Re Mott

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Jila Mahnaz Mott

2024 CIRO 31

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: January 19, 2024, in Toronto, Ontario by videoconference
Decision and Reasons: February 28,2024

Hearing Panel:
Joan Smart, Chair
Eugene Park, Industry Representative
Vas Pachapurkar, Industry Representative

Appearances:
Maria Di Clemente and Samantha Wu, Enforcement Counsel
Jila Mahnaz Mott, Respondent

DECISION AND REASONS (PENALTY)

I. INTRODUCTION

¶ 1 By Notice of Hearing, issued August 4, 2023, the Canadian Investment Regulatory Organization ("CIRO") commenced a disciplinary proceeding pursuant to Mutual Fund Dealer Rules 7.3 and 7.4 against Jila Mahnaz Mott (the "Respondent"), a former dealing representative with Keybase Financial Group Inc. (the "Dealer Member"), a Dealer Member of CIRO (formerly a Member of the MFDA).

¶ 2 CIRO Staff ("Staff") and the Respondent entered into an Agreed Statement of Facts, dated January 12, 2024 (the "ASF"), in which the Respondent admitted that:

> Between September 2019 and September 2021, she borrowed monies from clients, which gave rise to conflicts or potential conflicts of interest that she failed to disclose to the Dealer Member or otherwise ensure were addressed by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to the Dealer Member's policies and procedures and Mutual Fund Dealer Rules 2.1.4, 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1) (formerly MFDA Rules 2.1.4, 2.1.1, 1.1.2 and 2.5.1).

¶ 3 At the hearing, which was held electronically on January 19, 2024, Staff and the Respondent jointly requested that the Hearing Panel determine, on the basis of the ASF, the appropriate penalty to impose on the Respondent.

¶ 4 After considering the written submissions of Staff and the oral submissions of Staff and the Respondent, the Hearing Panel has decided that an appropriate sanction to impose on the Respondent is:

(a) a permanent prohibition on her authority to conduct securities related business while in the employ of or associated with any Dealer Member registered as a mutual fund dealer;

(b) a fine of $776,100 and

(c) costs of $7,500.

¶ 5 Below are our Reasons for that decision.

II. FACTS

¶ 6 The relevant facts concerning the admitted contraventions are set out in Part IV of the ASF which is attached as Appendix "A".

III. POSITION OF THE PARTIES ON SANCTION

¶ 7 Staff submitted that the appropriate sanction to impose on the Respondent was:

(a) a permanent prohibition on her authority to conduct securities related business in any capacity while in the employ of or associated with any Dealer Member 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 $674,300, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b); and

(c) costs in the amount of $7,500, pursuant to Mutual Fund Dealer Rule 7.4.2.

¶ 8 The Respondent was willing to accept a permanent prohibition but not any monetary sanction in light of her impecuniosity.

IV. ANALYSIS

A. Principles Relevant to ASFs

¶ 9 As submitted by Staff, where parties who enter into an ASF cannot agree on the appropriate penalty, the Hearing Panel's role is to determine the correct penalty having regard only to the facts and contraventions in the ASF. The Ontario Securities Commission ("OSC") stated in *Vickers (Re)*:

> ... when parties to a disciplinary proceeding have entered into an agreed statement of facts, those are the only facts regarding the alleged improper conduct of the respondent that the panel is allowed to consider. This is entirely appropriate as respondents must know the case they have to meet. Hearing panels, including the Panel, are bound by and limited to the facts set out in agreed statements of facts which are intended to substantially simplify proceedings by obviating the need for additional evidence.
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> *Vickers (Re)*, 2015 ONSEC 13 at para. 58
>
> *Smith (Re)*, [2021] Hearing Panel of the Central Regional Council, MFDA File No. 202083, Reasons for Decision dated September 24, 2021 at para. 10

¶ 10 Accordingly, the Hearing Panel's decision as to an appropriate sanction is based on the agreed facts and contraventions admitted in the ASF.

B. Misconduct: Respondent Borrowed Monies from Clients

¶ 11 The Respondent admitted that between September 2019 and September 2021, she borrowed $561,300 CAD and $93,000 USD from nine clients (the "Clients"), deposited the borrowed monies into her bank account (except for $93,000 USD that a client directly wired to third parties at the Respondent's request), and then transferred the borrowed monies to third parties, raising conflicts of interest or potential conflicts of interest that she failed to disclose to the Dealer Member, or otherwise ensure were addressed by the exercise of responsible business judgment influenced only by the best interests of the Clients.

¶ 12 The Respondent admitted that she acted contrary to the Dealer Member's policies and procedures and Mutual Fund Dealer Rules 2.1.4, 2.1.1, and 1.1.2 (as it relates to Rule 2.5.1) (formerly MFDA Rules 2.1.4, 2.1.1, 1.1.2 and 2.5.1).

Mutual Fund Dealer Rule 2.1.4 on Conflicts of Interest

¶ 13 The version of MFDA Rule 2.1.4 in effect between September 2019 and June 30, 2021, when amendments to that rule came into effect, stated:

> (a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.
>
> (b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d).
>
> (c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.
>
> (d) Each Member shall develop and maintain written policies and procedures to ensure compliance with Rules 2.1.4(a), (b) and (c).

