



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

---

Citation: *Ali (Re)*, 2023 ONCMT 52  
Date: 2023-12-22  
File No. 2022-6

**IN THE MATTER OF  
AMIN MOHAMMED ALI**

**REASONS AND DECISION**

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

**Adjudicators:** M. Cecilia Williams (chair of the panel)  
Sandra Blake  
William Furlong

**Hearing:** By videoconference, September 26 and 27, 2023

**Appearances:**

Amin Mohammed Ali	On his own behalf
Seema Sadiq	For Amin Mohammed Ali
Shelly Feld	For Canadian Investment Regulatory Organization
Alan Melamud	
Linda Fuerst	For Staff of the Ontario Securities Commission
Tyler Morrison	

## TABLE OF CONTENTS

1.	OVERVIEW .....	1
2.	BACKGROUND.....	1
3.	ISSUES.....	4
4.	STANDARD OF REVIEW IN AN APPLICATION.....	4
5.	ANALYSIS.....	5
5.1	Did the CIRO Panel err in law by denying Ali procedural fairness?.....	5
5.1.1	Did the CIRO Panel err in law by concluding that the medical opinion of Ali’s Treating Psychiatrist was inadmissible?.....	6
5.1.2	Did the CIRO Panel err in law by dismissing Ali’s renewed motion to adjourn the merits hearing and by proceeding with the hearing? .	11
5.1.3	Did the CIRO Panel err in law by failing to consider and apply human rights principles? .....	14
5.1.4	Did the CIRO Panel’s conduct indicate bias or a reasonable apprehension of bias, and if so, did it err in law by failing to recuse itself?	16
5.1.5	Conclusion regarding whether the CIRO Panel denied Ali procedural fairness.....	20
5.2	Did the CIRO Panel err in law by concluding that the allegations against Ali had been proven? .....	20
5.3	Did the CIRO Panel err in law by imposing unfair sanctions?.....	23
6.	OTHER RELIEF ALI IS SEEKING .....	24
7.	CONCLUSION.....	25

## REASONS AND DECISION

### 1. OVERVIEW

- [1] Amin Mohammed Ali brought this application (the **Application**) for a review of a decision of the Canadian Investment Regulatory Organization (**CIRO**, formerly the Mutual Fund Dealers Association), dated March 10, 2023 (the **CIRO Decision**).<sup>1</sup> Ali was found by CIRO to have breached CIRO rules resulting in a registration ban, a fine and costs.
- [2] Ali alleges several errors by the CIRO Panel (**CIRO Panel**) that he submits warrant the Tribunal dismissing both the findings of misconduct and the sanctions in their entirety.
- [3] CIRO Staff opposes the Application. Staff of the Ontario Securities Commission agrees with CIRO Staff's position.
- [4] We conclude that Ali did not meet the test for the Tribunal to interfere with the decision of a self-regulatory organization (**SRO**), such as CIRO. Therefore, Ali's Application is dismissed.

### 2. BACKGROUND

- [5] Ali's initial application, filed on March 14, 2022, was for a review of only the CIRO merits decision. On June 16, 2023, Ali amended the Application to include a review of the sanctions decision. The Application was heard on September 26 and 27, 2023. Throughout this proceeding, Ali was self-represented, with assistance from his friend Seema Sadiq, who is not a lawyer.
- [6] A portion of the Application hearing was conducted in the absence of the public pursuant to rule 22(2) of the *Capital Markets Tribunal Rules of Procedure and Forms*, to permit the parties to make submissions regarding information that we had previously decided should remain confidential.<sup>2</sup>
- [7] Ali was registered for 12 years, between May 2006 and February 2018, as a dealing representative with Quadrus Investment Securities Inc., a dealer

---

<sup>1</sup> *Ali (Re)*, 2023 CanLII 25855 (CA MFDAC) (**CIRO Decision**)

<sup>2</sup> *Ali (Re)*, 2023 ONCMT 30 at paras 39-55

member of CIRO. At the time of the CIRO merits hearing he was also a licensed insurance agent.

[8] CIRO started its investigation of Ali in April 2018 after his employer filed a report through CIRO's event tracking system advising that it had received complaints from Ali's clients about his handling of their accounts.

[9] A CIRO notice of hearing against Ali was issued in June 2020 (**Notice of Hearing**). Ali was alleged to have:

- a. engaged in outside business activities that were not disclosed to or approved by his dealer member or entered into unauthorized referral arrangements with third parties;
- b. provided false and misleading responses to his dealer member; and
- c. failed to cooperate with an investigation of his conduct by CIRO Staff.

[10] After several delays, which we elaborate on below, the merits hearing proceeded on February 10, 2022. The CIRO Panel found that the allegations against Ali had been proven.

[11] At a sanctions hearing, held on September 20, 2022, the CIRO Panel imposed the following sanctions on Ali:

- a. a permanent prohibition on his authority to conduct a securities-related business while employed by or in association with a CIRO member;
- b. a \$50,000 fine; and
- c. costs in the amount of \$10,000.

[12] The CIRO Panel issued their decisions in the merits and sanctions hearings orally on the dates of those hearings. Their reasons for those decisions were published in one document, the CIRO Decision, on March 10, 2023.

[13] Because it is relevant to the issues before us, we provide a summary of the CIRO proceeding before outlining the issues and our analysis.

[14] Between the time that CIRO issued its Notice of Hearing and the start of the merits hearing, 20 months had elapsed. Most of the delays in the proceeding, some with the consent of CIRO Staff, were at Ali's request or in response to

information provided to CIRO Staff and/or the CIRO Panel about Ali's needs for more time.

