Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA

Re: Lachman Hassaram Balani

Heard: December 10, 2019 in Toronto, Ontario
Decision: December 10, 2019
Reasons for Decision (Misconduct): February 10, 2020

REASONS FOR DECISION
(Misconduct)

Hearing Panel of the Central Regional Council:

W. A. Derry Millar	Chair
Patrick Galarneau	Industry Representative
Rob Christianson	Industry Representative

Appearances:

Francis Roy	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Lachman Balani	)	Respondent, not in attendance or represented by counsel

I. INTRODUCTION

The Allegations

1. The Staff of the Mutual Funds Dealers Association of Canada ("Staff") issued a Notice of Hearing dated June 19, 2019 ("Notice of Hearing") in respect of Lachman Hassaram Balani ("Respondent"), which alleged the following:

> **Allegation #1**: Commencing February 13, 2017, the Respondent failed to cooperate with an investigation by MFDA Staff into his conduct, contrary to section 22.1 of MFDA By-Law No. 1.
>
> **Allegation #2**: Between October 2010 and November 20, 2016, the Respondent prepared and submitted new account application forms and investment loan applications for at least two clients which the Respondent knew or ought to have known contained false, misleading or incorrect information, thereby failing to observe the high standards of ethics and conduct in the transaction of business and engaging in conduct unbecoming an Approved person, contrary to MFDA Rule 2.1.1.
>
> **Allegation #3**: Between October 2010 and November 20, 2016, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain, the risks, benefits, material assumptions, features and costs of a leveraged investment strategy that he recommended to at least two clients, thereby failing to ensure that the leveraged investment recommendations were suitable for the clients and in keeping with the clients' investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1 and MFDA Policy No. 2.
>
> **Allegation #4**: Between October 2010 and November 20, 2016, the Respondent failed to ensure that the leveraged investment recommendations he made to at least two clients were suitable for the clients and in keeping with the clients' investment objectives, having regard to the clients' relevant "Know Your Client" information and personal and financial circumstances, including but not limited to the clients' ability to afford the costs associated with the investment loans and withstand investment losses, contrary to MFDA Rules 2.2.1 and 2.1.1 and MFDA Policy No. 2.

2. The Notice of Hearing provided that the first appearance would take place by teleconference in the hearing room at the MFDA offices, 121 King St. W., Suite 1000, Toronto, Ontario on September 10, 2019 at 10 a.m. (Eastern).

Procedural History

3. On September 10, 2019, the first appearance in this matter was held by teleconference. The Respondent did not appear at the MFDA offices, 121 King St. W., Suite 1000, Toronto, Ontario, nor participate in the teleconference.

4. At the first appearance, the Chair of the Hearing Panel determined that the Respondent was properly served with the Notice of Hearing.[1] The Respondent was personally served on August 11, 2019 with a copy of the Notice of Hearing, a letter dated August 7, 2019 concerning the proceeding that was commenced against him by the MFDA, a copy of the MFDA's Rules and Procedures ("Rules"); and a copy of the MFDA's Guide to the Disciplinary Hearing Process.

5. Rule 8.1 provides that "a Respondent shall serve on every other party and file a Reply within 20 days of the effective date of service of the Notice of Hearing." The effective date of service of the Notice of Hearing was August 11, 2019. The Respondent did not file a Reply to the Notice of Hearing within 20 days or at all.

6. The Chair of the Hearing Panel ordered that the hearing on the merits would take place on November 13, 2019. By a news release issued by the MFDA on September 10, 2019, the MFDA gave notice that the hearing on the merits would take place on November 13, 2019.

7. On September 16, 2019, Tarun Rajput delivered a letter from Staff dated September 11, 2019, to the Respondent's home advising him that "the Chair ordered that the hearing will take place on November 13, 2019 commencing at 10 AM, in the hearing room located at the offices of the MFDA, 121 King St. W., Suite 1000, Toronto, Ontario."[2] On September 16, 2019, Staff sent a copy of the September 11, 2019 letter to the Respondent by registered mail ("registered mail package"). The registered mail package was refused by the "recipient" on September 27, 2019, as set out in the "detailed printout of the tracking results from Canada Post showing the refusal by the recipient for the registered mail."[3]

[1] Affidavit of Service of Abhishek Anand sworn August 19, 2019, Exhibit 2.
[2] Affidavit of Service of Tarun Rajput sworn September 19, 2019, Exhibit 3.
[3] Affidavit of Service of Terri Ash sworn October 3, 2019, Exhibit 4.

8. On November 13, 2019, a teleconference hearing was held with the Hearing Panel and Staff, and at the request of Staff because the MFDA counsel was ill, the hearing on the merits was adjourned to December 10, 2019. The Chair of the Hearing Panel had been advised on November 12, 2019, that MFDA Staff sought an adjournment which would be spoken to on November 13, 2019 at a teleconference hearing. The registration logs at the MFDA office indicated that no one with the Respondent's name attended at the MFDA offices, 121 King Street West, Suite 1000, Toronto, Ontario on November 13, 2019, for the hearing.

9. The MFDA issued two news releases dated November 12, 2019, and November 14, 2019, with respect to the adjournment of the hearing on the merits to December 10, 2019. The news releases are posted on the MFDA website which is accessible to any member of the public. The MFDA advised the Respondent by letter dated November 15, 2019, that the hearing on the merits had been adjourned to December 10, 2019 at 10:00 a.m. (Eastern) at the MFDA offices 121 King Street West, Suite 1000. The letter also enclosed the two news releases dated November 12, 2019, and November 14, 2019.

