

IN THE MATTER OF:

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA**

AND

JOAN MCCARTHY

NOTICE OF HEARING

An initial appearance (“Initial Appearance”) will be held before a hearing panel (“Hearing Panel”) of the Investment Industry Regulatory Organization of Canada (“IIROC”) pursuant to Sections 8203 and 8205 of the Consolidated Enforcement, Examination and Approval Rules of IIROC in this matter. The purpose of the Initial Appearance is to schedule a hearing (“Hearing”).

The Initial Appearance will be held by videoconference on July 15, 2021 at 10:00 a.m. (NDT).

The Respondent must serve a Response (“Response”) to this Notice of Hearing and the Statement of Allegations dated April 21, 2021 (“Statement of Allegations”) in accordance with Section 8415 within 30 days from the effective date of service of this Notice of Hearing.

If the Respondent does not file a Response in accordance with Section 8415(1), the Initial Appearance may be immediately converted to a Hearing.

If the Respondent files a Response in accordance with Section 8415(1), the Initial Appearance will be immediately followed by an initial prehearing conference. In preparation for the prehearing conference, the Respondent must serve and file a prehearing conference form in accordance with Section 8416(5).

The purpose of the Hearing will be to determine whether the Respondent has committed the contraventions that are alleged by the staff of IIROC (“Staff”). The alleged contraventions are contained in the Statement of Allegations.

Pursuant to Section 8409, the Hearing will be conducted as an:

- Oral Hearing
- Electronic Hearing
- Written Hearing

The Respondent may object to the format of the Hearing. The objection must be made in accordance with Section 8409.

The Initial Appearance, the Hearing and all related proceedings will be subject to the Rules of Practice and Procedure as set out in Section 8400.

Pursuant to the Rules of Practice and Procedure, the Respondent is entitled to attend the Hearing and to be heard, to be represented by counsel or by an agent, to call, examine and cross-examine witnesses, and to make submissions to the Hearing Panel at the Hearing.

If the Respondent fails to serve a Response at the Hearing, the Hearing Panel may, pursuant to Section 8415(4):

- (a) proceed with the hearing as set out in this Notice of Hearing, without further notice to the Respondent;
- (b) accept as proven the facts and contraventions set out by Staff in the Statement of Allegations; and
- (c) order sanctions and costs against the Respondent pursuant to Sections 8209, 8210 and 8214 and/or IROC Dealer Member Rules 20.33 and 20.34.

If the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by Staff in the Statement of Allegations, the Hearing Panel may, pursuant to Sections 8209 and 8210 and/or IROC Dealer Member Rules 20.33 and 20.34, impose any one or more of the following sanctions:

Where the Respondent is/was a Regulated Person who is not a Dealer Member:

- (a) a reprimand;
- (b) disgorgement of any amount obtained, including any loss avoided, directly or indirectly, as a result of the contravention;
- (c) a fine not exceeding the greater of:
 - (i) \$5,000,000/\$1,000,000 per contravention; and

- (ii) an amount equal to three times the profit made or loss avoided by the person, directly or indirectly, as a result of the contravention.
- (d) suspension of the person's approval or any right or privilege associated with such approval, including access to a Marketplace, for any period of time and on any terms and conditions;
- (e) imposition of any terms or conditions on the person's continued approval or continued access to a Marketplace;
- (f) prohibition of approval in any capacity, for any period of time, including access to a Marketplace;
- (g) revocation of approval;
- (h) a permanent bar to approval in any capacity or to access to a Marketplace;
- (i) permanent bar to employment in any capacity by a Regulated Person, and
- (j) any sanction determined to be appropriate under the circumstances.

Where the Respondent is/was a Dealer Member:

- (a) a reprimand;
- (b) disgorgement of any amount obtained, including any loss avoided, directly or indirectly, as a result of the contravention;
- (c) a fine not exceeding the greater of:
 - (i) \$5,000,000 per contravention; and
 - (ii) an amount equal to three times the profit made or loss avoided by the Dealer Member, directly or indirectly, by reason of the contravention;
- (d) suspension of membership in IIROC or of any right or privilege associated with membership, including a direction to cease dealing with clients, for any period of time and on any terms and conditions;
- (e) imposition of any terms and conditions on the Dealer Member's continued membership, including on access to a Marketplace;
- (f) expulsion from membership and termination of the rights and privileges of membership, including access to a Marketplace;

- (g) a permanent bar to membership in IIROC;
- (h) any other sanction determined to be appropriate under the circumstances.

If the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by the Staff in the Statement of Allegations, the Hearing Panel may assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances pursuant to Section 8214 and/or IIROC Dealer Member Rule 20.49.

DATED this 21 day of April, 2021.

(S) National Hearing Coordinator

NATIONAL HEARING COORDINATOR
Investment Industry Regulatory Organization of Canada
Suite 2000, 121 King Street West
Toronto, Ontario, M5H 3T9

IN THE MATTER OF:

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA**

AND

JOAN MCCARTHY

STATEMENT OF ALLEGATIONS

Further to a Notice of Hearing dated April 21, 2021, Enforcement Staff of the Investment Industry Regulatory Organization of Canada makes the following allegations.

