Re Minhas

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Sukhjinder Minhas

2025 CIRO 17

Canadian Investment Regulatory Organization
Hearing Panel (Pacific District)

Heard: January 13, 2025, in Vancouver, British Columbia
Decision: April 3, 2025
Reasons for Decision: April 3, 2025

Hearing Panel:
C. Lynn Smith, Chair, Barbara Fraser and Doug Stewart

Appearances:
Paul Blasiak, Senior Enforcement Counsel
Eric Chow, Enforcement Counsel
Sukhjinder Minhas (absent)

DECISION ON THE MERITS AND PENALTY

INTRODUCTION

[1] The Canadian Investment Regulatory Organization made two allegations against Mr. Sukhjinder Minhas, the Respondent to these proceedings. Between April 2010 and March 2022, he was registered in British Columbia as a dealing representative with Royal Mutual Funds Inc. (**RMFI**), a Dealer Member of CIRO. He was also employed by a bank affiliated with RMFI, namely, the Royal Bank of Canada. His employment with both was terminated on March 21, 2022, for reasons that included the conduct that is the subject of the first allegation. He is no longer registered in the securities industry in any capacity.

THE ALLEGATIONS

[2] The allegations were:

a) That between November 2021 and February 2022, the Respondent failed to identify, report to the Dealer Member, or address material conflicts of interest when he borrowed monies from clients, contrary to the Dealer Member's policies and procedures and Mutual Fund Dealer Rules 2.1.4(2), 2.1.5, 2.1.1, and 1.1.2 (as it relates to Rule 2.5.1).

b) Commencing on July 16, 2023, the Respondent failed to cooperate with an investigation into his conduct by Staff of CIRO, contrary to Mutual Fund Dealer Rule 6.2.1.

[3] The material conflicts of interest in allegation (1) arose because Mr. Minhas borrowed $400,000 in total

from three different clients.

[4] He borrowed: $50,000 from client GA on November 10, 2021; $275,000 from client PP between December 2021 and February 28, 2022; and $75,000 from a numbered company owned by client RA on January 4, 2022. None of the loans was secured by collateral, though each was recorded in a promissory note that specified the principal amount borrowed and the interest payable in respect of the loan. The Respondent used the proceeds of the loans to pay his personal expenses and to repay money owed to clients or to other persons.

[5] There is clear evidence that one of the clients was repaid. Bank records show that, between December 1, 2021, and March 2, 2022, the Respondent repaid the principal, interest, and fees that he owed on the loan from GA.

[6] Although the Respondent claimed in his interview with Mr. Jakubec, the CIRO investigator, that he had repaid RA's and PP's loans, and promised to produce documentation, that documentation was never produced. However, client RA, on March 20, 2024, sent an email to RMFI stating that the loan "has been repaid a long time ago". Client PP, whose loans to the Respondent totalled $275,000, never replied to three emails and a telephone call voicemail message from Mr. Jakubec, requesting that client PP contact him to discuss whether Mr. Minhas had repaid PP's loans.

[7] Mr. Minhas did not disclose to the Dealer Member RFMI or to the Royal Bank that he had obtained the various loans. The loans gave rise to unreported and unaddressed material conflicts of interest. At all material times, RMFI's policies and procedures prohibited its Approved Persons from borrowing money from clients, unless the client and the Approved Person were related to each other for the purposes of the *Income Tax Act (Canada)* and the compliance department gave written approval. When RMFI became aware of the loans and consequential conflicts of interest, it terminated the Respondent's employment and reported the matter to CIRO, as it was required to do.

[8] CIRO counsel argued that the conduct in allegation (1) contravened both RMFI's policies and procedures and Mutual Fund Dealer Rules 2.1.4(2), 2.1.5, 2.1.1, and 1.1.2 (as it relates to Rule 2.5.1).

[9] With respect to allegation (2), Mr. Minhas was interviewed by CIRO Staff on May 24, 2023, and responded to questions about his having borrowed money from his clients. For example, he claimed to have repaid the PP and RA loans and stated that he had used the proceeds from the PP loans to invest in a real estate development that was operated by a cousin of his. He undertook that he would provide certain information and documentation in support of what he said. He did not do so and has not done so to date, despite multiple follow-up requests by Mr. Jakubec.