¶ 14 The version of MFDA Rule 2.1.4(2) that was in effect after June 30, 2021 stated:

> (a) An Approved Person must take reasonable steps to identify existing material conflicts of interest, and material conflicts of interest that are reasonably foreseeable, between the Approved Person and the client.
>
> (b) If an Approved Person identifies a material conflict of interest under Rule 2.1.4(2)(a), the Approved Person must promptly report that conflict of interest to their Member.
>
> (c) An Approved Person must address all material conflicts of interest between the client and the Approved Person in the best interest of the client.
>
> (d) An Approved Person must avoid any material conflict of interest between a client and the Approved Person if the conflict is not, or cannot be, otherwise addressed in the best interest of the client.
>
> (e) An Approved Person must not engage in any trading or advising activity in connection with a material conflict of interest identified by the Approved Person under Rule 2.1.4(2)(a) unless
>
> > (i) the conflict has been addressed in the best interest of the client, and
> >
> > (ii) the Approved Person's Member has given the Approved Person its consent to proceed with the activity.

¶ 15 MFDA Staff Notice MSN-0047 on Personal Financial Dealings with Clients notes:

> 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.
>
> ...
>
> 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 unaware 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.

¶ 16 Hearing panels have reached the same conclusion. As stated by the panel in Nunweiler (Re):

> Where an Approved Person borrows money from a client, ..., such conduct immediately raises a significant actual conflict of interest, a conflict that in most if not all cases will be impossible to resolve in favour of the client. **It is patently obvious that ... borrowing money from a client is not the exercise of responsible business judgment in the best interests of the client.** [Emphasis Added]
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> *Nunweiler (Re)*, [2012] Hearing Panel of the Pacific Regional Council, MFDA File No. 201030, Reasons for Decision dated May 28, 2012 at para. 17
>
> *Tonnies (Re)*, [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Reasons for Decision dated June 27, 2005, at paras. 26-31
>
> *Rahman (Re)*, [2021] Hearing Panel of the Central Regional Council, MFDA File No. 202074, Reasons for Decision dated June 10, 2021 at paras. 52, 55

¶ 17 We have found that, as admitted by the Respondent, by borrowing monies from Clients and also not disclosing the loans to the Dealer Member, the Respondent contravened Mutual Fund Dealer Rule 2.1.4 (formerly MFDA Rule 2.1.4).

Mutual Fund Dealer Rule 1.1.2 – Dealer Member's Policies and Procedures on Conflicts of Interest

¶ 18 The Dealer Member had policies and procedures that:

(a) required its Approved Persons to avoid possible conflicts of interest;

(b) required its Approved Persons to disclose any conflict of interest or potential conflict of interest to Compliance at the Dealer Member;

(c) required its Approved Persons to address conflicts of interest by the exercise of responsible business judgment, influenced only by the best interests of clients;

(d) required its Approved Persons to provide written disclosure to clients regarding potential conflicts;

(e) prohibited Approved Persons from borrowing monies from clients; and

(f) required that all monetary benefits that are provided directly or indirectly to or from clients flow through the Dealer Member.

¶ 19 According to Mutual Fund Dealer Rule 2.5.1 (formerly MFDA Rule 2.5.1), Dealer Members must establish and maintain written policies and procedures to ensure its business is in compliance with the By-law, Rules, and Policies of CIRO (formerly MFDA) and applicable securities regulation. Approved Persons have a fundamental corresponding obligation to comply with those policies and procedures pursuant to Mutual Fund Dealer Rule 1.1.2 (formerly MFDA Rule 1.1.2). As stated by the hearing panel in *Franco (Re)*:

> The obligation of Approved Persons to comply with the policies and procedures of the Members 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 LNCMFDA 55 at para. 38
>
> *Frank (Re)*, 2015 LNCMFDA 75 at paras. 56-58

¶ 20 We have found that, as admitted by the Respondent, by engaging in conduct described above, she contravened the Dealer Member's policies and procedures and Mutual Fund Dealer Member Rule 1.1.2 (as it relates to Mutual Fund Dealer Rule 2.5.1) (formerly MFDA Rules 1.1.2 and 2.5.1).

Mutual Fund Dealer Rule 2.1.1 – Standard of Conduct

¶ 21 Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1) requires that Dealer Members and Approved Persons deal fairly, honestly, and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

¶ 22 MFDA hearing panels have held that borrowing from clients, contrary to MFDA Rule 2.1.4, constitutes a contravention of the standard of conduct in MFDA Rule 2.1.1 (now Mutual Fund Dealer Rule 2.1.1).

Nunweiler (Re), *supra* at para. 13

Rahman (Re), *supra* at paras. 52, 56-57

¶ 23 Hearing panels have also held that when an Approved Person contravenes the Member's policies and procedures, the Approved Person thereby contravenes MFDA Rule 2.1.1 (now Mutual Fund Dealer Rule 2.1.1).

