

Re Mifsud

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Joshua Emanuel Mifsud

2024 CIRO 50

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: April 23, 2024 by electronic hearing in Toronto, Ontario

Decision: May 9, 2024

Hearing Panel:

The Honorable Peter B. Hambly, Chair
Robert White, Industry Representative
Colleen Waring, Industry Representative

Appearances:

Maria Abate, Enforcement Counsel
Tyler Beazer, Enforcement Counsel
Joshua Emanuel Mifsud (present)

DECISION AND REASONS

INTRODUCTION

¶ 1 Between September 7, 2021 and September 9, 2021, the Respondent cut and pasted the signatures of two clients from copies of account forms previously signed by the clients onto four account forms and submitted the account forms to the Dealer Member for processing, contrary to Mutual Fund Dealer Rule 2.1.1

¶ 2 The Corporation and the Respondent jointly request that the Hearing Panel determine the appropriate sanction to impose on the Respondent on the basis of the Agreed Statement of Facts signed April 17, 2024

¶ 3 The Corporation submits that the appropriate penalty is a fine in the amount of \$13,000 and costs in accordance with the bill of costs filed in the amount of \$9,800 for a total of \$22,800.

Background

¶ 4 From March 29, 2016 to October 13, 2021, the Respondent was registered in the securities industry. From June 21, 2021 to October 13, 2021, the Respondent was registered in Ontario as a dealing representative with BMO Investments Inc. (the "Dealer Member"), a Dealer Member of CIRO (formerly a Member of the MFDA). On October 13, 2021, the Dealer Member terminated the Respondent due to the conduct described herein, and the Respondent is not currently registered in the securities industry in any capacity. At all material times, the Respondent conducted business in the Halton Hills, Ontario area.

¶ 5 At all material times, the Dealer Member's policies and procedures prohibited the falsification or modification of any account information, record or documentation in any way, stating the following:

You must always use documents and forms that the customer actually signed or initialled after the

document was properly filled out. You are prohibited from creating, possessing or using any documents or forms, including any Know Your Client (KYC) and trade execution forms, that have been pre-signed (the customer signed blank or only partially completed forms).

¶ 6 On October 2, 2015, the MFDA issued Bulletin #0661-E - Signature Falsification ("Bulletin #0661-E"). Bulletin #0661-E set out the definition of signature falsification as including:

signing a client's name to a document; and cutting and pasting, photocopying or using correction fluid on a document to "re-use" a previous signature.

¶ 7 Bulletin #0661-E also advised both Dealer Members and Approved Persons that the MFDA had recently been and would continue seeking increased penalties in upcoming cases involving signature falsification. On January 26, 2017, the MFDA updated and re-issued Staff Notice MSN-0066 - Signature Falsification. MSN-0066 reiterated the definitions of signature falsification noted above and reminded Approved Persons that Staff would seek enhanced penalties for conduct that occurred after the release of Bulletin #0661-E.

¶ 8 The account forms consisted of three account opening forms containing client Know Your Client information, and a redemption form, as described below:

- a. New and Existing Account Application form for a Tax-Free Savings Account;
- b. BMO Investments Inc. Account Redemption Form;
- c. BMO Investments Inc. Non-Registered Account Opening Form; and
- d. BMO Investments Inc. Registered Retirement Savings Plan Account Opening Form.

¶ 9 On September 24, 2021, the Dealer Member discovered the cut and pasted signatures of the two clients on the four account forms described above during a review of the clients' files. As part of its investigation into the Respondent's conduct, the Dealer Member completed a review of client files maintained by the Respondent. In order to determine whether the clients had authorized the transaction or account openings corresponding to the account forms described above, the Dealer Member contacted the clients on whose account forms the Respondent had cut and pasted their signatures as described above. Both clients described above confirmed to the Dealer Member that they authorized the transaction or account openings, but were not aware that the Respondent had cut and pasted their signatures onto the account forms described above.

¶ 10 There is no evidence of client loss, and no clients complained to Staff or the Dealer Member. The Respondent has not previously been the subject of CIRO or MFDA disciplinary proceedings.