[10] CIRO counsel say that the Respondent failed to cooperate with the investigation into his conduct, contrary to Mutual Fund Dealer Rule 6.2.1.

PROCEEDING IN THE ABSENCE OF THE RESPONDENT

[11] Mr. Minhas was personally served with a letter, Notice of Hearing, Rules of Procedure and Guide to Hearings on July 9, 2024. He was notified of the commencement of the proceeding, the first appearance date, and the date, time and location of the hearing on the merits. He did not file a Reply to the Notice of Hearing, appear at the first appearance date, or attend at the hearing on January 13, 2025.

[12] Rule 7 provides that:

> 7.3 Failure to Attend Hearing
>
> (1) Where a Respondent fails to attend the hearing on the date and at the time and location specified in the Notice of Hearing, the Hearing Panel may:
>
> (a) proceed with the hearing without further notice to and in the absence of the Respondent; and
>
> (b) accept the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing as proven and impose any of the penalties and costs described in sections 7.4.1 and 7.4.2 respectively of Mutual Fund Dealer Rules.

[13] Pursuant to Rule 7.3, the Panel was satisfied that, given the amount of notice the Respondent had received regarding the proceedings, and the opportunities he had to appear, it was appropriate to proceed in his absence without further notice. The Panel heard submissions from counsel for CIRO and reviewed the evidence. The Panel concluded that the evidence was sufficient to accept the facts alleged in the Notice of Hearing and that the Respondent had infringed the Mutual Fund Dealer Rules as alleged.

[14] The Panel then heard submissions regarding sanctions and advised that it would deliver written Reasons. These are those Reasons.

ALLEGATION (1): CONFLICTS OF INTEREST – BORROWING FROM CLIENTS

[15] The uncontradicted evidence shows that between November 2021 and February 2022, Mr. Minhas borrowed a total of $400,000 from clients GA, PP and RA. None of these loans was disclosed to RMFI.

[16] Rule 2.1.4(2), which was in effect throughout the relevant period, provides that:

> 2.1.4(2) Identifying, reporting and addressing material conflicts of interest – Approved Person
>
> > (a) An Approved Person must take reasonable steps to identify existing material conflicts of interest, and material conflicts of interest that are reasonably foreseeable, between the Approved Person and the client.
> >
> > (b) If an Approved Person identifies a material conflict of interest under Rule 2.1.4(2)(a), the Approved Person must promptly report that conflict of interest to their Member.
> >
> > (c) An Approved Person must address all material conflicts of interest between the client and the Approved Person in the best interest of the client.
> >
> > (d) An Approved Person must avoid any material conflict of interest between a client and the Approved Person if the conflict is not, or cannot be, otherwise addressed in the best interest of the client.
> >
> > (e) An Approved Person must not engage in any trading or advising activity in connection with a material conflict of interest identified by the Approved Person under Rule 2.1.4(2)(a) unless
> >
> > > (i) the conflict has been addressed in the best interest of the client, and
> > >
> > > (ii) the Approved Person's Member has given the Approved Person its consent to proceed with the activity.

[17] Rule 2.1.5, which came into effect on December 31, 2021, and would be applicable to the Respondent's conduct after that date, provides that:

> 2.1.5 Borrowing From Clients
>
> > No Approved Person shall borrow money, securities or other assets or accept a guarantee. in relation to borrowed money, securities or any other assets, from a client unless:
> >
> > (a) the client and the Approved Person are related to each other for the purposes of the Income Tax Act (Canada); and
> >
> > (b) the Approved Person has obtained the written approval of their Member to borrow the money, securities or other assets or accept the guarantee.

[18] Counsel for CIRO submitted that numerous hearing panels have found that borrowing money from a client is a breach of the general standard of conduct set out in Rule 2.1.1, which provides that Members and Approved Persons must deal fairly, honestly, and in good faith with clients, observe high standards of ethics and conduct in the transaction of business, and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

[19] Further, Counsel submitted that hearing panels have held that borrowing money from a client is entering into a conflict of interest with the client, contrary to Rule 2.1.4. This is so whether or not the monies are subsequently repaid to the client.