- [15] In response to a letter from Ali's treating psychiatrist, Dr. Syed (Ali's **Treating Psychiatrist**), in February 2020 opining that Ali required a three-month deferral of the hearing, CIRO issued the Notice of Hearing but delayed its publication for 30 days and scheduled the first appearance for September 8, 2020.
- [16] At the September appearance, CIRO Staff consented to an adjournment for six months, in response to a further letter from the Treating Psychiatrist stating that Ali required six months to be sufficiently well to cope with and respond to the issues in the proceeding. The merits hearing was scheduled to start on May 27, 2021.
- [17] On May 7, 2021, the CIRO Panel adjourned the merits hearing to permit Ali to bring a motion to adjourn the hearing indefinitely, supported by evidence Ali intended to file from his Treating Psychiatrist.
- [18] Ali's adjournment motion was heard on August 30, 2021. During the hearing of the adjournment motion, the CIRO Panel expressed concern about the lack of impartial medical evidence supporting the motion. CIRO Staff and Ali agreed to adjourn the adjournment motion to see if they could agree to Ali obtaining an independent medical opinion.
- [19] On September 14, 2021, the parties reconvened and advised the CIRO Panel that they could not reach an agreement. The CIRO Panel dismissed Ali's motion to adjourn the merits hearing without prejudice to Ali renewing his motion supported by an objective medical opinion about Ali's mental health. The merits hearing was scheduled for February 8-11, 2022.
- [20] On January 31, 2022, Ali filed a renewed motion to adjourn to be heard at the outset of the merits hearing on February 8, 2022. On the morning of February 8, Ali's counsel forwarded to the CIRO Panel, at Ali's request, an email from the Treating Psychiatrist repeating his view that the merits hearing should not proceed (the **February Email**). We describe the February Email in more detail in our analysis below. For the purposes of this summary, it is sufficient to note that the CIRO Panel thought the February Email should not have been sent to them.

[21] The CIRO Panel adjourned the merits hearing and Ali's renewed motion to adjourn so the parties and the CIRO Panel could consider how best to proceed. The CIRO Panel requested that the parties reconvene on February 10, 2022, and be prepared to proceed with the merits hearing at that time. When the renewed motion to adjourn recommenced on February 10, the CIRO Panel determined the Treating Psychiatrist's evidence was inadmissible, concluding that it was not objective opinion evidence. The CIRO Panel dismissed the renewed motion to adjourn for lack of the requisite independent medical evidence and proceeded, after recessing for the morning, to the merits hearing.

### **3. ISSUES**

[22] The issues we need to decide are whether the CIRO Panel erred by:

- a. denying Ali procedural fairness by:
  - i. concluding the opinion of his Treating Psychiatrist was inadmissible;
  - ii. dismissing his renewed motion to adjourn the merits hearing until his Treating Psychiatrist said he was sufficiently well to participate and proceeding with the merits hearing;
  - iii. failing to consider and apply human rights principles; and
  - iv. failing to recuse itself because its conduct indicated that it was biased or gave rise to a reasonable apprehension of bias;
- b. finding that the allegations against Ali had been proven; and
- c. ordering an unfit or unjust sanction.

### **4. STANDARD OF REVIEW IN AN APPLICATION**

[23] A person directly affected by a decision of CIRO may apply to the Tribunal for a hearing and review of the decision under s. 21.7 of the *Securities Act* (the **Act**).<sup>3</sup> On hearing the application, the Tribunal may confirm the decision under review or make such other order as it considers proper.<sup>4</sup>

---

<sup>3</sup> RSO 1990, c S.5

<sup>4</sup> *Act*, s 8

[24] 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.<sup>5</sup>

[25] In practice, the Tribunal takes a restrained approach in such reviews due to the specialized expertise of SROs, including CIRO hearing panels. The Tribunal will generally not substitute its own view for that of an SRO on the basis that the Tribunal might have come to a different conclusion.

[26] 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.<sup>6</sup>

[27] We now consider in turn the errors that Ali submits were made by the CIRO Panel. We commence our analysis with the issues of procedural fairness.

## **5. ANALYSIS**

### **5.1 Did the CIRO Panel err in law by denying Ali procedural fairness?**

[28] Procedural fairness requires that Ali know the case to be met and that he be provided with the opportunity to respond to the allegations before an unbiased tribunal.<sup>7</sup>

[29] We conclude, for the reasons below, that the CIRO Panel did not deny Ali procedural fairness. While we recognize the seriousness of Ali’s mental health

---

<sup>5</sup> *Sutton (Re)*, 2018 ONSEC 42 at para 10

<sup>6</sup> *Re Canada Malting Co.* (1986), 9 OSCB 3565 at para 24; *Odorico (Re)*, 2023 ONCMT 34 at para 60

<sup>7</sup> *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at para 22

issues, there is no persuasive evidence that Ali did not know the case he had to meet. Ali was represented by legal counsel during the major stages of the CIRO proceeding. He had an opportunity to respond to the concerns about the medical evidence and to the allegations against him before a panel that we find did not demonstrate bias against him.

[30] We now turn to the specific issues of procedural fairness starting with the CIRO Panel's decision that the evidence of Ali's Treating Psychiatrist was inadmissible, because the other issues arise from that decision.

#### **5.1.1 Did the CIRO Panel err in law by concluding that the medical opinion of Ali's Treating Psychiatrist was inadmissible?**

[31] The motion record for Ali's motion to adjourn the merits hearing indefinitely included an affidavit from his Treating Psychiatrist, attaching a Psychiatric Assessment dated July 2, 2021 (the **Psychiatric Assessment**), and an Addendum to the Psychiatric Assessment, dated July 6, 2021 (the **Addendum**). In the Psychiatric Assessment, the Treating Psychiatrist opined that Ali was not capable of preparing for and meaningfully participating in the CIRO merits hearing.

[32] The materials for Ali's renewed motion for an indefinite adjournment included the previously filed Psychiatric Assessment and Addendum, additional letters and clinical notes from the Treating Psychiatrist, an affidavit from Sadiq, and a signed unsworn statement from Ali's ex-wife.

