Capital Markets Tribunal | Tribunal des marchés financiers | 22nd Floor, 20 Queen Street West, Toronto ON M5H 3S8 | 22e étage, 20, rue Queen ouest, Toronto ON M5H 3S8

Dziadecki v Canadian Investment Regulatory Organization, 2024 ONCMT 22
Date: 2024-10-23
File No. 2024-4

LESZEK DZIADECKI

- **and -**

CANADIAN INVESTMENT REGULATORY ORGANIZATION

- **and –**

ONTARIO SECURITIES COMMISSION

REASONS AND DECISION

(Sections 8 and 21.7 of the *Securities Act*, RSO 1990, c S.5)

Adjudicators: Mary Condon (chair of the panel)
William J. Furlong
Russell G. Juriansz

Hearing: July 29, 2024

Appearances:

Leszek Dziadecki	On his own behalf
Alan Melamud	For the Canadian Investment Regulatory Organization
Scott Azzopardi	For the Ontario Securities Commission

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REASONS AND DECISION

1. OVERVIEW

[1] Leszek Dziadecki applied to the Tribunal for a review of two decisions of the Canadian Investment Regulatory Organization (**CIRO**, formerly the Mutual Fund Dealers Association of Canada (**MFDA**)) dated May 16, 2023, and January 30, 2024 (with reasons issued in September 2023[1] and March 2024,[2] respectively), pursuant to ss. 8(3) and 21.7 of the *Securities Act* (the ***Act***).[3]

[2] Dziadecki was found to have breached MFDA rules and was permanently prohibited from conducting securities-related business while employed with any mutual fund dealer, fined $300,000, and ordered to pay costs in the amount of $30,000.

[3] Dziadecki asks the Tribunal to set aside CIRO's findings. Staff of CIRO and the Ontario Securities Commission oppose Dziadecki's application.

[4] For the reasons below, we decline to set aside any of the findings of CIRO. Dziadecki's application is dismissed.

2. BACKGROUND

[5] Between May 7, 2004, and October 1, 2018, Dziadecki was registered in Ontario as a dealing representative with Global Maxfin Investments Inc. (**Member**), a Dealer Member of CIRO. He was also designated as a branch manager of the Member. During the material time, he was also the owner and president of Advantage Group of Finance Inc. (**Advantage**) where he sold insurance products and provided financial planning, among other services. Advantage was approved as an outside business activity (**OBA**) by

[1] *Re Dziadecki,* 2023 CIRO 15 (**Merits Decision**)
[2] *Re Dziadecki*, 2024 CIRO 35 (**Penalty Decision**)
[3] RSO 1990, c S.5

the Member. He also regularly spoke about investing and insurance on a local Polish-language radio program.

[6] In August 2022, a disciplinary proceeding was commenced by CIRO staff against Dziadecki. In the Merits Decision resulting from that proceeding, the CIRO Panel found that:

a. between 2015 and 2016, Dziadecki engaged in securities-related business that was not carried on for the account of the Member or conducted through its facilities by recommending, selling, or facilitating the sale of syndicated mortgage investments (**SMIs**) to clients and other individuals, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1); and

b. between 2015 and 2016, Dziadecki engaged in unapproved outside business activities in relation to SMIs, contrary to the Member's policies and procedures and MFDA Rules 1.2.1(c), 2.1.1 and 1.1.2 (as it relates to MFDA Rule 2.5.1).

[7] In the Penalty Decision, the CIRO Panel imposed the following sanctions on Dziadecki:

a. a permanent prohibition from conducting securities-related business while employed or associated with any Dealer Member of CIRO registered as a mutual fund dealer;

b. a fine in the amount of $300,000; and

c. costs in the amount of $30,000.

[8] Dziadecki filed his review application with the Tribunal on February 29, 2024, before the reasons for the Penalty Decision were issued by CIRO. The application sought a review of the CIRO Merits Decision only. Dziadecki subsequently filed an amended application on April 15, 2024, and a further amended application on June 20, 2024, seeking a review of both the Merits Decision and Penalty Decision.