¶ 11 The Respondent represented himself. He filed a reply. Without objection, he explained as he set out in his reply his circumstances. He said that the copied signatures became known to his superior at BMO during a discussion when he volunteered the information. The forms with the copied signatures were not used. He filed documents to demonstrate that he is impecunious. He has left the industry. Currently he is a graduate student at the University of Waterloo. He said that he had health issues but did not provide further information about them. He presented as sincere and remorseful.

Applicable Rules

Mutual Fund Dealer Rule 1A

Transitional Provisions

- (1) The Corporation is the corporation continuing from the amalgamation effective January 1, 2023 of the Mutual Fund Dealers Association of Canada and the Investment Industry Regulatory Organization of Canada and as a result, for greater certainty:
 - (i) any reference in these Rules to the Corporation includes the Mutual Fund Dealers Association of Canada prior to January 1, 2023;
 - (ii) any person subject to the jurisdiction of the Mutual Fund Dealers Association of Canada prior to January 1, 2023 remains subject to the jurisdiction of the

Corporation in respect of any action or matter that occurred while that person was subject to the jurisdiction of the Mutual Fund Dealers Association of Canada at the time of such action or matter;

- (iii) any individual that was an Approved Person under the Rules of the Mutual Fund Dealers Association of Canada immediately prior to January 1, 2023 continues to be an Approved Person in respect of these Rules if that individual has not ceased to be approved by the Corporation; and
- (iv) the provisions of the articles, by-laws, rules, policies and any other instrument or requirement prescribed or adopted by the Mutual Fund Dealers Association of Canada pursuant to such articles, by-laws, rules or policies and any approval, ruling or order granted or issued by the Mutual Fund Dealers Association of Canada, in each case while a person was subject to the jurisdiction of the Mutual Fund Dealers Association of Canada, will continue to be applicable, whether presently effective or effective at a later date, to that person in accordance with their terms and may be enforced by the Corporation.

MUTUAL FUND DEALER RULE 2 – BUSINESS CONDUCT

2.1 General

2.1.1 Standard of Conduct

Each Member and each Approved Person of a Member shall:

- deal fairly, honestly and in good faith with its clients;
- observe high standards of ethics and conduct in the transaction of business;
- not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and
- be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

7.4 Discipline Powers

7.4.1. Power of Hearing Panels to Discipline

7.4.1.1. Approved Persons

A Hearing Panel shall have power to impose upon an Approved Person or any other person under the jurisdiction of the Corporation any one or more of the following penalties:

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
 - (i) \$5,000,000.00 per offence; and
 - (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;

7.4.2 Costs

A Hearing Panel may in any case in its discretion require that the Member or Approved Person pay the whole or part of the costs of the proceedings before the Hearing Panel pursuant to Rule 7.3 and Rule 7.4.1 or Rule 7.4.3 and any investigations relating thereto.

Discussion

¶ 12 In *Re Barnai*, 2015 MFDA File No. 201325 the Respondent falsified the signatures of two clients on trading and KYC forms in order to give effect to transactions which the clients had authorized. A hearing panel approved a settlement suspending the respondent from trading in securities for 9 months and payment of costs in the amount of \$1,500. The decision set out some of the principles which should guide a panel in imposing a penalty as follows:

Falsifying client signatures or initials is serious misconduct. Signature falsification (like the use of pre-signed forms) adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud and misappropriation.

¶ 13 As a Hearing Panel of the Investment Dealers Association (now CIRO) stated in *Bell (Re)*:

“Forgery is always serious. It is unequivocally condemned because it is fundamentally dishonest and dangerous. Any act of forgery is a step onto a steep and slippery slope of deception that is always potentially harmful to clients and actually harmful to the Member firm and the securities industry as a whole.”¹

¶ 14 *Lamontagne (Re)* reiterated the principle set out in *Bell (Re)*, but went on to state that, where warranted, hearing panels may distinguish between serious and less egregious instances of falsification:

“Forgery is always a serious regulatory matter because it shows that the Respondent lacks the honesty required of a professional in the securities industry. Forgery often attracts severe sanctions. While there is no such thing as a "minor case" of forgery, hearing panels may distinguish between more and less egregious examples of forgery.”²

¶ 15 Acts of falsification which are performed without the knowledge of the client, or resulted in loss or disadvantage to the client or Member, will be treated as more serious forms of misconduct. Conversely, falsification which occurs with the knowledge or approval of the client, and can be shown to have given effect to the client’s instructions, will generally be considered to be less serious misconduct.

