

Re Lehri

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Zahir Hussain Lehri

2024 CIRO 55

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: November 13, 2023, January 11, 2024 and March 7, 2024 in Toronto, Ontario (via videoconference)
Decision: June 07, 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 LIABILITY

INTRODUCTION

¶ 1 The Hearing Panel finds that the Respondent, Zahir Hussain Lehri (the **Respondent**) contravened Dealer Member (**Member**) policies and procedures and the Mutual Fund Dealer (**MFDA**) Rules by facilitating stealth advising, misappropriating \$31,000 USD, and failing to cooperate with an MFDA investigation.

BACKGROUND

¶ 2 To put our findings in context, we begin with background about the Respondent, Zahir Lehri, and his relationship with Muhamad Sadiq, who takes a major role in the allegations,

¶ 3 The Respondent was a registrant since 2007. Since 2008, he had a business relationship with Muhamad Sadiq. Mr. Sadiq was the Respondent's branch manager first at Monarch Wealth Corporation and subsequently at Sterling Mutuals. Both Mr. Lehri and Mr. Sadiq were Members of the MFDA. Their relationship endured between 2008 until 2012, when Sterling Mutuals terminated the Respondent's employment. During those years, the Respondent shared his commissions with Mr. Sadiq. They also shared a bank account, which was used to pay the Respondent's registration fees. From this evidence, we conclude that the Respondent and Mr. Sadiq had a business relationship during that time.

¶ 4 While the Respondent admitted that he worked with Mr. Sadiq, he attempted to downplay the extent of their relationship.

¶ 5 In 2014, the Respondent applied to Shah Financial, also a Member of the MFDA (now a Dealer Member of CIRO). In his reference of Mr. Lehri to Shah Financial, Mr. Sadiq described the Respondent as having the following strengths: "positive, consistence [sic], good work ethic, extra ordinary social, friendly, strong."

¶ 6 The Respondent joined Shah Financial as a dealing representative on July 24, 2014. In 2019, the Respondent was terminated by Shah Financial. The Respondent is not working in the securities industry.

¶ 7 The allegations in this matter involve four particular clients who came to the Respondent at Shah from Mr. Sadiq. These clients, KH, AK, SD, and RS (the **Shah clients**), each filed affidavits in this proceeding that were relied on by Staff and which recounted the extent of their connection to and reliance on Mr. Sadiq rather than the Respondent. We will describe their evidence when discussing the allegations of stealth advising. In the meantime, on November 2, 2022, an MFDA hearing panel made findings of misconduct against Mr. Sadiq arising from the same facts and ordered the following sanctions:

- (a) a permanent prohibition from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member;
- (b) a fine in the amount of \$750,000; and
- (c) costs in the amount of \$49,662.50.

EVIDENTIARY RECORD

¶ 8 Before turning to our analysis, we turn to the record on which it is based. The Respondent, who was unrepresented, initially stated that he would not testify. The Respondent's transcript, containing his compelled testimony at his interview, was attached to an affidavit of Stephen Davis, a Senior Investigator with the MFDA (the **Davis Affidavit**), which was filed as an exhibit by CIRO Enforcement Staff (**Staff**) at the outset of the hearing. Staff did not call Mr. Davis as a witness and did not refer to or make any submissions about the Respondent's compelled interview testimony.

¶ 9 However, during the Respondent's submissions at the hearing, Staff objected that the Respondent was giving evidence and asked that he be sworn in as a witness.

¶ 10 After the hearing, the Panel raised the issue of whether in the circumstances, the Respondent's interview transcripts were admissible or whether the Respondent's testimony was the best evidence. The Panel invited submissions from the parties, and a hearing was convened to hear oral submissions on the issue.

¶ 11 At the hearing about the admissibility of the transcripts, Staff stated that they had no objection to removing the parts of the Respondent's interview transcripts that were not specifically cited in the Davis Affidavit. We therefore strike the Respondent's interview transcripts from the evidence except to the extent that they were cited in the Davis Affidavit. The cover pages and the page with the signature of the court reporter will be maintained in the hearing record together with the pages on which the cited transcript excerpts appear.