3. ISSUES

[9] The issues we need to decide are:

a. What is the standard of review when the Tribunal reviews the decision of a self-regulatory organization?

b. Has Dziadecki established any grounds on which the Tribunal ought to intervene in the Merits Decision?

c. Has Dziadecki established any grounds on which the Tribunal ought to intervene in the Penalty Decision?

d. If there are such grounds to intervene, is it appropriate to set aside one or both of the CIRO decisions?

[10] As outlined below, since we answer no to the questions in (b) and (c), it is unnecessary for us to consider the question in (d).

4. ANALYSIS

4.1 Standard of Review in a Review Application

[11] A person directly affected by a decision of CIRO may apply to the Tribunal for review of the decision under s. 21.7 of the *Act*. On hearing the application, the Tribunal may confirm the decision under review or make such other order as it considers proper.[4]

[12] The Tribunal's review of decisions of recognized SROs, such as CIRO, is guided by the purposes of the *Act* as set out in s. 1.1. Particularly relevant are the protection of investors from unfair or improper practices and the fostering of confidence in the capital markets.[5]

[13] In practice, the Tribunal takes a restrained approach in such reviews due to the specialized expertise of SROs, including CIRO hearing panels. The

[4] *Act*, s 8

[5] *Sutton (Re),* 2018 ONSEC 42 at para 10

Tribunal will generally not substitute its own view for that of an SRO simply on the basis that the Tribunal might have come to a different conclusion.

[14] The Tribunal will only interfere with a decision of an SRO if one of the following grounds is established by the applicant:

a. the SRO proceeded on an incorrect principle;

b. the SRO erred in law;

c. the SRO overlooked material evidence;

d. new and compelling evidence is presented to the Tribunal that was not presented to the SRO; or

e. the SRO’s perception of the public interest conflicts with that of the Tribunal.[6]

[15] The Applicant in this case, who was self-represented, did not specifically address each of these grounds for review in either his written or oral submissions. As we will describe in more detail below, his submissions with respect to CIRO’s Merits Decision focused largely on a claim that the SRO had made an error in coming to the decision that he had engaged in two forms of misconduct. The Applicant also raised some issues related to the evidence before the CIRO Panel. With respect to the Penalty Decision, he focused on the onerous effects of the financial sanctions imposed by CIRO, and less so on the permanent business prohibition.

[16] We will first address the Applicant’s request that we set aside the Merits Decision, followed by a consideration of the Penalty Decision.

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[6] *Canada Malting Co (Re),* (1986), 9 OSCB 3565 at para 24; *Odorico (Re),* 2023 ONCMT 34 at para 60

4.2 Merits Decision

4.2.1 Did the CIRO Panel err by finding that Dziadecki sold BioNorth SMI?

[17] We conclude that no error was made by the CIRO Panel when it found that Dziadecki engaged in securities-related business by selling the BioNorth SMI, contrary to the Member's policies and MFDA rules.

[18] In his written submissions to the Tribunal, and in the hearing itself, Dziadecki advances several arguments to dispute the finding of the CIRO Panel that he traded in BioNorth SMIs. He acknowledges that he provided a positive opinion about the BioNorth SMI, both in his radio program and to several of his clients, but he claims that this was permitted because of his designation as a Certified Financial Planner. He insists that he did not actually sell these securities, but instead referred his clients to mortgage brokers to complete the transactions for the SMI. In particular, he contends that he received no compensation for his activities related to BioNorth SMIs. He submits that the CIRO Panel overlooked or did not properly consider these points.