10. On December 10, 2019, the Respondent did not attend the hearing in person or by counsel.

Service of the Notice of Hearing and the Effect of Failing to Respond to the Proceeding

11. Section 20.4 of MFDA By-law No. 1 states:

> If a Member or person summoned before a hearing of a Hearing Panel by way of Notice of Hearing fails to:
>
> (a) serve a reply in accordance with s. 20.2; or
>
> (b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a reply may have been served;
>
> the Hearing Panel may proceed with the hearing of the matter on the date and at the time and place set out in the Notice of Hearing (or any subsequent date, at any time and place), without further notice to and in the absence of the Member or person, and the Hearing Panel may accept the facts alleged by the Corporation in the Notice of Hearing as having been proven by the Corporation and may impose any of the penalties described in Section 24.1.

12. Rule 7.3 of the MFDA Rules of Procedure ("Rules") provides:

> 1. Where a Respondent fails to attend a hearing on the date, time and location specified in the Notice of Hearing, the Hearing Panel may:
>
> a. proceed with the hearing without further notice to and in the absence of the Respondent; and
>
> b. accept the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing as proven and impose any of the penalties and costs described in sections 24.1 and 24.2 respectively of MFDA By-law No. 1.

13. Rule 8.4 of the Rules provides:

> 1. Where a Respondent fails to serve and file a Reply in accordance with the requirements of Rules 8.1 and 8.2, the Hearing Panel may do any one or more of the following:
>
> a. proceed with the hearing without further notice to and in the absence of the Respondent;
>
> b. accept the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing as proven and impose any of the penalties and costs described in sections 24.1 and 24.2 respectively of MFDA By-law No. 1;
>
> c. order that the Respondent pay costs, at any stage of the proceeding, regardless of the outcome of the proceeding and in addition to any other penalties and costs imposed on the Respondent, in an amount which reflects the extent to which, in the Hearing Panel's discretion, the hearing will be or has been unnecessarily prolonged or complicated by the failure of the Respondent to deliver a proper Reply;
>
> d. prohibit, restrict, or place terms on the right of the Respondent to call witnesses or present evidence at the hearing.

14. As noted above, the Respondent did not file a Reply and did not attend the first appearance hearing on September 10, 2019, the hearing on the merits on November 13, 2019 at which time the hearing on the merits was adjourned to December 10, 2019, or the hearing on the merits on December 10, 2019.

15. The Hearing Panel proceeded with the hearing on the merits in the absence of the Respondent as provided in the Rules. The Hearing Panel accepted "the facts alleged by the Corporation in the Notice of Hearing as having been proven by the Corporation" as provided in section 20.4 of Bylaw No. 1 and accepted "the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing as proven" as provided in Rules 7.3 and 8.4.

16. In addition to the deemed acceptance of the facts and conclusions in the Notice of Hearing as provided for in Rules 7.3 and 8.4, Staff filed at the hearing the Affidavit of Daniela Capozzolo sworn December 9, 2019[4] which sets out the facts in support of the Notice of Hearing. The Affidavit of Daniela Capozzolo confirms the facts set out in the Notice of Hearing.

17. At the hearing, we made a finding of misconduct with respect to the allegations in the Notice of Hearing and signed the Order dated December 10, 2019. These are our reasons for our findings of misconduct.

II. FACTS

18. The facts are set out in the Notice of Hearing, a copy of which is attached as Schedule "1".

19. As set out in Schedule "1", from April 8, 2010 to November 20, 2016, the Respondent was registered in Ontario as a mutual fund salesperson (now known as dealing representative) with Shah Financial Planning Inc. ("Shah"), a Member of the MFDA. Prior to that, the Respondent was registered as a mutual fund salesperson with the following Members of the MFDA:

a) Queen Financial Group Inc., from November 2009 to March 2010; and
b) Global Maxfin Investments Inc., from October 2003 to October 2004.

20. Shah terminated the Respondent on November 20, 2016. The Respondent is not currently registered in the securities industry in any capacity. At all material times, the Respondent conducted business in Brampton, Ontario.

[4] Exhibit 5A,Volume 1, and Exhibit 5B, Volume 2.

III. FINDINGS OF MISCONDUCT

Introduction

21. We agree with the submissions of MFDA Staff with respect to the allegations against the Respondent.

Relevant Rules and Provisions

22. The relevant rules and provisions with respect to misconduct are:

a) MFDA Rule 2.1.1 (*standard of conduct*);
b) MFDA Rule 2.2.1 ("*Know-Your-Client*" and *suitability*); and
c) Section 22.1 of MFDA By-Law No. 1 (*MFDA Staff investigations*).
d) MFDA Policy No. 2.

Allegation #1 – The Respondent's Failure to Cooperate

23. Pursuant to s. 21 of MFDA By-Law No. 1, the MFDA has a duty to conduct examinations and investigations into the conduct, business or affairs of an Approved Person as it considers necessary or desirable in connection with any matter relating to compliance by the Approved Person with:

a) the By-laws, Rules or Policies of the MFDA;
b) any securities legislation applicable to such person; or
c) the by-laws rules, regulations and policies of any self-regulatory organization.