¶ 16 The seriousness of the falsification of a client signature or initials also varies by the type or nature of the document involved. Falsification of a client’s signature or initials on trade-related documents and Know-Your-Client ("KYC") forms will generally be treated more seriously than similar conduct carried out in relation to non-transaction-oriented documents because of the greater risk of client harm.

¶ 17 In *Re Tonnie*s (2005) MFDA File No. 200503 the factors which a hearing panel should take into consideration in setting a penalty were listed as follows:

- (a) the protection of the investing public;
- (b) the integrity of the securities market;
- (c) specific and general deterrence;
- (d) the protection of the MFDA’s (now CIRO’s) membership; and
- (e) the protection of the integrity of the MFDA’s (now CIRO’s) enforcement process;
- (f) the seriousness of the allegations proved against the Respondent;
- (g) the Respondent's past conduct, including prior sanctions;
- (h) the Respondent's experience and level of activity in the capital markets;

¹ *Bell (Re)*, [2005] LD.A.C.D. No. 15, Alberta District Council, Panel Decision dated March 21, 2005, at para. 35.

² *Lamontagne (Re)*, [2009] IIROC No. 6, Alberta District Council, Panel Decision dated January 27, 2009, at paras. 14 and 45. *Wise (Re)*, 2012 LNCMFDA 79.

- (i) whether the Respondent recognizes the seriousness of the improper activity;
- (j) the harm suffered by investors as a result of the Respondent's activities;
- (k) the benefits received by the Respondent as a result of the improper activity;
- (l) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- (m) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- (n) 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;
- (o) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- (p) previous decisions made in similar circumstances.

¶ 18 In *Armstrong (Re)*, [2021] Hearing Panel of the Pacific Regional Council, MFDA File No. 202161, Reasons for Decision dated November 30, 2021, the respondent photocopied the signature pages of account forms previously signed by 4 clients and photocopied 5 client account forms to re-use signatures. A hearing panel approved a settlement agreement that levied a fine of \$12,000 and costs of \$2,500. In *Rizovska-Spasik (Re)*, [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202236, Reasons for Decision dated November 23, 2022, the respondent cut and pasted client signatures from copies of account forms previously signed by 3 clients onto 4 account forms. A hearing panel approved a settlement agreement of a fine of \$13,000 and costs of \$2,500. In *Roberts (Re)*, [2022] Hearing Panel of the Pacific Regional Council, MFDA File No. 202225, Reasons for Decision dated December 15, 2022, the respondent falsified one client signature on four forms. A hearing panel approved a settlement agreement of a fine of \$10,000 and costs of \$2,500. In *Ajin (Re)*, 2023 CIRO 21, Hearing Panel of the Nova Scotia District, File No. 202178, Reasons for Decision dated November 14, 2023, the respondent cut and pasted client signatures from copies of account forms previously signed by 3 clients onto 4 new account forms. A hearing panel approved a settlement of a fine of \$12,500 and costs of \$2,500.

Conclusion

¶ 19 We take into consideration in setting a penalty the following:

1. The seriousness of the conduct;
2. It took place during the pandemic when government cautioned people against meeting in groups;
3. The impecuniosity of the Respondent;
4. The consequences to the Respondent of his misconduct;
5. The sincerity and remorse of the Respondent;
6. The Dealer Member terminated his employment at the height of the pandemic;
7. The Respondent used electronic signatures;
8. The clients suffered no loss and did not complain;
9. Penalties imposed in prior cases.

¶ 20 We set the penalty at a fine of \$5,000 and costs of \$2,500.

Dated at City of Toronto, this 9th day of May 2024.

“Peter B. Hambly”

The Honorable Peter B. Hambly, Chair

“Robert White”

Robert White, Industry Representative

“Colleen Waring”

Colleen Waring, Industry Representative

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