

# Re Armitstead

IN THE MATTER OF:

**The Mutual Fund Dealer Rules**

**and**

**Susan Armitstead**

2024 CIRO 60

Canadian Investment Regulatory Organization  
Hearing Panel of the Alberta District

Heard: April 29, 2024 by electronic hearing in Calgary, Alberta  
Decision and Reasons: July 8, 2024

**Hearing Panel:**

Robert Stack, Chair  
Kathleen Jost, Industry Representative  
Patricia Rigsby, Industry Representative

**Appearances:**

Alan Melamud, Senior Enforcement Counsel  
Molly McCarthy, Enforcement Counsel  
Paul Moreau, for Susan Armitstead  
Susan Armitstead, Respondent, not in attendance

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## DECISION AND REASONS ON PENALTY

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### I. INTRODUCTION

¶ 1 Below we set out reasons for a decision of a Canadian Investment Regulatory Organization ("CIRO") hearing panel (the "**Hearing Panel**") assembled to determine the appropriate penalty in relation to admitted allegations that CIRO staff ("**Staff**") made against Susan Armitstead (the "**Respondent**" or "**Ms. Armitstead**").

### II. ALLEGATIONS

¶ 2 A Notice of Hearing in this matter alleges that:

**Allegation #1:** Between February 3, 2016 and May 10, 2018, the Respondent misappropriated or otherwise failed to account for client monies, contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1) (the "**Misappropriation Allegation**").

**Allegation #2:** Between February 4, 2016 and January 3, 2018, the Respondent:

- a) recorded false or misleading notes in the Dealer Member's back office system; or
- b) made false or misleading statements to the Dealer Member during supervisory inquiries,

contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1) (the "**Misleading Records and Statements Allegation**").

### III. AGREED STATEMENT OF FACTS

#### General Admissions

¶ 3 An Agreed Statement of Facts ("ASF") dated April 12, 2024, was presented to the Panel. In the ASF, the Respondent admits the facts set out in the Misappropriation Allegation and the Misleading Records and Statements Allegation. She further admitted that the conduct amounted to a violation of MFDA Rule 2.1.1, as described below.

¶ 4 The ASF also disclosed the Ms. Armitstead's registration history. She was registered in Alberta as a dealing representative of Quadrus Investment Services Ltd. (the "**Dealer Member**") between September 14, 2001 and August 12, 2021. The Respondent operated out of the Onoway, Alberta area.

¶ 5 The Dealer Member terminated the Respondent as a result of the conduct described in the ASF and she is currently not registered in any capacity in the securities industry.

#### Misappropriation Allegation

¶ 6 The ASF provided further information about the Misappropriation Allegation.

¶ 7 Among Ms. Armitstead's clients was her spouse. Between February 3, 2016 and May 10, 2018, she processed a total of 10 redemptions from his registered and unregistered accounts in the total amount of \$61,328, signing her spouse's signature on the necessary forms. These redemptions were made without the knowledge or authorization of the client spouse. The funds were placed in the Respondent's personal bank account and then spent.

¶ 8 When the client asked for statements, the Respondent created false statements that did not show the redemptions and overstated the capital of the account.

¶ 9 The misconduct was identified after the client contacted the Dealer Member and asked it for account statements. The statements produced by the Dealer Member showed the redemptions.

¶ 10 The insurer of the Dealer Member provided compensation to the client that covered the loss of \$61,328.86, plus a sum of \$21,384.54 for anticipated loss of investment growth. The insurer also paid out \$3,525.74 in relation to unauthorized redemptions from a segregated fund (which is not a product that is regulated by CIRO or the subject of this proceeding).

¶ 11 The insurer of the Dealer Member then commenced a subrogated civil claim against the Respondent in order to recover the amounts it paid out. The Respondent did not defend the action and eventually paid off a judgment of \$91,542.68, which also included legal costs and prejudgment interest.

#### Details Regarding Misleading Records and Statements

¶ 12 According to the ASF, between February 3, 2016, and June 15, 2017, Ms. Armitstead recorded five false statements in the Member's back-office system suggesting that the client was aware of the redemptions and authorized them. The notes proposed reasons why the investor might be interested in withdrawing funds at that time, despite negative potential income tax consequences and deferred sales charges.