24. The corresponding obligation of Approved Persons to cooperate with MFDA examinations and investigations is codified in s. 22.1 of MFDA By-law No. 1, which states:

> For the purpose of any examination or investigation pursuant to this By-law, a Member, Approved Person of a Member or other person under the jurisdiction of the Corporation pursuant to the By-laws or the Rules may be required by the Corporation:

> (a) to submit a report in writing with regard to any matter involved in such investigation;
>
> (b) to produce for inspection and provide copies of the books, records and accounts of such person relevant to the matters being investigated;
>
> (c) to attend and give information respecting any such matters;
>
> and the Member or person shall be obliged to submit such report, to permit inspection, provide such copies and to attend, accordingly. Any Member or person subject to an investigation conducted pursuant to this By-law may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the persons conducting the investigation…

25. We agree with Staff that these obligations are consistent with the duties owed by all members of self-governing professions. As stated by the Court in *Artinian* v. *College of Physicians and Surgeons of Ontario*,[5] "Fundamentally, every professional has an obligation to co-operate with his self-governing body."

26. There is no question that an Approved Person must attend an interview with Staff or provide statements or documents to Staff when requested to do so.[6] We agree that to hold otherwise would hinder the MFDA's ability to investigate the conduct of registrants in the mutual fund industry and prevent the MFDA from investigating and fulfilling its regulatory mandate to protect the public.

27. The Respondent did not respond to Staff's requests for responses to letters it sent on February 13, 2017, March 14, 2017 and March 29, 2017, as well as a voice message left for the Respondent by Staff on March 6, 2017, despite Staff's repeated demands that he do so.

[5] (1990), 73 O.R. (2d) 704 (Div. Ct.).
[6] See: *Parkinson (Re)*, [2005] MFDA Ontario Regional Council, File No. 200501, Hearing Panel Decision dated April 29, 2005; *Headley (Re)*, [2006] MFDA Ontario Regional Council, File No. 200509, Hearing Panel Decision dated February 21, 2006; and *Tahir (Re)*, [2015] Hearing Panel of the Central Regional Council, MFDA File No. 201444, Hearing Panel Decision dated August 4, 2015.

28. The Respondent had an obligation to cooperate with the MFDA in carrying out its investigation of the complaints against him. The Respondent failed to cooperate. In fact, he failed to respond to the MFDA at all. The Respondent breached section 22.1 of MFDA By-law No. 1.

Allegation #2 – Incorrect Loan Applications and NAAFs

29. MFDA Rule 2.1.1 prescribes the standard of conduct applicable to Members and Approved Persons. It states that each Member and Approved Person shall:

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

30. We agree with Staff that completing account forms and loan applications with false or misleading information is behaviour which contravenes the standard of conduct set out in MFDA Rule 2.1.1.[7]

31. The evidence supports the finding that the Respondent knowingly prepared and submitted loan applications and NAAFs/KYCs for clients MS and DS which the Respondent knew or ought to have known contained incorrect information. He then tried to hide this fact from the clients by sending them what he claimed were the completed documents he submitted to give effect to their respective Leveraged Investment Strategies but were not.

32. We agree with Staff that this conduct breached the standard of conduct prescribed in MFDA Rule 2.1.1.

[7] See: *McAuley (Re)*, [2011] MFDA Central Regional Council, File No. 201018, Hearing Panel Decision dated April 11, 2011; *Sarker (Re)*, [2014] MFDA Central Regional Council, File No. 201327, Hearing Panel Decision dated February 28, 2014; *Tahir*, *supra.*

(a) Overview of the Suitability Obligation

33. MFDA Rule 2.2.1 codified the "Know-Your-Client" and "suitability" obligations recognized by securities regulators. These obligations are "an essential component of the consumer protection scheme of [securities legislation] and a basic obligation of a registrant, and a course of conduct by a registrant involving a failure to comply with them is an extremely serious matter."[8]

34. In *Lamoureux*,[9] the Alberta Securities Commission described the relationship between the "Know-Your-Client" and "suitability" obligations as follows:

> The "know your client" and "suitability" obligations are conceptually distinct but, in practice, they are so closely connected and interwoven that the terms are sometimes used interchangeably.
>
> The "know your client" obligation is the obligation to learn about the client, their personal financial situation, financial sophistication and investment experience, investment objectives and risk tolerance.
>
> The "suitability" obligation is the obligation of a registrant to determine whether an investment is appropriate for a particular client. Assessment of suitability requires both that the registrant understands the investment product and knows enough about the client to assess whether the product and client are a match.