[33] Ali also filed the February Email which was prompted by issues raised in CIRO Staff's written submissions on the motion. The February Email repeated the Treating Psychiatrist's views, using subjective, non-medical statements, that the merits hearing should be halted. In part the email stated that "I sincerely hope that everyone involved in the case: from the judge, lawyer, board members, clerks, interns, secretarial staff, ect. [*sic*] all would also have enough concern for their fellow human soul they would not want to"<sup>8</sup> see him come to harm.

[34] At the start of the hearing of the renewed adjournment motion, the CIRO Panel stated its view that it had been improper for Ali to instruct his counsel to send

---

<sup>8</sup> Exhibit 2, Email dated February 7, 2022, Redacted Amended Hearing Record, Tab 3 at p 40



the February Email to the CIRO Panel. In the CIRO Panel's view it appeared to be advocacy on the part of the Treating Psychiatrist and an attempt to coerce the CIRO Panel to grant the requested adjournment.

[35] The CIRO Panel decided that "it would decline to hear the Treating Psychiatrist's evidence both on the grounds that it could not qualify as an expert opinion of the kind and nature that would be of any assistance to the CIRO Panel and that it contained nothing new."<sup>9</sup> The CIRO panel stated, "It was not an expert opinion, rationally based. The CIRO Panel regarded it as a purely partisan act of advocacy couched in threatening terms regarding the consequence of continuing the proceedings against [Ali]."<sup>10</sup>

[36] The CIRO Panel dismissed Ali's renewed motion for an indefinite adjournment as "the additional evidence, which was a condition precedent to the motion being brought, had not been supplied."<sup>11</sup> No objective medical opinion about Ali's mental health had been provided.

#### **5.1.1.a Law regarding the admissibility of expert evidence**

[37] The test for the admissibility of expert evidence was set out by the Supreme Court of Canada in *R v Mohan*.<sup>12</sup> To be admissible, expert evidence must meet certain criteria, including relevance, necessity, absence of an exclusionary rule, and a properly qualified expert.<sup>13</sup>

[38] In *White Burgess Langille Inman v Abbott and Haliburton Co.*,<sup>14</sup> the Supreme Court of Canada stated that there is a threshold admissibility requirement in relation to a proposed expert's independence and impartiality. Once that threshold is met, any concerns about the impartiality of a proposed expert should be considered as part of the overall weighing of the costs and benefits of admitting the evidence.<sup>15</sup> The expert witness' duty is to assist the court and that

---

<sup>9</sup> CIRO Decision at para 30

<sup>10</sup> CIRO Decision at para 29

<sup>11</sup> Exhibit 2, CIRO Hearing Transcript, February 10, 2022 at p 6, lines 12-15, Redacted Amended Hearing Record, Tab 5 at p 982

<sup>12</sup> 1994 CanLII 80 (SCC) (***Mohan***)

<sup>13</sup> *Mohan* at 20

<sup>14</sup> 2015 SCC 23 (***White Burgess***)

<sup>15</sup> *White Burgess* at para 10

duty overrides their obligation to the party calling them. A witness who is unable or unwilling to fulfill that duty does not qualify to perform the role of an expert and should be excluded.”<sup>16</sup>

- [39] In *Westerhof v Gee Estate*,<sup>17</sup> the Ontario Court of Appeal recognized a distinction between a “litigation expert”, an expert retained by a party for the purpose of litigation who forms an opinion to assist the court, and a “participant expert”, an expert engaged in treating an individual whose opinions are formed at the time of treating the individual, such as a treating physician/psychiatrist.
- [40] A litigation expert is required to acknowledge that their obligation is to assist the court and that their opinion evidence must be fair, objective and non-partisan. A participant expert’s opinion must be based on their observation of or participation in the events at issue; and they must have formed the opinion to be given as part of their ordinary exercise of their skill, knowledge, training, and experience with observing or participation in such events.<sup>18</sup> For a participant expert providing a medical opinion about an individual, this would mean they had formed their opinion while treating the individual and applying their particular medical expertise to that treatment. The Ontario Court of Appeal in *Imeson v Maryvale*<sup>19</sup> has made it clear that a participant expert is subject to the *Mohan/White Burgess* test for admissibility of expert evidence.<sup>20</sup> Such evidence must therefore be fair, objective and non-partisan.

#### **5.1.1.b Parties’ positions and our analysis**

- [41] Ali submits that in legal cases involving mental health, it is crucial to ensure fair and just outcomes and one essential piece of evidence often considered is the treating psychiatrist’s opinion. Ali submits that advocacy is a necessary part of the doctor-patient relationship, and he should not be punished for his doctor’s passionate support. Ali submits that the reports of his Treating Psychiatrist

---

<sup>16</sup> *White Burgess* at para 46

<sup>17</sup> 2015 ONCA 206 (***Westerhof***)

<sup>18</sup> *Westerhof* at paras 59-62, 63

<sup>19</sup> 2018 ONCA 888 (***Imeson***)

<sup>20</sup> *Imeson* at para 83

clearly explain the specific conditions Ali was facing and how they are impacting him and therefore the reports should have been accepted by the CIRO Panel.

[42] CIRO Staff submits that the CIRO Panel did not err in declining to admit the Treating Psychiatrist's evidence. The Treating Psychiatrist had shown himself to be an advocate. He demonstrated that he lacked the degree of fairness and objectivity required to be an expert witness. That lack of fairness and objectivity, CIRO Staff submits, was evident in the February Email, the Psychiatric Assessment, the Addendum to the Psychiatric Assessment and the Treating Psychiatrist's correspondence to the CIRO Panel.

[43] In the Psychiatric Assessment, solicited by Ali's counsel and filed in support of the first and renewed motions to adjourn the merits hearing, the Treating Psychiatrist opined on whether Ali could prepare for and meaningfully participate in a hearing on the merits before CIRO. CIRO Staff submits that this opinion was formed for the purposes of the CIRO proceeding. It goes beyond opinions the Treating Psychiatrist formed as part of his ordinary consultation and treatment of Ali and is either not supported by or is inconsistent with his clinical notes from his consultation and treatment of Ali.

