

Re Fawcett

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Erika Fawcett

2024 CIRO 37

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: January 29, 2024 in Toronto, Ontario (via videoconference)
Decision and Reasons: March 15, 2024

Hearing Panel:

The Honourable Robert P. Armstrong, K.C., Chair
Linda Anderson, Industry Representative
Jeff Page, Industry Representative

Appearances:

Molly McCarthy, CIRO Enforcement Counsel
Erika Fawcett, the Respondent (present)

DECISION AND REASONS

I. INTRODUCTION

¶ 1 From July 11, 2017, to August 26, 2022, the Respondent, Erika Fawcett, was registered in Ontario as a dealing representative with Quadrus Investment Services Ltd., a Dealer Member of the Canadian Investment Regulatory Organization (CIRO) (formerly a member of the Mutual Fund Dealer Association of Canada “MFDA”).

¶ 2 By Amended Notice of Hearing dated November 30, 2023, the following allegations were made by CIRO against the Respondent:

Allegation #1: Between July 28, 2017 and September 28, 2021, the Respondent conducted trading activity in respect of clients who resided in provinces where the Respondent was not registered, contrary to the Dealer Member’s policies and procedures and Mutual Fund Dealer Rules 1.1.5, 2.1.1 and 1.1.2 (as it relates to 2.5.1) (formerly MFDA Rules 1.1.5, 2.1.1, 1.1.2, and 2.5.1).

Allegation #2: Between October 9, 2020 and March 2021, the Respondent photocopied four client account forms that had been previously signed by clients and altered information on the account forms to complete four new transactions, contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1).

Allegation #3: Between March 29, 2020 and January 20, 2021, the Respondent altered and used to process transactions, five account forms in respect of three clients, by altering information on the account forms without having the clients initial the alterations, contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1).

Allegation #4: Between July 11, 2017~~July 29, 2016~~ and July 15, 2021, the Respondent obtained, possessed and used to process transactions, ~~2832~~ pre-signed account forms in respect of 9 clients, contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1).

II. THE FACTS

¶ 3 The Respondent acted as a licensed assistant for VJ, another dealing representative registered with the Dealer Member who was registered in the provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario and Saskatchewan.

¶ 4 This matter proceeded before us by way of agreed statement of facts. The relevant facts for the purposes of these reasons are taken from the Agreed Statement of Facts as follows:

Registration History

9. From July 11, 2017 to August 26, 2022, the Respondent was registered in Ontario as a dealing representative with Quadrus Investment Services Ltd., a Dealer Member of CIRO (the "Dealer Member") (formerly a Member of the Mutual Fund Dealer Association of Canada ("MFDA")).

10. On August 26, 2022, the Respondent resigned and is not currently registered in the securities industry.

...

Out of Province Trading

15. At all material times, the Dealer Member's policies and procedures required licensed assistants who are registered to only place trades in jurisdiction in which they are registered, and required that if a transaction is submitted on behalf of a client, that the dealing representative be registered in the same province where the client is resident.

16. At all material times, the Respondent was registered as a dealing representative with the Dealer Member solely in the province of Ontario.

17. The Respondent acted as a licensed assistant for VJ, another dealing representative registered with the Dealer Member, who was registered in the provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario and Saskatchewan.

18. From time to time, the Respondent communicated with clients of the Dealer Member whose accounts were serviced by VJ to obtain trade instructions, and processed transactions under VJ's representative code. The Respondent did not have a personal representative code.

19. Between July 28, 2017 and September 28, 2021, the Respondent obtained trade instructions, prepared client account forms, and used VJ's representative code to process 31 transactions in respect of 15 clients who resided in provinces where the Respondent was not registered.

20. The Respondent submitted these account forms to facilitate transactions on behalf of the clients including subsequent purchases of mutual funds, switches, redemptions, transfers, conversions, and a letter of direction.

21. Both the Respondent and VJ have stated the Respondent's trading outside her jurisdiction was an administrative oversight and the Respondent became registered in all provinces in which VJ was registered upon discovery of the oversight.

Re-use of Client Signature

22. At all material times, the Dealer Member's policies and procedures prohibited the falsification of client signatures.

23. Between October 9, 2020 and March 22, 2021, the Respondent photocopied and altered information on four account forms that contained client signatures that had been used to process previous transactions and submitted the account forms to the Dealer Member to process new transactions.

24. The Respondent altered the information on the photocopied account forms by applying liquid correction fluid and adding new information to the photocopied account forms.

25. The re-used account forms include transfer forms and conversion forms, and the information the Respondent altered on the account forms included client investment instructions and fund information.

Altered Account Forms

26. At all material times, the Dealer Member's policies and procedures prohibited its dealing representatives from altering information on account forms without having the client initial the alterations.