(b) The Three Stage Analysis of Suitability

35. Securities authorities have adopted a three-stage analysis of suitability, according to which a registrant is obliged to:

a) use due diligence to know the product and know the client;
b) apply sound professional judgment in establishing the suitability of the product for the client; and

[8] See: *Daubney (Re)*, 2008 LNONOSC 338 (OSC); *DeVuono (Re)*, [2012] MFDA Pacific Regional Council, File No. 201102, Hearing Panel Decision on Misconduct dated November 22, 2012; *DeVuono (Re)*, 2013 LNCMFDA 34 at paras. 2-3; *Tahir*, *supra*.
[9] *Lamoureux (Re)*, [2001] A.S.C.D. No. 613 (ASC); See also: *Daubney*, *supra* at paras. 15-17; *DeVuono Misconduct Decision*, *supra* at para. 53.

c) disclose the negative as well as the positive aspects of the proposed investment.[10]

36. In *Lamoureux*, the hearing panel explained the three stage process that an advisor must follow to fulfill their suitability obligations, stating that:[11]

> Knowing the product involves carefully reviewing and understanding the attributes, including associated risks, of the securities that they are considering recommending to their clients. Knowing the client was discussed above.
>
> Only after the "due diligence" of the first stage is completed, can the registrant move to the second stage in which they fulfil their obligation to determine whether specific trades or investments, solicited or unsolicited, are suitable for the client.
>
> Suitability determinations…will always be fact specific. A proper assessment of suitability will generally require consideration of such factors as a client's income, net worth, risk tolerance, liquid assets and investment objectives, as well as an understanding of particular investment products. The registrant must apply sound professional judgement to the information elicited from "know your client" inquiries. If, based on the due diligence and professional assessment the registrant reasonably concludes that an investment in a particular security in a particular amount would be suitable for a particular client, it is then appropriate for the registrant to recommend the investment to that client.
>
> By recommending a securities transaction to a client, a registrant enters the third stage of the process… At this stage, when making the client aware of a potential investment, the registrant is obligated to make the client aware of the negative material factors involved in the transaction, as well as positive factors.
>
> The disclosure of material negative factors in the third stage of the process is intended to assist the client in making an informed investment decision.

37. We agree with Staff that the Ontario Securities Commission and previous MFDA hearing panels have characterized a particular investment approach such as a leveraging strategy as part of the "product" and determined that the evaluation of the suitability of such an approach for a

[10] See: *Daubney*, *supra* at para. 17; *DeVuono Misconduct Decision*, *supra* at para. 52.
[11] *Lamoureux*, *supra* at pp. 16-17.

particular client is part of the registrant's suitability obligation.[12] In particular, the registrant must assess whether the client would have the ability to meet debt obligations and tolerate losses in the event of a market downturn. Furthermore, because leveraging can magnify losses, the registrant is required to ensure that the client understands the risks of borrowing to invest.

38. We agree with Staff that the Respondent's conduct, as described in the Notice of Hearing, involves a failure to fulfill one or more stages of the suitability obligation.

Allegation #3 –Failure to Explain the Risks and Benefits of Leveraging

39. We agree with Staff that if the registrant reasonably determines that an investment product or strategy would be appropriate, the registrant may recommend the investment to the client. At this stage, the registrant has an obligation to couple the recommendation with disclosure of all salient material relevant to product or strategy including negative factors involved in the transaction, prior to executing a trade on the client's behalf. A balanced presentation must be offered to the client in the interest of complete disclosure and relative objectivity.[13]

40. Where a registrant recommends a leveraging strategy, the registrant is obliged to properly explain all of the material risks of the leveraging strategy and the leveraging recommendation should not be supported by inaccurate or misleading representations.[14]

41. It is particularly important that the registrant ensure the client understands the risks of borrowing monies to invest because leveraging can magnify the losses suffered by the client.[15]

42. Clients are entitled to receive an objective assessment of risk. A risk assessment cannot be based upon a registrant's optimism in the venture. An assessment of risk must be based on a realistic and objective assessment of the circumstances of the investment and of the investor.[16]

43. In addition, a registrant's assessment and description of the risks of leveraging must take into the account the possibility of a market downturn and the impact such a downturn would have

[12] *Daubney*, *supra* at paras. 24-25; *DeVuono Misconduct Decision*, *supra* at para. 57.
[13] *Lamoureux*, *supra* at p. 19; *DeVuono Misconduct Decision*, *supra*.
[14] *Mytting (Re)*, 2012 IIROC 45 at pp. 4, 17-18.
[15] *Daubney*, *supra* at paras 24-25.
[16] *Bilinski (Re)*, 2002 LNBCSC 1 at para 346.

on the leverage strategy. It ought to be reasonably foreseeable to any investment advisor that there might, at almost any time, be a market downturn that might prove to be of minor or major proportion and would impact, potentially substantially, the performance of a mutual fund.[17]

44. While disclosure of the risks of leveraging or a leveraging strategy is an important step in the suitability process, it cannot cure or relieve a registrant from regulatory liability for making an unsuitable recommendation. If an improper recommendation is made, the registrant has breached his obligations to the client even if he discloses material negative factors about the product or strategy and regardless of whether the client claims to understand and accept the risks involved in the investment.[18]

45. We agree with Staff that the Respondent failed to fully and adequately explain to client MS and DS, among other things, that:

a) the mutual funds purchased with their investment loans could decline in value, such that the clients may not be able to sell the mutual funds and use the proceeds to pay down the entirety of the principal amount of their investment loans;
b) the mutual funds purchased with the investment loans may not pay the clients with sufficient monthly proceeds to sustain or justify the Strategy;
c) the risk that an increase in interest rates may affect the clients' ability to sustain the strategy given that clients MS and DS did not have additional or sufficient other income to cover the additional costs of servicing their investment loans; and
d) clients MS and DS could sustain losses if they were required to sell their mutual funds earlier than anticipated and could as a result incur DSC fees upon redemption.