[19] CIRO staff submits (and the Commission agrees) that the CIRO Panel correctly interpreted the allegation as whether Dziadecki engaged in "trading or advising" in securities rather than whether the Applicant "sold" the securities. CIRO staff cites the Tribunal's statement in *Sabourin (Re)*[7] that there is no requirement that a sale of a security even be completed in order to find that trading occurred. Further, and in response to Dziadecki's contention that he received no compensation for his activities, CIRO staff cites the Tribunal's decision in *Valentine (Re)*[8] that receipt of consideration or some other benefit is not necessary to find acts in furtherance of a trade. CIRO staff also notes that MFDA By-law No. 1 states that "securities related business" captures trading and advising in a security "whether or not carried on for gain".[9]

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[7] 2009 ONSEC 11 at para 62

[8] 2024 ONCMT 11 at para 113

[9] MFDA By-law No. 1, s 1

[20] CIRO staff submits that the CIRO Panel's conclusion that the activities engaged in by Dziadecki constituted trading in and advising about securities was correct, based on the evidence before it, and that there is no basis for overturning it.

[21] We disagree with Dziadecki that the CIRO Panel overlooked his claim that he had not actually sold the SMI. The CIRO Panel considered the arguments about the extent of Dziadecki's involvement in the transactions carefully. It found them to be inconsistent with the testimony of several investors from whom the CIRO Panel heard. Dziadecki provided us with no basis to disturb the findings of the CIRO Panel about the evidence of those investors.

[22] The CIRO Panel ultimately concluded that Dziadecki misunderstood what constituted engaging in "securities-related business". The CIRO Panel explained that compensation is not required, and that "securities-related business" encompassed Dziadecki's activities aimed at encouraging his clients to invest in BioNorth SMIs.

[23] The definition of trading in the *Act* is broader than simply a determination that a security was sold. The definition of trading includes "any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of"[10] any sale of a security. The evidence of the investors supported the CIRO Panel's finding that Dziadecki's activities related to BioNorth SMIs fell within this expansive definition of trading. In any event, while Dziadecki may not have received immediate compensation for his activities, at the CIRO hearing he admitted he expected those activities would earn him a profit in the longer term.

[24] The CIRO Panel considered each element of the first allegation made by CIRO staff and concluded that Dziadecki had engaged in securities-related business that was not conducted through the facilities of the Member, contrary to the Member's policies and MFDA Rules. We find that the CIRO Panel made no error in coming to this finding.

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[10] *Act*, s 1(1)(e)

4.2.2 Did the CIRO Panel err in finding that Dziadecki engaged in an unapproved outside business activity?

[25] The CIRO Panel did not err in its finding that Dziadecki engaged in an unapproved OBA, contrary to the Member's policies and MFDA rules.

[26] Dziadecki submits that he set up his company, Advantage, prior to his association with the Member and that his company was approved by the Member as an OBA. He says that the activities he engaged in through his company, including financial planning and mortgage-related activity, were disclosed both to the Member and to his clients. He also says that he was not paid for the activities related to BioNorth SMIs, so this did not constitute an OBA.

[27] CIRO staff submits that Dziadecki's conduct met the requirements of an OBA and that numerous MFDA Hearing Panels have found that conduct to recommend, sell, or facilitate the sale of an investment constitutes an OBA under the MFDA Rules.

[28] The CIRO Panel concluded that Dziadecki engaged in an OBA when he traded SMIs, and that whether he was paid for this trading as it was taking place was not determinative of whether it was an OBA. It found that he was receiving a future expected benefit by trading in this way with his clients.

[29] The CIRO Panel also found that Dziadecki had not disclosed to the Member that he was trading SMIs. It found that his disclosure indicated that others in his business were facilitating mortgage transactions, which is different from disclosing the trading of SMIs, which are securities.

[30] The CIRO Panel found that the Member had not authorized its Approved Persons to trade SMIs outside of the facilities of the Member. When Dziadecki did just that, he breached both the Member's policies and MFDA rules about OBAs. The CIRO Panel's decision appropriately identified the nature of the OBA in question and appropriately distinguished between mortgage transactions and SMIs. We find no basis to overturn the CIRO Panel's finding

regarding the lack of disclosure of SMI activity to the Member and thereby its finding that unapproved OBAs had taken place.

4.2.3 Did the CIRO Panel err in its consideration of witness evidence?

[31] Dziadecki makes several submissions regarding the testimony of one of the investor witnesses at the CIRO hearing (**AF**). In Dziadecki's written submissions, he alleges that one client "exaggerated and in fact lied" about issues such as her level of experience with investing in SMIs and with whom and when she had invested.