Tonnies (Re), supra at para. 39

Nunweiler (Re), supra at para. 16

¶ 24 In our view, in addition to failing to comply with the Dealer Member's policies and procedures contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1), the Respondent also contravened that rule when she misled the Dealer Member about the intended use of the proceeds from the redemptions in the Clients' accounts, stating that they required the proceeds for personal expenses, when the proceeds were actually being loaned to the Respondent.

¶ 25 We have found that the Respondent's conduct in this matter did not meet the standard of conduct required of Approved Persons in the mutual fund industry and, as admitted by the Respondent, contravened Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1.).

C. Penalty

Factors Concerning the Appropriateness of a Proposed Penalty

¶ 26 The primary goal of securities regulation is the protection of investors and fostering public confidence in the capital markets and the securities industry.

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

Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission), [2001] 2 S.C.R. 132 at para. 41

Tonnies (Re), supra at para. *45*

¶ 27 Sanctions imposed by a hearing panel should be protective and preventative, to prevent likely future harm to the markets. As stated by the hearing panel in *Kowalsky (Re)*:

> While the primary objective of sanctions is to prevent future misconduct by the Respondent and other industry participants, and not to punish the Respondent, some element of punishment of the Respondent is the inevitable result [sic] of any sanctions. But the fact that some punishment of the Respondent may occur, should not inhibit the Panel from imposing sanctions, so long as the primary goal of those sanctions is the prevention of future misconduct. [Underlining in original.]

Kowalsky (Re), 2022 LNCMFDA 31 at para. 11

Committee for the Equal Treatment of Asbestos Shareholders v. Ontario (Securities Commission), [2001] 2 S.C.R. 132 at para. 42

Fauth (Re), 2019 LNABASC 90 at para. 100

MFDA Sanction Guidelines, dated November 15, 2018, pp. 2-3

¶ 28 As has been stated in a number of previous cases, to determine an appropriate sanction, a 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 (now CIRO) membership; and

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

See for example:

Tonnies (Re), supra at para. 46

Breckenridge (Re), 2007 LNCMFDA 38 at para. 76

¶ 29 Hearing panels have also considered the following factors when determining whether a sanction is appropriate:

(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.

See for example:

Tonnies (Re), supra at para. 48

Breckenridge (Re), supra at para. 77

¶ 30 A hearing panel may also consider the MFDA Sanction Guidelines which summarize the key factors upon which discretion can be exercised consistently and fairly. They include many of the same factors that are listed above, as well as several others such as whether a sanction was imposed on the Respondent for the same conduct by their Dealer Member and the ability of the Respondent to pay a financial penalty.

Application of Relevant Factors in this Case

Seriousness of the Misconduct

¶ 31 As was stated in the case of *Sarang (Re)*, conflicts of interest seriously undermine public confidence in the integrity of the market and its regulation.

Sarang (Re), 2016 LNCMFDA 22 at para. 11

¶ 32 The seriousness of the Respondent’s misconduct was a significant factor in our decision to impose a permanent prohibition and substantial fine on the Respondent. In particular, we found that she engaged in serious misconduct involving conflicts of interest, and breaches of the Dealer Member’s policies and procedures and the Mutual Fund Dealer Rules (formerly MFDA Rules) by:

(a) over a period of two years, borrowing substantial amounts ($561,300 CAD and $93,000 USD) from nine clients (the “Clients”), after receiving communications indicating she had to advance monies to third parties to obtain a settlement amount and proceeds from the sale of shares she

had previously purchased in two Mexican vacation resorts;

(b) in the case of three Clients, borrowing monies that were proceeds from redeemed investments held in their accounts at the Dealer Member;

(c) borrowing monies from Clients who were vulnerable on the basis of their age;

(d) failing to document or provide security for the loans;

(e) failing to disclose the borrowings to the Dealer Member and in fact misleading the Dealer Member respecting the intended use of the proceeds of the redemptions from certain Clients' accounts, thereby interfering with the Dealer Member's ability to supervise the Respondent's activities in the best interests of the Clients;

(f) failing to appropriately address the conflicts or potential conflicts of interest arising from the borrowing, in the best interests of the Clients;

(g) continuing to borrow monies from three Clients in the approximate amount of $43,500 CAD and $64,969 USD after she was advised by her bank that it had recalled a wire in May 2021 that she had sent from her bank account to an account in Mexico, the source of which was monies borrowed from one of the Clients, on the basis that the bank suspected the transaction was fraudulent;

(h) even continuing to borrow monies from several Clients after she disclosed to the Dealer Member on or about June 22, 2021 that she had contacted the police and filed a report with the Canadian Anti-Fraud Centre with respect to the Mexican transactions; and

(i) failing to repay most of the Clients' loans, leaving $550,300 CAD and $93,000 USD outstanding.

¶ 33 Borrowing from the Clients created a conflict or perceived conflict of interest. The Respondent took advantage of her professional relationship with her Clients, to whom she had an obligation to act in their best interest, and placed her own interests ahead of the Clients' interests to their detriment.

¶ 34 Hearing panels have found such conduct to be very serious misconduct that resulted in permanent prohibitions and substantial fines.

