

¶ 26 We agree with the submission of Staff that an Approved Person accepting a financial interest in a client's estate is totally inconsistent with the trusted position that a mutual fund advisor holds. It clearly and unambiguously prevents the Approved Person from being able to fulfil his or her role as an independent and impartial advisor influenced only by the best interests of the client.

¶ 27 In the present case, the Respondent's misconduct, as it relates to client MW, is aggravated by several factors:

(a) To the Respondent's knowledge, MW was a vulnerable client. She was a senior with memory problems. MW and the Respondent were friends. Consequently, it was incumbent on the Respondent to take immediate steps to rescind all appointments, disclose all appointments to the Member, and, together with the Member, ensure that the conflicts were addressed by the exercise of responsible business judgment influenced only by the best interests of the client. This is what Rule 2.1.4 requires. The Respondent repeatedly failed in her basic obligations to her client, her Member and the mutual fund industry.

(b) The Respondent's conduct spanned multiple years and her registration with two Members. Her misconduct displayed a repeated pattern of disregard for her regulatory obligations.

(c) As detailed in paragraphs 84-90 of the Decision and Reasons (Misconduct), the Respondent deceived her Member into believing that any conflict between her and client MW had been fully and appropriately addressed, when, to her knowledge, it had not. This deception is a further serious aggravating factor with respect to penalty.

(d) The fact that the Respondent and client MW were close or long-term friends is an aggravating factor on the issue of penalty. As found by the Capital Markets Tribunal in *Marrone (Re)*, a close personal relationship between the Approved Person and the client increases the client's vulnerability.

Marrone (Re), 2023 ONCMT 9, at para. 29.

(e) We have also found that, while an Approved Person at, initially Desjardins and, subsequently, at IPC, the Respondent submitted compliance information forms to the respective Members in which she provided false or misleading responses regarding her conflicts with client MW and whether she had been designated as a client's Power of Attorney, executor or trustee.

Such conduct is fundamentally dishonest and inhibits the Member's supervisory function and prevents the Member from ensuring that client interests are at all times protected.

¶ 28 In addition to the extensive misconduct involving client MW, the Respondent borrowed $30,000 from client ME. The Respondent knew that such borrowing was prohibited. She testified that she was "very familiar" with IPC's policies and procedures detailing the prohibition.

¶ 29 Borrowing money from a client is serious misconduct. An Approved Person, who borrows money from a client, places their own interests ahead of those of the client, disregards their responsibilities as an Approved Person, exposes the Member to reputational harm, and obtains a personal benefit to which they are not entitled by virtue of their regulatory obligations.

¶ 30 Finally, we found that between January 2018 and May 2018, the Respondent obtained, possessed, and, in some instances, used to process transactions, 18 pre-signed account forms in respect of 7 clients.

¶ 31 Hearing Panels have consistently regarded this as a serious form of misconduct as it can lead to an array of outcomes contrary to the public interest, including discretionary trading, destruction of the audit trail and subverting Member supervision.

¶ 32 As the Hearing Panel explained in Price (Re):

> "Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading . . . At its worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client . . . Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. The presence of the client's signature on a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the Member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account."
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> *Price (Re)*, [2011] Hearing Panel of the Central Regional Council, MFDA File No. 200814, Decision and Reasons (Misconduct) dated April 18, 2011 at paras. 122-124.

¶ 33 The MFDA has been warning Approved Persons against the use of pre-signed account forms for a number of years.

> Staff Notice #MSN-0035 dated December 10, 2004.
>
> Staff Notice #MSN-0066 dated October 31, 2007, (updated March 4, 2013 and January 26, 2017).
>
> MFDA Bulletin #0661-E dated October 2, 2015.

¶ 34 It is well-established that obtaining pre-signed forms after the publication of Bulletin #0661-E is an aggravating factor.

(b) The Respondent's Past Conduct Including Prior Sanctions

¶ 35 The Respondent has not previously been the subject of CIRO or MFDA disciplinary proceedings. However, given the seriousness of the misconduct, its wide-ranging nature and the period of time over which it lasted, the Hearing Panel has given limited weight to this factor.