¶ 12 We turn to the analysis of the three allegations.

ANALYSIS

Issue I- Did the Respondent facilitate stealth advising?

¶ 13 In this case, Staff allege that the Respondent facilitated stealth advising by allowing an Approved Person, who was not registered with the Member to:

- (a) open new accounts at the Member for clients;
- (b) complete and submit for processing Know-Your-Client forms;
- (c) implement a leveraging strategy for these clients using false or inaccurate client financial documentation; and
- (d) process trades in the accounts of these clients using the Respondent's representative code, thereby:
 - (i) facilitating stealth advising by the other Approved Person, contrary to MFDA Rules 1.1.1 and 2.1.1; or
 - (ii) failing to use due diligence to learn the essential facts relative to the clients and to ensure that the leveraging strategy and investments that were recommended and

implemented for clients were suitable, contrary to MFDA Rules 2.2.1 and 2.1.1.

¶ 14 MFDA Rule 1.1.1(c) requires the relationship between the Member and any person conducting securities related business on account of the Member must be that of: (a) an employer and employee, (b) a principal and agent, or (c) an introducing dealer and a carrying dealer. The relationship between the Respondent and Mr. Sadiq, as described above, 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.

The Respondent opened new accounts at the Member for Mr. Sadiq's clients and submitted forms for processing.

¶ 15 When the accounts were opened at Shah for the four clients, we find on a balance of probabilities that the Respondent disregarded the Know-Your-Client (**KYC**) requirements. He opened and processed the accounts based on information provided by Mr. Sadiq without ever having a substantive meeting with any of the four clients. The Respondent also did so by using false financial information provided by Mr. Sadiq resulting in unsuitable investments.

¶ 16 Staff relied on affidavits of Clients KH, AK, SD, and RS (the **Shah clients**). Each of these clients testified that the Respondent did not meet with them, did not collect their KYC information, and did not give them investment advice. They testified that Mr. Sadiq, who was their accountant, recommended they take out loans to invest in mutual funds.

¶ 17 The Respondent's representative code and his signature appears on all of the Shah clients' New Account Application Forms (**NAAFs**) and the B2B loan applications. Each of the documents are signed "Zahir Lehri," the Respondent's first and last name, which is consistent with how the Respondent testified that he signed documents. At the hearing, the Respondent admitted that he signed the documents.

¶ 18 The Respondent testified that he met with each of these clients but denied he recommended the leveraging strategy. He testified that he sometimes met the Shah clients at his office and sometimes at Tim Hortons. The Respondent insisted that the clients selected their own investments after he spent days reviewing all the mutual funds offered by Shah Financial.

¶ 19 On this point, at the hearing before the Panel under cross examination by Staff, the Respondent adopted the testimony he gave at his interview to the effect that he met with each of the four clients and reviewed about a hundred funds with each one over several meetings over several days after which each client chose funds for investment:

Q. Sorry. I'm at Exhibit MM-3. It is again a transcript of your interview, but from the third day. I'm going to go down to page 15, and you can see it on your screen, but I'll also read it to you so you can hear it. Mr. Davis said:

"And how did the client select them? How did the client know to select these funds?"

"MR. LEHRI: We have to show them a bunch of funds, as I said, for each and every client and we have to discuss all the funds, you know, merits, demerits, performance and everything and client has to choose fund."

"MR. DAVIS: Did you recommend any of the mutual funds over others?"

"MR. LEHRI: No."

"MR. DAVIS: Did you have certain mutual funds you generally discussed with clients and from there they chose which ones to purchase?"

"MR. LEHRI: No, there were so many funds in Shah Financial's website, we used to open that and discuss all funds."

"MR. DAVIS: You'd review all of the different mutual funds that were listed?"

"MR. LEHRI: Yes."