Nunweiler (Re), supra at paras. 31, 45, 52, 54

Visneskie (Re), 2017 LNCMFDA 348 at paras. 19-20

Smockum (Re), [2023] Hearing Panel of the Central Regional Council, MFDA File No. 202157, Reasons for Decision dated February 8, 2023 at paras. 24, 45-46

Tonnies (Re), supra at para. 31

Deterrence

¶ 35 Deterrence includes specific deterrence of the wrongdoer, as well as general deterrence of other participants in the capital markets, in order to protect investors.

Specific Deterrence

¶ 36 The need for specific deterrence was not a significant factor in our decision as to an appropriate penalty in this case. Given the Respondent's age, the fact of this prosecution and the fact that she has been out of the mutual fund industry for two years, it is unlikely she will return to the industry in any event. Also, given her bankruptcy, it is unlikely she will be able to pay any fine assessed. However, based on observing and hearing from the Respondent at the hearing, we expect that any financial sanction we impose will have a significant emotional impact on her.

General Deterrence

¶ 37 The need for general deterrence was a more significant factor in assessing an appropriate sanction in

this case.

¶ 38 The Supreme Court of Canada, when discussing the issue of general deterrence in *Cartaway Resources Corp. (Re)*, stated:

> 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.
>
> *Cartaway Resources Corp. (Re)*, 2004 SCC 26 at para. 61

¶ 39 In our view, the imposition of a permanent prohibition on the Respondent in this case is a very significant sanction and should serve to achieve general deterrence of other Approved Persons who might be inclined to engage in similar conduct.

¶ 40 Under Mutual Fund Dealer Rule 7.4.1.1(b), Hearing Panels have the power to order a fine not exceeding the greater of an amount equal to three times the profit obtained and $5,000,000 per offence.

¶ 41 As is noted in Part II of the 2018 MFDA Sanction Guidelines, as a general principle, a wrongdoer should not benefit from their wrongdoing.

¶ 42 In our view, the fine that we impose should at least disgorge the $550,300 CAD and $93,000 USD that the Respondent obtained from her misconduct, and has not repaid to the Clients. This would further general deterrence by sending a message to mutual fund industry participants that wrongdoers will not be permitted to retain gains acquired through their misconduct. As stated by the OSC in *Mutual Fund Dealers Assn. (Re)*:

> Disgorgement is an important tool to advance the remedial and protective aims of securities regulation and to ensure that specific and general deterrence of misconduct is achieved. The disgorgement remedy is intended to deprive a wrongdoer of gains obtained through misconduct and thereby remove the incentive to engage in similar future non-compliance with securities regulation.
>
> In addition, disgorgement serves the important public interest of maintaining public confidence in the capital markets and securities regulation, by making it clear that contravening securities regulations does not pay.
>
> *Mutual Fund Dealers Assn. (Re)*, 2021 ONSEC 24 at paras. 30-31

¶ 43 In a number of previous cases, hearing panels have imposed an administrative penalty in addition to disgorgement for the purposes of deterrence. As stated by the OSC in *Northern Securities (Re)*:

> Imposing that fine, in addition to disgorgement, is necessary as a matter of general deterrence. There may be significant financial benefits that can be obtained as a result of a contravention of IIROC Rules. As a general principle, no registrant should be able to profit from the breach of IIROC Rules. It is not sufficient deterrence simply to pay to IIROC an amount equal to the profit obtained from the misconduct. IIROC Dealer Members and Approved Persons must recognize that there will be a substantial cost to misconduct. A substantial fine, in addition to disgorgement, is appropriate in these circumstances.
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> *Northern Securities Inc. (Re), supra* at para. 215, SBA, Tab 26.
>
> *Fauth (Re)*, 2019 LNABASC 90 at paras. 96-100, 109-110
>
> See also para. 52 below

¶ 44 In our view, it is appropriate to impose a fine of $100,000 in addition to the disgorgement of the amount outstanding to the Clients, in order to reflect the seriousness of the misconduct and ensure that the fine serves as a general deterrent.

¶ 45 While we appreciate that the sanctions imposed on this Respondent will have a limited impact on her in the circumstances, the sanctions should have a deterrent effect on other mutual fund participants who wish to remain in the industry and are financially able to pay a fine.

Harm Suffered by Investors and Benefits Received by the Respondent

¶ 46 Clients, many of whom were vulnerable, suffered substantial losses of $550,300 CAD and $93,000 USD as a result of the Respondent's misconduct. Presumably, they have also lost interest that they might have earned on those funds. Given the Respondent's bankruptcy, it is unlikely that any of the Clients will recover the outstanding amounts.

¶ 47 There was no evidence before us to indicate that the Dealer Member had compensated the Clients for their losses as is often done in similar circumstances. However, we were advised that none of the Clients had complained to either the Dealer Member or to CIRO.

¶ 48 The Respondent benefitted from the loans in that she deposited $561,300 CAD that she borrowed from the Clients into her own bank account and also asked a client to directly wire $93,000 USD to third parties for her benefit.

The Respondent's Experience

¶ 49 The Respondent had been registered as an Approved Person for over 22 years when the misconduct began and should have been aware of her regulatory and Dealer Member obligations around conflicts of interest.