[44] We agree with CIRO Staff's submission that the Treating Psychiatrist's lack of impartiality is apparent in the February Email where he:

- a. said the CIRO Panel was lacking the minimum "fiduciary duty" "taught in childhood";
- b. stated that the CIRO proceeding was a "voluntary" burden that would not be advanced by a "true judge";
- c. was incredulous that the CIRO proceeding was being pursued in the circumstances;
- d. expressed an opinion on the requirements for a fair trial; and
- e. asserted that moving forward with the proceeding would cause lethal harm to Ali.

[45] CIRO Staff submits, and we agree, that further evidence of a lack of impartiality is apparent in a January 24, 2022, letter attached to the Treating Psychiatrist's second affidavit in connection with the renewed motion to adjourn. In that letter

he wrote that it was inhumane to insist on a trial before there had been adequate symptom reduction.

- [46] CIRO Staff acknowledges that a treating psychiatrist is expected to have some bias in favour of his patient. The limitations placed on participant expert's evidence by the Ontario Court of Appeal in *Westerhof* guards against bias, as it limits the participant expert's evidence to opinions formed outside of the litigation context. CIRO Staff submits that in *Imeson*, the Ontario Court of Appeal stated that "[t]ypically, any opinions that are sought to be introduced [from a participant expert] are found in the clinician's clinical notes and records, or in reports prepared for the purpose of consultation and treatment."<sup>21</sup>
- [47] CIRO Staff submits that the Treating Psychiatrist's opinions about Ali being unable to meaningfully participate in the CIRO proceedings are either not present in his December 9, 2021, clinical notes or those clinical notes are inconsistent with that view.
- [48] The Treating Psychiatrist's December 9, 2021, clinical notes from his two-hour psychiatric assessment of Ali (filed in connection with the renewed motion to adjourn) support the view that Ali had the requisite cognitive capacity to participate in the CIRO hearing. The assessment stated that:
- a. Ali's thought flow is logical and coherent;
  - b. Ali's cognition, orientation, and judgment are intact; and
  - c. Ali is at "LOW risk of imminent harm".
- [49] In addition, in a letter dated January 24, 2022, the Treating Psychiatrist stated:
- "I wish to re-iterate, that my assertion is not that Mr. Ali is incapable of understanding the nature of the charges being brought in front of him, but rather that the legal process itself would be unable for him to psychologically bear due to the high likelihood of...symptom exacerbation. Said again: his inability is not an inability to give consent, but in his inability to bear stress."<sup>22</sup>

---

<sup>21</sup> *Imeson* at para 61

<sup>22</sup> Exhibit 2, Letter from Treating Psychiatrist dated January 24, 2022, Redacted Amended Hearing Record, Tab 7 at p 2543

- [50] Finally, CIRO Staff submits that even if we were to find that the CIRO Panel erred by finding the Treating Psychiatrist's evidence inadmissible, the application of his evidence to the merits of Ali's renewed motion to adjourn would not have changed the result. CIRO Staff submits that there is nothing in the Treating Psychiatrist's evidence that establishes that Ali was "unable to prepare for or meaningfully participate in a hearing on the merits" or that "[f]orcing [Ali] to proceed to a hearing on the merits also exposes him to significant harm."
- [51] OSC Staff agrees with CIRO Staff that it was not unreasonable for the CIRO Panel to have decided the Treating Psychiatrist's opinion evidence was inadmissible due to partiality.
- [52] We conclude that the CIRO Panel did not err in finding that the Treating Psychiatrist's opinions did not meet the test for admissibility as an expert opinion. Ali did not characterize his Treating Psychiatrist as either a "litigation" or "participant" expert and it is not necessary for us to determine if he was either. The Treating Psychiatrist expressed opinions from his treatment of Ali and about Ali's ability to participate in the CIRO proceeding. Regardless, we conclude that his opinions were partisan and non-objective and therefore of no value to the CIRO Panel as expert medical evidence. Finally, the Treating Psychiatrist's observations in his clinical notes from December 9, 2021, and in his letter of January 24, 2022, were inconsistent with his opinion that Ali was not able to participate in the CIRO proceeding.
- [53] We now address the second issue of procedural fairness, whether the CIRO Panel erred by dismissing Ali's motion to adjourn the CIRO proceeding indefinitely and by proceeding with the hearing.

### **5.1.2 Did the CIRO Panel err in law by dismissing Ali's renewed motion to adjourn the merits hearing and by proceeding with the hearing?**

#### **5.1.2.a Law with respect to adjournments**

- [54] The party seeking an adjournment bears the onus, which includes establishing a proper evidentiary basis for the adjournment.<sup>23</sup>

---

<sup>23</sup> *Darrigo (Re)*, 2016 ONSEC 21 (***Darrigo***) at para 8

[55] The granting of an adjournment for medical reasons is a discretionary exercise. In exercising that discretion, it is appropriate for the adjudicator to balance the public interest in a timely hearing, and the applicant's interest in knowing the case against him and having an opportunity to answer it.<sup>24</sup>

#### **5.1.2.b Parties' positions and our analysis**

[56] Ali submits that the CIRO Panel dismissed the renewed motion to adjourn after refusing to admit the expert medical opinion without hearing submissions on the merits of the motion. The CIRO Panel also failed to consider the statements from Ali's ex-wife and Sadiq about his mental health. Ali also submits that the CIRO Panel failed to address his capacity to participate meaningfully in the merits hearing.

[57] CIRO Staff submits that the CIRO Panel had the parties' written submissions and had heard oral submissions on the first adjournment motion on August 30, 2021, about the expert medical evidence.

[58] OSC Staff submits that Ali failed to provide a proper evidentiary basis for the renewed adjournment, by failing to adduce independent medical evidence establishing that he was not able to participate in the merits hearing.<sup>25</sup> OSC Staff also submits that while the evidence of Ali's ex-wife and Sadiq may have been admissible as non-expert opinion evidence concerning Ali's condition, it was reasonable for the CIRO Panel to conclude that in the absence of expert opinion evidence, the test for incapacity had not been met.