¶ 13 Further, between February 4, 2016 and January 3, 2018, Ms. Armitstead responded to supervisor inquiries with statements suggesting that the investor was aware of the redemptions when that was, in fact, not the case.

#### Additional Factors

¶ 14 The ASF disclosed that the Respondent was charged with fraud, forgery and possession of stolen property under the Criminal Code, RSC 1985, c. C46 (the "**Code**"). She later pleaded guilty to one count of fraud under Section 380 of the Code and was sentenced to a conditional sentence of 12 months.

¶ 15 The ASF also indicated that as a result of her misconduct, the Respondent's spouse commenced divorce proceedings against her. She also lost her certification as a financial planner.

¶ 16 Ms. Armitstead did not appear at the Hearing, but was represented by counsel. She did file as “submissions” a short document that stated that she had taken the funds because her investor spouse was not carrying his fair share of the economic burdens of their household and that she could not afford to pay a fine. Her counsel did represent that she is working and the reason she could not attend the Hearing was because of this employment.

### **ANALYSIS**

¶ 17 The Respondent admitted that the conduct described in the ASF amounted to a contravention of Mutual Fund Dealer Rule 2.1.1, which is as follows:

#### 2.1.1 Standard of Conduct.

Each Member and each Approved Person of a Member shall:

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

¶ 18 The Panel agrees that the admitted misappropriation and the issuing of misleading records and statements were grossly contrary to the standards of ethical and professional practice required by Mutual Fund Dealer Rule 2.1.1.

### **Positions of the Parties on Penalty**

¶ 19 Under Mutual Fund Dealer Rule 7.4, Staff is seeking a penalty of \$20,000 to \$30,000, plus costs of \$5,000. It also seeks a permanent ban on the Respondent acting as a dealing representative for a CIRO member.

¶ 20 Ms. Armitstead submits that she has been exposed to sufficient negative consequences from her misconduct, including the civil judgment and the criminal sentence, to effect specific deterrence. She does not dispute the need for a permanent ban on acting as a dealing representative and submits that this sanction is the ultimate deterrent. Her counsel did not seriously question Staff’s claim for costs.

¶ 21 We agree with the parties that a permanent prohibition on the authority of the Respondent to conduct securities related business is necessary in this case. The misconduct was so fundamentally contrary to the ethical obligations of a dealing representative that this severe sanction is justified and necessary for both specific and general deterrence. It is also consistent with cases presented to the Hearing Panel.

¶ 22 It is the issue of fine where the parties disagree. Staff rely on a number of cases where MFDA panels assessed fines despite other consequences suffered by the respondent. In *Douglas (Re)*, 2018 LNCMFDA 216, the dealing representative misappropriated \$31,636.78 from a client who was a family member. The dealing representative plead guilty to a charge under the Code and made restitution in the criminal proceeding. The MFDA panel imposed an additional fine for the misappropriation of \$50,000, plus a fine for failing to cooperate and a costs award.

¶ 23 Large fines for misappropriation were also assessed against dealing representatives who were subject to criminal sanctions in *Dew (Re)*, 2018 LNCMFDA 164 and *Vanlandschoot (Re)*, 2021 LNCMFDA 10.

¶ 24 On the other hand, the Respondent relies upon the case of *Rivet (Re)*, 2023 CIRO 17, where a respondent who was subject to a criminal sanction received no additional fine from a hearing panel. The panel did order a permanent ban on acting as a dealing representative and ordered the respondent to pay costs.

¶ 25 Further, the Hearing Panel in this case was aware of another case, *Sumka (Re)*, 2021 CanLII 4974,

where an MFDA hearing panel similarly declined to order a fine against a respondent who had already suffered a criminal conviction. When asked to comment on this case, the Respondent asserted that the decision supported its position that specific deterrence had been achieved and no further penalty was necessary. Staff distinguished *Sumka (Re)* on the basis that the criminal sanction in that case was greater and the respondent in that case did more to show an inability to pay.

### **Analysis**

¶ 26 The Supreme Court of Canada has emphasized that sanctions in the area of securities regulation are “preventive in nature and prospective in orientation”. The focus is not on punishing past behaviour, but preventing future reoccurrences that would harm the public and the integrity of capital markets.<sup>1</sup>

¶ 27 Panels of CIRO and its predecessor organizations have often cited the following factors as relevant to the fixing of sanctions:

- 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.<sup>2</sup>

¶ 28 In this case, the misconduct was extremely serious. The misappropriation was both counter to basic ethical norms and struck at the heart of the client/representative relationship. Such misconduct represents a threat to the integrity and reputation of capital markets in general. Clients must be able to trust dealing representatives sufficiently that they will leave considerable investment funds with them. The gravity of the misconduct as a threat to the investment industry is an important consideration in terms of both specific and general deterrence.

