Re Bock

IN THE MATTER OF:

the Mutual Fund Dealer Rules

and

Michael Bock

2024 CIRO 22

Canadian Investment Regulatory Organization
Hearing Panel (Alberta District)

Heard: July, 26, 2023 by electronic hearing in Calgary, Alberta
Decision (Sanctions) and Reasons: February 7, 2024

Hearing Panel:
Robert Stack, Chair
Annette Stevens, Industry Representative
Kathleen Jost, Industry Representative

Appearances:
Jennifer Galarneau, Enforcement Counsel
Zachary Pringle, Counsel for the Respondent
Michael Bock, Respondent (not in attendance)

DECISION (SANCTIONS) AND REASONS

I. INTRODUCTION

¶ 1 Below we set out reasons for a decision of a Canadian Investment Regulatory Organization ("**CIRO**") hearing panel (the "**Hearing Panel**") assembled to determine the appropriate penalty in relation to admitted allegations that CIRO staff ("**Staff**") made against (the "**Respondent**" or "**Mr. Bock**").

¶ 2 We note that this proceeding was commenced by the Mutual Fund Dealers Association of Canada (the "**MFDA**"). The MFDA merged with the Investment Industry Regulatory Organization of Canada on January 1, 2023, becoming the New Self–Regulatory Organization of Canada ("SROC"). SROC later became CIRO. We refer to these entities globally as the "Corporation" unless it is necessary to refer to a particular one of these continued corporations. Under its Bylaw 1, CIRO retains jurisdiction over members of the MFDA in relation to violations of the MFDA by-laws or rules. As the matter was commenced before January 1, 2023, the powers of the Panel derive from MFDA By-law No. 1.[1]

II. ALLEGATIONS

¶ 3 A Notice of Hearing in this matter alleges that:

Allegation #1: Between September 3, 2015, and January 28, 2021, the Respondent altered and used to

[1] Amended and Restated By-law No. 1, being a General By-law of the Canadian Investment Regulatory Organization, Section 14.6 and Mutual Fund Dealer Rule 1A

process transactions, 69 account forms in respect of 56 clients, by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1. ("**Altered Forms Allegation**")

Allegation #2: Between September 8, 2015, and January 2, 2021, the Respondent obtained, possessed, and in some instances used to process transactions, 18 pre-signed account forms in respect of 18 clients, contrary to MFDA Rule 2.1.1. ("**Pre-signed Forms Allegation**")

¶ 4 The Notice of Hearing further states that the altered account forms included:

(a) 4 Know Your Client (KYC) Update Forms

(b) 3 Systematic Instructions forms

(c) 6 Transfer Forms

(d) 25 Order Information Forms

(e) 10 Fund Co. Application Forms

(f) 21 New Client Application Forms

¶ 5 The pre-signed account forms allegedly included:

(a) 3 KYC Update Forms

(b) 3 Systematic Instructions forms

(c) 3 Transfer Forms

(d) 3 Order Information Forms

(e) 1 Fund Co. Application Forms

(f) 5 New Client Application Forms

¶ 6 The alterations to the account forms included changes to client risk tolerance, withdrawal amounts, investment objectives, income, net worth, plan type, fund code/name, and client addresses.

III. AGREED STATEMENT OF FACT

¶ 7 An Agreed Statement of Fact dated April 13, 2023, ("**ASF**") was filed in this matter. In it the Respondent admitted to both the Alerted Forms Allegation and the Pre-signed Forms Allegation. The Respondent also admitted to the above computation of what kind of altered and pre-signed forms he used as described in the Notice of Hearing, with the exception that the ASF lists only 4 pre-signed New Client Application Forms.

¶ 8 The ASF indicated that the Respondent has been a registrant since 1997. He has been registered in Alberta since September of 2008 as a dealing representative with the MFDA-member firm Investia Financial Services Inc. (the "**Member**"). He operated out of Calgary, Alberta.

¶ 9 The ASF detailed several commitments regarding compliance that Bock made to MFDA members:

(a) on April 10, 2006, the Respondent signed a contract with the mutual fund dealer in which he agreed to comply with the Rules of the MFDA and compliance regulations of that particular dealer, which was a predecessor of the Member;

(b) on December 10, 2008, and April 18, 2012, the Respondent again signed documentation with the Member indicating that he would adhere to internal policies and he would comply with all regulations of the MFDA;

(c) between 2018 and 2021, the Respondent executed attestations annually in which he indicated he had reviewed and understood the "Policies and Procedures Manual" of the member he was then working with, whose policies prohibited making changes to an account form after a client had signed it and the holding of blank or incomplete pre-signed forms.