¶ 50 In the many years during which the Respondent was registered in the mutual fund industry, we expect she would have received training on how to identify potential frauds. Accordingly, we were surprised and concerned that she allowed herself to become a victim of the fraud where the circumstances in which the monies were requested and sent to Mexico ought to have triggered a suspicion of a potential fraud. We were particularly concerned that she then got her Clients' monies involved, choosing to follow the instructions of an unknown third party over her obligations to her Clients, the Dealer Member and the MFDA (now CIRO). These concerns were factors in our decision that the Respondent should not be allowed to continue as an Approved Person in the mutual fund industry.

Mitigating Factors

¶ 51 The Hearing Panel considered several mitigating factors, although given the seriousness of the breaches, they did not significantly influence our decision on an appropriate sanction. They included:

(a) in her Reply and in the ASF the Respondent admitted to her misconduct and at the hearing indicated sincere remorse for what she had done;

(b) the Respondent entered into an ASF thereby saving CIRO the time and expense of a fully contested hearing;

(c) the Dealer Member had already terminated the Respondent's employment as a result of the misconduct; and

(d) the Respondent had not been the subject of any prior MFDA or CIRO disciplinary proceedings.

Previous Decisions Made in Similar Circumstances

¶ 52 Staff directed us to a number of previous cases involving similar circumstances, set out in the chart below. In those cases an administrative penalty over the amounts borrowed and outstanding was imposed.

CASE	FACTS	PENALTIES
Boldt (Re), 2017 LNCMFDA 26	At least 8 clients loaned approximately $1,330,000 to non-arm's length business, of which $517,705 was returned in the form	**ASF** - Permanent prohibition - $950,000 global fine - $7,500 Costs

CASE	FACTS	PENALTIES
	of interest payments, leaving $812,295 outstanding Respondent had been bankrupt Misconduct occurred over 2 years; not a one time lapse of judgement Additional misconduct: engaged in outside business activity - principal of 3 corporations; failure to cooperate with MFDA investigation	
Smockum (Re), [2023] Hearing Panel of the Central Regional Council, MFDA File No. 202157, Reasons for Decision dated February 8, 2023	Respondent borrowed monies from 8 clients over 3 years; 2 clients were vulnerable Respondent also borrowed money from one client to start a medical marijuana business; client relied upon her investments for income Loans amounted to $919,315 ($208,506 outstanding) Member repaid the outstanding amounts Respondent did not have the ability to pay Additional misconduct: engaged in outside business – incorporated marijuana company; recorded false notes and misled the Member	**ASF** - Permanent prohibition - $275,000 global fine, to be paid within 24 months - $10,000 costs
Visneskie (Re), 2017 LNCMFDA 348	Respondent engaged in personal financial dealings ("PFD") with 8 clients by requesting and accepting a total of approximately $764,300 Most clients were vulnerable Respondent repaid approximately $223,769 (excluding interest payments), leaving a principal outstanding balance of approximately $540,531 Staff sought a penalty of the outstanding amount owing to clients plus a $50,000 penalty Additional misconduct: misled Member with respect to PFD	**Uncontested** - Permanent prohibition - $650,531 global fine ($110,000 penalty over amount outstanding) - $15,000 costs

CASE	FACTS	PENALTIES
Latour (Re), 2016 LNCMFDA 180	Respondent had solicited and accepted approximately $651,946 from at least 3 clients Respondent had failed to return or otherwise account for the monies Respondent submitted he was homeless and bankrupt Additional misconduct: failed to cooperate with Staff's investigation	**Uncontested** - Permanent prohibition - $900,000 total fine that included $650,000 obtained from clients, $200,000 for lost interest to clients on funds obtained and deterrence, and $50,000 for failure to cooperate -$10,000 costs
Frank (Re), 2015 LNCMFDA 83	Respondent engaged in PFD with client by borrowing from clients Minimum known amount not repaid to clients was $170,000 Respondent had financial difficulties, did not seem able to manage his own affairs financially, and prospects of payment were not likely Additional misconduct: respondent recommended and implemented leveraged investments in the accounts of 10 clients without obtaining Member approval and failed to cooperate.	**Uncontested** - Permanent prohibition - $400,000 fine - $10,000 costs
Bangyay (Re), 2013 LNCMFDA 41	Respondent obtained $100,000 loan from client to invest in the Respondent's company and did not repay the amount borrowed Additional misconduct: Outside business activities, including establishing and raising capital for his company; failure to cooperate with MFDA investigation	**Uncontested** - Permanent prohibition - $250,000 fine - $10,000 costs

The Respondent's Inability to Pay

¶ 53 Under the MFDA Sanction Guidelines, a respondent's inability to pay may be a relevant consideration when imposing a monetary sanction or costs.

¶ 54 Facts regarding the Respondent's inability to pay, including her bankruptcy and present financial circumstances and medical condition, are set out in the ASF.

¶ 55 Even in cases where respondents have established or claimed an inability to pay owing to financial circumstances and health issues, hearing panels have recognized the importance of imposing a substantial fine to ensure general deterrence, reflect the seriousness of a respondent's misconduct and the benefit obtained as a result of the misconduct and/or the loss to those affected, and in order to maintain confidence in the regulatory process.

