

Re Carlisle

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Gulnar Carlisle

2024 CIRO 64

Canadian Investment Regulatory Organization
Hearing Panel (Pacific District)

Heard: July 15, 2024 in Vancouver, British Columbia (via videoconference)

Decision: July 15, 2024

Reasons for Decision: July 22, 2024

Hearing Panel:

Linda Murray, Chair

Bruce Krutow, Industry Representative

Jared Webb, Industry Representative

Appearances:

Molly McCarthy, CIRO Enforcement Counsel

Shaun Frost, Counsel for Gulnar Carlisle

Gulnar Carlisle, Respondent

REASONS FOR DECISION

I. INTRODUCTION

¶ 1 On June 13, 2024, the Canadian Investment Regulatory Organization (CIRO) issued a Notice of Settlement Hearing pursuant to Mutual Fund Dealer Rule 7.4.4 requesting that the hearing panel consider whether to accept a Settlement Agreement between CIRO Staff and Gulnar Carlisle (Ms. Carlisle or the Respondent).

¶ 2 Ms. Carlisle admitted the following contraventions of the Mutual Fund Dealer Rules:

Between February 25, 2020 and March 11, 2021, the Respondent signed a client signature using electronic platforms on 84 account forms with respect of 34 clients and submitted the account forms to the Dealer Member for processing, contrary to Mutual Fund Dealer Rule 2.1.1.

¶ 3 In the Settlement Agreement the Respondent and CIRO staff agreed to the following sanctions:

- (a) the Respondent shall pay a fine in the amount of \$10,000, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b);
- (b) the Respondent shall pay costs in the amount of \$2,500, pursuant to Mutual Fund Dealer Rule 7.4.2;
- (c) the Respondent shall be prohibited from conducting securities related business in any capacity

while in the employ of or associated with any CIRO Dealer Member for a period of six months, commencing the date that this settlement agreement is accepted by a Hearing Panel, pursuant to Mutual Fund Dealer Rule 7.4.1.1(c);

- (d) the Respondent shall in the future comply with the Mutual Fund Dealer Rule 2.1.1; and
- (e) the Respondent shall attend on the date set for the Settlement Hearing.

¶ 4 The issues for this Hearing Panel to determine, pursuant to Mutual Fund Dealer Rule 7.4.4.3, were whether:

- (a) the facts admitted by the Respondent in the Settlement Agreement amounted to misconduct and breached the Rules; and
- (b) whether to accept the Settlement Agreement.

II. BACKGROUND

¶ 5 The relevant facts are set out in Section IV of the Settlement Agreement, which is attached as Appendix A to our Reasons for Decision.

III. ANALYSIS

Do The Agreed Facts Constitute Misconduct?

¶ 6 Mutual Fund Dealer Rule 2.1.1 prescribes the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires that:

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.

¶ 7 The Respondent admitted that, using the Dealer Member's electronic signature platforms, she signed client signatures on 84 account forms for 34 clients, aged 55 to 100 years, and submitted the forms to her Dealer Member for processing, contrary to Rule 2.1.1.

¶ 8 Through Staff Notice #0066 (as amended) and Bulletin #0661-E published prior to the misconduct, the MFDA warned Approved Persons not to engage in signature falsification, including signing a client's signature, which amounted to serious misconduct. The Notices and Bulletin confirmed that any falsification was unacceptable whether or not it was done for client convenience or whether the client instructed or agreed. The Notices and Bulletin noted that client signature falsification created a number of issues including, among other things: affecting the integrity and reliability of documents; destroying the audit trail; misleading Member supervisors; negatively affecting the credibility of the registrant and the Member; and potentially prejudicing the ability of the Member to deal with client complaints.

¶ 9 The Respondent acknowledged in the Settlement Agreement that client convenience is not an acceptable justification for failing to properly obtain client signatures.

¶ 10 The Respondent admitted that her conduct was also contrary to the Dealer Member's policies and procedures.

¶ 11 Previous cases have held that signing a client's signature contravenes the standard of conduct set out in Rule 2.1.1 and is serious misconduct. These cases include: (1) *Kwak (Re)* [2022] MFDA Hearing No. 202204; (2) *Barnai (Re)* [2015] MFDA File No. 201325; (3) *Lamontagne (Re)*; (4) *Harry (Re)* [2021] MFDA Hearing No. 202035; and (5) *Adair (Re)* [2017] MFDA Hearing No. 201681.