[59] It does not appear, from the Amended Record of Proceedings relating to the renewed adjournment motion, that Ali's counsel drew the CIRO Panel's attention to Ali's ex-wife's unsworn statement or Sadiq's affidavit about the nature of his symptoms. The CIRO Panel does not appear to have asked for oral submissions about the merits of the motion, nor did Ali's counsel appear to have asked to make further oral submissions. However, the CIRO Panel had Ali's motion record, containing the unsworn statement and affidavit, and the parties' written submissions.

---

<sup>24</sup> *Darrigo* at para 9

<sup>25</sup> *Darrigo* at para 8

- [60] The CIRO Panel moved directly from dismissing the renewed adjournment motion to the scheduled merits hearing. By that time, it had been 20 months since the Notice of Hearing was issued and there had been multiple accommodations given to Ali. The CIRO Panel exercised its discretion to dismiss the adjournment motion, apparently balancing the public interest in proceeding with the hearing after lengthy delays with Ali's knowing and having the right to respond to the case against him.
- [61] CIRO Staff provided us with detailed written submissions on the law regarding fitness to participate and the facts that, in their view, supported a conclusion that Ali was fit to meaningfully participate in the CIRO proceeding. This issue was not raised with or discussed by the CIRO Panel at the time of the merits hearing. We, therefore, focus our review on what the CIRO Panel said and did at the time to assess whether they erred in law by proceeding with the merits hearing.
- [62] After dismissing Ali's renewed motion to adjourn the merits hearing, the CIRO Panel did not expressly address the issue of Ali's fitness to proceed with the hearing. The CIRO Panel accepted Staff's view that the matter should proceed to a merits hearing, "in effect because there was no basis to do otherwise as there was nothing new in [the Treating Psychiatrist's] email."<sup>26</sup>
- [63] Although the CIRO Decision could have dealt more explicitly with the fact that the CIRO Panel concluded that Ali was fit to proceed to defend the allegations against him, we conclude that this is implicit in the CIRO Panel's decision to continue. The CIRO Decision could also have been clearer about what evidence "already before" them they relied on to conclude that the CIRO proceeding should commence. However, we do not consider these deficiencies in the CIRO Decision to be errors in law warranting our intervention in the decision. The Amended Record of Proceedings contains sufficient information to support the CIRO Panel's conclusion that Ali was able to meaningfully participate in the proceeding.
- [64] Ali retained and instructed counsel, and representatives, to represent him throughout the CIRO proceeding. Although at various times, Ali's counsel

---

<sup>26</sup> CIRO Decision at para 30

indicated they were unable to obtain instructions, and indeed in one instance requested removal from the record for that reason, Ali continued to be represented and took meaningful steps throughout the process.

[65] Those steps included Ali:

- a. providing information to counsel to facilitate the drafting of a lengthy letter in response to CIRO's initial inquiries;
- b. participating in a two-day interview with CIRO Staff and answering their questions;
- c. providing information to his family for the preparation of a Reply to the Notice of Hearing; and
- d. attending every appearance in the proceeding personally or sending a representative; representing himself at an interim appearance, and successfully advocating for a subsequent attendance to be scheduled far enough in the future to allow him to retain new counsel.

[66] The CIRO Panel relied on the evidence that was properly before them, which evidence did not include the evidence of Ali's Treating Psychiatrist because it was determined inadmissible for the reasons outlined above. There was no evidence before them that indicated that Ali was unable to understand the nature or object of the proceedings or the possible consequences of the proceedings, or that he was unable to instruct his representatives. Indeed, the CIRO Panel observed that Ali was able to meaningfully participate. Therefore, we find that they did not err in law by proceeding with the merits hearing.

[67] We now consider the third issue of procedural fairness, whether the CIRO Panel erred by failing to consider and apply human rights principles.

### **5.1.3 Did the CIRO Panel err in law by failing to consider and apply human rights principles?**

[68] Ali submits that the CIRO Panel failed to protect his privacy and his human rights. Ali did not provide any supporting evidence in his Application with respect to the alleged violation of his privacy rights. Nor does it appear from the Amended Record of Proceedings that Ali, or any of his representatives, raised privacy concerns during the CIRO Proceeding. We therefore focus our analysis on



the issue of human rights principles. We conclude that the CIRO Panel did not err in law on this issue as it was not asked to consider the application of human rights principles. It is more appropriate to consider Ali's allegation through the lens of procedural fairness and we conclude that the CIRO proceedings, with the many accommodations accorded to Ali due to his health, were fair.

- [69] Ali submits that CIRO is subject to and obligated to comply with Canadian laws and regulations that protect human rights. His treatment by the CIRO Panel amounted to direct and indirect discrimination against him because of his mental illness. Ali submits that it is imperative that all accommodation providers (including CIRO) strictly adhere to the Ontario *Human Rights Code* with no exceptions, something he submits the CIRO Panel failed to do.
- [70] CIRO Staff submits that Ali's reliance on human rights law is misplaced. First, because the issue of human rights law was never raised before the CIRO Panel. Second, as held by the Law Society of Ontario in *Law Society of Ontario v Bien*,<sup>27</sup> where the issue is a request for an adjournment based on an incapacity to participate in a hearing, the appropriate lens for assessing the matter is procedural fairness, not human rights law.<sup>28</sup>
- [71] CIRO Staff agrees that as a matter of procedural fairness, a CIRO hearing panel has an obligation to provide reasonable accommodations to a respondent in the litigation process. However, the respondent must ask for that accommodation, explain the basis for the request and, where the request is contested, provide evidence to support the need for the accommodation. Ali did not do this. CIRO Staff submits that the Amended Record of the Proceeding demonstrates that CIRO Staff and the CIRO Panel did reasonably accommodate Ali throughout the CIRO proceeding.
- [72] We conclude that the CIRO Panel cannot have erred by failing to apply principles it was not asked to consider. In addition, the Amended Record of Proceedings also reflects that Ali received accommodations to address his health concerns throughout the process.

