

Re Smith

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Michael Rolland Smith

2025 CIRO 31

Canadian Investment Regulatory Organization
Hearing Panel (Nova Scotia District)

Heard: June 2, 2025, in Halifax, Nova Scotia by videoconference

Decision: June 2, 2025

Reasons for Decision: June 23, 2025

Hearing Panel:

R. Scott Peacock, Chair

David Acker, Industry Representative

Thomas Kostandoff, Industry Representative

Appearances:

Alan Melamud, Senior Enforcement Counsel

Oliver Janson for the Respondent

Michael Rolland Smith (present)

REASONS FOR DECISION

INTRODUCTION:

[1] This matter was commenced by Notice of Hearing dated 18th September 2024 ¹. The Notice of Hearing alleged (a) misappropriation or otherwise obtaining monies from a client, (b) changing the beneficiary for a client's mutual fund accounts to the Respondent's family members, (c) failing to cooperate with an investigation.

[2] The first appearance was held virtually on 12th November 2024. The Notice of Hearing and Affidavit of Service were marked and entered as evidence, Exhibits 1 and 2 respectively. The Respondent requested an adjournment to retain counsel. An adjournment was granted setting 12th December 2024 for resumption of the Hearing.

[3] Upon resumption of the first appearance, the Respondent advised that his Counsel was not available until the 15th of January 2025. The matter was adjourned until the 17th of January 2025 at 10:00 AM AST.

¹ Notice of Hearing 18 September 2024, Ex. 1

[4] On the 17th of January 2025, the matter was set for a hearing on the merits requiring 2 days. Dates were agreed upon for the exchange of documents and disclosure. The Hearing was set for June 2nd and 3rd 2025, in person at Halifax.

[5] The parties drafted an Agreed Statement of Facts dated 26th May 2025. The issue for the Panel's determination became whether or not the Agreed Facts were sufficient to determine that they made out the allegations made in the Notice of Hearing, applying the appropriate test for an administrative discipline hearing. The Panel, after consideration of the facts and hearing Counsel for the parties, found that the facts did support the allegations and found the Respondent had committed misconduct.

BACKGROUND:

[6] The Agreed Statement of Facts provided the basis for the Panel's determination and finding. Notwithstanding any submissions that may be made, Enforcement Counsel and Respondent's Counsel's comments and submissions do not constitute evidence for the Panel's consideration; only facts mutually agreed can be considered.

[7] The essential facts considered by the Panel were:

(a) Misappropriation

“12. At all material times, client BR was a client of the Dealer Member whose accounts were serviced by the Respondent.

13. At the time of the misconduct described below commenced, client BR was 74 years old, retired and held approximately \$170,000.00 in a nonregistered account and \$450,000.00 in two registered accounts with the Dealer Member. At around the time the Respondent's misconduct was discovered, the balance remaining in client BR's accounts was approximately \$54.00 and \$111.00 respectively.

14. Between March 2017 and May 2023, the Respondent processed 236 Mutual fund redemptions and 200 cash withdrawals from client BR's accounts. In each instance the Respondent directed the proceeds of redemption and electronic cash withdrawals to the Respondent's personal bank account by submitting to the Dealer Member a banking customers account information form falsely portraying the Respondent bank account as belonging to client BR.”²

[8] The Agreed Statement of Facts further provided evidence that the Respondent received money resulting from payouts from client BR's RRIF account. Client BR was not aware that the Respondent was receiving the RRIF payouts. In total, the Respondent received \$460,126.47. The Agreed Statement of Facts provided evidence that the Respondent provided BR with two false account statements. Further evidence provided that the Respondent received from BR four blank signed cheques, received for the purpose of making investments in BR's account with the Dealer Member. The Respondent cashed these cheques totaling \$26,500.00 into his own bank account. The misconduct by the Respondent resulted in BR incurring tax consequences of \$41,578.50 and deferred sales charges of \$1,678.20.

² Agreed Statement of Facts 26 May 2025, paras 12, 13, 14

(b) Beneficiary Designations

“22. On or about March 17th, 2022, the Respondent completed and submitted for processing two account forms to change the beneficiary of client BR’s two registered accounts from BR’s cousin to three individuals who were non-arm’s length to the Respondent.”³

[9] Client BR was not aware of the changes made by the Respondent to the designated beneficiary.

