Re Lehri

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Zahir Hussain Lehri

2024 CIRO 75

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: August 30, and September 5, 2024 in Toronto, Ontario (via videoconference)
Decision: October 22, 2024

Hearing Panel:
Emily Cole, Chair
Rob Christianson, Industry Representative
Cheryl Hamilton, Industry Representative

Appearances:
Alan Melamud, CIRO Senior Enforcement Counsel
Zahir Hussain Lehri, Respondent (present)

REASONS FOR DECISION ON SANCTIONS

INTRODUCTION

¶ 1 On June 7, 2024, the Hearing Panel found that the Respondent, Zahir Hussain Lehri (the **Respondent**), contravened Dealer Member (**Member**) policies and procedures and the Mutual Fund Dealers Association of Canada (**MFDA**) Rules by facilitating stealth advising, misappropriating $31,000 USD from a client and another individual, and failing to cooperate with an MFDA investigation.

¶ 2 This case is about the core values of the securities industry: the privilege and the corresponding responsibility of being an Approved Person. It is about the trust clients place in the hands of an Approved Person and the regulatory system.

¶ 3 An Approved Person's access code gives them access to the Member's system, allows them to act on their client's trust and uses their client's confidential, personal, and financial information to open accounts and execute trades as directed on their behalf.

¶ 4 In this case, the Respondent allowed an Approved Person of another MFDA firm to use the Respondent's Approved Person's code, implement a leveraged strategy and make unsuitable investments which resulted in significant financial harm to the clients. His actions breached the clients' trust in Approved Persons, the regulatory system in which they operate and the securities industry as a whole.

¶ 5 The Respondent also breached a client's and another individual's trust by misappropriating $31,000 USD from the client and the individual, and failed to cooperate with MFDA Staff.

¶ 6 In short, the Respondent demonstrated that he is ungovernable.

FACTORS CONSIDERED IN DETERMINING THE APPROPRIATE SANCTIONS

¶ 7 We followed the considerable jurisprudence developed by the courts and securities regulatory tribunals about the principles we should apply and the factors we should consider in determining the appropriate sanctions.

¶ 8 The Supreme Court of Canada (SCC) directed that securities regulatory tribunals must keep in mind the primary goal of securities regulation, which is the protection of the investing public.[1]

¶ 9 The SCC also indicated that sanctions imposed in the securities regulatory context should be protective and preventative, intended to be exercised to prevent likely future harm to the capital markets.[2]

¶ 10 Staff followed previous decisions by the SCC and the Ontario Securities Commission (OSC) when it outlined the appropriate role of a hearing panel in determining penalty and provided guidance about the factors we should consider.

¶ 11 The OSC set out succinctly its role, not dissimilar to the role of this Panel, in determining penalties in *Re Mithras Management Ltd, et al.*.[3] The Commission stated at 1610:

> [T]he role of this Commission is to protect the public interest by removing from the capital markets -- wholly or partially, permanently, or temporarily as the circumstances may warrant -- those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient.

¶ 12 Several previous decisions of industry tribunals, including an MFDA panel in *Re Parkinson*,[4] found the following factors should be taken into account in determining the appropriate sanctions to impose:

a) the protection of the investing public;

b) the integrity of the securities market;

c) specific and general deterrents;

d) the protection of the governing body's membership; and

e) the protection of the integrity of the governing body's enforcement processes.

¶ 13 Moreover, the SCC in *Re Cartaway Resources Corp.*[5] indicated that general deterrence is an appropriate consideration when making orders that are both protective and preventative. At para. 61 of that case, the Court stated:

> 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.

¶ 14 Previous tribunals have set out a number of additional factors that should be considered in determining

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[1] *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557

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

[3] (1990) 13 O.S.C.B. 1600

[4] 2005 MFDA Case No. 200501

[5] (2004) 1 S.C.R. 672

penalty.[6] They include:

a) The seriousness of the allegations proved against the Respondent;

b) The Respondent's past conduct, including prior sanctions;

c) The Respondent's experience in the capital markets;

d) The level of the Respondent's activity in the capital markets;

e) Whether the Respondent recognizes the seriousness of the improper activity;

f) The harm suffered by investors as a result of the Respondent's activities;

g) The benefits received by the Respondent as a result of the improper activity;

h) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;

i) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;

j) 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;

k) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and

l) Previous decisions made in similar circumstances.

¶ 15 In determining the appropriate penalty, we are also governed by the principle of proportionality. The penalty must be proportionate to the seriousness of the misconduct and the particular circumstances of the Respondent.[7] This helps CIRO meet its primary objective of investor protection.

