

# Re Khaldi

IN THE MATTER OF:

**The Mutual Fund Dealer Rules**

**and**

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

2024 CIRO 29

Canadian Investment Regulatory Organization  
Hearing Panel (Nova Scotia District)

Heard: February 15, 2024, in Halifax, Nova Scotia

Decision: February 15, 2024

Reasons for Decision: March 1, 2024

## Hearing Panel:

R. Scott Peacock, Chair

Jason Downey, Industry Representative

Patrick Galarneau, Industry Representative

## Appearances:

Paul Blasiak, Senior Enforcement Counsel

Tyler Beazer, Enforcement Counsel

Adib Khaldi (also known as “Deebo”), Respondent (present)

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## REASONS FOR DECISION (PENALTY)

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### INTRODUCTION

¶ 1 This matter came before a Panel of the Nova Scotia District to hear from the parties in respect to an appropriate penalty for the Respondent. In a decision rendered on the 8<sup>th</sup> December 2023 the Panel found the Respondent had committed misconduct as set out in a Notice of Hearing dated 5 October 2022. Written reasons for the decision in the Hearing on the Merits were issued on 15 January 2024. This matter was adjourned to 15<sup>th</sup> February 2024 for a Penalty Hearing.

¶ 2 After hearing from the parties and considering the submissions and exhibits submitted; the Panel imposed a penalty pursuant to MFDA By-Law No. 1, section 24.1.1 (now Mutual Fund Dealer Rule 7.4.1.1) being:

- (a) a fine in the amount of \$15,000.00
- (b) costs in the amount of \$10,000.00
- (c) a prohibition of two years from the date of the decision on penalty
- (d) the Respondent is required to write/rewrite and pass the Conduct and Practices Handbook examination.

### BACKGROUND

¶ 3 An issue arose in the conduct of this matter at both the Hearing on the Merits and the Penalty Hearing.

The Respondent was self-represented throughout and stated he was unfamiliar with the Rules of Procedure and evidence in general. The Respondent had been supplied with materials by Staff Counsel as part of the disclosure package.

¶ 4 Unrepresented parties are not uncommon in adjudicative proceedings and raises a few issues in respect to access to justice and the fairness of the proceeding. The unrepresented Respondent must be provided with some degree of latitude in respect to rules of procedure and evidence. In granting this latitude the adjudicative panel must guard against being perceived by either party as not being impartial or worse advocating for one party or the other.

¶ 5 Traditionally adjudicators have adopted a passive role in adjudication allowing each party to present their case and then deciding the appropriate outcome. The proliferation of unrepresented parties has led to considerable academic review and study. In respect to the traditional role of adjudicators it has been posited:

“This model of adjudication assumes that the parties understand the complex and nuanced rules governing the framing and presentation of their respective cases. In essence it assumes that each party will have legal representation or, at least, the means, knowledge, and ability to effectively represent themselves.”<sup>1</sup>

¶ 6 The advent of more self-represented parties has given rise to a trend towards two models of administrative adjudication: “adjudicative assistance and active adjudication”<sup>2</sup> In the first instance direction and information is provided to the unrepresented party, in the latter the adjudicator is more active in the presentation of the unrepresented party’s case.

¶ 7 There are many judicial decisions positing that the finder of fact should offer assistance to the unrepresented litigants. The problem is that the adjudicator must balance their role so as not to be unfair or perceived to be unfair to either party. Further, the adjudicator must maintain control of the proceedings and prevent any party from straying too far afield. They must maintain the integrity, fairness and efficacy of the administrative proceeding.

¶ 8 In this case considerable latitude was afforded to the Respondent in the presentation of his case. There were instances when limits were placed upon his presentation, offerings of evidence and conduct. In the course of the Penalty Hearing and in his written submissions the Respondent attempted to relitigate findings of fact made in the Hearing on the Merits. The Respondent was constrained from making such representations and to address his comments to the issue of penalty.

## ANALYSIS

### FIRST ISSUE: FACTS

¶ 9 The facts for the Panel’s consideration in respect to the appropriate penalty for the Respondent’s misconduct are set out in the Reasons for Decision dated 15 January 2024. The panel determined the Respondent did:

**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 procedure and MFDA Rules 1.3, 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1)

**Allegation #3.** Between approximately May 2019 and May 2020, the Respondent processed transactions

<sup>1</sup> Michelle Flaherty, “Self Represented Litigants Active Adjudication and Perception of Bias: Issues in Administrative law (2015) 38:1 Dal. LJ. 119

<sup>2</sup> 1 *Supra*, p. 128

in respect of approximately 23 clients as redemptions and purchases rather than as switches, thereby:

- (a) engaging in conduct which gave rise to a conflict of interest which the Respondent failed to disclose to the Member, or ensure was addressed by the exercise of responsible business judgement influenced only by the best interests of the client, contrary to MFDA Rules 2.1.4 and 2.1.1; or
- (b) Failing to comply with the Member's 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).

## **SECOND ISSUE: STAFF SUBMISSIONS**

¶ 10 Staff counsel made written and oral submissions emphasizing the serious nature of the misconduct and sought a fine of \$30,000.00, \$15,000.00 costs, a two-year prohibition and requiring a write/rewrite of the Conduct and Practices Handbook examination. In Staff's submission dated 6<sup>th</sup> February 2024, the Panel's attention was drawn to MFDA By-Law No. 1, section 24.1.1 (a) to (f) (now Mutual Fund Dealer Rule 7.4.1.1), providing authority to impose penalties for misconduct.