(c) Failure to Cooperate

[10] The investigation of the Respondent’s conduct of BR’s accounts was commenced on 16th May 2023. In an interview conducted on 24th January 2024, the Respondent told Staff that he had “borrowed” not “misappropriated” funds from BR and that he had begun repaying BR by making monthly deposits of \$1,167.00 to BR’s bank account.

[11] Regarding the Respondent’s failure to cooperate, the Agreed Statement of Facts provided evidence that:

“Despite staff’s repeated requests and repeated extensions granted to the Respondent, the Respondent failed to satisfy the undertaking or provide the additional documents and information requested by Staff...”⁴

[12] The Respondent’s admissions in the Agreed Statement of Facts provided evidence that the Respondent misled Staff in the 24th January 2024 interview, in that he had not made any repayment to BR’s bank account.

[13] In considering its deliberations upon the facts in evidence, the Panel must consider whether on the balance of probabilities or preponderance of evidence, that the admitted conduct constitutes a violation of the Rules and Standard of Conduct the Respondent was obligated to meet.

ANALYSIS:

[14] The facts in this matter are not at issue, the contents of the Agreed Statement of Facts are accepted by the Parties and the Panel. Having considered those admissions, the Panel is unanimous in finding that the Respondent has violated Mutual Fund Dealer Rules 2.1.1 and 6.2.1 respectively.

Submissions by Parties

[15] Enforcement Counsel made written submissions that he summarized for the Panel’s consideration during its deliberations in respect to penalty. He emphasized that the Respondent’s conduct was an egregious breach of the conduct set forth in Mutual Fund Dealer Rule 2.1.1 setting the standard for Members and Approved Persons to 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. Enforcement Counsel posited that the Respondent’s conduct was antithetical to the standard of conduct.

[16] The changing of BR’s beneficiaries on registered accounts, submission of false documents to the dealer, and diverting funds to his own account were in Enforcement Counsel’s submission

³ Agreed Statement of Facts, 26 May 2025, para 22

⁴ Agreed Statement of Facts, 26 May 2025, para 28

worthy of very serious penalties and a permanent prohibition from conducting securities business.

[17] Enforcement Counsel recommended to the Panel that the Respondent be permanently prohibited from conducting securities related business, pay a fine of \$1,023,252.94 comprised of a disgorgement of \$486,626.47 and a fine of \$486,626.47 in respect to allegations 1 and 2. Further, a fine of \$50,00.00 in respect to allegation 3. It was recommended to the Panel that costs in the amount of \$20,000.00 be ordered.

[18] Respondent's Counsel made written and oral submissions. He affirmed that the Respondent had signed and agreed with the Agreed Statement of Facts submitted for the Panel's consideration. It was stated that the Respondent was facing not only the regulatory proceeding but also civil and criminal proceedings. The civil proceedings have resulted in the Dealer Member obtaining a default judgement, having compensated BR for losses and charges against the accounts. The current criminal proceedings have not yet been concluded. Respondent's Counsel informed the Panel that the Respondent suffered domestic upset and strained relationships with his family. Further, the Respondent has not been able to secure meaningful employment as a result of his current circumstances.

[19] Respondent's Counsel confirmed that the Respondent accepts that a permanent prohibition is appropriate on the facts of this matter. However, he does not agree with the monetary penalties proposed by Enforcement Counsel.

[20] Respondent's Counsel referred the Panel to *Re Walker*⁵ and *Re Tonnies*⁶ setting forth various factors to be considered by the Panel in penalty deliberations. He proposed a fine in the amount of \$486,626.47 and \$75,000.00 totalling \$561,626.47 as appropriate with costs of \$20,000.00.

CONCLUSION:

[21] The Panel, having accepted the Agreed Statement of Facts and made a finding that the allegations in the Notice of Hearing had been made out, the remaining determination to be made was the appropriate penalty for the misconduct.

[22] The misconduct in this matter was very serious, a complete abdication of the responsibilities, ethics, honesty, good business practices and fair dealing on the part of the Respondent. It is not possible to overstate the impact upon the client, market integrity and public interest.