¶ 12 The hearing panel in *Barnai (Re)* cited the hearing panel in *Bell (Re)*, a decision by a hearing panel of the then Investment Dealer Association:

Forgery is always serious. It is unequivocally condemned because it is fundamentally dishonest and dangerous. Any act of forgery is a step onto a steep and slippery slope of deception that is always potentially harmful to clients and actually harmful to the Member firm and the securities industry as a whole.

¶ 13 The hearing panel in *Lamontagne (Re)* confirmed that although forgery is a serious offence, hearing panels may distinguish between more or less serious circumstances of client signature falsification.

¶ 14 The Respondent admitted, and the Hearing Panel concurred, that her actions amounted to misconduct and breached the regulatory requirements and standards referenced in Mutual Fund Dealer Rule 2.1.1.

IV. ACCEPTANCE OF THE SETTLEMENT AGREEMENT

¶ 15 The Hearing Panel took into account the authorities and submissions of counsel regarding its role and the recommended sanctions in making its determination to accept the Settlement Agreement.

¶ 16 The role of a hearing panel when considering a settlement agreement is well-established. The hearing panel does not determine whether it would have imposed the same sanctions as those agreed by the parties through negotiation.

¶ 17 Previous cases emphasized the importance of negotiated settlements to the efficiency of the administrative process and to the overall public interest. The role of a hearing panel when considering a settlement agreement is to determine whether the proposed sanctions fall within the criteria set in previous cases and if so, to accept the negotiated settlement.

¶ 18 Enforcement Counsel referred the Hearing Panel to the cases of *Sterling Mutuals Inc. (Re)* [2008] MFDA File No. 200820; *Milewski (Re)* [1999] I.D.A.C.D. No.17; *Jackson (Re)* [2007] MFDA File No. 200712; and *British Columbia Securities Commission v. Seifert*, 2007 BCCA 484. Collectively, the hearing panels in those cases noted that a settlement agreement should be accepted if the agreed sanctions:

- (a) are fair and reasonable as proportional to the seriousness of the contraventions, considering all relevant circumstances;
- (b) are within an acceptable range taking into account previous cases; and
- (c) would serve as a specific and general deterrent to protect the public interest and foster confidence in the integrity of the securities markets and securities regulators.

¶ 19 Enforcement Counsel referred to the CIRO Sanction Guidelines and referenced a number of the general principles and relevant factors in determining whether the proposed sanctions were appropriate. The Hearing Panel considered the following factors:

- a. The conduct was serious.
- b. The MFDA issued Notices and a Bulletin warning of the serious nature and consequences of signing client signatures.
- c. The Respondent was facilitating the switch of existing client accounts to a new type of account which was either beneficial or neutral to the clients regarding fees. There is no evidence that she received any fees or financial benefit from the conduct.
- d. The conduct occurred during the COVID-19 pandemic lockdown when social distancing and business closures prevented physical meetings with clients to sign forms.
- e. The Respondent said that the clients were not able to sign the forms using the electronic platforms due to their ages, lack of cell phones, and limited computer skills. However, the Respondent acknowledged that client convenience did not justify her conduct.
- f. Ms. Carlisle spoke to each client to obtain the client's consent before electronically signing the

forms. She made notes of each discussion and placed them in the client files.

- g. The Dealer Member contacted the clients and none reported any concerns. There was no evidence of financial losses to the clients.
- h. The Dealer Member required the Respondent to obtain proper client signatures on new forms.
- i. In August 2022, the Dealer Member issued a warning letter to Ms. Carlisle and imposed a fine of \$2,000, which she paid. The Dealer Member did not terminate Ms. Carlisle's employment.
- j. Ms. Carlisle cooperated with the Dealer Member review and the CIRO investigation. She agreed to resolve these matters by Settlement Agreement reducing the resources required by Enforcement Staff, leading to an expeditious resolution.
- k. Ms. Carlisle was registered from 1998 to 2023 when she retired. She has no prior disciplinary history.
- l. The sanctions based upon the circumstances and factors set out in the Settlement Agreement would serve as both a specific deterrent and a general deterrent to other members of the industry.
- m. Ms. Carlisle accepted responsibility for her conduct and entered into the Settlement Agreement after extensive negotiations for which she was represented by counsel.
- n. No aggravating factors were noted.