[20] We have reviewed the authorities and concluded that Counsel's submissions are sound.

[21] For example, in *Re Nunweiler*, Reasons for Decision dated May 28, 2012,[1] a Hearing Panel of the Pacific Regional Council, stated at para. 17:

> Where an Approved Person borrows money from a client or arranges investments by clients in companies in which the Approved Person has a personal interest, such conduct immediately raises a significant actual conflict of interest, a conflict that in most if not all cases will be impossible to resolve in favour of the client. It is patently obvious that facilitating investments by a client in your company, or borrowing money from a client is not the exercise of responsible business judgment in the best interests of the client.

[22] To similar effect, see *Re Reid*[2].

[23] There is no evidence that Mr. Minhas identified, reported to RMFI, or addressed the material conflicts of interest that arose when he borrowed money from the clients.

[24] Rule 2.5.1 requires Dealer Members to have in place policies and procedures to ensure compliance with the By-laws and Rules, and with applicable securities legislation. RMFI in its Compliance Manual dated May 2021, stated this policy:

> 4.6 Conflicts of Interest
>
> RMFI is required by securities laws to identify and address all material conflicts of interest in the best interests of clients, put the client's interest first when making suitability determinations and disclose material conflicts of interest to clients. Material conflicts of interest that cannot be addressed in the best interests of clients must be avoided.
>
> ....
>
> Personal financial dealings with clients
>
> Conflicts arise when you are involved in personal financial dealings with clients and in almost all cases these conflicts cannot be addressed in the best interest of the client. As a result, these conflicts must be avoided.
>
> > Borrowing from Clients
> >
> > Borrowing from a client raises a material conflict that, in almost all cases, cannot be addressed in the best interest of the client. As a result, you are not permitted to personally borrow from clients, and may only do so in the limited circumstances where you and the client are related to each other for the purposes of the Income Tax Act (Canada), and you have obtained the written approval from RMFI Compliance.

[25] Rule 1.1.2 requires compliance by Approved Persons with the By-laws and Rules as they relate to the Dealer Member. It states:

> 1.1.2 (b) Each Approved Person who conducts or participates in any securities related business in respect of a Member in accordance with Rule 1.1.1(c)(i) or (ii) shall comply with the By-laws and Rules as they relate to the Member or such Approved Person.

[26] It can be a regulatory violation for an Approved Person to fail to comply with the Member's policies, particularly those policies designed to facilitate regulatory supervision by the Member. Otherwise, the

[1] MFDA File No. 201030

[2] 2023 CIRO 41 at para 107 – 115

Members' policies would be meaningless and ineffective: *Frank (Re)*.[3]

[27] See also *Re Wilkins*[4], and the cases it refers to.

[28] We accept that Mr. Minhas was in breach of RMFI policies and that his conduct was thereby contrary to Rules 2.5.1 and 1.1.2.

[29] We find that allegation (1) has been proved against the Respondent.

ALLEGATION (2): FAILURE TO CO-OPERATE WITH THE INVESTIGATION

[30] Rule 6.1 and 6.2.1 give CIRO the power to conduct investigations of Approved Persons, such as Mr. Minhas, related to their compliance with CIRO's By-laws and Rules, and place an obligation upon current or former Approved Persons to attend interviews and provide information and documents to CIRO Staff upon request.

[31] Counsel referred to numerous authorities in which the obligation of Approved Persons to provide information and documents has been explained and enforced, including: *Rai (Re)*[5],; *Chapman (Re)*[6].

[32] The uncontradicted evidence is that, during his interview with CIRO investigative staff on May 24, 2023, the Respondent undertook to provide CIRO staff with a number of items, including: evidence to corroborate his claim that he repaid the loans from client PP; information regarding his claim that he had invested the proceeds of PP's loans into a real estate development operated by the Respondent's cousin; information regarding other loans between himself and GA; and information with respect to money transfers from his bank account, that he was unable to explain during his interview.

[33] Despite several requests by CIRO staff that he provide the promised documentation; the Respondent has failed to do so.

[34] The Panel finds that the Respondent failed to cooperate with an investigation into his conduct, contrary to Rule 6.2.1.