(c) The Respondent's Experience and Level of Activity in the Capital Markets

¶ 36 The Respondent was first registered in the securities industry in May of 1997. Between November 2009 and December 2017, she was registered with Desjardins, and its predecessor, MGI Financial Inc. Between December 2017 and July 2020, the Respondent was registered with IPC. Between November of 2009 and April of 2016, the Respondent was registered as a Branch Manager with Desjardins and MGI. Consequently, she had considerable experience in the securities industry, including in a supervisory capacity. She should have known that her conduct was wrong and unacceptable. This is an aggravating factor.

(d) Whether the Respondent Recognizes the Seriousness of the Improper Activity

¶ 37 The evidence before the Hearing Panel at the Hearing on the Merits in April of 2023, was that the

March 2018 codicil to MW's Will, appointing the Respondent as co-executor and co-trustee of her estate, represented MW's current Will status up to at least July of 2020. There was also no evidence presented to the Hearing Panel that the Respondent had renounced these appointments at any time prior to the said Hearing on the Merits.

¶ 38 In her Written Submissions (Penalty), the Respondent stated: "March 2018 – it was documented by Staff that I had been re-established as a trustee of MW's estate." Instead of taking concrete, provable steps to be removed as co-executor and co-trustee of MW's estate and present evidence of same at the Penalty Hearing, the Respondent stated: "this seems ridiculous after I had already, 2 years prior, asked to be removed as I was her financial advisor."

¶ 39 Had the Respondent taken concrete steps to be removed and provided evidence of same, that would have been considered as a mitigating factor. However, the Respondent has chosen to present no such evidence. This is another aggravating factor.

(e) Benefits Received by the Respondent

¶ 40 The position of Staff, in both its written and oral submissions, is that the Respondent was (and continues to be) entitled to receive a substantial benefit from client MW's estate. Staff showed how the amount which the Respondent was entitled to receive from the estate rose over a period of time. They estimated its current dollar value at $96,000.

¶ 41 Staff then submits that the penalty which the Hearing Panel imposes must be sufficiently large in order to deter other Approved Persons from breaching their obligations to disclose conflicts of interest to the Member so that they can retain significant financial benefits from clients that would either be prohibited or jeopardized if the Member became aware of the conflict.

¶ 42 We agree with Staff's submissions in this regard. However, we cannot put any reliable dollar value on what the Respondent may derive from MW's estate. At the Penalty Hearing, we were informed by the Respondent that MW is still alive. Consequently, MW is free to alter her bequests in any manner she deems appropriate. This could range from increasing the Respondent's interest in the estate to removing her as a beneficiary. Thus, while we agree with Staff's calculations, we can only accept them as historically accurate figures. However, that does not deter from our acceptance of Staff's follow-up submission.

¶ 43 We agree with Staff that the Respondent did financially benefit from her admitted misconduct in obtaining access to a $30,000 short term loan from client ME, something she admitted she knew, at the time, was prohibited. She also admitted that she did not disclose this loan to her Member. The penalty imposed must reflect the Hearing Panel's condemnation of these actions.

(f) Damage Caused to the Integrity of the Capital Markets

¶ 44 The Respondent has caused damage to the integrity of the capital markets. Her misconduct spanned multiple years, encompassed numerous contraventions of MFDA Rules, took place while she was registered with two Members, involved significant conflicts of interest which she failed to disclose to the Members and purposedly misled the Members on the compliance information forms which she did submit. As outlined above, the conflicts of interest relate to her accepting appointments as a Power of Attorney, executor, trustee and/or beneficiary, as well as her personal financial dealing in accepting a loan from a client.

(g) Deterrence

¶ 45 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.

¶ 46 In our view, a permanent prohibition, along with an appropriate fine, will prevent the Respondent from causing any further harm to the mutual fund industry and will deter others in the capital markets

from engaging in similar activity.

