Re Hanson

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Sherry Susan Hanson

2024 CIRO 39

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: February 12, 2024 in Toronto, Ontario (via videoconference)
Decision: February 12, 2024
Reasons for Decision: March 15, 2023

Hearing Panel:
Frederick W. Chenoweth, Chair
Kenneth Mann, Industry Representative
Craig Woolford, Industry Representative

Appearances:
Tyler G.B. Beazer, CIRO Enforcement Counsel
Justin Papazian, Counsel for the Respondent
Sherry Susan Hanson, the Respondent (present)

REASONS FOR DECISION

BACKGROUND

¶ 1 By Notice of Settlement Hearing, a Hearing Panel of the Ontario District Hearing Committee of the Canadian Investment Regulatory Organization ("CIRO"), was convened to consider whether pursuant to Mutual Fund Dealer Rule 7.4.4, the Hearing Panel should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of CIRO and Sherry Susan Hanson (the "Respondent").

¶ 2 At the outset of the proceeding, the Panel considered a joint submission by Staff and the Respondent to move the proceedings "in camera". The Panel granted the motion. The Panel then considered the provisions of the Settlement Agreement, aided by submissions as to the applicable law, which should guide the Panel in determining whether or not to accept or reject the Settlement Agreement. The Panel unanimously accepted the Settlement Agreement and issued an Order accordingly. These are the Panel's reasons for doing so.

The Contravention

¶ 3 In the Settlement Agreement, the Respondent admits that:

(a) between January 3, 2017 and January 24, 2022, the Respondent altered and used to process transactions, 52 account forms in respect of 33 clients, by altering information on the account forms without having the clients initial the alternations, contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1).

The Facts

¶ 4 In the Settlement Agreement, Staff of CIRO and the Respondent agreed to the existence of a series of facts, which are set out in Part IV, paragraphs 7-21 of the Settlement Agreement. The Settlement Agreement is attached as Appendix "A" to these Reasons.

¶ 5 The Respondent has been registered in the securities industry since approximately June 1998. Since November 30, 2012, she has been registered in Ontario as a dealing representative with Desjardins Financial Security Investments Inc. ("Dealer Member"), a Dealer Member of CIRO (formerly a dealer member of the MFDA). The Respondent remains registered with the Dealer Member. At all material times, the Respondent conducted business in the Ottawa, Ontario area.

Discussion

¶ 6 The Hearing Panel was aware that prior to accepting a Settlement Agreement, a Hearing Panel must be satisfied that:

(a) The facts admitted by the Respondent constitute misconduct in contravention of the By-law, Mutual Fund Dealer Rules or policies, or provincial securities legislation; and

(b) The penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness, bearing in mind the nature and extent of the misconduct and all the circumstances.

¶ 7 The Panel accepted that the role of a Hearing Panel at a settlement hearing was fundamentally different than its role at a contested hearing. As stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, citing the I.D.A. Ontario District Council in *Milewski (Re)*:

> We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel "will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness." [Emphasis added].
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> *Sterling Mutual Inc. (Re)*, MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at para. 37.
>
> *Milewski (Re)*, [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999.

¶ 8 The Panel also considered that settlements are necessary to assist the Corporation to fulfill its regulatory objective of protecting the public. Settlements advance this regulatory objective by proscribing activities that are harmful to the public, while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent.

> *British Columbia (Securities Commission) v. Seifert*, [2006] B.C.J. No. 225 at paras. 48-49 (S.C.), aff'd, [2007] B.C.J. No. 2186 at para. 31 (C.A) ["*British Columbia (Securities Commission)*"].

¶ 9 Hearing Panels have consistently held that obtaining or using pre-signed or altered forms is a contravention of the standard of conduct prescribed under Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1).

> *Donais (Re)* [2020], Hearing Panel of the Pacific Regional Council, MFDA File No. 201945, Panel Decision dated January 20, 2020 at paras 10-11.
>
> *Smith (Re)* [2019], Hearing Panel of the Central Regional Council, MFDA File No. 201960, Panel Decision dated December 17, 2019 at para. 14.

¶ 10 Historically, the MFDA (now CIRO) has warned Members and approved persons against altering account forms without having the clients initial the alterations to show that they are aware of the change made to the information on the form. Both the Member Staff Notice and Bulletins put the mutual fund industry on notice that Staff would be seeking enhanced penalties at disciplinary proceedings for conduct that occurred after the publication of the Bulletin.

Staff Notice #MSN-0066 – Signature Falsifications

MFDA Bulletin #0661-E – Signature Falsifications

¶ 11 It is well established that altering account forms without obtaining clients' initials after the publication of Bulletin #0661-E may be considered an aggravating factor.

Bates (Re), 2020 CanLII 30011 (CMFDA) at paras. 10-11.

Fulton (Re), 2023 CanLII 81955 (CMFDA) at para. 23.

¶ 12 In the present case, as reflected in the Settlement Agreement, the Respondent admits the contravention described in these Reasons. The Panel accordingly concluded that the Respondent's conduct constitutes misconduct in contravention of the By-law, Mutual Fund Dealer Rules or policies or provincial securities legislation.