Brauns (Re), 2014 LNCMFDA 9 at para. 16

Kowalski (Re) supra at paras. 29-34

Fauth (Re), supra at paras. 107, 112

See also para. 52 above

¶ 56 As recognized by the OSC in *Mutual Fund Dealers Assn. (Re)*, inability to pay is not a predominant or determining factor, and this factor "takes on less significance when determining a penalty in instances where a respondent engages in egregious misconduct that harms a client."

Mutual Fund Dealers Assn. (Re), supra at para. 51-52

¶ 57 We have sympathy for the Respondent in light of her health issues and dire financial circumstances in which she now finds herself, although she is largely the architect of her current financial misfortune. Notwithstanding that, we have given the Respondent's inability to pay relatively little weight in light of: the seriousness of her misconduct; the need for general deterrence; the substantial losses suffered by the Clients and the Respondent's concomitant gains; the Respondent's experience; and previous cases involving similar circumstances in which permanent prohibitions and significant fines were imposed on respondents who claimed an inability to pay. However, we note that we might have considered imposing a higher administrative penalty on top of the disgorgement amount if the Respondent was not in her current financial state and had the ability to pay a fine.

¶ 58 Furthermore, notwithstanding the Respondent's impecuniosity, we believe the fine should be substantial so that it appropriately reflects all of the relevant factors and is in a range that the public would expect in relation to the misconduct in order to maintain confidence in the regulatory system.

D. Costs

¶ 59 The Respondent admitted to her misconduct in her Reply and in the ASF and thereby saved Staff additional potential costs that might have been necessary for a fully contested hearing. Staff submitted that the cost request was reduced taking that into consideration.

¶ 60 Staff submitted that costs of $7,500 were reasonable and considerably less than the costs of the full amount of time and resources expended by Staff as set out in the Bill of Costs. We agree.

V. CONCLUSION

¶ 61 Having considered and weighed all of the factors outlined above, we have decided that an appropriate sanction to impose on the Respondent in this case is:

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

(b) a fine of $776,100, representing approximately the amount owing to the Clients plus a premium amount of $100,000, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b); and

(c) costs of $7,500 pursuant to Mutual Fund Dealer Rule 7.4.2.

¶ 62 We believe that the above sanction will further the objectives of CIRO to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by making clear the imperative for high standards of conduct to be upheld by Approved Persons in the industry.

Dated at Toronto, Ontario this 28th day of February, 2024.

"Joan Smart"

Joan Smart, Chair

"Eugene Park"

Eugene Park, Industry Representative

"Vas Pachapurkar"

Vas Pachapurkar, Industry Representative

APPENDIX "A"

Agreed Statement of Facts

File No. 202318

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Jila Mahnaz Mott

AGREED STATEMENT OF FACTS

I. INTRODUCTION

¶ 1 By Notice of Hearing dated August 4, 2023 the Canadian Investment Regulatory Organization ("CIRO") commenced a disciplinary proceeding against Jila Mahnaz Mott (the "Respondent") pursuant to Mutual Fund Dealer Rules 7.3 and 7.4.

¶ 2 The Notice of Hearing sets out the following allegation:

> Between September 2019 and September 2021, the Respondent borrowed monies from clients, which gave rise to conflicts or potential conflicts of interest that the Respondent failed to disclose to the Dealer Member or otherwise ensure were addressed by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to the Dealer Member's policies and procedures and Mutual Fund Dealer Rules 2.1.4 and 1.1.2 (as it relates to Rule 2.5.1) (formerly MFDA Rules 2.1.4, 1.1.2, and 2.5.1).

II. IN PUBLIC / IN CAMERA

¶ 3 The Respondent and Staff of CIRO ("Staff") agree that this matter should be heard in public pursuant to Rule 1.8 of the Mutual Fund Dealer Rules of Procedure.

III. ADMISSIONS AND ISSUES TO BE DETERMINED

¶ 4 The Respondent has reviewed this Agreed Statement of Facts and admits the facts set out in Part IV herein. The Respondent admits that the facts in Part IV constitute misconduct for which the Respondent may be penalized on the exercise of the discretion of a hearing panel of the Ontario District Hearing Committee (the "Hearing Panel") of CIRO pursuant to Mutual Fund Dealer Rule 7.4.1.

¶ 5 Staff and the Respondent jointly request that the Hearing Panel determine, on the basis of this Agreed Statement of Facts, the appropriate penalty to impose on the Respondent.

IV. AGREED FACTS

¶ 6 Staff and the Respondent agree that submissions made in this proceeding will be based only on the agreed facts in Part IV, and no other information, facts, or documents, subject to the content of this paragraph and paragraph 7 below.