CONCLUSION ON THE ALLEGATIONS

[35] At the hearing, the Panel considered the evidence and submissions of CIRO counsel, and then advised those present that it had concluded that both allegations had been made out. The Panel then heard submissions as to the appropriate sanctions.

SANCTIONS

[36] A hearing panel can impose any of the penalties set out in Mutual Fund Dealer Rule 7.4.1.1(a)-(f)), including a permanent prohibition of the authority of the Approved Person to conduct securities related business, and a fine not exceeding the greater of $5,000,000 or three times the profit obtained, or loss avoided by engaging in the misconduct. It also has discretion under Mutual Fund Dealer Rule 7.4.2 to require the Respondent to pay costs related to the investigation and to the proceeding.

[37] The sanctions sought by Enforcement Counsel were:

> (a) a permanent prohibition on the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any Dealer Member of CIRO;
>
> (b) a fine in the amount of $425,000, comprising:

[3] (2015) Hearing Panel of the Central Regional Council, MFDA File No. 201407, Panel Decision (Misconduct) dated May 5, 2015, at paras. 57-58.
[4] 2024 CIRO 71, para 27-27.
[5] (2019) Hearing Panel of the Central Regional Council, MFDA File No. 2018106, Panel Decision dated July 24, 2029, at para. 26
[6] [2021] Hearing Panel of the Central Regional Council, MFDA File No. 201934, Panel Decision (Misconduct) dated December 2, 2020, at para. 36–41

I. an amount sufficient to disgorge $275,000, being the amount the Respondent obtained from his contravention of Mutual Fund Dealer Rules; and

II. a fine of $150,000; and

(c) costs in the amount of $10,000.

[38] Penalties that will deter persons involved in the securities industry from misconduct are required for the protection of the investing public and reinforcement of the integrity of the securities market. Counsel referred us to several authorities to this effect, including *Pezim v. British Columbia (Superintendent of Brokers*)[7]; *Reid (Re)*[8]; *Wilkins (Re)*[9].

[39] The Respondent committed serious misconduct – he borrowed a total of $400,000 from clients, thereby putting himself in a serious conflict of interest and breaching his employer's policies designed to ensure regulatory compliance. He then, through failure to cooperate, prevented the regulatory organization (CIRO) from ascertaining all of the relevant facts. The amount borrowed from clients was large, none of it was secured by collateral (thus putting clients' money at risk), and there were five separate loans from three different clients over a period of two and a half months. Mr. Minhas facilitated the loans from client PP, by processing redemptions of the client's GICs so that the proceeds could be loaned, and by filling out the cheques for the client (he said that the client had "hand issues"). Borrowing from clients was against both the MFDA Rules and his Dealer Member's policies.

[40] We note that Mr. Minhas had no previous history of regulatory discipline. At the same time, there is no evidence that he acknowledged his wrongdoing, and his failure to cooperate with the investigation or to participate in this proceeding suggests that he is unwilling to comply with regulation of the securities industry. The fact that GA was repaid could be seen as a mitigating factor. However, Mr. Blasiak for CIRO noted, Mr. Minhas's repayment to client GA of $50,000 plus interest and fees took place one day after he had borrowed $100,000 from client PP. Therefore, CIRO counsel argued, the repayment to GA can be given little weight as a possibly mitigating factor since it appears to have been financed by a loan from a different client. We agree.

[41] In addition, as stated in *Wilkins (Re)* at para. 71-72, for an Approved Member to fail to cooperate with an investigation is serious misconduct because it undermines CIRO's ability to determine all of the relevant facts and to perform its regulatory function.

Prohibition from conducting securities related business

[42] Given Mr. Minhas's failure to cooperate with the investigation, and his misconduct, there is no room for doubt that he should be prohibited from conducting securities related business in any capacity while employed by or associated with any Dealer Member.

[43] To permit him to resume such business would put at risk investors and capital markets in the jurisdiction. This should be a permanent prohibition.