46. In *Sarker*,[19] an MFDA hearing panel considered contraventions relating to a similar leveraged investment strategy as the one at issue in the present case. In that case, the hearing panel

[17] *Pretty*, [2014] MFDA Atlantic Regional Council, File No. 201128, Hearing Panel Decision on Misconduct dated January 30, 2014 at para. 103.
[18] See: *Lamoureux*, *supra* at p. 19; *DeVuono Misconduct Decision*, *supra* at para. 70; *Pretty*, *supra* at para. 101.
[19] *Sarker (Re)*, *supra* at para. 15.

found that the Respondent failed to fulfill his suitability and know-your-client obligations pursuant to MFDA Rules 2.2.1 and 2.1.1 when he failed to fully and adequately explain to clients that the leveraged investment strategy was subject to the risks, benefits, material assumptions, features and costs described above.

47. We agree with Staff that the facts establish that the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risks, benefits, material assumptions, features and costs of the Leveraged Investment Strategy to the clients, thereby failing to ensure that the Leverage Investment Strategy was suitable for the clients and in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1, and MFDA Policy No. 2.

48. We agree with Staff that this conduct breached MFDA Rules 2.2.1 and 2.1.1, and MFDA Policy No. 2.

Allegation #4 – Unsuitable Leveraging Recommendations

49. We agree with Staff that special considerations apply where a registrant recommends the use of leveraging. In circumstances where a registrant is evaluating the suitability of a leveraging strategy for a client, the registrant is required to consider whether the client has sufficient income or unencumbered liquid assets to be able to, among other things:

a) withstand a market downturn without jeopardizing their financial security; and

b) satisfy all loan obligations (both principal-and-interest) associated with the strategy;

regardless of the performance of the investments purchased as a result of the strategy and without relying on anticipated income from the investments.[20]

50. MFDA Rule 2.2.1 requires Members and Approved Persons to use due diligence to ensure that each order accepted or recommendation made for any account of a client is suitable for the client and in keeping with the client's investment objectives. MFDA Rules do not; however,

[20] See: *Daubney*, *supra* at paras. 24-25, 199-205; *Pretty*, *supra* at para. 105.

prescribe specific criteria or 'bright line' standards which each transaction must satisfy in order to be suitable and appropriate for the client. Rather, each Member is expected to develop its own criteria and standards to determine whether transactions should be permitted.

51. At the material times, Shah's policies and procedures stated that leveraging was only suitable for those clients that met the following criteria, among other factors:

a) an investment knowledge of that is not "none", "limited", "low" or "poor";
b) an investment time horizon of not less than "6 to 9 years" or "long term" time horizon;
c) a minimum "medium" risk tolerance;
d) the clients' "debt payments should not exceed 35% of the clients' gross income" ("debt to income ratio"); and
e) the borrowed monies did not exceed 30 percent of clients' net worth ("loan to net worth ratio").

52. In the present case, the Leveraged Investment Strategy recommended by the Respondent for the accounts of clients MS and DS was not suitable in keeping with the clients actual risk tolerance, investment knowledge, debt to income ratio, and loan to net worth ratio.

53. We agree with Staff that the Respondent failed to ensure that the leveraged investment recommendations he made for the clients was suitable for them and in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1 and MFDA Policy No 2.

54. We agree with Staff that this conduct breached MFDA Rules 2.2.1 and 2.1.1, and MFDA Policy No. 2.

IV. CONCLUSION

55. As a result of our findings at the Hearing on the Merits that Allegations 1, 2, 3, and 4 had been established by Staff and our finding of misconduct with respect to Allegation 1, 2, 3, and 4, we signed the Order dated December 10, 2019.

56. As set out in the Order dated December 10, 2019, the penalty hearing will be scheduled now that these Reasons for Decision have been issued.

DATED this 10th day of February, 2020.

"W. A. Derry Millar"
W. A. Derry Millar
Chair

"Patrick Galarneau"
Patrick Galarneau
Industry Representative

"Rob Christianson"
Rob Christianson
Industry Representative

Schedule "1"

Notice of Hearing

File No. 201942

Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA

Re: Lachman Hassaram Balani

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council ("Hearing Panel") of the Mutual Fund Dealers Association of Canada ("MFDA") in the hearing room at the MFDA offices, 121 King Street West, Suite 1000, Toronto, Ontario on September 10, 2019 at 10:00 a.m. (Eastern), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Lachman Hassaram Balani ("Respondent").

DATED this 19th day of June, 2019.

"Michelle Pong"
Michelle Pong
Director, Regional Councils

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Telephone: 416-945-5134
Email: corporatesecretary@mfda.ca

NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Commencing February 13, 2017, the Respondent failed to cooperate with an investigation by MFDA Staff into his conduct, contrary to section 22.1 of MFDA By-Law No. 1.

Allegation #2: Between October 2010 and November 20, 2016, the Respondent prepared and submitted new account application forms and investment loan applications for at least two clients which the Respondent knew or ought to have known contained false, misleading or incorrect information, thereby failing to observe the high standards of ethics and conduct in the transaction of business and engaging in conduct unbecoming an Approved person, contrary to MFDA Rule 2.1.1.

Allegation #3: Between October 2010 and November 20, 2016, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain, the risks, benefits, material assumptions, features and costs of a leveraged investment strategy that he recommended to at least two clients, thereby failing to ensure that the leveraged investment recommendations were suitable for the clients and in keeping with the clients' investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1 and MFDA Policy No. 2.