¶ 7 In the event that the Hearing Panel advises one or both of Staff and the Respondent of any additional facts that it considers necessary in order to determine the issues before it, Staff and the Respondent agree that such additional facts may be provided to the Hearing Panel, either: (a) with the consent of both Staff and the Respondent if the additional facts are agreed upon; (b) if the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel; or (c) if the parties are both present at the hearing and are not in agreement about the additional facts requested by the Hearing Panel, the parties will be given a reasonable opportunity to lead evidence concerning the additional facts. In circumstances where a party leads evidence concerning additional facts requested by the Hearing Panel, the opposing party may cross-examine any witness tendered to lead such evidence and shall be given a reasonable opportunity to lead responding evidence if they wish to do so.

¶ 8 Nothing in this Part IV is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against them.

Registration History

¶ 9 Between August 17, 1997 and September 30, 2021, the Respondent was registered in Ontario as a dealing representative with Keybase Financial Group Inc. (the "Dealer Member"), a Dealer Member of CIRO (formerly a Member of the MFDA).[1]

¶ 10 On or about September 30, 2021, the Dealer Member terminated the Respondent as a result of the conduct described herein. The Respondent is not currently registered in the securities industry in any capacity.

¶ 11 At all material times, the Respondent carried on business in the Toronto, Ontario area.

Facts

Allegation – Borrowing from Clients

¶ 12 At all material times, the policies and procedures of the Dealer Member:

(a) required its Approved Persons to avoid possible conflicts of interest;

(b) required its Approved Persons to disclose any conflict of interest or potential conflict of interest to Compliance at the Dealer Member;

(c) required its Approved Persons to address conflicts of interest by the exercise of responsible business judgment, influenced only by the best interests of clients;

(d) required its Approved Persons to provide written disclosure to clients regarding potential conflicts;

(e) prohibited Approved Persons from borrowing monies from clients; and

(f) required that all monetary benefits that are provided directly or indirectly to or from clients flow through the Dealer Member.

¶ 13 In May 2004, the Respondent invested approximately $30,000 USD for the purchase of shares in two vacation ownership resorts in Cancun, Mexico (the "Mexican Properties").

[1] Between November 2005 and September 2021, the Respondent was also registered with the Dealer Member in British Columbia.

¶ 14 In October 2018, the Respondent received communications from an individual who represented themselves to be a broker at a real estate company in the United States in respect of the sale of the Respondent's shares in the Mexican Properties. Thereafter, the Respondent received communications advising her that she had to pay various taxes and fees in order to process the sale of her shares and receive the sale proceeds.

¶ 15 In September 2019, the Respondent received communications advising her that a lawsuit relating to the sale of her shares in the Mexican Properties had been commenced on her behalf, which required the Respondent to provide additional monies to parties in Mexico. In January 2020, the Respondent received communications that she had received a settlement arising from the lawsuit of approximately $950,000 USD (the "Settlement Amount"), in addition to approximately $42,000 USD from the sale of her shares in the Mexican Properties (the "Sale Proceeds"), and that she was required to provide additional monies in order to access the Settlement Amount.

¶ 16 At all material times, clients BD, SA, EC, AH, BB, RB, HB, JH, and LJ were clients of the Dealer Member (the "Clients") whose accounts were serviced by the Respondent. Clients BD, SA, EC, BB, RB, HB, JH, and LJ ranged in age from 67 to 92 years old and were vulnerable investors on the basis of their age.

¶ 17 Commencing in or about September 2019, the Respondent advised the Clients that the Respondent required monies to provide to individuals in Mexico in order for the Respondent to receive the Settlement Amount and the Sale Proceeds.

¶ 18 Between September 2019 and September 2021, the Respondent solicited loans from each of the Clients totaling approximately $561,300 CAD and $93,000 USD as set out below. The Respondent assured the Clients that the loans would be repaid once she received the Settlement Amount and the Sale Proceeds.

Client	Date of Loan(s)	Amount Borrowed	Terms	Sources of Monies Loaned to the Respondent	Payments to the Clients
EC	September 2019 to September 2021	$204,200	Unspecified bonus upon repayment	$139,044.64 redeemed from the client's investment account at the Dealer Member; remainder from client's bank account	$5,000
BB and RB	March to July 2020	$44,000	Bonus of 10% upon repayment (additional $4,000)	Clients' bank accounts	Nil
HB and JH	June and September 2020	$20,000	Not known	Clients' bank accounts	Nil
LJ	November 2020	$15,000	Not known	Client's bank account	Nil
BD	November 2020 to September 2021	$38,000	"Thank you" bonus, including an additional $1,000 bonus	Client's bank account	Nil
SA	December 2020 and January 2021	$41,500	$1,000 bonus upon loan repayment	$16,500 redeemed from client's investment account	$1,000

Client	Date of Loan(s)	Amount Borrowed	Terms	Sources of Monies Loaned to the Respondent	Payments to the Clients
				at the Dealer Member $25,000 borrowed from the client's bank account/line of credit	
AH	April 2021 to September 2021	$198,600, in addition to approximately $93,000 USD wired directly to parties in Mexico at the Respondent's request	Unspecified bonus upon repayment	$121,742.22 redeemed from client's investment account at the Dealer Member; remainder from client's bank account/line of credit	$5,000
		Total: $561,300 CAD and $93,000 USD			**Total: $11,000 CAD**

¶ 19 Borrowing monies from and making payments to the Clients gave rise to conflicts or potential conflicts of interest that the Respondent was required to immediately disclose to the Dealer Member but failed to do so.