¶ 10 The ASF also detail many occasions in which the MFDA indicated to Members and Approved Persons that the MFDA considered the use of pre-signed or altered forms to be contrary to its standards of conduct and therefore a violation of MFDA rule 2.1.1. The first of these was Staff Notice MSN–0066 from October 31, 2007. An update to MSN–0066 issued on March 4, 2013, made the same point. Bulletin #06610-E regarding "signature falsification" sent a similar message in 2015 and indicated that Staff of the MFDA would be seeking higher penalties for this kind of violation.

¶ 11 Yet another update to MSN-0066 in January 2017 also issued a warning with regard to this form of misconduct.

¶ 12 The ASF indicated that the misconduct in this case was discovered by a Member investigation in February of 2021. The Respondent was placed under strict supervision for a period of five months starting April 1, 2021 and correspondence was sent to clients to confirm the last three years of their trading history was accurate and authorized, and, in some cases to confirm their "know your client" information. On September 9, 2021 the Respondent signed an undertaking with the Member to abide by policies and procedures in the future and received a warning letter regarding the pre-signed and altered account forms from the Member. The Respondent paid a total of $1,445.00 to the member as compensation for the expense of the strict supervision and the sending of letters to clients.

¶ 13 The ASF stated that there is no evidence of client loss, or unauthorized trading and no evidence that the Respondent received any kind of financial benefit from the misconduct other than what he earned in commissions and fees to which he otherwise would have been entitled in the ordinary course. The Respondent had no history of disciplinary proceedings with the MFDA in the past.

IV. SENTENCING FACTORS

¶ 14 In determining what is an appropriate sanction, Corporation hearing panels have considered factors such as the following:

(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 activities;

(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 activities to those who are permitted to participate in the capital markets; and

(k) previous decisions made in similar circumstances.

Milewski (Re), [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999 at p. 25.

Laverdiere (Re), [2010] Hearing Panel of the Pacific Regional Council, MFDA File No. 200936, Panel Decision dated May 12, 2010, at para. 22

¶ 15 The application of most of these factors to the present circumstance should not be controversial. On the one hand, the use of altered and pre-signed forms, as many Corporation panels have said in the past, is a

serious violation of the requirement to practice in a professional and ethical manner.[2] The admission of a violation of Rule 2.1.1 is therefore appropriate. The Respondent was experienced in the industry and quite simply should have known better.

¶ 16 On the other hand, there is no evidence of investor harm, unauthorized trading or any particular financial benefit to the Respondent. There is no prior history of misconduct and there is no indication that he repeated the inappropriate conduct after detection.

¶ 17 What is controversial in this case is the impact of prior decisions and the concept of general deterrence. Here Staff and the Respondent have significant differences.

V. POSITIONS OF PARTIES AND KEY ARGUMENTS

¶ 18 Staff is seeking a fine of $35,000 against Mr. Bock. It also seeks as a condition of his continued authority to conduct securities related business that he complete an Ethics and Professional Conduct Course offered by the IFSE Institute, or a different industry course acceptable to CIRO, within 12 months of a decision on sanction.

¶ 19 The Respondent proposes $22,500 as the appropriate penalty. His counsel asserts that the Respondent should not have to take an ethics course or, if he does, the cost for the course should be deducted from his penalty.

¶ 20 Staff's position is based on more recent cases where Corporation panels endorsed higher penalties that Staff was able to negotiate with respondents. Staff notes that several panels have cited the persistence of form violations and called for higher fines to affect greater general deterrence. Staff further notes that the conduct in this case is all the worse given the many attempts to warn approved persons that the use of altered pre-signed forms would be considered contrary to MFDA rules and could result in increased fines.

¶ 21 Counsel for the Respondent disputes that there is a greater need for general deterrence. He introduced evidence indicating that form violations have been in fact falling in recent years based on Corporation Enforcement Reports. The figures introduced by the Respondent show a reduction after 2019 in the number of files opened in this area. They also show that investigations of form violations declined as a percentage of total contravention files opened by the MFDA.

¶ 22 Staff replies that the years 2020 – 2022 were marked by the Covid-19 pandemic and this explains why there were not more investigations in this area. While the Panel would expect that the pandemic had some impact on complaints and investigations, it does note that the total number of contravention files did not fall off at the same rate as pre-signed and altered forms files.

VI. ANALYSIS

¶ 23 The Panel did find the information regarding the number of files opened to be informative. It may be that in the future if Staff wishes to seek a significant change in the range of penalties awarded for certain conduct, documentation indicating the persistence or growth of such conduct could be introduced. It would have to be balanced against the knowledge of industry experts on the panel and their particular experience of what is happening in the securities industry. However, as a result of the Covid-19 pandemic, the questions of how effective prior sanctions have been and whether form violations are more or less numerous, are somewhat obscure. These questions therefore did not play a great role in our deliberations.