¶ 11 The focus of Staff's submissions was that the primary goal of securities regulation is the protection of investors, ensuring efficient and fair capital markets and public confidence in the industry.<sup>3</sup> In the course of their submissions, Staff's counsel highlighted the detrimental effect that outside, unauthorized business activity had upon the Member's ability to monitor and maintain compliance procedures set in place. Further, the failure to adhere to the Member's policies in respect to switches rather than redemptions and purchases within the same fund family gave rise to an unresolved and undeclared conflict of interest on the part of the Respondent. The clients were unnecessarily exposed to market risk by the Respondent's conduct being out of the market because of the redemption and purchases entered by the Respondent. The clients suffered approximately \$3,500.00 in losses on the switch avoidance transactions. The Member subsequently compensated the clients.

¶ 12 The impugned transactions produced for the Respondent approximately \$558.00 in additional compensation in bonus payments. Due to his subsequent termination by the Member no bonus was paid. These aggravating factors were advanced by Staff's counsel together with case citations for similar misconduct. Staff made an additional filing of a Bill of Costs in the amount of \$ 33,362.50, entered as evidence as exhibit P8 in the proceeding.

## **THIRD ISSUE: RESPONDENT'S SUBMISSIONS**

¶ 13 The Respondent filed written submissions and exhibits in the early morning of the Penalty Hearing. The proceeding was recessed for an hour to ensure the Panel and Staff had sufficient time to read the materials filed. The recess also addressed an error in the start time for the hearing contained in the Press Release in the event members of the public wished to attend.

¶ 14 The Respondent's written submissions were substantially an attempt to re-litigate the facts found and the outcome of the Hearing on the Merits. The Respondent was advised that such representations at the Penalty stage of the proceedings are not appropriate and would not be considered by the Panel. Further, the Respondent in his written submissions made references to details of settlement discussions that had been on a without prejudice basis with former Staff counsel. They were also not considered by the Panel.

¶ 15 The Respondent submitted that he had suffered financially, reputationally, and professionally due to his termination by the Member. He advised the Panel that he was currently unemployed and living in his parent's home having exhausted his employment insurance benefits.

¶ 16 The Respondent stated that he had cooperated throughout the investigation by the Member and Staff. He attributed his misconduct to not fully understanding the By-Laws and member policies. He regretted the circumstance and outcome of his misconduct.

¶ 17 The Respondent filed exhibits P1 to P6 in respect to his current financial situation. These were reviewed and considered by the Panel in camera. These documents could best be considered a peripheral to his financial

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<sup>3</sup> *Pezim v British Columbia (Superintendent of Brokers)* [1994] 2SCR 557 paras. 59 and 68

status, email with his tax service, credit report and his own declaration touching on his financial position. It is noteworthy that more relevant documents such as bank statements, investment account statements were not provided.

#### **FOURTH ISSUE: THE ABILITY TO PAY**

¶ 18 The Sanction Guidelines make provision for consideration of the Respondent's ability to pay monetary penalties. However, it is not the determining factor. The issues of general and specific deterrence, the appropriateness of the penalty vis a vis the misconduct, public interest and the maintenance of fair and efficient capital markets, and public trust in the ability of the industry to self-regulate are essential considerations.

¶ 19 Staff provided the Panel with the case of Re: *King Kwong Clement Chow*<sup>4</sup>:

"105. Staff provided the Panel with a number of MFDA decisions where the Hearing Panel held that a Respondent's inability to pay a fine is outweighed by other factors. When determining the appropriateness of a penalty, including the need to have a penalty that reflects the seriousness of the Respondent's misconduct and a penalty that takes into account the benefit to the Respondent and loss to the client..."

¶ 20 Considering the submissions and evidence before the Panel on the ability to pay, the materials filed as exhibits by the Respondent do not overcome or outweigh the necessity of imposing an appropriate monetary penalty and costs order.

#### **CONCLUSION:**

¶ 21 The Panel considered the undisclosed conflict of interest as serious misconduct. The Respondent acknowledged he was aware of the Member's switch avoidance and outside activity policies but disregarded them in any event. He knowingly disregarded the By-Laws and policies in place to protect clients and the integrity of the securities industry.

¶ 22 Having considered all the evidence, the Panel has concluded that Staff's original submission for a fine of \$30,000.00 and costs of \$15,000.00 were not appropriate for the misconduct proven. Rather an order for a fine of \$15,000.00, costs of \$10,000.00, a two-year prohibition from the date of the decision, and a write/rewrite of the Conduct and Practices Handbook examination was ordered.

**DATED** at Halifax, Nova Scotia this 1<sup>st</sup> day of March 2024.

"R. Scott Peacock"

R. Scott Peacock, Chair

"Patrick Galarneau"

Patrick Galarneau, Industry Representative

"Jason Downey"

Jason Downey, Industry Representative

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<sup>4</sup> MFDA file No. 202054 Penalty Decision 25 August 2021, Reasons 18 January 2022