[32] In particular, Dziadecki refers to the date when documents related to the BioNorth SMI were signed by AF. He claims that if AF's testimony was that she signed the document on March 15 in his presence, it could not be true as at that time he was on vacation outside Canada. Dziadecki is not clear about the relevance of this point. We infer that he is suggesting that the CIRO Panel overlooked material evidence when it reached its misconduct conclusion.

[33] The Commission submits that credibility findings of the trier of fact should be accorded significant deference.

[34] We not accept Dziadecki's submissions that the CIRO Panel overlooked material evidence about AF's investment experience or whether he was present when she signed the documents related to BioNorth SMIs. The CIRO Panel's findings of misconduct were based in part on the evidence of several other investors and in part on the Applicant's own submissions about his activities related to BioNorth SMIs. The Merits Decision references the testimony of AF that Dziadecki had described the BioNorth SMI opportunity as a "gold egg". Even if it were the case that this particular investor had signed the forms agreeing to invest in the BioNorth SMI on a day when Dziadecki was not present (and he filed no evidence that he was in fact overseas on that day), we nevertheless conclude that the CIRO Panel's findings of misconduct were amply supported by other material evidence. We see no error.

4.3 Penalty Decision

4.3.1 Did the CIRO Panel order the appropriate penalties and costs?

[35] Dziadecki submits that the Penalty Decision should be set aside. He says that the financial penalties and costs awarded against him are excessive. He submits he has no issue with being banned completely from registration. However, he maintains that the financial penalties were not in proportion to his activities, which involved speaking about investments, including SMIs, to investors while having those transactions "processed" by others in his office.

[36] CIRO staff submits that the CIRO Panel appropriately considered the nature of the misconduct, the harm caused by Dziadecki's misconduct, and that he had been previously sanctioned by the Tribunal for the same type of misconduct. CIRO staff also provides precedents from other CIRO decisions that have satisfied us that the sanctions imposed here, including a permanent prohibition and a fine of $300,000, are appropriate.

[37] In the Penalty Decision, the CIRO Panel set out the primary goals of securities regulation (protecting investors and fostering confidence in the capital markets and securities industry) and the role that disciplinary sanctions play in restraining future misconduct. The CIRO Panel considered the seriousness of Dziadecki's misconduct, his past discipline by both the Tribunal and the MFDA, his experience in the capital markets, his failure to recognize the seriousness of the misconduct, the harm suffered by investors, the benefits gained by Dziadecki, and the need for specific and general deterrence.

[38] Finally, the CIRO Panel considered previous comparable cases and concluded that "a fine of at least $300,000 is consistent with the comparator cases, considering the nature and the circumstances of [Dziadecki's] misconduct."[11]

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[11] Penalty Decision at para 32

[39] We find that the CIRO Panel considered appropriate factors in its Penalty Decision and appropriately applied them to the findings in the Merits Decision.

[40] The CIRO Panel carefully considered the seriousness of both the financial and emotional harm suffered by investors, and that conducting unapproved OBA undermines the credibility of, and confidence in, the detailed compliance regime that is imposed on industry members. We agree with the CIRO Panel that prior misconduct and specific deterrence are also relevant considerations. We find no basis to disturb the CIRO Panel's decision on the permanent ban, the financial penalty of $300,000 or the costs award of $30,000. A bill of costs was provided which showed that CIRO staff were seeking only a portion of the costs incurred to litigate this matter which we consider to be reasonable.

5. CONCLUSION

[41] For these reasons, we conclude that neither the Merits Decision nor the Penalty Decision of the CIRO Panel should be set aside. We confirm the CIRO decisions and dismiss Dziadecki's application.

Dated at Toronto this 23rd day of October, 2024

"Mary Condon"

Mary Condon

"William J. Furlong"

William J. Furlong

"Russell G. Juriansz"

Russell G. Juriansz