¶ 16 In this case, we considered the seriousness of the allegations proven against the Respondent, the financial harm suffered by the clients as a result of the Respondent's improper conduct, the financial benefits received by the Respondent as a result of his improper activity, the Respondent's failure to recognize the seriousness of his improper conduct, the risk to investors and the capital markets in the jurisdiction were the Respondent to continue to operate; the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities, general and specific deterrence, and previous decisions made in similar circumstances.

Seriousness of the Misconduct

I The Respondent engaged in Stealth advising

¶ 17 Stealth advising is very serious misconduct. We stated the following in the Merits decision.

¶ 18 The Respondent contravened MFDA Rule 1.1.1 (c) which prohibits an Approved Person from engaging in securities-related business unless the relationship between the Member and any person conducting securities-related business on the account of the Member is that of: (a) an employer and employee; (b) a principal and agent; or (c) an introducing dealer and a carrying dealer.

¶ 19 The relationship between the Respondent and Mr. Sadiq was none of these. Rather, the Respondent acted as a conduit through which Mr. Sadiq conducted securities-related business with the Member using the Respondent's representative code.

¶ 20 Stealth advising is deceitful conduct designed to facilitate misconduct by another individual. The

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[6] *See Belteco Holdings Inc. (1998)*, 21 O.S.C.B. 7743; *M.C.J.C Holdings and Michael Cowpland (2002)*, 25 O.S.C.B. 1133; *Lamoureux (Re)*, [2002] A.S.C.D. No. 125; and *Tonnies (Re)*, 2005 LNCMFDA 7 at paras. 44-48.

[7] *Re Harrigan,* 2019 MFDA Case No. 201415 at para. 5

Respondent knew Mr. Sadiq was not authorized to conduct securities related business using the Member's system. The Respondent knowingly allowed Mr. Sadiq to access the Member's system. The Respondent knew that in doing so he was removing Mr. Sadiq's trading activity from his Member's supervision. The Respondent denied the Shah clients the protection of supervision by his Member. Supervision is an essential tool designed to prevent client harm and protect the investing public. The Respondent knew that a potential outcome was that clients could suffer financial harm.

¶ 21 The Respondent knew or ought to have known that by removing the Member's supervision of Mr. Sadiq, the Respondent was preventing the Member from meeting its regulatory supervisory obligations and bringing the entire securities industry into disrepute.

¶ 22 Other MFDA cases provided by Staff including *Pender (Re)*, 2019 LNCMFDA 11 at paras. 6-8, *Lamarre (Re)*, 2017 LNCMFDA 306 at para. 10, *Doyle (Re)*, 2017 LNCMFDA 24 at para. 8 and *Gowan (Re)*, 2022 LNCMFDA 8 at para. 26 reached similar conclusions.

II The Respondent Misappropriated Client Funds

¶ 23 Misappropriation is very serious misconduct. In this case, the Respondent misappropriated $31,000 USD by accepting a transfer into his personal bank account in that amount from client SD.

¶ 24 The deceitfulness of this conduct is evident in the use of the Respondent's personal bank account. The Respondent knew that accepting a transfer into his personal bank account from a client was theft. The Respondent transferred $30,000 USD to an account controlled by Mr. Sadiq and retained $1,000 USD. The Respondent transferred $1,000 USD into his wife's account and eventually withdrew that amount in Canadian currency in cash from her account.

¶ 25 This method of misappropriation echoes stealth advising. The Respondent was a conduit for Mr. Sadiq who misappropriated $30,000 USD and retained that amount.

¶ 26 Misappropriation or theft is the ultimate breach of client trust. The seriousness of this misconduct is underscored by the fact that criminal charges have been laid in other MFDA misappropriation cases. See *Douglas (Re)* 2018 LNCMFDA 216 and *Dew (Re)*, 2018 LNCMFDA 157.

III The Respondent Failed to Cooperate

¶ 27 The Respondent's failure to cooperate with an investigation into his conduct by MFDA Staff was serious misconduct. While the Respondent cooperated with MFDA Staff's investigation by attending interviews and answering MFDA Staff's questions, he failed to produce his client notes and financial documents he obtained from clients.

¶ 28 Deceit was also evident as the Respondent also appeared to feign his own death, intentionally attempting to evade MFDA Staff and his responsibility to cooperate in the investigation.

IV The Financial Harm Suffered by Clients as a Result of the Respondent's Improper Conduct

¶ 29 The Shah Clients suffered losses of $152,387 as a consequence of the unsuitable leveraged investment strategy implemented in their accounts by the Respondent. In addition, client SD and his spouse were forced to sell their home, and client RS needed to borrow money from family to repay the loans received for the accounts at Shah Financial and Sterling Mutuals. The Shah Clients also lost the opportunity to grow their savings and suffered considerable stress from the unsuitable investments they were placed in by Sadiq and the Respondent.

¶ 30 Client SD and his spouse lost a further $31,000 USD because of the Respondent's misappropriation.