Allegation #4: Between October 2010 and November 20, 2016, the Respondent failed to ensure that the leveraged investment recommendations he made to at least two clients were suitable for the clients and in keeping with the clients' investment objectives, having regard to the clients' relevant "Know Your Client" information and personal and financial circumstances, including but not limited to the clients' ability to afford the costs associated with the investment loans and withstand investment losses, contrary to MFDA Rules 2.2.1 and 2.1.1 and MFDA Policy No. 2.

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by the MFDA at the hearing:

Registration History

1. From April 8, 2010 to November 20, 2016, the Respondent was registered in Ontario as a mutual fund salesperson (now known as dealing representative) with Shah Financial Planning Inc. ("Shah"), a Member of the MFDA.

2. Prior to that, the Respondent was registered as a mutual fund salesperson with the following Members of the MFDA:

a) Queen Financial Group Inc., from November 2009 to March 2010; and
b) Global Maxfin Investments Inc., from October 2003 to October 2004.

3. Shah terminated the Respondent on November 20, 2016. The Respondent is not currently registered in the securities industry in any capacity.

4. At all material times, the Respondent conducted business in Brampton, Ontario.

Allegation #1: The Respondent's Failure to Cooperate

5. In or about November 2016, Shah received two client complaints concerning the Respondent.

6. The clients alleged, among other things, that the Respondent had made unsuitable leveraging recommendations, failed to discuss the material risks and features associated with borrowing to invest and failed to explain how the investments they made with borrowed funds operated.

7. Upon being informed by Shah of the complaints, Staff commenced an investigation of the Respondent's activities. Among other things, Staff sent letters to the Respondent on February 13, 2017, March 14, 2017 and March 29, 2017 requesting that the Respondent contact Staff to schedule an interview concerning the subject matter of the complaints.

8. The Respondent has failed or refused to reply to Staff's letters and has never contacted Staff to schedule an interview. As a result of the Respondent's failure to cooperate with Staff's investigation, Staff has been unable to determine the full nature and scope of the Respondent's activities and, in particular, whether other clients may have been affected by his actions.

9. By engaging in the conduct described above, the Respondent failed to cooperate with MFDA Staff during the course of an investigation into his conduct, contrary to section 22.1 of MFDA By-Law No. 1.

Allegations #2 to #4: The Leveraged Investment Strategy

Overview of the Leveraged Investment Strategy

10. Between October 2010 and November 20, 2016, the Respondent recommended and facilitated the implementation of a leveraged investment strategy in the accounts of at least two clients (the "Leveraged Investment Strategy"). As part of the Leveraged Investment Strategy, the clients were directed by the Respondent to obtain investment loans and use the proceeds of the investment loans to purchase return of capital ("ROC") mutual funds for their accounts.[21] The ROC mutual funds recommended by the Respondent were subject to deferred sales charges ("DSC").

11. The Leveraged Investment Strategy was based, in part, on the premise that the investments would generate sufficient proceeds each month to at least equal the clients' costs of servicing their investment loans and, if additional proceeds were realized, the clients could use the extra amounts to supplement their lifestyle. The Leveraged Investment Strategy was also purportedly structured to eliminate or minimize the tax consequences the clients would face when they made monthly withdrawals from their registered accounts to service their investment loans as part of the strategy.

12. In the course of recommending the Leveraged Investment Strategy to the two clients, the Respondent made one or more of the following representations:

a) the Leveraged Investment Strategy would pay for itself such that the clients would not have to incur any out-of-pocket expenses in order to sustain the strategy;

[21] "Return of capital" mutual funds are structured to pay a set monthly amount of proceeds to an investor which may include a return of the capital originally invested by the investor. In the event the value of a ROC mutual fund declines due to deteriorating market conditions, poor investment performance or other factors such that the amount of the promised monthly proceeds exceeds the increase in the value of the fund, there is a risk that the fund will be required to reduce, suspend or cancel the monthly proceeds paid to investors.

b) the ROC mutual funds they purchased could be relied upon to pay monthly or annual proceeds to the clients, and such proceeds were guaranteed and would not be reduced or stopped;

c) the proceeds paid by the ROC mutual funds to investors would be sufficient to pay (or greater than) the costs associated with the clients' investment loans, such that the Leveraged Investment Strategy would pay for itself;

d) to the extent that the proceeds paid by the ROC mutual funds to investors exceeded the clients' costs of servicing their investment loans, the Leverage Investment Strategy would provide a source of income for the clients to pay living expenses or enjoy an increased lifestyle, to purchase additional investments, or to purchase other products or services from the Respondent, such as life insurance policies;

e) the ROC mutual funds would not decrease in value and would continue to grow in value over time; and

f) the Leveraged Investment Strategy was low risk.