¶ 13 The Panel then proceeded to consider the appropriateness of the proposed penalty as set out in the Settlement Agreement. In doing so, the Panel considered the submissions of Staff and the Respondent's Counsel, the CIRO Sanction Guidelines and the substantial case law to which it was referred.

¶ 14 The Panel was mindful that the primary goal of securities regulation is the protection of the investor. The Panel was further mindful that in addition to protection of the public, the goals of securities regulation also include fostering public confidence in the capital markets and the securities industry.

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

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para. 71.

Penalty

¶ 15 The Panel also accepted the submissions of Staff that the following factors are frequently considered by Hearing Panels when determining whether a penalty is appropriate:

(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 activity;

(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 activity in the capital markets; and

(k) Previous decisions made in similar circumstances.

Breckenridge, *supra*.

¶ 16 In this respect, the Panel was mindful that, the nature of the contraventions that had been admitted by the Respondent were serious and warranted significant penalties.

Balani (Re), MFDA File No. 201402, Hearing Panel of the Central Regional Council, Decision and Reasons dated January 15, 2015.

¶ 17 With respect to the particular factors which were considered by the Panel when assessing the appropriateness of the penalties agreed to in this matter, the Panel was mindful that the Respondent has been registered in the securities industry since approximately June 1998. The Panel concluded that she was experienced in the industry and knew, or ought to have known of her regulatory obligations as an approved person.

¶ 18 The Dealer Member having conducted a full review of the Respondent's files, issued a disciplinary letter to the Respondent and placed her under close supervision, the Dealer Member has reported that no concerns or further issues were identified while the Respondent was under close supervision.

¶ 19 Based on her admissions, the Respondent has acknowledged that her conduct constitutes a serious contravention of the Mutual Fund Dealer Rules and the high standard of conduct expected of registrants in the securities industry. By entering into the Settlement Agreement, the Respondent has accepted responsibility for her actions, and has saved CIRO the time, resources and expenses associated with conducting a full disciplinary hearing on the merits to resolve the matter.

Settlement Agreement, at para. 21

¶ 20 The Respondent has not previously been the subject of disciplinary proceedings commenced by the MFDA or CIRO.

Settlement Agreement, at para. 19

¶ 21 It is to be noted that no clients raised any concerns to the Dealer Member with respect to the Respondent's conduct. Additionally, there was no evidence of any lack of authorization or financial loss to clients resulting from the Respondent's conduct.

¶ 22 The proposed penalty satisfies the obligation to apply both general and specific deterrence.

¶ 23 Staff propose that costs in the amount of $2,500 be imposed against the Respondent. In its Submissions, Staff made it clear to the Panel that the costs incurred more than justified the imposition of the above cost award. The Respondent, in the Settlement Agreement, consented to same.

Result

¶ 24 For all the above reasons, the Panel concluded that the Settlement Agreement was reasonable and proportionate. Accordingly, the following penalties will be imposed upon the Respondent:

(a) The Respondent shall pay a fine in the amount of $26,000 in certified funds on the date of this Order, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b);

(b) The Respondent shall pay costs in the amount of $2,500 in certified funds on the date of this Order, pursuant to Mutual Fund Dealer Rule 7.4.2;

(c) The Respondent shall in the future comply with Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1);

(d) 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.

DATED at Toronto, Ontario this 15 day of March 2024

"Frederick W. Chenoweth"

Frederick W. Chenoweth, Chair

"Kenneth Mann"

Kenneth Mann, Industry Representative

"Craig Woolford"

Craig Woolford, Industry Representative

Appendix "A"

File No. 202335

Settlement Agreement

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Sherry Susan Hanson

SETTLEMENT AGREEMENT

1. 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 Ontario District Hearing Committee (the "Hearing Panel") of CIRO should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of CIRO ("Staff") and Sherry Susan Hanson (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.

2. CONTRAVENTIONS

¶ 4 The Respondent admits to the following violation of the Mutual Fund Dealer Rules:[1]

Between January 3, 2017 and January 24, 2022, the Respondent altered, and used to process transactions, 52 account forms in respect of 33 clients, by altering information on the account forms without having the clients initial the alterations, contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1).

3. 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 $26,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b);

(b) the Respondent shall pay costs in the amount of $2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to Mutual Fund Dealer Rule 7.4.2;

(c) the Respondent shall in the future comply with Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1); and

(d) the Respondent shall attend by videoconference on the date set for the Settlement Hearing.

¶ 6 Staff and the Respondent agree to the settlement on the basis of the facts set out in this Settlement Agreement herein and consent to the making of an Order in the form attached as Schedule "A".

[1] At the time of the conduct addressed in this proceeding, MFDA Rule 2.1.1 was in effect and is now incorporated into Mutual Fund Dealer Rule 2.1.1 referred to in this proceeding.

4. AGREED FACTS

Registration History

¶ 7 The Respondent has been registered in the securities industry since approximately June 1998.

¶ 8 Since November 30, 2012, the Respondent has been registered in Ontario as a dealing representative with Desjardins Financial Security Investments Inc. (the "Dealer Member"), a Dealer Member of CIRO (formerly a Member of the MFDA).