V The Financial Benefit Gained as a Result of the Respondent's Improper Conduct

¶ 31 The Respondent received a total financial benefit of $35,523: $34,208 commissions from the unsuitable investments in the accounts he opened for the Shah Clients plus $1,315, being the conversion of the $1,000 USD, he kept from the $31,000 USD he misappropriated.

VII The Respondent's Failure to recognize the Seriousness of his Misconduct

¶ 32 The Respondent failed to recognize the seriousness of his misconduct. He persistently tried to shift

responsibility to others including the clients and the Member.

VIII The Risk to Investors and the Capital Markets

¶ 33 The Respondent's misconduct posed a grave risk of financial harm to Investors which was unfortunately realized.

IX The Damage Caused to the Integrity of the Capital Markets by the Respondent's Improper Conduct

¶ 34 The Respondent's misconduct, which facilitated further misconduct beyond the watchful eyes of the Member, caused significant damage to the integrity of the capital markets.

X General and Specific Deterrence

¶ 35 Specific deterrence is in the form of a permanent prohibition and is necessary in cases such as this where the Respondent's misconduct is very serious and deceitful. The Respondent did not oppose a permanent prohibition.

XI Previous Decisions

¶ 36 Staff was unable to provide a case like this one where stealth advising resulted in financial harm. The fines issued in the stealth advising cases provided by Staff ranged from $15,000-$40,000. None of the respondents in those cases was the subject of a permanent prohibition.

¶ 37 Staff argued that we should consider the fines imposed in suitability cases and provided five cases. During oral submissions Staff stated that the *Pretty* and *DuVuono* cases were most similar to this case.

¶ 38 In *Pretty*, the Respondent recommended and facilitated a leveraged investment strategy for the accounts of 6 clients without performing necessary due diligence and ensuring suitability. (emphasis added). Whereas in this case, Mr. Sadiq recommended the leveraged investment strategy, and the Respondent facilitated that misconduct.

¶ 39 The Respondent in *Pretty* received a financial benefit of $48,000.

¶ 40 In *Pretty*, LNCMFDA 2014 56, the Respondent received a 10-year prohibition, a $50,000 fine for the KYC failure, $50,000 to offset the benefit and $25,000 for failure to cooperate.

¶ 41 In *DuVuono*, 2013 LNCMFDA 34, the Respondent recommended and facilitated a leveraged investment strategy for the accounts of two clients. He misrepresented the clients' income, assets, investment knowledge and risk tolerance. There was an aggravating factor in that the clients were vulnerable.

¶ 42 The Respondent in *DuVuono* received a financial benefit of $38,300.

¶ 43 The Respondent, Mr. DuVuono recommended that two clients borrow against their home (which was their sole asset) and use $250,000 from their home as collateral to borrow $750,000. The panel found that: "As a result of the leveraged investment strategy collapse, they were left with no investment portfolio and outstanding loans in excess of $285,000."

¶ 44 In *DuVuono*, the Respondent received sanctions of a 3-year prohibition, a $150,000 fine, an industry course, close supervision, and a prohibition on engaging in leverage activities plus $20,000 costs.

¶ 45 The *Pretty* and *DuVuono* cases are somewhat helpful but there are also many factual differences between those cases and this one.

¶ 46 After considering the unique circumstances of this case and the factors set out above, we determined the sanctions set out below will provide general and specific deterrence and send a strong, clear message to others in the industry who consider engaging in similar misconduct.

CONCLUSION

¶ 47 We order the following sanctions:

a) the Respondent be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any Dealer Member of CIRO registered as a

mutual fund dealer, pursuant to Mutual Fund Dealer (MFD) Rule 7.4.1.1(e) (formerly section 24.1.1(e) of MFDA By-law No. 1).

b) the Respondent pay a fine of $185,523, pursuant to MFD Rule 7.4.1.1(b) (formerly section 24.1.1(b) of MFDA By-law No. 1), comprising:

   (i) an amount sufficient to disgorge $35,523, being the amount obtained by the Respondent from his contravention of the MFDA Rules;

   (ii) a fine of $50,000 on account of Allegation #1;

   (iii) a fine of $50,000 on account of Allegation #2; and

   (iv) a fine of $50,000 on account of Allegation #3; and

c) the Respondent pay costs in the amount of $25,000 which would constitute part of the costs to Staff of conducting the investigation and prosecution of the Respondent as set out in the Bill of Costs, pursuant to MFD Rule 7.4.2 (formerly section 24.2 of MFDA By-law No. 1).

DATED at Toronto, Ontario this 22nd day of October 2024.

"Emily Cole"
Emily Cole, Chair

"Rob Christianson"
Rob Christianson, Industry Representative

"Cheryl Hamilton"
Cheryl Hamilton, Industry Representative