¶ 29 The Respondent enjoyed a benefit from the misconduct, though she suggests the funds went to family expenses and eventually she had to satisfy a civil judgement. The client certainly suffered a loss initially. The Respondent did not make the loss whole directly; rather, the dealing member's insurance did.

¶ 30 However, keeping in mind that the focus is not on punishment, but prevention, it is clear that the Respondent in this case has already paid a price in a number of ways:

1. Ms. Armitstead had to satisfy a large civil judgment relating to the insurance indemnification

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<sup>1</sup> *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 45

<sup>2</sup> *Milewski (Re)*, [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999 at p. 25

paid to the investor;

2. The misconduct led to a divorce (we are told); and
3. The Respondent was the subject of a criminal conviction and a lengthy custodial sentence. Although this sentence was served in the community, it still amounts to a restriction on her freedom.

¶ 31 We were also informed that Ms. Armitstead suffered regulatory consequences in terms of the loss of her licence with the Insurance Council of Alberta and that she is dealing with a disciplinary proceeding with FP Canada flowing from the same misappropriation.

¶ 32 Counsel for the Respondent cited the Supreme Court of Canada (“SCC”) case of *Guindon v. Canada*, 2015 SCC 41 (CanLII), [2015] 3 SCR 3 for the proposition that the bringing of an administrative proceeding in relation to the same conduct that led to a criminal conviction could be an abuse of process. However, the SCC only stated in obiter that a respondent could make such an argument, not in what circumstances it would likely be successful. Counsel for the Respondent conceded he was not taking the position that the current CIRO proceeding amounted to an abuse.

¶ 33 In the earlier case of *R. v. Wigglesworth*, 1987 CanLII 41 (SCC), [1987] 2 S.C.R. 541, the SCC found that the same misconduct could result in a person “accounting to” the public at large in terms of a criminal sentence, while also “accounting to” narrower groups or associations, such as a professional body, via administrative or regulatory consequences. Here the Respondent has to account to her professional regulator in relation to the breach of its rules.

¶ 34 While there is nothing “abusive” about the CIRO proceeding coming after the criminal conviction, the Hearing Panel can consider the impact of consequences from the criminal, civil and regulatory proceedings when assessing specific deterrence. We are of the view that in this case a large measure of specific deterrence has already been achieved and this is an important factor in our decision set out below. Further, we agree that the permanent prohibition on conducting securities related business is itself a severe penalty.

¶ 35 Having said that, while the Respondent pleaded guilty to fraud, there is no evidence that she suffered any penalty for her misstatements to the Dealer Member. Furthermore, it must be clear to both her and the industry that there will be financial consequences of a considerable degree if a dealing representative misappropriates client funds.

¶ 36 Ability to pay is also a consideration in setting the appropriate penalty in this case. The Respondent’s counsel emphasized she has a limited capacity to pay a fine. Staff responded to this by stressing that the Respondent had not provided any evidence in that regard. We give this factor of limited means some weight, but less than we might have had information been provided to Staff and had the Respondent appeared to discuss her circumstances. Only so much credit can be given to unsworn statements and “submissions” in that regard.

¶ 37 Further, while the Panel was somewhat curious about the representations that the Respondent made about the reasons for the misappropriation, i.e., that her husband was not paying his fair share of household expenses, the Respondent did not appear in person to testify about this fact, leaving the evidence somewhat uncertain.

## **CONCLUSION**

¶ 38 In all of the circumstances, the Hearing Panel is of the view that the Respondent should pay a fine of \$15,000 and costs of \$5,000.

¶ 39 We also order a permanent prohibition on her authority to conduct securities related business.

**DATED** at Calgary, Alberta this 8<sup>th</sup> day of July, 2024.

“Robert Stack” \_\_\_\_\_  
Robert Stack, Chair

“Kathleen Jost”

Kathleen Jost, Industry Representative

“Patricia Rigsby”

Patricia Rigsby, Industry Representative

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