Mr. Davis then says:

"Alan, do you have any questions?"

"MR. MELAMUD: Yes, just one question, how many funds was it?"

"MR. LEHRI: I don't remember now; it was more than 100 funds.

"So how long would this conversation take to review 100 funds?"

That's me.

"MR. LEHRI: Hours, days. Sometimes it took two or three days, four days to decide. Some clients, they just review a few funds and they're like, okay, I want to go with this, I don't want to see anymore, I don't want to be confused. So, it depends on the different clients. Sometimes a client would maybe --- two meetings, three meetings.

"MR. MELAMUD: So, you're saying it could take multiple meetings for the client to choose a fund?"

"MR. LEHRI: Yes."

So, again, Mr. Lehri, I want to ask you: Those answers that you gave there, I assume they were accurate and true. That's how you reviewed mutual funds with your clients?

A. Yes.

Q. Okay. And that is the process you followed with the complainants also, correct?

A. Yes.

November 13, 2023 Hearing Transcript at 115-117 [emphasis added]

¶ 20 SD testified at the hearing that he met with Mr. Sadiq to sign the forms which were blank. At those meetings Mr. Sadiq told him, he said, to sign the forms and that Mr. Sadiq would fill out the forms later. SD and his wife trusted Mr. Sadiq because he had been their accountant since 2011. SD admitted that he met the Respondent on one occasion for five minutes but testified that the Respondent did not give him advice or fill out any forms with him. SD understood that the Respondent was Mr. Sadiq's business partner. Mr. Sadiq told SD that the Respondent worked at Shah Financial and was helping with their investment accounts.

¶ 21 We reject the Respondent's evidence on this point and accept the evidence of the Shah clients that had no substantive meeting with the Respondent. We prefer the evidence of the Shah clients over the evidence of the Respondent because it is unlikely four individuals could be mistaken about meetings with the Respondent and the extent of any such meetings.

¶ 22 We do not accept that the Respondent would spend days reviewing 100s of mutual funds with each of his clients after which the clients made their own selection of mutual funds for investment. We reject that this was the Respondent's practice.

¶ 23 We find that instead it was Mr. Sadiq who met with the four Shah clients, provided advice and recommendations, and obtained their signatures. Mr. Sadiq told the clients to sign the forms and he would complete them later. It is reasonable to infer that the Respondent provided the necessary Shah Financial forms and Mr. Sadiq completed the financial information. We find that it is more likely than not that the Respondent then submitted the forms for processing at Shah Financial. There is no other rational explanation for how they were approved by Shah Financial.

The Respondent implemented a leveraging strategy using false or inaccurate client financial documentation.

¶ 24 The KYC information for the Shah clients, recorded in connection with the leveraging investment strategy implemented at Shah Financial, was inaccurate as it overstated the Shah clients' investment knowledge as moderate, risk tolerance as medium to high, annual income, and net worth.

¶ 25 The Shah clients also testified that they met Mr. Sadiq each year and provided him with information so that he could prepare their taxes. Mr. Sadiq had access to the Shah clients' financial documents. It is reasonable to infer that Mr. Sadiq altered those documents to inflate the Shah clients' income and assets. We find that the Respondent did not fill out the forms with the clients.

¶ 26 We rely on Mr. Davis's uncontested evidence that the investments were unsuitable. Mr. Davis provided tables setting out the Shah clients' recorded KYC information, their actual KYC information and the resulting financial ratios used to assess leverage suitability demonstrating that the financial ratios did not meet Sterling Mutual's requirements, and the guidance contained in the Member Regulation Notice MR-0069 - Suitability Guidelines.

¶ 27 The transactions implemented a leveraging investment strategy recommended by Mr. Sadiq using unsuitable investments, which resulted in client losses of \$152,387. The Respondent earned at least \$34,208 in commissions as the Approved Person of record for those clients.

