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Now New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA

**IN THE MATTER OF  
THE MUTUAL FUND DEALER RULES**

**and**

**Leszek Dziadecki**

Heard (Motion): February 21, 2023 by electronic hearing in Toronto, Ontario

Decision (Motion): February 21, 2023

Reasons (Motion): September 26, 2023

**REASONS FOR DECISION  
(Motion)**

Hearing Panel of the Ontario District Hearing Committee:

Frederick H. Webber  
Guenther W. K. Kleberg  
Kenneth P. Mann

Chair  
Industry Representative  
Industry Representative

Appearances:

Alan Melamud	)	Senior Enforcement Counsel for the New Self-
	)	Regulatory Organization of Canada
	)	(Mutual Fund Division)
	)	
Zack Pringle	)	Counsel for Respondent
	)	
	)	
Leszek Dziadecki	)	Respondent
	)	

## **I. SCHEDULE**

1. On February 17, 2023, the Respondent brought a motion to adjourn the hearing on the merits of this matter which was scheduled to be heard from February 27 to March 3, 2023 (“the Hearing”). The motion was heard by the panel on February 21, 2023.

## **II. RESPONDENT’S GROUNDS FOR ADJOURNMENT**

2. The Respondent’s counsel advanced two grounds in support of the adjournment request, illness of the Respondent and his firm’s withdrawal from representing the Respondent.

3. Respondent’s counsel advised the panel that the Respondent could not effectively participate in his defence on the merits due to illness, in particular that he has been suffering from depression for some time and continues to do so.

4. The second ground for the adjournment request was that, for reasons that are protected by solicitor and client privilege, the Respondent’s legal representation, Babin Bessner Spry LLP, would no longer represent the Respondent. As such, the Respondent would be self-represented at the Hearing and would require additional time to review the MFDA’s disclosure and prepare to represent himself at the Hearing.

5. In support of the motion, Respondent’s counsel submitted that this was the Respondent’s first adjournment request and that there would be no prejudice to the MFDA if an adjournment was granted. Conversely, the Respondent would sustain significant prejudice if an adjournment was not granted.

### MFDA Grounds Opposing the Adjournment

6. MFDA submitted a Responding Notice requesting:

- a) an order dismissing the Respondent’s motion and proceeding with the hearing on the merits;
- b) In the alternative, an order that MFDA be permitted to present its case on February 27th and 28th, with the Respondent to present his defence at a time to be determined within the next two months.

7. Regarding the Respondent's claim of illness, the MFDA submitted that except for affidavits from the Respondent and his wife (characterized as self-serving), there was no evidence to support his claim that he suffered from a significant illness between December 14, 2022 and January 13, 2023 or that he has suffered from severe depression. In particular, Respondent's prescription receipts did not disclose his illness, the severity of his condition or whether it impacts his ability to review disclosure and prepare for the Hearing.

8. Furthermore, both counsel dealt with several procedural matters during the period of claimed illness without the Respondent's illness being raised. In particular, Respondent's counsel consented to the cancellation of an interim appearance before the chair scheduled for January 23rd, "precisely the opportunity to address any issues that could impact the scheduling of the Hearing on the Merits..." At no time did Respondent's counsel advise the MFDA that an adjournment of the hearing might be needed.

9. Regarding Respondent's argument based on the withdrawal of his counsel, MFDA submitted that:

- a) the withdrawal of the Respondent's counsel is irrelevant. The Respondent intended to represent himself and therefore does not require time to find new counsel.
- b) the Hearing was scheduled in October 2022 based on a joint timetable agreed to by the parties. The Respondent has been represented to date. Nonetheless, no disclosure nor a list of witnesses was delivered by the Respondent, nor were any requests made to change the deadlines set for those steps in the proceeding.
- c) the Respondent has had ample time to review Staff's disclosure, which was substantially delivered in December 2022.
- d) Rule 3-7-1 of the Rules of Professional Conduct requires that counsel provide reasonable notice to a client prior to withdrawing, such that the client is not put "in a position of disadvantage or peril". Accordingly, the Hearing Panel should assume that the Respondent had reasonable notice in advance of the Hearing that he would be representing himself.

### **III. ARGUMENTS**

10. The Respondent's argument was essentially that the adjournment should be granted because proceeding as scheduled would amount to procedural unfairness to the Respondent. It is

well established law that respondents in administrative law cases are entitled to procedural fairness, as a matter of principle. There is no need for the panel to cite any cases in support of this principle, nor were any cited by Respondent's counsel. The application of this principle is dependent on the facts of each case. Respondent's counsel cited a number of cases where an adjournment was granted and invited the panel to conclude that the facts were sufficiently similar that the adjournment should be granted in this case.

11. On the other hand, the MFDA argued that the motion should be denied on the basis that there is a public interest in ensuring that regulatory proceedings are resolved expeditiously, particularly where the allegations are serious, as in this case. The victims of the alleged misconduct also have a right to an expeditious resolution of this case so that their rights to compensation can be protected. This principle is also well established and no cases need be cited in support. Furthermore, the witnesses are ready to testify and their testimony would be negatively impacted by any delay.

#### **IV. DECISION**

12. The panel weighed both arguments, the particular facts of this case and reviewed the cases cited in coming to its decision. The panel agreed with the MFDA, that the medical evidence provided by the Respondent was insufficient to support his claim of ongoing illness or depression. Affidavits or letters from qualified medical professionals to substantiate his claim were required, but none were provided to the panel, despite there being adequate time for the Respondent to do so.

13. The panel also agreed with MFDA regarding withdrawal of the Respondent's counsel. He had adequate time prepare for the Hearing and to find new counsel if he chose to do so, but he chose to represent himself. In fact, when the hearing started on February 27, the Respondent participated fully.

14. The panel therefore concluded that the Respondent was not entitled to the benefit of the principle of procedural fairness on the facts of his particular case, and that the public interest in an expeditious hearing, the rights of the victims of the Respondent's misconduct and the interests of the witnesses would prevail.

15. Accordingly, the panel’s decision was not to grant the request for an adjournment and for the Hearing to proceed as scheduled on February 27, 2023. An order to this effect was signed by the panel.

**DATED** this 26 day of September 2023.

“Frederick H. Webber”

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Frederick H. Webber  
Chair

“Guenther W. K. Kleberg”

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Guenther W. K. Kleberg  
Industry Representative

“Kenneth Mann”

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Kenneth P. Mann  
Industry Representative

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