¶ 20 Enforcement Counsel referred to a number of cases involving similar misconduct including:

- (a) *Patel (Re)* [2003] CIRO File No. 202307;
- (b) *Suleman (Re)* [2019] MFDA Hearing No. 201880;
- (c) *MacDermaid (Re)* [2021] MFDA File No. 202117;
- (d) *Cassim (Re)* [2019] MFDA Hearing No. 201804; and
- (e) *Mailloux (Re)* [2019] MFDA Hearing No. 201955.

¶ 21 Enforcement Counsel submitted that the Respondent's case was within the range set by the cases referenced.

¶ 22 Counsel jointly submitted that the sanctions in the Settlement Agreement were within an acceptable range, given Ms. Carlisle's particular circumstances. The Hearing Panel concurs.

V. CONCLUSION

¶ 23 Following a review of counsel submissions and panel deliberations, the Hearing Panel accepted the Settlement Agreement with written reasons to follow.

¶ 24 The Hearing Panel determined that the agreed sanctions met the CIRO Sanction Guidelines and:

- (a) were fair and reasonable considering all the relevant circumstances;
- (b) were within an acceptable range taking into account similar cases; and
- (c) would serve as a specific and general deterrent in the public interest.

¶ 25 The Hearing Panel unanimously accepted the Settlement Agreement and ordered the following sanctions:

- a. the Respondent shall pay a fine in the amount of \$10,000, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b);
- b. the Respondent shall pay costs in the amount of \$2,500, pursuant to Mutual Fund Dealer Rule 7.4.2;
- c. the Respondent shall be prohibited from conducting securities related business in any capacity

while in the employ of or associated with any CIRO Dealer Member for a period of six months, commencing the date that this settlement agreement is accepted by a Hearing Panel, pursuant to Mutual Fund Dealer Rule 7.4.1.1(c); and

¶ 26 the Respondent shall in the future comply with Mutual Fund Dealer Rule 2.1.1.

Confidentiality Order

¶ 27 As agreed by the Respondent and CIRO staff, the Hearing Panel makes the following confidentiality order:

If at any time a non-party to this proceeding, with the exception of the bodies set out in Mutual Fund Dealer Rule 6.3, requests production of or access to exhibits in this proceeding that contain personal information as defined by CIRO's Privacy Policy, then the Hearings Office of CIRO shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all intimate financial and personal information, pursuant to Rules 1.8(2) and (5) of the Mutual Fund Dealer Rules of Procedure.

DATED at Vancouver, British Columbia, this 18th day of July 2024.

"Linda Murray"
Linda Murray, Chair

"Bruce Krutow"
Bruce Krutow, Industry Representative

"Jared Webb"
Jared Webb, Industry Representative

Appendix "A" Settlement Agreement

IN THE MATTER OF:

The Mutual Fund Dealer Rulesⁱ

and

Gulnar Carlisle

SETTLEMENT AGREEMENT

I. INTRODUCTION

¶ 1 The Canadian Investment Regulatory Organization, a consolidation of IIROC and the MFDA ("CIRO") will announce that it proposes to hold a hearing (the "Settlement Hearing") to consider whether, pursuant to Mutual Fund Dealer Rule 7.4.4.3, a hearing panel of the Pacific District Hearing Committee (the "Hearing Panel") of CIRO should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of CIRO ("Staff") and Gulnar Carlisle (the "Respondent").

¶ 2 Staff and the Respondent, consent and agree to the terms of this Settlement Agreement.

¶ 3 Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

II. CONTRAVENTIONS

¶ 4 The Respondent admits to the following violations of the Mutual Fund Dealer Rules:

Between February 25, 2020 and March 11, 2021, the Respondent signed a client's signature using electronic signature platforms on 84 account forms with respect of 34 clients and submitted the account forms to the Dealer Member for processing, contrary to Mutual Fund Dealer Rule 2.1.1.