¶ 9 At all material times, the Respondent conducted business in the Ottawa, Ontario area.

Altered Account Forms

¶ 10 At all material times, the Dealer Member's policies and procedures prohibited Approved Persons from altering or correcting any information on client account forms, without having the client initial the alterations to show that the change was authorized.

¶ 11 Between January 3, 2017 and January 24, 2022, the Respondent altered, and used to process transactions, 52 account forms in respect of 33 clients, by altering information on the account forms without having the clients initial the alterations.

¶ 12 The altered account forms consisted of:

(a) three Account Opening Forms;

(b) one Application for Retirement Income Fund Form;

(c) three Application for Investment Account Forms;

(d) one Client Application/Update Form;

(e) two Funds Transfer Agreement Forms;

(f) four Know-Your-Client ("KYC") Forms;

(g) 28 Letters of Direction;

(h) one Registered Education Savings Plan ("RESP") Redemption Form;

(i) one RESP Withdrawal Form;

(j) three Tax Free Savings Account ("TFSA") Application Forms;

(k) three Transfer Authorization for Registered Investments ("TARI") Forms; and

(l) two Transfer Authorization for Registered and Non-Registered Investments Forms.

¶ 13 The alterations the Respondent made to the account forms consisted of alterations to: risk tolerance; redemption amounts; liquid assets and net worth amounts; purchase and transfer amounts; fund names and codes; Pre-Authorized Contribution and Automatic Withdrawal instructions; banking information; Electronic Funds Transfer information; disclosure information; client personal and contact information; and dates.

The Dealer Member's Investigation

¶ 14 In November 2021, during an internal compliance review, the Dealer Member discovered one altered account form without client initials in the client files maintained by the Respondent. As a result, the Dealer Member commenced an investigation into the Respondent's conduct, reviewed additional client files maintained by the Respondent, and discovered an additional 17 altered account forms.

¶ 15 On April 29, 2022, the Dealer Member issued a disciplinary letter to the Respondent.

¶ 16 In October 2022, the Dealer Member conducted a full review of the client files maintained by the Respondent, and discovered the remaining altered account forms described above.

¶ 17 Based on the additional findings from its review of the Respondent's client files, the Dealer Member placed the Respondent under close supervision on November 24, 2022. The Respondent's close supervision is

ongoing. The Dealer Member has reported that no concerns or further issues were identified while the Respondent was under close supervision.

¶ 18 As part of the Dealer Member's investigation into the Respondent's conduct, on November 28, 2022, it sent letters to the affected clients in order to determine whether the altered information on the account forms described above was accurate and if the underlying transactions were authorized. No clients raised any concerns to the Dealer Member.

Additional Factors

¶ 19 The Respondent has not previously been the subject of disciplinary proceedings commenced by the MFDA or CIRO.

¶ 20 There is no evidence of client financial loss or lack of authorization for the underlying transactions, and no clients have complained to Staff or the Dealer Member.

¶ 21 By entering into this Settlement Agreement, the Respondent has saved CIRO the time, resources and expenses associated with conducting a contested hearing of the allegations.

5. ADDITIONAL TERMS OF SETTLEMENT

¶ 22 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.

¶ 23 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.mfda.ca.

¶ 24 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.

¶ 25 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 facts and contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and 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.

¶ 26 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.

¶ 27 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.

¶ 28 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, including the attached Schedule "A", will be released to the public if and when the Settlement Agreement is accepted by the Hearing Panel.

¶ 29 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 30TH day of November, 2023.

"Sherry Susan Hanson"
Sherry Susan Hanson

"Witness"
Witness - Signature

"Witness"
Witness - Print name

"Charles Toth"
Staff of CIRO
Per: Charles Toth
Canadian Investment Regulatory Organization, Vice-President, Enforcement (Mutual Fund Dealers)

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Sherry Susan Hanson

ORDER

WHEREAS on [date], the Canadian Investment Regulatory Organization ("CIRO") issued a Notice of Settlement Hearing pursuant to Mutual Fund Dealer Rule 7.4.4 in respect of a disciplinary proceeding against Sherry Susan Hanson (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of CIRO dated [date] (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to Mutual Fund Dealer Rules 7.3 and 7.4.1;

AND WHEREAS based upon the admissions of the Respondent in the Settlement Agreement, the Hearing Panel is of the opinion that:

> Between January 3, 2017 and January 24, 2022, the Respondent altered, and used to process transactions, 52 account forms in respect of 33 clients, by altering information on the account forms without having the clients initial the alterations, contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1).

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

¶ 1 The Respondent shall pay a fine in the amount of $26,000 in certified funds payable on the date of this Order, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b);

¶ 2 The Respondent shall pay costs in the amount of $2,500 in certified funds payable on the date of this Order, pursuant to Mutual Fund Dealer Rule 7.4.2;

¶ 3 The Respondent shall in the future comply with Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1); and

¶ 4 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.

DATED this [day] day of [month], 2023.

_____

Name,
Chair

_____

Name,
Industry Representative

Name,
Industry Representative