¶ 28 The Panel carefully read the Respondent's written submissions and listened to his submissions at the hearing. The Respondent complains about how Shah Financial and the MFDA conducted their investigations, specifically sending letters to his former clients and asking questions about their investments, Mr. Sadiq, and the Respondent. That is not the subject of this hearing but, even if it were, there is nothing untoward about the way the investigations were carried out. The Respondent also complains that the complainants did not come forward until years after the Respondent had resigned from Shah Financial. That is also not the subject of this hearing but, even if it were, complainants often come forward only after they suffer losses and discover wrongdoings.

¶ 29 Significantly, the Respondent does not deny the elements of the stealth advising: that he had a business relationship with Mr. Sadiq, that he signed all the NAAFs and necessary documents, and submitted them for approval and processing by Shah Financial. He does not provide any explanation for the false financial information that was provided on each of the NAAFs and filed in support of the loan applications. His defence is that the clients' complains should be against Mr. Sadiq. He does not deny his actions, which amount to facilitating Mr. Sadiq's stealth advising. In the Respondent's written submissions, he stated:

Just for a while if we consider the allegation of the clients the best answer from my side is that when they knew that I am not their advisor and kyc information was inaccurate and they had no knowledge of investment even then they were okay for 4 years and acting on behalf of Mr Sadiq, so now what is their case against me, they should go to Mr Sadiq because they willingly did this with Mr Sadiq. [sic]

¶ 30 We conclude on a balance of probabilities that the Respondent facilitated the stealth advising.

Issue II – Did the Respondent misappropriate \$31,000 USD from Client SD and his wife SDD?

¶ 31 Staff allege that the Respondent misappropriated or failed to account for money received from Client SD and his wife SDD, contrary to MFDA Rule 2.1.1.

¶ 32 Staff allege that the Respondent misappropriated \$31,000 USD by accepting a transfer into his bank account in that amount from Client SD. The Respondent admitted he received the money and further stated that he transferred \$30,000 USD to Mr. Sadiq. The documentary evidence proves that Client SD transferred \$31,000 USD to the Respondent, who then wired \$30,000 USD to Mr. Sadiq. The documentary evidence also established that \$1,000 USD was deposited in the Respondent's wife's bank account from which the Respondent later withdrew \$1,000 USD cash. There is no evidence that the money was repaid. The Respondent denies that he was responsible for the money after he transferred it to Mr. Sadiq.

¶ 33 Staff filed an affidavit of Client SD as evidence at the hearing. SD was available at the hearing for cross examination, however, the Respondent declined to cross examine SD. SD's evidence was not challenged and was accepted by the Panel.

¶ 34 In his affidavit, Client SD explained that Mr. Sadiq told him about a trading business Mr. Sadiq was starting with the Respondent who Mr. Sadiq said was his business partner. Mr. Sadiq recommended that SD and his spouse cash in mutual funds purchased in their RRSP and non-registered account to invest in the trading business. On May 11, 2017, SD transferred \$31,000 USD to the Respondent's bank account.

¶ 35 Staff also relied on the Davis affidavit. The Panel was satisfied by the documentary evidence attached to the Davis affidavit that the Respondent received \$31,000 USD in his bank account, transferred \$30,000 USD to an account controlled by Mr. Sadiq and retained \$1,000 USD. The paper trail of the movement of this money was clear, and the evidence was not disputed by the Respondent.

¶ 36 According to Mr. Davis, there was no evidence that the Respondent or Mr. Sadiq used the \$31,000 USD, or any of the other money received from clients, in connection with a trading business for the benefit of the clients. Mr. Davis was available at the hearing for cross examination, however, the Respondent declined to cross examine him. Mr. Davis's unchallenged evidence was accepted by the Panel.

¶ 37 The Respondent admitted that he received \$31,000 USD from Client SD. The Respondent also admitted that he transferred "the money" to Mr. Sadiq. The Respondent stated:

[...] I don't know for what purpose this transfer happened through me. After that many years, I don't remember, but the money came into my account and I transferred into that account what they said.