---

<sup>27</sup> 2019 ONLSTH 103 (*Bien*)

<sup>28</sup> *Bien* at paras 7-8

[73] We now turn to the final issue under the broad category of procedural fairness, whether the CIRO Panel’s conduct indicated bias or a reasonable apprehension of bias, and if so, did it err by failing to recuse itself.

#### **5.1.4 Did the CIRO Panel’s conduct indicate bias or a reasonable apprehension of bias, and if so, did it err in law by failing to recuse itself?**

##### **5.1.4.a Law regarding bias or a reasonable apprehension of bias**

[74] As a procedural matter, an allegation of bias and the facts on which it is based must be made to the decision-maker at the earliest possible opportunity.<sup>29</sup> If a party does not raise its allegation of bias at the earliest opportunity, it may be deemed to have waived the objection.<sup>30</sup>

[75] The burden of establishing actual or perceived bias is on the party asserting it.<sup>31</sup> Given the importance of an unbiased adjudicator to procedural fairness, a party asserting bias need only establish a reasonable apprehension of bias.<sup>32</sup> The inquiry into bias is fact-specific and must be considered in the context of the entire proceeding.<sup>33</sup>

[76] The apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining the requisite information. The test is whether an informed person, viewing the matter realistically and practically, would think that it is more likely than not that the decision-maker, whether consciously or unconsciously, would not decide fairly.<sup>34</sup>

[77] The threshold for establishing a reasonable apprehension of bias is high, as “pure conjecture, insinuations or mere impressions are not sufficient – because a finding of reasonable apprehension of bias calls into question an element of

---

<sup>29</sup> *Khan (Re)*, 2014 ONSEC 3 (***Khan***) at para 13

<sup>30</sup> *In re Human Rights Tribunal and Atomic Energy Can*, 1985 CanLII 5528 (FCA) at 113; *Dickson v Canadore College*, 2007 CanLII 68563 (Div Ct) at paras 21-23; *Zundel v Canada (Human Rights Commission)*, 2000 CanLII 16575 (FCA) at para 4

<sup>31</sup> *Debus (Re)*, 2021 ONSEC 21 (***Debus***) at para 9

<sup>32</sup> *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioner of Public Utilities)*, 1992 CanLII 84 (SCC) at para 22

<sup>33</sup> *Debus* at para 12

<sup>34</sup> *Debus* at para 10; *Committee for Justice & Liberty v. Canada (National Energy Board)*, 1976 CanLII 2 (SCC) at 394

judicial integrity”.<sup>35</sup> An expert panel should be “presumed, in the absence of evidence to the contrary,” to have “act[ed] fairly and impartially in discharging [its] adjudicative responsibilities.”<sup>36</sup>

#### **5.1.4.b Parties’ positions and our analysis**

- [78] CIRO Staff submits that the CIRO Panel could not have erred by failing to respond to an allegation of bias that was never made. All the grounds raised by Ali in support of his allegation of bias had crystallized by the morning of February 10, 2022, when the CIRO Panel advised the parties it was finding the Treating Psychiatrist’s evidence to be inadmissible and dismissing the renewed motion to adjourn. The proceeding was temporarily adjourned so Ali and his counsel could consult. The proceeding then resumed with Ali’s counsel participating and making closing submissions. The allegations of bias were not made until Ali filed the Application, a month after the CIRO merits hearing concluded.
- [79] CIRO Staff further submits that, if we decide to review the matter of bias despite Ali’s implied waiver, Ali failed to demonstrate any reasonable apprehension of bias or any actual bias by the CIRO Panel against him.
- [80] Ali frames his submissions on this issue as the CIRO Panel demonstrating “bad faith”. As Ali was not precise in his submission in this respect, we infer that Ali submits that the CIRO Panel acted in bad faith by:
- a. after finding the Treating Psychiatrist’s evidence inadmissible due to advocating on Ali’s behalf, the CIRO Panel dismissed Ali’s renewed motion to adjourn without hearing submissions from Ali’s counsel on the merits of the motion;
  - b. demonstrating Islamophobia; and
  - c. being upset by the February Email and dismissing his renewed motion to adjourn without the opportunity being afforded to Ali to submit further evidence.

---

<sup>35</sup> *Khan* at para 27

<sup>36</sup> *Price (Re)*, 2009 CanLII 90073 (CA MFDAC) at paras 18-19; *Debus* at para 9

- [81] Ali submits that the CIRO Panel wanted to find him accountable for the alleged misconduct from the outset. By finding that his expert's opinion was inadmissible and requiring him to submit an independent medical report it acted in bad faith. Ali's counsel explored the possibility of obtaining an independent medical expert and determined that it would be costly, require time (as more than one visit with the expert would be required), and could potentially be harmful to Ali's health. The CIRO Panel then dismissed his renewed motion to adjourn until he was medically able to proceed, without any evidence about his health and proceeded to consider the allegations against him.
- [82] CIRO Staff submits that the record shows Ali did have an opportunity to make submissions about the adjournment. Both parties filed written submissions. Both parties made oral submissions at the hearing of the first adjournment motion to address the CIRO Panel's concerns about the Treating Psychiatrist's impartiality. The CIRO Panel did not seek submissions about whether the Treating Psychiatrist's evidence would be sufficient to warrant an adjournment. But, CIRO Staff submits, the CIRO Panel had the parties' written submissions and oral submissions would have been pointless given the CIRO Panel's decision not to admit the evidence entirely. Further, Ali's counsel did not ask to make further submissions.
- [83] On the issue of Islamophobia, Ali states that his lawyer was asked, in a private conversation, whether Ali was "familiar with" his doctor. Ali submits that this indicates that the CIRO Panel assumed that because he and the Treating Psychiatrist were of the same culture, they knew each other and that made the Treating Psychiatrist biased in Ali's favour.
- [84] CIRO Staff submits that there was no evidence of Islamophobia by the CIRO Panel and that it was unaware of the CIRO Panel or CIRO Staff questioning whether Ali was "familiar" with his physician.
- [85] With respect to the February Email, Ali submits that the hearing was concluded abruptly by the CIRO Panel Chair who appeared to be upset about the email and the CIRO Panel then dismissed Ali's renewed motion to adjourn without any new evidence.