¶ 47 Approved Persons must clearly understand that they must put their client's interests ahead of their own and that a breach of their duty to deal honestly, fairly and in good faith with their clients will have very serious consequences.

¶ 48 In our view, in addition to a permanent prohibition, a very significant fine is necessary in order to achieve general deterrence and maintain public confidence in the securities industry. The fine must be high enough to deter other Approved Persons from ignoring vital regulatory requirements in the hope that they can obtain financial benefits from clients that would be disallowed or jeopardized if the Member became aware of the underlying conflict.

¶ 49 In *Marrone (Re)*, the Capital Markets Tribunal concluded that, in addition to various permanent market bans, a $500,000 administrative fine was appropriate to send the message that Tribunal sanctions "cannot be viewed as a mere licensing fee for failing to properly address conflicts of interest."

Marrone (Re), *supra*, at para. 60.

¶ 50 We believe that, considering all of the circumstances, a fine in the amount of $125,000 is appropriate.

(h) Previous Decisions Made in Similar Circumstances

¶ 51 Staff provided the Hearing Panel with a detailed chart seeking to show that the penalties that they were proposing were consistent with the penalties imposed by Hearing Panels in similar circumstances. A review of the cases shows that they are equally consistent with the penalties which we have imposed upon the Respondent.

¶ 52 The following cases were discussed:

(a) *Marrone (Re)*, 2023 ONCMT 9.

(b) *Yamamoto (Re)*, 2023 CIRO 25.

(c) *Gebhardt (Re)*, [2023] Hearing Panel of the Central Regional Council, MFDA File No. 202072, Panel Decision dated January 26, 2023.

(d) *Plentai (Re)*, 2022 LNIIROC 4.

(e) *Fairclough (Re)*, 2020 IIROC 20.

(f) *Salina (Re)*, [2022] Hearing Panel of the Pacific Regional Council, MFDA File No. 202081, Panel Decision dated August 30, 2022.

(g) *Wang (Re)*, [2017] Hearing Panel of the Pacific Regional Council, MFDA File No. 201762, Panel Decision dated October 2, 2017.

(h) *Du (Re)*, [2022] Hearing Panel of the Prairie Regional Council, MFDA File No. 202121, Panel Decision dated May 30, 2022.

(i) *Sarang (Re)*, [2016] Hearing Panel of the Pacific Regional Council, MFDA File No. 201535, Panel Decision dated March 21, 2016.

(j) *Alam (Re)*, [2020] Hearing Panel of the Central Regional Council, MFDA File No. 202016, Panel Decision dated July 24, 2020,

(k) *Perrault (Re)*, [2023] Hearing Panel of the Ontario District Hearing Committee, File No. 202254, Panel Decision dated February 13, 2023,

(l) *Moody (Re)*, 2023 CIRO 32.

(m) *Kachur (Re)*, [2022] Hearing Panel of the Prairie Regional Council, MFDA File No. 202201,

Panel Decision dated July 6, 2022.

(n) *Mailloux (Re)*, [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202217, Panel Decision dated July 25, 2022,

(o) *Cheng (Re)*, [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202244, Panel Decision dated November 3, 2022,

¶ 53 Prior to the commencement of the Penalty Hearing, Staff provided the Hearing Panel with a copy of a January 2024 CIRO Decision, namely *Re Kelly*, 2024 CIRO 09.

VIII. COSTS

¶ 54 Staff presented the Hearing Panel with a Bill of Costs in the amount of $51,287.50. Staff requested an Order for costs in the amount of $20,000. We find both the Bill of Costs and the request of Staff to be appropriate. We will make a Cost Order in the amount of $20,000.

Dated at Toronto, Ontario this 29 day of February 2024.

"Thomas J. Lockwood"

Thomas J. Lockwood, K.C., Chair

"Brigitte Geisler"

Brigitte Geisler, Industry Representative

"Timothy Pryor"

Timothy Pryor, Industry Representative