November 13, 2023 Hearing Transcript at 101

¶ 38 The Respondent did not provide any explanation for why the money was transferred to him or why he transferred \$30,000 USD to Mr. Sadiq. The Respondent testified that he does not remember. Significantly, the Respondent denies he had any responsibility for the money after he transferred it to Mr. Sadiq. The Respondent stated:

About the US dollars given to me to transfer to [Sadiq]. after that many years I really don't remember the reason why [SD] did this transfer through me but the fact is that the money was transferred to [Sadiq], no complain that I did not transferred the money, after that what they did with the money is not my problem and I am not responsible for that.

March 30, 2023 Respondent's Written Statement at 6

¶ 39 In his written submissions, the Respondent argued that it was up to SD to prove that the Respondent conspired with Mr. Sadiq:

Furthermore, in this new complaint [SD] stated that he (Zahir Lehri) conspired with Sadiq to defraud him USD 31000.00. well [SD] need to prove that allegation, just saying is not enough.

March 30, 2023 Respondent's Written Statement at 10

¶ 40 The Panel rejects this argument. The Panel found that the documentary evidence clearly established the \$31,00 USD was deposited in the Respondent's account. If the Respondent did not know why the money was transferred into his account, he could have asked the bank to return the money. He did not. Instead, he transferred \$30,000 USD to Mr. Sadiq and kept \$1,000 USD for himself through his wife's account.

¶ 41 We conclude that the documentary evidence together with the testimony of Client SD and Mr. Davis established on a balance of probabilities that the Respondent misappropriated \$31,000 USD from Client SD and his wife SDD.

¶ 42 While there was no evidence to suggest the money was used for the benefit of Client SD, the Respondent cannot absolve himself of responsibility by saying he did not know what happened to the \$30,000 USD after he transferred it to Mr. Sadiq.

Issue III - Did the Respondent fail to cooperate with an MFDA investigation?

¶ 43 Staff allege that the Respondent failed to cooperate with an investigation into his conduct by Staff contrary to Section 22.1 of MFDA By-law No. 1. an MFDA investigation.

¶ 44 We accept the Respondent's evidence that he cooperated with Staff's investigation by attending interviews on two or three occasions and answering Staff's questions. Sometimes, the Respondent experienced Internet or power issues in the country where he was located, but Staff agreed this did not constitute a failure to cooperate.

¶ 45 The issue we must decide is whether the Respondent's failure to produce his client notes and financial documents he obtained from clients constituted a failure to cooperate. Staff requests for these productions were well documented.

¶ 46 The Respondent admitted that he promised to give Staff this documentation. The Respondent failed to produce these documents.

¶ 47 Staff led evidence that, after the Respondent's interview, they sent a letter asking him to fulfill the undertakings he had given at his interview, including to provide his client notes and financial documents he received from clients.

¶ 48 Staff received two emails from the Respondent saying that he would provide the documents when he returned to Canada, and he provided a tentative return date of December 2020. The Respondent stated:

I give my undertaking that I will provide all the requirements mentioned in the letter dated August 25, 2020, on my arrival to Canada which is tentatively scheduled for December 2020.

Davis Affidavit, Exhibit "OO", September 6, 2020 Email

¶ 49 Approximately six weeks later, Staff received an email from the Respondent's email address stating:

This is to inform with greater sorrow to all contact mr zahir lehri [sic] that mr zahir lehri [sic] passed away, he was infected by covid 19. [sic]

Davis Affidavit, Exhibit "PP", October 16, 2020 Email

¶ 50 Staff replied to this email and requested the Respondent's date of death and a copy of his death certificate and asked the sender of the email to identify themselves and explain their relationship with the Respondent.