- [86] Regarding the Chair's reaction to the February Email, CIRO Staff submits this did not give rise to a reasonable apprehension of bias and was an understandable reaction given the tone and content of the email. Regardless, the fact that an adjudicator shows emotion does not establish a reasonable apprehension of bias.<sup>37</sup> OSC Staff submits that it takes more than a demonstration of judicial impatience with counsel or even downright rudeness to dispense the strong presumption of judicial impartiality.<sup>38</sup>
- [87] We reviewed the Amended Record of Proceedings and it indicates that Ali did have an opportunity to make submissions regarding the adjournment motions. He filed written submissions, his counsel made submissions at the hearing of the first motion to adjourn about the CIRO Panel's concerns about the impartiality of Ali's medical evidence. At the renewed adjournment motion, after the CIRO Panel decided that the evidence of Ali's Treating Psychiatrist was inadmissible, Ali's counsel did not indicate that he wished to make further submissions. The Amended Record of Proceedings also shows that Ali was granted numerous procedural indulgences by the CIRO Panel.
- [88] On the issue of whether there were questions about Ali and his Treating Psychiatrist being of the same culture, there is no evidence in the Amended Record of Proceedings of the CIRO Panel questioning whether Ali was "familiar" with his doctor. Ali states this occurred in a private conversation with Ali's counsel. It is not clear from Ali's submission who had the conversation with his counsel. There is no means by which we can know who the conversation was with, when it occurred or the context and content of any such conversation.
- [89] The CIRO Panel's reaction to the February Email, while indicating some emotion, was not in our view persuasive evidence of bias warranting our intervention.
- [90] The CIRO Panel did dismiss Ali's renewed motion to adjourn, but the fact that a party disagrees with an adjudicator's decision does not constitute bias.<sup>39</sup>
- [91] Assessed holistically and in the context of the entire CIRO proceeding, we conclude that the CIRO Panel acted fairly and impartially throughout the

---

<sup>37</sup> *R v Gager*, 2020 ONCA 274 at para 153

<sup>38</sup> *Kelly v Palazzo*, 2008 ONCA 82 at para 21

<sup>39</sup> *Apiaries Inc (Re)*, 2019 ONSEC 31 at para 22

proceeding. We find no demonstration of actual bias nor the basis for Ali to assert that a reasonable person would have a reasonable apprehension of bias.

### **5.1.5 Conclusion regarding whether the CIRO Panel denied Ali procedural fairness**

[92] For all the reasons above, we conclude that the CIRO Panel did not err in law by denying Ali procedural fairness. We find that given the numerous and lengthy re-schedulings of the CIRO proceeding and the CIRO Panel's assessment that it could not accept the Treating Psychiatrist as an expert because he was not impartial, the CIRO Panel did not err in law or principle by finding inadmissible the medical evidence, denying the renewed motion to adjourn indefinitely, requiring the merits hearing to proceed or failing to apply human rights principles. In addition, we find no basis to conclude that there was a reasonable apprehension of bias on the part of the CIRO Panel.

[93] Given all the circumstances it was reasonable for the CIRO Panel to ultimately proceed as it did. There is no evidence that Ali did not know the case he had to meet. He had an opportunity to respond to the concerns about the medical evidence and to the allegations against him before a panel that we find did not demonstrate actual bias or the basis for a reasonable apprehension of bias against him.

[94] We now turn to Ali's submission that the CIRO Panel erred by concluding that CIRO's allegations against him had been proven.

### **5.2 Did the CIRO Panel err in law by concluding that the allegations against Ali had been proven?**

[95] Ali submits that CIRO Staff had the onus of proving the allegations against him but failed to provide any evidence against him other than that of his former employer, with whom he had had a falling out. Ali also asserts that the CIRO Panel erred by failing to consider his mental illness when it concluded that the alleged misconduct had been proven. In particular, Ali submits that:

- a. he could not form the "ill intentions" required;
- b. he did not appreciate the nature and quality of his actions;
- c. he cannot recall his past actions; and

d. he was not of sound mind during his interview by CIRO Staff, and so the interview transcript “cannot be considered valid”.

[96] CIRO Staff submits that there was a substantial amount of evidence provided to the CIRO Panel to establish the allegations, as outlined in the CIRO Decision.

[97] With respect to the CIRO Panel’s alleged error of not considering Ali’s mental health when reaching their conclusion on the merits, CIRO Staff submits:

- a. the CIRO Panel had appropriately excluded the only evidence available regarding Ali’s mental health and could not have erred for failing to consider the same evidence when assessing whether Ali had engaged in the misconduct;
- b. intention or motive is not necessary to prove a regulatory contravention, other than those more akin to criminal violations, such as fraud;<sup>40</sup>
- c. the Treating Psychiatrist started treating Ali in May 2020 and, therefore, had no observations of Ali at the time of the alleged misconduct;
- d. the Treating Psychiatrist’s statement in a June 3, 2020, letter about the possible impacts of Ali’s mental illness in the past is vague and general. It is not clear if the statement applies to the alleged misconduct, which dated back 14 years;
- e. the Treating Psychiatrist’s statement in the Addendum that “[i]t is quite likely that many of the improprieties he is accused of occurred during this phase of his mental illness” was based on Ali’s family’s observations over several months in 2018. This time was after the material time for the bulk of CIRO’s allegations against Ali and prior to the Treating Psychiatrist starting to treat Ali;
- f. there is no evidence that Ali suffered from memory loss, and an inability to remember events in issue is not a defence in the criminal context and equally should not be in the regulatory context; and

---

<sup>40</sup> *Sabourin (Re)*, 2009 ONSEC 11 at paras 64-69

- g. there is no evidence that Ali was not of sound mind during his CIRO interview because:
  - i. the Treating Psychiatrist's statement was vague and did not clearly apply to the time of the CIRO interview;
  - ii. Ali's ex-wife was not an expert and Ali's counsel did not ask to have her unsworn statement about the state of Ali's mental health at the time of the interview entered in to evidence; and
  - iii. Ali was represented by two counsel during the CIRO interview, and they did not indicate to CIRO Staff that Ali was not of sound mind at the time.