III. TERMS OF SETTLEMENT

¶ 5 Staff and the Respondent agree and consent to the following terms of settlement:

- (a) the Respondent shall pay a fine in the amount of \$10,000, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b);
- (b) the Respondent shall pay costs in the amount of \$2,500, pursuant to Mutual Fund Dealer Rule 7.4.2;
- (c) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any CIRO Dealer Member for a period of six months, commencing the date that this settlement agreement is accepted by a Hearing Panel, pursuant to Mutual Fund Dealer Rule 7.4.1.1(c);
- (d) the Respondent shall in the future comply with Mutual Fund Dealer Rule 2.1.1; and
- (e) the Respondent shall attend on the date set for the Settlement Hearing.

¶ 6 The Respondent consents to the Hearing Panel making a confidentiality order on the following terms:

If at any time a non-party to this proceeding, with the exception of the bodies set out in Mutual Fund Dealer Rule 6.3, requests production of or access to exhibits in this proceeding that contain personal information as defined by CIRO's Privacy Policy, then the Corporate Secretary's Office, Mutual Fund Dealer Division of CIRO shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all intimate financial and personal information, pursuant to Rules 1.8(2) and (5) of the Mutual Fund Dealer Rules of Procedure.

¶ 7 Staff and the Respondent agree to the settlement on the basis of the facts set out in this Settlement Agreement herein.

IV. AGREED FACTS

Registration History

¶ 8 From June 1, 1998 until June 1, 2023, the Respondent was registered in British Columbia as a dealing representative with Investors Group Financial Services Inc., a Dealer Member of CIRO (the "Dealer Member"), formerly a Member of the MFDA.

¶ 9 The Respondent is not currently registered in the securities industry in any capacity.

¶ 10 At all material times, the Respondent conducted business in the North Vancouver, British Columbia area.

Signed Client's Electronic Signature

¶ 11 At all material times, the Dealer Member's policies and procedures prohibited Approved Persons from signing another person's name on any document. The prohibition applied regardless of whether the client requested the Approved Person to sign on their behalf and if there is no fraudulent intention by the Approved Person.

¶ 12 At all material times, the Dealer Member permitted its Approved persons to use two specific platforms to obtain and authenticate electronic signatures obtained from clients. Both platforms automatically produce an electronic audit trail, which evidences the authentic electronic signature of clients.

¶ 13 Both platforms require two-factor authentication in which a code is sent to the client's personal phone number by text message. The client then enters the code into the signature platform to access the document and sign it. Once the client has electronically signed to document, it is returned to the Approved Person who then submits it to the Dealer Member for processing.

¶ 14 In 2019, the Dealer Member introduced an advisory account program allowing clients to switch to a new account series, which was either beneficial or neutral to clients from a fee perspective. In order to process the switch to the new account series, Approved Persons had to complete and have clients sign switch authorization forms.

¶ 15 Between February 25, 2020 and March 11, 2021, the Respondent states that she had discussions with clients about switching their accounts to the new account series and obtained authorization for each transaction. Instead of sending the switch authorization forms to the clients to electronically sign, the Respondent sent the forms to herself, used her personal phone number for the two-factor authentication, entered the authentication code she received from the platforms and then electronically signed the clients name on the forms.

¶ 16 Specifically, the Respondent signed the client's name a total of 84 times using the electronic signature platforms in respect of a total of 34 clients.

¶ 17 At the time the Respondent signed clients' names on the switch authorization forms, all of the clients were between approximately 55 and 100 years old.

Dealer Member's Investigation

¶ 18 In or about February 2021, during trade review, the Dealer Member discovered a note in a client's file maintained by the Respondent that stated that the client authorized the Respondent to sign the switch authorization forms on the client's behalf.

¶ 19 In response, the Dealer Member conducted a review of the account forms processed by the Respondent that were electronically signed by clients between February 2020 and March 2021 and identified the account forms described above.

¶ 20 The Dealer Member contacted the clients to confirm that they authorized the transactions. No clients reported any concerns to the Dealer Member. The Respondent also kept notes from her conversations with each client documenting their authorization for her to sign the switch authorization forms on the clients' behalf.

¶ 21 The Dealer Member also required the Respondent to obtain authentic client signatures on new versions of the account forms in accordance with the Dealer Member's policies and procedures.

¶ 22 On August 21, 2022, the Dealer Member issued the Respondent a warning letter and imposed a fine of \$2,000, which the Respondent paid.

¶ 23 On June 1, 2023, the Respondent retired from the Dealer Member.