¶ 24 Both Staff and the Respondent cited several precedents in support of their positions. The Respondent noted that several of the authorities cited by Staff involved "active signature falsification", that is where the advisor signs for the client or photocopies and reuses a signature, and this explains why the fines in those

[2] ***Price (Re)***, [2011] Hearing Panel of the Atlantic Regional Council, MFDA File No. 2016, Panel Decision (Misconduct) dated April 18, 2011 at paras. 121-124

cases were particularly high.[3] The Respondent also points out that panels endorsing some of the higher settlements in recent years did not have the benefit of reviewing the enforcement statistics presented in this Hearing and may not have had as much information regarding general deterrence.

¶ 25 In the case of several decisions cited by the Respondent where the number of forms involved seemed relatively high in relation to the fine ultimately applied,[4] Staff notes that these were settlements and it is difficult to know what factors went into the decision to resolve the matter at that level of fine.

¶ 26 We do agree that some of the authorities cited by Staff involved active signature falsification and therefore the misconduct in those cases was graver. It is also true that almost all the authorities cited by the parties were settlements. In such cases, the panel is asked only to confirm that the joint position on sanction is within an appropriate range. Its role is not to set the fine itself.

¶ 27 An exception is the decision in *Moody (Re)*, [2023] Hearing Panel of the Prairie Regional Council, MFDA File No. 202242, in which Staff and the respondent provided the panel with an agreed statement of facts, but disagreed on penalty. In that case the approved member admitted to using 29 altered forms and 4 pre-signed forms over four and a half years. The panel imposed a fine of $18,500, citing the member's industry experience and the duration of the conduct as indicating a need for specific deterrence.

¶ 28 In this case, we are dealing with an even longer period of misconduct and a higher number of forms. The bulk of misconduct came after the 2015 Bulletin #0661-E and the earlier iterations of Staff Notice MSN-0066. As mitigating factors, the Respondent has already paid the Member some costs in relation to the period of supervision and the client letters. There is no evidence of client harm.

¶ 29 In consideration of the above factors, the Panel considers that the amount of $28,000 is an appropriate amount for the Respondent to pay as a fine for the admitted conduct. The Panel expects this amount should affect specific deterrence and would indicate to others that such misconduct will result in substantial consequences.

¶ 30 The issue of whether the Respondent should have to complete an ethics course was not discussed at length in either written or oral submissions. It has been a common condition to put on continued practice under MFDA By-law No. 1, s. 24.1.1(f), now Mutual Fund Dealer Rule 7.4.1.1 (f). We consider it appropriate to require completion of such a course in this case.

¶ 31 In terms of costs, there was no time at the hearing to deal with the question and the issuance of this decision may provide the parties with thoughts on what submissions to make in that regard. We provide directions on submissions below.

VII. CONCLUSION

¶ 32 We therefore order the Respondent pay a fine of $28,000 to the Corporation under s. 24.1.1(b) of MFDA By-Law No. 1, now Mutual Fund Dealer Rule 7.4.1.1(b).

¶ 33 Under s. 24.1.1(f) of MFDA By-Law No. 1, now Mutual Fund Dealer Rule 7.4.1.1(f), we require as a condition of his continued conduct of securities related business that the Respondent complete an Ethics and Professional Conduct Course offered by the IFSE Institute, or a different industry course acceptable to CIRO Staff, within 12 months of service of this decision.

¶ 34 We direct the parties to provide up to two pages (not including attachments) of written submissions on costs within two weeks of receiving these reasons. If the parties are able to make a joint submission on this issue, the Panel would welcome it.

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[3] ***Wilson (Re)***, [2021] Hearing Panel of the Prairie Regional Council, MFDA File No. 202130; **Myers (Re)**, [2021] Hearing Panel of the Central Regional Council, MFDA File No.202145, Panel Decision dated January 10, 2022; ***Milne (Re)***, [2022] Hearing Panel of the Pacific Regional Council, MFDA File No. 202147

[4] ***Perron (Re)***, [2021] Hearing Panel of the Atlantic Regional Council, MFDA File No.202041, Panel Decision dated January 8, 2021; ***Hunter (Re)***, [2020] Hearing Panel of the Pacific Regional Council, MFDA File No. 202014, Reasons for Decision dated November 5, 2020

Dated at Calgary Alberta, this 7 day of February 2024.

"Robert Stack"

Robert Stack, Chair

"Annette Stephens"

Annette Stephens, Industry Representative

"Kathleen Jost"

Kathleen Jost, Industry Representative