PART I - REQUIREMENTS CONTRAVENED

Contravention 1

Between 2006 and 2019, the Respondent falsified signatures and appropriated funds from her clients' accounts, contrary to Dealer Member Rule 29.1 and Rule 1400 of the Consolidated Rules (after September 1st, 2016).

Contravention 2

The Respondent failed to cooperate with an IIROC investigation, by refusing to provide documents and failing to attend an interview with Enforcement Staff, contrary to section 8104 of the Consolidated Rules.

PART II - RELEVANT FACTS AND CONCLUSIONS

Overview

1. The Respondent, Joan McCarthy (McCarthy), was a registered representative employed with MD Management Limited (MD), an IIROC-regulated firm, and worked at the St. John's branch located in Newfoundland and Labrador.
2. Between 2006 and 2019, McCarthy appropriated approximately \$775,000 from the accounts of six elderly clients.
3. In November 2019, Enforcement Staff sent the Respondent, and her legal counsel, a notice to appear to a mandatory interview as part of the investigation. In November and December, Enforcement Staff attempted to contact the Respondent and her legal counsel several times in this regard. McCarthy never responded to the notice to appear.

Registration History

4. Between August 2000 and March 2019, McCarthy was registered as a representative employed with MD at its St. John's branch, located in Newfoundland and Labrador.
5. McCarthy has not been employed with MD since March 2019 and has not worked for an IIROC-regulated firm since.

Falsification of signatures and misappropriation of funds by the Respondent in the accounts of six elderly clients

6. Between 2006 and 2019, McCarthy appropriated funds from the accounts of six elderly clients.

7. McCarthy appropriated the funds by obtaining, without client authorization, cheques drawn on their accounts, which she then deposited to her own personal bank account by falsifying their signatures.
8. McCarthy obtained the cheques initially by submitting a cheque requisition to the MD head office, which was responsible for issuing funds from the client accounts.
9. With each requisition, McCarthy would instruct the head office to send the cheques directly to the St. John's branch by internal mail, not to the clients' homes. She justified these requests to head office by confirming that the clients preferred to pick up their cheques from the branch themselves.
10. Once the cheques arrived at the branch, McCarthy would take possession of them and tell the MD staff that she would deliver the cheques to her clients' homes herself, contrary to MD's internal procedure.
11. According to MD's internal procedure, clients wishing to pick up cheques that were delivered to the branch would have had to be identified by branch staff and then sign an internal cheque log before they could collect their cheques.
12. After taking possession of the cheques, McCarthy would also forge her clients' signature on the cheque log to falsely demonstrate that she was delivering the cheques to her clients in person.
13. In reality, McCarthy was forging her clients' signatures on the cheques in order to deposit them in her personal bank account.
14. During the material period, McCarthy therefore appropriated nearly \$775,000 by fraudulently cashing a little over 160 cheques payable to the order of her clients.

Failure to cooperate in the investigation

15. As part of IIROC's investigation, Enforcement Staff required McCarthy to provide documents and attend and answer questions.

Refusal to provide documents

16. On or around September 18, 2019, Enforcement Staff sent McCarthy, through her legal counsel, a request requiring her to submit the monthly statements for her personal bank account for the period of June 2006 to March 2019. McCarthy had until October 14, 2019 to submit the requested documents.
17. On or around October 10, 2019, Enforcement Staff sent McCarthy a registered letter to her home, reiterating the request to provide her bank statements. The letter was received by McCarthy on October 16, 2019.
18. On or around October 10, 2019, McCarthy's legal counsel informed Enforcement Staff by email that his client would not be providing the requested documents.

Failure to participate in an interview

First Request

19. On or around November 18, 2019, Enforcement Staff sent McCarthy a registered letter to inform her that she must attend an interview and answer the questions of an investigator. McCarthy had until November 26, 2019 to confirm to IIROC her intention to cooperate or not in the investigation. This letter was also emailed to her legal counsel.

20. On or around November 21, 2019, the letter sent by registered mail on November 18, 2019, was received by McCarthy's spouse at the family residence. McCarthy did not reply to this letter.
21. On or around November 27, 2019, having received no reply from McCarthy regarding the letter sent on November 18, 2019, Enforcement Staff sent a follow-up email to her legal counsel asking him to confirm whether his client intended to cooperate or not. McCarthy's legal counsel did not reply to this email.

Second Request

On or around December 16, 2019, Enforcement Staff sent McCarthy, through her legal counsel, a registered letter requiring her to attend an interview and answer the questions of an investigator.

22. On or around December 17, 2019, Enforcement Staff attempted to serve this letter by bailiff at the McCarthy residence. On visiting the McCarthy residence, the bailiff found that it appeared uninhabited.
23. On or around December 18, 2019, the letter sent by registered mail was received by McCarthy's legal counsel. McCarthy's legal counsel did not reply to this letter.
24. On or around February 5, 2020, following a request from Enforcement Staff, McCarthy's legal counsel refused to disclose his client's new home address.
25. To date, McCarthy has not replied to Enforcement Staff's interview requests.

DATED at Montréal (Québec), this 21 day of April, 2021.