27. Between March 29, 2020 and January 20, 2021, the Respondent altered and used to process transactions, five account forms in respect of three clients, by altering information on the account forms without having the clients initial the alterations.

28. The altered account forms include transfer forms and conversion forms.

29. In each instance, the Respondent altered the dates of the client signature on the account forms without having the clients initial the alterations.

Pre-signed Forms

30. At all material times, the Dealer Member's policies and procedures prohibited its dealing representatives from using pre-signed account forms.

31. Between July 11, 2017 and July 15, 2021, the Respondent obtained, possessed and used to process transactions, 28 pre-signed forms in respect of 9 clients.

32. The pre-signed account forms include transfer forms, conversion forms, Registered Education Savings Plan withdrawal request forms, redemption forms and subsequent investment forms.

33. The information that the Respondent added to the account forms after the clients had already signed, included transfer instructions, fund information, client information and dates.

Dealer Member's Investigation

34. In October 2021, the Dealer Member completed a full file review of client files maintained by VJ and discovered the account forms as well as the transactions processed by the above. Respondent in provinces where the Respondent was not registered, as described above.

35. As part of its investigation into the Respondent's conduct, the Dealer Member sent letters to all clients whose accounts VJ serviced, along with portfolio summaries in order to determine the accuracy of the information and whether the transactions were authorized. No clients responded to the Dealer Member's letters with any concerns.

36. On November 3, 2021, the Dealer Member issued the Respondent a disciplinary letter in respect of the conduct described above.

Additional Factors

37. There is no evidence that the Respondent received any financial benefit from the misconduct described above.

38. There is no evidence of client financial loss or lack of authorization for the underlying transactions, and no clients have complained to CIRO or the Dealer Member.

39. The Respondent has not previously been the subject of disciplinary proceedings by the MFDA or CIRO.

Misconduct Admitted

40. By engaging in the conduct described above, the Respondent admits that she:

- (a) Between July 28, 2017 and September 28, 2021, the Respondent obtained instructions and processed transactions in respect of clients who resided in provinces in which the Respondent was not registered, contrary to the Dealer Member's policies and procedures and Mutual Fund Dealer Rules 1.1.5, 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1) (formerly MFDA Rules 1.1.5, 2.1.1, 1.1.2, and 2.5.1);
- (b) Between October 9, 2020 and March 22, 2021, the Respondent photocopied and altered information on four account forms that contained client signatures that had been used to process previous transactions and submitted the account forms to the Dealer Member to process new transactions, contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1);
- (c) Between March 29, 2020 and January 20, 2021, the Respondent altered and used to process transactions, five account forms in respect of three clients, by altering information on the account forms without having the clients initial the alterations, contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1); and
- (d) Between July 11, 2017 and July 15, 2021, the Respondent obtained, possessed and used to process transactions, 28 pre-signed forms in respect of 9 clients, contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1).

III. THE RESPONDENT

¶ 5 The Respondent attended the hearing in person. She was not represented by counsel and spoke briefly on her own behalf. She indicated that she was not making excuses, but she wanted the Panel to know she did not act alone. She indicated that the company by whom she was employed “never once came to me and asked why my signature was on those documents.” She indicated that the company “did not intervene.” She also said that her boss was fully aware of what she was doing. She said she did what she was told to do by her boss. The aforementioned statements were made without objections from counsel for CIRO.

IV. SUBMISSIONS IN RESPECT OF PENALTY BY COUNSEL FOR CIRO

¶ 6 Counsel for CIRO submitted that based on the admissions by the Respondent that Staff would ordinarily seek a fine of \$30,000.00 and costs. However, in view of the Respondent's financial circumstances counsel for CIRO is seeking a fine of at least \$15,000 and costs in the amount of \$2,500.00.

¶ 7 In summary, counsel for CIRO submitted that in exercising its discretion to impose a penalty that hearing panels in the past have considered the following factors:

- (a) The protection of the investing public;
- (b) The integrity of the securities market;
- (c) Specific and general deterrence;
- (d) The protection of the MFDA's (now CIRO) membership; and
- (e) The protection of the integrity of the MFDA's (now CIRO) enforcement process.

¶ 8 Counsel for CIRO submitted that the Supreme Court of Canada in *Pezim v. British Columbia* (Superintendent of Brokers), [1994] 2 S.C.R. 557, has held that the primary goal of securities regulation is the protection of investors including ensuring efficient capital markets and public confidence in the industry.

V. ALLEGATION #1 – TRADING OUTSIDE THE JURISDICTION

¶ 9 Counsel for CIRO submitted that pursuant to Mutual Fund Dealer Rule 1.1.5(a) Approved Persons such as Ms. Fawcett are only permitted to conduct securities business in Ontario pursuant to the Mutual Fund Dealer Rule 1.1.5(b). Also, Mutual Fund Dealer Rule 2.1.1 requires an Approved Person to deal fairly and honestly. Hearing Panels have also held that Approved Persons engaging in securities related business beyond their registration are in breach of Mutual Fund Dealer Rules 1.1.5(b) and 2.1.1.