Additional Factors

¶ 24 There is no evidence of client financial loss and no clients have complained to the Dealer Member or Staff in respect of the Respondent's conduct described in the Settlement Agreement.

¶ 25 There is no evidence of lack of authorization for the transactions processed using the account forms described above. The Respondent obtained client authorization for each transaction.

¶ 26 There is no evidence the Respondent received any commissions or fees arising from the transactions described herein.

¶ 27 The Respondent has not been the subject of prior MFDA or CISO disciplinary proceedings.

¶ 28 At the time the Dealer Member introduced the new account advisory program, the COVID-19 pandemic was ongoing. As such, social distancing and business closures prevented the Respondent from meeting with clients in person to facilitate the signing of the switch authorization forms. The clients would have been required to receive the forms by mail, sign them and mail them back to the Respondent, or navigate the

electronic signature platforms themselves.

¶ 29 The Respondent states that, given their age and that most of the clients did not have cell phones or computers, the clients would not have been able to perform the actions required to facilitate the switch to the new account advisory program. The Respondent acknowledges that client convenience is not an acceptable justification for failing to obtain client signatures properly.

¶ 30 The Respondent is currently 68 years old, and states that she is retired and will not return to the securities industry.

¶ 31 By entering into this Settlement Agreement, the Respondent has saved time, resources and expenses associated with conducting a contested hearing on the allegation.

V. ADDITIONAL TERMS OF SETTLEMENT

¶ 32 This settlement is agreed upon in accordance with Mutual Fund Dealer Rule 7.4.4 and Rules 14 and 15 of the Mutual Fund Dealer Rules of Procedure.

¶ 33 The Settlement Agreement is subject to acceptance by the Hearing Panel. At or following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. Settlement Hearings are typically held in the absence of the public pursuant to Mutual Fund Dealer Rule 7.3.5 and Rule 15.2(2) of the Mutual Fund Dealer Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.ciro.ca.

¶ 34 The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise agreed, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.

¶ 35 Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

- (a) the Settlement Agreement will constitute the entirety of the evidence to be submitted at the settlement hearing, subject to Rule 15.3 of the Mutual Fund Dealer Rules of Procedure;
- (b) the Respondent agrees to waive any rights to a full hearing, a review hearing or appeal, including before the Board of Directors of CIRO or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction;
- (c) except for any proceedings commenced to address an alleged failure to comply with this Settlement Agreement, Staff will not initiate any proceeding under the Mutual Fund Dealer Rules against the Respondent in respect of the contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in this Settlement Agreement, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;
- (d) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to Mutual Fund Dealer Rule 7.4.1.1 for the purpose of giving notice to the public thereof in accordance with Mutual Fund Dealer Rule 7.4.5; and
- (e) neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against the Respondent.

¶ 36 If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under Mutual Fund Dealer Rule 7.4.3 against the Respondent based on, but not limited to, the facts

set out in this Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the Hearing Panel that accepted the Settlement Agreement, if available.

¶ 37 If, for any reason, this Settlement Agreement is not accepted by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to Mutual Fund Dealer Rules 7.3 and 7.4, unaffected by the Settlement Agreement or the settlement negotiations.

¶ 38 The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law. The terms of the Settlement Agreement will be released to the public if and when the Settlement Agreement is accepted by the Hearing Panel.

¶ 39 The Settlement Agreement may be signed in one or more counterparts, which together shall constitute a binding agreement. A facsimile or electronic copy of any signature shall be as effective as an original signature.

DATED this 28 day of June, 2024.

“Gulnar Carlisle”
Gulnar Carlisle

“Witness”
Witness – Signature

“Witness”
Witness – Print name

“Molly McCarthy”
Staff of the Canadian Regulatory Organization
Molly McCarthy, Enforcement Counsel

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ⁱ On January 1, 2023, the Investment Industry Regulatory Organization of Canada (“IIROC”) and the Mutual Fund Dealers Association of Canada (the “MFDA”) were consolidated into a single self-regulatory organization that is called the Canadian Investment Regulatory Organization (referred to herein as “CIRO”) and is recognized under applicable securities legislation. CIRO adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies of the MFDA (the “Interim Rules”). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and certain by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation. Pursuant to Mutual Fund Dealer Rule 1A and s. 14.6 of By-law No. 1 of CIRO, contraventions of former MFDA regulatory requirements may be enforced by CIRO.