[98] OSC Staff submits that Ali has failed to identify any discrete error of law or failure by the CIRO Panel to consider material evidence that would justify the Tribunal's intervention regarding the merits hearing. Further Ali adduced no new evidence to call into question the merits or sanctions decisions.

[99] We agree with CIRO Staff's and OSC Staff's submissions outlined above. We have reviewed the Amended Record of Proceedings and the CIRO Decision and conclude that the CIRO Panel considered and applied the evidence before them. We find no error by the CIRO Panel in concluding that the evidence proved the allegations against Ali.

[100] The CIRO Panel had evidence other than from Ali's employer, contrary to Ali's submissions. That evidence included documentary evidence of Ali's outside business activities, an affidavit from CIRO Staff's investigative witness, affidavits from employees of Ali's former dealer member attesting to the fact that Ali had not disclosed his outside business activities, and Ali's uncontroverted evidence from his interview about those outside business activities. In addition, Ali's counsel chose not to cross-examine CIRO Staff's witnesses or to lead any other evidence.

[101] With respect to the allegation that Ali failed to cooperate with CIRO Staff, during the investigation, Ali was asked to produce bank statements. CIRO Staff submitted at the CIRO merits hearing that Ali had provided some but not all the requested documents. CIRO Staff presented the bank documents that had been



provided and made submissions about how the numbering of the pages supported the conclusion that not all the documents had been provided to CIRO as requested. In oral argument, Ali's counsel suggested an alternate view of the evidence. The CIRO Panel chose to rely on CIRO Staff's interpretation of the evidence on this issue. In addition, in June 2019 Ali's lawyer at the time advised CIRO in writing that Ali was not planning to cooperate further. We conclude that the CIRO Panel did not err in law in reaching the conclusion it did on the evidence before them on this point.

[102] With respect to whether the CIRO Panel erred by failing to consider Ali's mental health when determining the allegations had been proven, we find no such error. We concluded earlier that the CIRO Panel did not err by finding inadmissible the evidence of Ali's Treating Psychiatrist. Even if it had admitted the evidence, we conclude that it would have had no impact on the merits decision because:

- a. the opinions were vague and not clearly linked to the allegations and were not based on contemporaneous observations by the Treating Psychiatrist during the material time of the misconduct;
- b. Ali was represented during his CIRO interview, and his counsel did not raise any issues about his state of mind; and
- c. the statement from Ali's ex-wife was unsworn, was not proffered into evidence and, had it been, the CIRO Panel could not be considered to have erred by not accepting the unsworn statement of someone who was not an expert.

[103] We therefore conclude that Ali has failed to establish an error that would warrant our intervention in the CIRO Panel's conclusions that the allegations against him had been proven.

[104] We now turn to whether the CIRO Panel erred by imposing unfair sanctions.

### **5.3 Did the CIRO Panel err in law by imposing unfair sanctions?**

[105] Ali submits that the sanctions imposed on him were more onerous than those imposed on other market participants. Ali also submits the sanctions are excessive because he has not been working for five and a half years and he has no money to pay the financial sanctions.

- [106] Both CIRO Staff and OSC Staff submit that Ali failed to allege any issues or errors in the sanctions decision and that the sanctions levied are not unreasonable.
- [107] Despite Ali not specifying a particular error in the sanctions decision, we reviewed the CIRO Decision regarding sanctions to assess if there was any apparent error and conclude there was not.
- [108] In the CIRO Decision, the CIRO Panel sets out the primary goal of securities regulation (protecting investors and fostering confidence in the capital markets) and the role that disciplinary sanctions play in restraining future misconduct. The CIRO Panel considers the serious nature of the misconduct in question, the fact that the misconduct took place over most of the period Ali was employed, that Ali had not recognized the seriousness of the misconduct, and the need for specific and general deterrence.
- [109] Finally, the CIRO Panel considered previous comparable cases and concluded that “[CIRO] Staff’s submissions with respect to sanctions were moderate and in accord with the Panel’s overall view of the case.”<sup>41</sup> It took note of two cases that were directly comparable where the fines imposed were the same as those proposed by Staff for Ali. Ali did not file any personal financial information or any other evidence relating to his ability to pay financial sanctions at the CIRO sanctions hearing, nor did he seek to introduce any such evidence on his Application.
- [110] We conclude that the CIRO Panel did not err in their sanctions decision and therefore there is no basis for us to intervene in that decision.

## **6. OTHER RELIEF ALI IS SEEKING**

- [111] In his Application, Ali also asked for an order expunging all records of the CIRO proceeding and stating that his 2019 interview by CIRO Staff be “inadmissible”. The basis provided for Ali’s request about the records of the CIRO proceeding was concerns about his privacy. Regarding the 2019 interview, Ali submits that

---

<sup>41</sup> CIRO Decision at para 66

he did not know what he was saying at the time, and he does not remember the interview.

[112] OSC Staff submits, and we agree, that it would be inappropriate for us to consider these issues on a review, given that they were not raised with the CIRO Panel and not included in the Application.

**7. CONCLUSION**

[113] We have not found any persuasive evidence to conclude that the CIRO Panel committed any errors that would warrant our intervention in the CIRO Decision, with respect to either the merits or sanctions decisions. Ali's Application is therefore dismissed.

Dated at Toronto this 22<sup>nd</sup> day of December, 2023

*"M. Cecilia Williams"*

---

M. Cecilia Williams

*"Sandra Blake"*

---

Sandra Blake

*"William Furlong"*

---

William Furlong