Implementation of the Leveraging Investment Strategy

13. The two clients relied upon the Respondent's recommendations to open accounts at Shah, and to apply for and obtain investment loans totaling $193,214 from B2B Bank, as set out below:

Client	Date of Loan	Loan Amount
MS	October 27, 2010	$50,000
DS	October 27, 2010 November 15, 2011 May 22, 2013	$50,000 $45,000 $48,214

14. Relying upon the Respondent's recommendations, the two clients used the proceeds of their investment loans to purchase a ROC mutual fund offered by Marquest Asset Management ("Marquest"), the Marquest Monthly Pay Fund[22], as set out below:

Client	Amount	ROC Mutual Fund Purchased	Purchase Date
MS	$50,000	Marquest Monthly Pay Fund	October 27, 2010
DS	$50,000	Marquest Monthly Pay Fund	October 27, 2010

[22] At the time of purchase, the Marquest Monthly Pay Fund was known as the Matrix Monthly Pay Fund, which was issued by Matrix Asset Management Inc. ("Matrix"). On September 17, 2013, Marquest and Matrix concluded an asset purchase agreement wherein Matrix sold to Marquest the portfolio management and related contracts of the Matrix Group of Mutual Funds, including the Matrix Monthly Pay Fund.

Client	Amount	ROC Mutual Fund Purchased	Purchase Date
	$45,000 $48,214	Marquest Monthly Pay Fund Marquest Monthly Pay Fund	November 15, 2011 May 22, 2013

15. The Marquest Monthly Pay Fund was sold to the clients on a DSC basis.

16. All distributions paid out by the Marquest Monthly Pay Fund to the two clients were paid to the clients' bank accounts and used to service the costs of their investment loans. To the extent the two clients had any monies left over after paying their investment loan costs, the Respondent represented to the clients that they could use such monies to fund their lifestyle.

Performance of the Leveraged Investment Strategy

17. Every year between 2010 and 2016, the distributions paid out by the Marquest Monthly Pay Fund remained constant at $0.90 per unit, however the proportion of the distributions consisting of a return of the clients' capital increased from 86% of the distributions in 2010 to 100% of the distributions commencing in 2014. The value of the Marquest Monthly Pay Fund held by the clients declined from a unit value of $7.41 in 2010 to $2.41 in 2016.

18. Because of the decline in value of the Marquest Monthly Pay Fund held by the clients, the total value of the clients' investments declined below the outstanding principal amount of their investment loans. Consequently, the clients were not in a position to sell their ROC mutual funds and use the sale proceeds to pay down their investment loans without incurring a shortfall for which they would be responsible.

19. In July 2016, B2B Bank sent a letter to all individuals who had obtained investment loans from the bank to purchase the Marquest Monthly Pay Fund, including clients MS and DS, informing them of their investments' losses and suggested the following to minimize further erosion of their investments:

- Switch out the entirety of their investments held in the Marquest Monthly Pay Fund to non-ROC mutual funds;
- To the extent they were not reinvesting the distributions paid out by the Marquest Monthly Pay Fund, to immediately commence reinvesting such distributions in the leveraged investment accounts into eligible non-ROC mutual funds;

- Pledge, or increase, additional monies or investments into their leveraged accounts as collateral in an amount sufficient to ensure that investments held in the accounts (in non-ROC mutual funds) becomes equal to, or greater than, 100% of the clients' outstanding loan balance; or
- Pay down their investment loans in full.

20. On October 13, 2016, B2B Bank sent a second letter to individuals who had obtained investment loans from the bank to purchase the Marquest Monthly Pay Fund, including clients MS and DS. In this letter, B2B Bank stated that:

(a) it would instruct Marquest Asset Management Inc. to suspend return of capital cash distributions made directly to the individuals' bank accounts from the Marquest Monthly Pay Fund on October 14, 2016, including clients MS and DS; and

(b) it would instead direct all future distributions made by the Marquest Monthly Pay Fund to a B2B Bank investment account to be held as eligible collateral against the clients' investment loans ("B2B's Instructions").

21. Commencing October 14, 2016, and as a result of B2B's Instructions, the monthly proceeds received by clients MS and DS went down to $0 and the clients had insufficient funds to cover the costs of servicing their investment loans. The clients were eventually forced to incur out-of-pocket expenses, which they had difficulty affording or were unable to reasonably afford, in order to sustain the Leveraged Investment Strategy.

22. On November 7, 2016, clients MS and DS both filed complaints with Shah with respect to the suitability of the Leveraged Investment Strategy. Shah conducted a review and investigation of the complaints and provided compensation to both clients.

Allegation #2: False, misleading and incorrect account opening and loan documents

23. The Respondent completed the documents required to implement the Leveraged Investment Strategy in the accounts of clients MS and DS, including the Shah New Account Application Forms ("NAAFs") and the B2B Bank investment loan applications, without discussing the contents of the documents with the clients. The Respondent then had the clients sign the fully completed documents without reviewing the contents of the documents with the

clients adequately or at all. Consequently, the clients' documented Know-Your-Client information did not accurately reflect the clients' actual personal and financial circumstances in material respects.

24. The Respondent completed the clients' documents so that the information recorded on the documents complied or substantially complied with Shah's minimum requirements permitting the use of leveraging. Shah's policies and procedures stated that leveraging was only suitable for those clients that met the following criteria, among other factors:

a) an investment knowledge of that is not "none", "limited", "low" or "poor";
b) an investment time horizon of not less than "6 to 9 years" or "long term" time horizon;
c) a minimum "medium" risk tolerance;
d) the clients' "debt payments should not exceed 35% of the clients' gross income" ("debt to income ratio"); and
e) the borrowed monies did not exceed 30 percent of clients' net worth ("loan to net worth ratio").[23]

25. The Respondent recorded the investment knowledge of clients MS and DS as "moderate" when he knew or ought to have known that the clients' actual investment knowledge was limited to nil. The clients were new clients to Shah and neither one of them had any prior experience investing in mutual funds or any other types of securities.