¶ 51 Staff received a reply to their questions from the Respondent's email address stating:

I am his brother in law, he died in his village on 2nd October and there is no doctor or hospital in the village so no death certificate, and no need of certificate everyone here knows that he died. And I am [sic] now closing his email account also .my name is syed Muhammad waqar Rizvi. [sic]

Davis Affidavit, Exhibit "RR", October 17, 2020 Email

¶ 52 Staff did not receive any further correspondence from the Respondent or from Mr. Rizvi.

¶ 53 Staff provided evidence suggesting that the Respondent was not deceased, including a printout of his Facebook page showing continued posting after his feigned death and a driver's license search showing the Respondent's license had been renewed and his home address updated.

¶ 54 The new address on the Respondent's driver's license is a property owned by the Respondent's sister.

¶ 55 The Respondent never gave Staff his client notes or the financial documents that he stated he had obtained from clients. Staff also made inquiries of Shah Financial, who were unable to find any of the client notes or records requested.

¶ 56 At the hearing on the merits before the Panel, the Respondent offered the explanation that he could not produce his client notes and financial documents clients had given him because he was out of the country and did not have access to his laptop and documents.

¶ 57 The Respondent testified by videoconference that he could not produce his notes because he was in another country. He had gone to that country because his mother resided there and was sick. The Respondent promised to provide the notes when he returned to Canada. The Respondent testified that he has never returned to Canada and therefore could not produce the notes.

¶ 58 The Respondent further testified that his phone was stolen from him at gunpoint. His email was hacked, and the individuals who hacked his phone sent several emails, including to his friends asking for money. The Respondent testified that after he recovered his phone and email account, he responded to Staff's emails.

¶ 59 In response to questions from the Panel, the Respondent testified that his marriage had failed, and his house was sold while he was out of the country. The Respondent does not know where his laptop is.

¶ 60 The only issue for us to decide was whether the Respondent's explanation absolved him of his duty to cooperate.

¶ 61 The Panel finds that it was implausible that someone would steal the Respondent's phone, hack into his email account, and correspond with Staff. It makes no sense. Why would a thief want to correspond with the

MFDA?

¶ 62 The Respondent did not produce any evidence to support his testimony that the thief also contacted his friends from his email account. Even if he had, it would simply establish his email account had been hacked. It still would not explain why a thief would write to the MFDA and falsely state that the Respondent had deceased.

¶ 63 Adding to the implausibility is that someone responded to Staff's request for the date of death and death certificate. If in fact a thief had stolen the Respondent's phone, it defies logic that the thief would reply to the MFDA request for information about the Respondent's date of death and death certificate.

¶ 64 Further, Facebook posts after the Respondent's alleged death and a change of address on the driver's license are also strong evidence that the Respondent was not deceased. We also considered evidence that suggested the Respondent had returned to Canada for a visit.

¶ 65 On December 20, 2021, the MFDA sent a letter by a process server to the Respondent at his new address advising him that the investigation of his conduct had been escalated to Enforcement Counsel. The process server was unable to serve the Respondent personally, but the Respondent's sister answered the door and said that he *"is gone and leaving the country today with no return date."*

¶ 66 On June 1, 2022, the MFDA sent a Well's letter to the Respondent's new address in Canada, and someone signed a registered mail receipt with the initials "ZL" again suggesting that the Respondent may have been in Canada.

¶ 67 After considering the documentary evidence and the Respondent's testimony, the Panel finds that the Respondent's explanation is not credible. We conclude on a balance of probabilities that the Respondent failed to produce his client notes and financial documents that he purported to have received from clients. We find he intentionally tried to evade Staff and his responsibility to cooperate in the investigation.

CONCLUSION

¶ 68 In conclusion, after considering the evidence and the submissions made by the parties, we find on a balance of probabilities that the Respondent contravened the Mutual Fund Dealer Rules as alleged in the Notice of Hearing.

DATED at Toronto, Ontario this 7th day of June 2024.

"Emily Cole"

Emily Cole, Chair

"Rob Christianson"

Rob Christianson, Industry Representative

"Cheryl Hamilton"

Cheryl Hamilton, Industry Representative

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