¶ 10 Counsel for CIRO submitted that a dealing representative who engages in business beyond the terms of

his or her registration is in breach of the Mutual Fund Dealer Rules 1.1.5 and 2.1.1., such conduct circumvents the Dealer Member's ability to supervise the activities of its Approved Persons. Reference was made to the following cases:

Potter (Re) [2012] Hearing Panel of the Central Regional Council, MFDA File No. 201038, Panel Decision dated January 24, 2012, SBA, Tab 5.

Martin (Re) [2016] Hearing Panel of the Central Regional Council, MFDA File No. 201627, Panel Decision dated November 11, 2016, SBA, Tab 6.

Simmons (Re) [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201894, Panel Decision dated January 25, 2019, SBA, Tab 7.

Jindal (Re) [2023] Hearing Panel of the Central Regional Council, CIRO File No. 202328, Panel Decision dated December 23, 2023, SBA, Tab 40.

VI. ALLEGATION #2 – REUSED CLIENT SIGNATURES

¶ 11 Counsel for CIRO submits that when an Approved Person reuses a signed account form that has been previously used to process a transaction such conduct offends Mutual Fund Dealer Rule 2.1.1. In support she cites:

Boucher (Re), [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201744, Panel Decision dated December 8, 2017.

Singh (Re), [2017] Hearing Panel of the Central Regional Council, MFDA File No. 2017110, Panel Decision dated December 8, 2017.

Lewis (Re), [2018] Hearing Panel of the Prairie Regional Council, MFDA File No. 2017121, Panel Decision dated March 26, 2018.

VII. ALLEGATION #3 – ALTERED ACCOUNT FORMS

¶ 12 Counsel for CIRO submits when an Approved Person alters information on an account form without having the client initial the form such conduct is a breach of Mutual Fund Dealer Rule 2.1.1. In support she cites the following cases:

Lok (Re), [2020] Hearing Panel of the Central Regional Council, MFDA File No. 202011, Hearing Panel Decision dated May 11, 2020.

Warr (Re), [2020] Hearing Panel of the Atlantic Regional Council, MFDA File No. 202037, Hearing Panel Decision dated September 25, 2020.

¶ 13 Counsel notes that the MFDA had previously warned Approved Persons against the use of pre-signed forms which altered account forms without the involvement of the client's initials to show that they are aware of the change.

VIII. ALLEGATION #4 – PRE-SIGNED ACCOUNT FORMS

¶ 14 Counsel submits that pre-signed forms are, for example, account forms that were incomplete at the time they were signed. Approved Persons are only permitted to use and rely upon such forms that are executed by the client when all the information on the form has been included.

¶ 15 Counsel for CIRO submits that using pre-signed account forms is also a contravention of the standard of conduct prescribed under Mutual Fund Dealer Rule 2.1.1. Counsel cited the following cases:

Lok (Re), *supra*.

Warr (Re), *supra*.

IX. CONCLUSION

¶ 16 This Panel accepts the Agreed Statement of Facts. We agree that by accepting the agreed facts Ms. Fawcett has accepted that she is in breach of the Mutual Fund Dealer Rules as alleged in Allegations 1, 2, 3

and 4 in the Amended Notice of Hearing. In the result, we conclude that Ms. Fawcett has breached the Mutual Fund Dealer Rules as alleged in the Amended Notice of Hearing. What remains for us is to decide the appropriate penalty to be imposed on the Respondent.

¶ 17 In considering what is the appropriate penalty we accept that the primary goal of securities regulation is the protection of the investors including ensuring efficient capital markets and public confidence in the industry as articulated by the Supreme Court of Canada.

¶ 18 We also take into account that Ms. Fawcett co-operated fully with the staff of MFDA in the investigation of this matter and fully admitted her wrong doing.

¶ 19 In addition to the above, we note that Ms. Fawcett acted under the direction of her superior. While this does not relieve her of her personal responsibility it is a factor we take into account in considering the appropriate penalty.

¶ 20 It is also a factor to take into account that there is no evidence that any client suffered a loss and no evidence that Ms. Fawcett received any particular benefit from her conduct.

¶ 21 Finally, we have considered Ms. Fawcett's personal financial situation.

¶ 22 In the result, we conclude that the appropriate penalty in this case is for Ms. Fawcett to pay a fine of \$10,000 and costs of \$1,500 and we so order.

Dated at Toronto, Ontario this 15 day of March 2024

“Robert P. Armstrong” _____

Robert P. Armstrong, K.C., Chair

“Linda Anderson” _____

Linda Anderson, Industry Representative

“Jeff Page” _____

Jeff Page, Industry Representative

Copyright © 2024 Canadian Investment Regulatory Organization. All Rights Reserved