Fine

[44] Counsel argued for a fine of $425,000 on the basis that $275,000 was borrowed from client PP with no evidence that it was repaid, and that an additional fine of $150,000 is appropriate to ensure that the fine is a true deterrent. In *Kowalsky (Re)*[10], , the panel noted that "Wrongdoers should not benefit from their wrongdoing, and a benefit received by a respondent from its misconduct sets a bare minimum in determining the appropriate fine to be paid by the respondent".

[45] As noted above, client GA was repaid. Client RA apparently also received repayment of his loan to Mr. Minhas, although the evidence is not as clear. Nevertheless, counsel seeks a fine based upon the premise that Mr. Minhas benefitted from his wrongdoing only to the extent of $275,000 – the amount of the loan from client

[7] (1994) 2 S.C.R. 557 at paras. 59 and 68

[8] 2024 CIRO 30 at para. 20

[9] 2024 CIRO 71 at para. 63

[10] (2022) Hearing Panel of the Central Regional Council, MFDA File No. 202102, Panel Decision dated March 2, 2022, at para. 24

PP. The loans to RA and GA are disregarded for this purpose.

[46] In his interview, the Respondent claimed that he had repaid the $275,000 to PP but provided no documentation of repayment despite having promised to do so. Nor is there evidence from PP that M. Minhas repaid the loan.

[47] Is it a reasonable inference that Mr. Minhas retained the funds that he borrowed from client PP, in the absence of any evidence that he repaid those funds? Taking into account the ample opportunity Mr. Minhas had to respond to the allegations and to produce evidence, and his failure to cooperate with the investigation, the Panel has concluded that it is reasonable to infer that he retained the money. In *Fauth (Re)*[11], the Alberta Securities Commission stated that once the regulatory authority has proved on a balance of probabilities that a respondent has obtained a certain amount as a result of misconduct, the burden shifts to the respondent to disprove the reasonableness of that amount. It added, "Further, it has been accepted that 'any risk of uncertainty in calculating disgorgement should fall on the wrongdoer whose non-compliance with the Act gave rise to the uncertainty'".

[48] Even if we had not inferred that Mr. Minhas retained all of the $275,000 borrowed from PP, we note that the gravamen of the offence here is not that he retained the funds – it is that he borrowed them in the first place. That suffices to infringe the MFD Rules, and his employer's policies, creating a serious conflict of interest.

[49] CIRO counsel argued that if a sanction is to act as a deterrent, it must include an amount in addition to disgorgement of the benefit received by the Respondent. Otherwise, there is a risk that the industry will view the fine as merely the cost of doing business, bringing a wrongdoer back to square one. Accordingly, Mr. Blasiak submitted, the fine should include an additional amount of $150,000. A total fine of $425,000 would reflect the totality of the misconduct, he argued, including the seriousness of obtaining multiple loans from clients totalling $400,000, and thereafter failing to cooperate with CIRO's investigation.

[50] Counsel pointed to a number of past cases involving borrowing from clients, where the fines ordered were significantly higher than the amounts that had not been repaid to those clients, including: *Latour (Re)*[12]; *Mott (Re)*[13]; and *Chapman, Nunweiler,* and *Wilkins* (cited above).

[51] The Panel has concluded that, taking into account the seriousness of the misconduct, that it involved a very considerable sum of money and unsecured loans from three different clients over a period of months, and that the Respondent's failure to cooperate with the investigation made it impossible to ascertain all of the relevant facts including whether the monies were repaid to the three clients, a global penalty of $425,000 for the two allegations is appropriate.

Costs

[52] Third, the Panel finds that costs should be payable in the sum requested - $10,000.

CONCLUSION

[53] For these reasons, the Panel imposes sanctions of: (1) A permanent prohibition on the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any Dealer Member of CIRO; (2) A fine of $425,000; and (3) Costs in the amount of $10,000.

Dated at Vancouver, British Columbia this 3rd day of April 2025.

"C. Lynn Smith"
C. Lynn Smith, K.C., Chair

"Barbara Fraser"

[11] 2019 ABASC 102 at para. 81
[12] [2016] Hearing Panel of the Central Regional Council, MFDA File No. 201561, Panel Decision dated December 19, 2016 (Penalty)
[13] 2024 CIRO 31

Barbara Fraser, Industry Representative

"Doug Stewart"

Doug Stewart, Industry Representative