¶ 20 The Respondent did not provide collateral in respect of any of the loans that she obtained from the Clients, and none of the loans were reduced to writing.

¶ 21 As described in the chart above, client AH wire transferred a total of approximately $93,000 USD directly to parties in Mexico at the Respondent's request. The Respondent provided client AH with the details to facilitate the wire transfers.

¶ 22 Except for the $93,000 USD that client AH directly wired to parties in Mexico, the Respondent deposited the monies borrowed from the Clients into her bank account, and subsequently transferred the monies in USD to various parties in Mexico.

¶ 23 As described in the chart above, clients SA, EC and AH redeemed investments held in their accounts at the Dealer Member in order to loan the redemption proceeds to the Respondent. The Respondent indicated on the documentation that the Respondent submitted to the Dealer Member to process these redemptions that these clients required the proceeds of the redemptions to cover their personal expenses.

¶ 24 The Respondent's statements to the Dealer Member were false or misleading, and concealed from the Dealer Member that the full proceeds of the redemptions from the accounts of clients SA and AH were to be loaned to the Respondent, in addition to most of the proceeds of the redemptions from the account of client EC.

¶ 25 As described in the chart above, the Respondent paid small amounts to some of the Clients totaling $11,000, the source of which included monies that the Respondent had borrowed from some of the other clients or other individuals.

¶ 26 The Respondent has failed to repay approximately $550,300 CAD and $93,000 USD of the monies that the Respondent borrowed from the Clients.

¶ 27 The Respondent states that in May 2021, the Respondent's bank had recalled a wire order that the Respondent sent from her bank account to an account in Mexico, the source of which was monies borrowed from one of the Clients, as the bank suspected that the transaction was fraudulent.

¶ 28 In the period after the Respondent received notice from her bank, described above, until her eventual

termination by the Dealer Member, the Respondent continued to borrow monies from clients EC, BD, and AH in the approximate total amount of $43,500 CAD and $64,969 USD.

¶ 29 On or about June 22, 2021, during a meeting to discuss the Respondent's planned resignation from the Dealer Member, the Respondent disclosed to the Dealer Member for the first time that she had borrowed monies from clients in order to pay various parties in Mexico. The Respondent also advised that she had contacted the police and filed a report with the Canadian Anti-Fraud Centre ("CAFC"), which instructed the Respondent to formally dispute or reverse the wire transfers previously sent to the various parties in Mexico.

¶ 30 The Dealer Member began an investigation into the Respondent's conduct. The Dealer Member transferred the accounts of clients serviced by the Respondent to another Approved Person, and subsequently terminated the Respondent.

¶ 31 The Dealer Member sent a letter to all of the clients whose accounts were serviced by the Respondent to determine whether they had lent monies to the Respondent. During the investigation of this matter, all of the Clients (except SA) referred to above acknowledged lending monies to the Respondent. None of the Clients have complained to the Dealer Member or CIRO.

¶ 32 The Respondent filed for bankruptcy on May 31, 2022. At the time, the Respondent reported total assets of $500 and total liabilities of $1,292,086, which included monies that the Respondent owed to the Clients, described above. The Respondent will be eligible for automatic discharge from bankruptcy on May 31, 2024.

¶ 33 Given the Respondent's bankruptcy, it is unlikely that any of the Clients will recover the approximately $550,300 CAD and $93,000 USD that they loaned to the Respondent that remains outstanding.

Additional Facts

¶ 34 In total, the Respondent transferred approximately $976,934 USD to parties in Mexico while she was registered with the Dealer Member, consisting of her own monies, monies obtained from the Clients described herein, and monies she obtained from friends and family who were not clients of the Dealer Member.

¶ 35 The Respondent is 80 years old and states that she is unemployed, has no assets, and lives with her family. The Respondent has provided Staff with documentation that she has minimal savings, and relies on her government pension and old age security income (approx. $2,000 per month) to support herself. The Respondent has provided Staff with medical documentation indicating that she has been treated for depression since June 2021.

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

Misconduct Admitted

¶ 37 By engaging in the conduct described above, the Respondent admits that between September 2019 and September 2021, the Respondent borrowed monies from clients, which gave rise to conflicts or potential conflicts of interest that the Respondent failed to disclose to the Dealer Member or otherwise ensure were addressed by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to the Dealer Member's policies and procedures and Mutual Fund Dealer Rules 2.1.4, 2.1.1, and 1.1.2 (as it relates to Rule 2.5.1) (formerly MFDA Rules 2.1.4, 2.1.1, 1.1.2 and 2.5.1).

Execution of Agreed Statement of Facts

¶ 38 This Agreed Statement of Facts may be signed in one or more counterparts which together shall constitute a binding agreement.

¶ 39 A facsimile copy of any signature shall be effective as an original signature.

DATED this 12th day of January, 2024.

"Jila Mahnaz Mott"
Jila Mahnaz Mott

"Charles Corlett"
Staff of CIRO
Per: Charles Corlett
Vice-President, Enforcement