[23] Enforcement Counsel referred the Panel to several authorities included in his Book of Authorities in support of his disposition recommendations. It is a long-established principle that regulatory securities proceedings' primary purpose is the maintenance of public confidence in securities markets and the protection of investors. In consideration of those goals, penalties and sanctions imposed by a panel are protective and preventive.⁷

[24] Enforcement Counsel referred to *Fauth Re*⁸ a decision of the Alberta Securities Commission (**ASC**). In the discussion of an appropriate penalty for serious misconduct, the ASC decision stated:

“...Balancing is involved so that general deterrence is not over-emphasized and individual circumstances are not overlooked but the administrative penalty should still be sufficient

⁵ *Re Walker* 2024 CIRO 43 p 4

⁶ *Re Tonnies* 2005 LNCMFDA 7

⁷ *Pezim v BC Supt. of Brokers*, [1994] 2 SCR 557

⁸ *Fauth Re* LNABASC 90 para 100

to have a deterrent effect. (*Guindon v Canada* 2015 SCC 41 at paras. 77, 80). We agree with Staff's submission that an administrative penalty that is too low - especially in cases like this one, involving the most serious sort of capital-market misconduct - could erode public confidence."

[25] Although *Fauth* was a case involving unregistered activity, misrepresentation and fraud, the principles in respect to serious misconduct are applicable. Staff referred to *Olanrewaju (Re)*⁹ in respect to misappropriation as being misconduct that "strikes at the heart of advisor-client relationship."

[26] The harm caused by the Respondent's dishonest misconduct is a matter of grave concern for the client affected, the Member Dealer, investors and the public at large. In *Vanlandschoot (Re)*¹⁰ the panel wrote:

"The Hearing Panel was satisfied that the misappropriation of client monies is fundamentally dishonest conduct which strikes at the very nature of advisor client relationship. Such conduct not only caused harm to the client and members, but it also undermines the reputation and integrity of the securities industry as a whole."

[27] The Panel finds that the Respondent's misconduct has caused grave harm to the client, Dealer Member and has eroded public confidence in securities markets in gross disregard to the public interest.

[28] Respondent's Counsel in addressing the appropriate penalty for the admitted misconduct, agreed that the permanent prohibition was appropriate upon the facts. However, he recommended to the Panel that a lesser financial penalty would be appropriate, referring the Panel to *Re Walker*¹¹ to consider a list of factors to be considered in arriving at an appropriate penalty. Those factors are primarily set forth in CIRO's Sanction Guidelines.

[29] Respondent's Counsel referred the Panel to *Re Sukhai*¹² and *Re Mott*¹³ as examples where lesser monetary penalties were imposed. The Panel notes that those cases were instances of a registrant borrowing money from a client, not the same as the Respondent's misappropriation and therefore distinguishable on the facts in this proceeding.

[30] The Panel was reminded by Counsel that the Respondent had no prior discipline record.

[31] The Panel is mindful of submissions made in respect to the Respondent's current employment situation. However, no evidence was led with respect to the disposition of the misappropriated funds nor the Respondent's current financial situation or net worth. The Panel considered the requirement in these circumstances that there be a disgorgement of the misappropriated funds in conjunction with a fine appropriate for the egregious misconduct. In *Northern Securities (Re)*¹⁴ the decision stated:

"Imposing that fine, in addition to disgorgement, is necessary as a matter of general deterrence...As a general principle no registrant should be able to profit from a breach of IIROC Rules. It is not sufficient to pay IIROC an amount equal to the profit obtained from misconduct".

⁹ *Olanrewaju (Re)*, 2022 LNCMFDA 14, para 22

¹⁰ *Vanlandschoot (Re)* 2021 LNCMFDA 10

¹¹ *Re Walker*, 2024 CIRO 43

¹² *Re Sukhai* 2024 CIRO 21

¹³ *Re Mott* 2014 CIRO 31

¹⁴ *Northern Securities (Re)* 2014 LNONOSC 58, para 215

[32] Having considered the facts, oral and written submissions, the Panel has concluded that under the provisions of Mutual Fund Dealer (MFD) Rule 7.4, the following penalty is appropriate and imposed on the Respondent:

- a. Pursuant to MFD Rule 7.4.1.1(b), a fine in the amount of \$1,459,879.41 being composed of disgorgement of \$486,626.47 and twice the amount misappropriated in relation to allegations 1 and 2
- b. Pursuant to MFD Rule 7.4.1.1(b), a fine in the amount of \$50,000.00 in respect to allegation 3
- c. Pursuant to MFD Rule 7.4.2, costs in the amount of \$20,000.00
- d. Pursuant to MFD Rule 7.4.1.1(e), a permanent prohibition of Michael Rolland Smith to conduct securities related business in any capacity, effective 2 June 2025.

DATED at Halifax this 23rd day of June 2025

“R. Scott Peacock”

R. Scott Peacock, Chair

“David Acker”

David Acker, Industry Representative

“Thomas Kostandoff”

Thomas Kostandoff, Industry Representative

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