26. The Respondent recorded the investment risk tolerance of clients MS and DS as "aggressive" when he knew or ought to have known that the clients' actual investment risk tolerance was "low".

27. The Respondent recorded false income and asset information for clients MS and DS on their B2B Bank investment loan applications, which was contrary to the income, assets and liabilities information that had been provided to him by clients MS and DS. In both instances, the Respondent had clients MS and DS sign completed investment loan applications containing the

[23] At times between 2006 and 2008, WFG's policies and procedures stated that borrowed monies were not to exceed 50 percent of clients' net worth.

clients' accurate income, assets and liabilities information, then altered some or all of such information on the investment loan applications he submitted to B2B Bank. In both instances, the Respondent falsified the clients' income, assets and/or liabilities information in order to ensure that the clients' information complied with Shah's minimum requirements permitting the use of leveraging, including debt to income and loan to net worth ratios.

28. In the case of client MS, had the Respondent submitted accurate investment loan applications to B2B Bank for her, client MS's debt to income ratio would have been 47%, and her loan to net worth ratio would have been 375%, both in excess of Shah's leveraging guidelines. Instead, the investment loan applications submitted by the Respondent to B2B Bank for client MS recorded the client's debt to income ratio as 29%, and her loan to net worth ratio as 25%.

29. In the case of client DS, had the Respondent submitted accurate investment loan applications to B2B Bank for him, client DS's debt to income ratio would have been 78%, and his loan to net worth ratio would have been 29%. Instead, the investment loan applications to B2B Bank for client DS recorded the client's debt to income ratio as 58%, and his loan to net worth ratio as 26%.

30. By engaging in the conduct described above, the Respondent failed to observe high standards of ethics and conduct in the transaction of business and engaged in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1

Allegation #3: Failure to Explain the Leveraged Investment Strategy

31. At all material times, clients MS and DS relied on the Respondent's recommendations with respect to the Leveraged Investment Strategy and his explanations, to the extent he provided any, of the risks, benefits, material assumptions, features and costs of the Leveraged Investment Strategy.

32. The Respondent misrepresented, failed to fully and adequately explain, or omitted to explain, the following risks, benefits, material assumptions, features and costs, among others, of the Leveraged Investment Strategy to the clients:

a) the risk that the mutual funds purchased with the investment loans may decline in value, such that the clients may not be able to sell the mutual funds and use the proceeds to pay down the entirety of the principal amount of their investment loans;[24]

b) the risk that the mutual funds purchased with the investment loans may not pay the clients sufficient monthly proceeds to sustain or justify the strategy;

c) the risk that an increase in interest rates may affect the clients' ability to sustain the strategy if the clients did not have additional sources of income or savings to cover the additional costs of servicing their investment loans;

d) the risk that the clients may not be able to sustain the strategy if they exhausted the savings in their registered accounts (which the Respondent directed them to use to pay the costs of servicing their investments loans); and

e) the risk that the clients may sustain losses if they were required to sell their mutual funds earlier than anticipated and incurred DSC fees upon redemption.

33. The Respondent obtained Leverage Disclosure Documents signed by the clients prior to implementing Leveraged Investment Strategy in their accounts but failed to adequately review and explain the contents of the documents to the clients to ensure that they understood and accepted the risks of using borrowed monies to invest.

34. By engaging in the conduct described above, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risks, benefits, material assumptions, features and costs of the Leveraged Investment Strategy to clients MS and DS, thereby failing to ensure that the Leveraged Investment Strategy was suitable for the clients and in keeping with the clients' investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1 and MFDA Policy No. 2.

[24] The Respondent led the clients to believe that the mutual funds purchased with the investment loans could be counted on to almost double by the end of the loans' terms.

Allegation #4: Unsuitable Leveraging Recommendations

35. The Leveraged Investment Strategy recommended and implemented by the Respondent in the accounts of clients MS and DS was not suitable for the clients and in keeping with their investment objectives, in that, among other reasons:

a) the clients' investment knowledge was limited to nil;
b) the clients' investment risk tolerance was low;
c) the clients were not able to service the investment loans using their own personal income. The clients had mortgages and other expenses that consumed a significant portion of their income. As a consequence, neither one of the clients had sufficient personal income to cover the costs of servicing their investment loans in the event that the proceeds paid by the ROC mutual funds to investors were reduced, suspended or cancelled; and
d) the clients did not have sufficient financial resources to withstand investment losses if the Leverage Investment Strategy did not perform as the Respondent represented it would.

36. By engaging in the conduct described above, the Respondent failed to ensure that the leveraged investment recommendations he made to clients MS and DS were suitable for the clients and in keeping with the clients' investment objectives, having regard to the clients' relevant "Know Your Client" information and financial circumstances, including but not limited to the clients' ability to afford the costs associated with the investment loans and withstand investment losses, contrary to MFDA Rules 2.2.1 and 2.1.1 and MFDA Policy No. 2.

NOTICE is further given that the Respondent shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

NOTICE is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, the Respondent:

- has failed to carry out any agreement with the MFDA;

- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;
- has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;
- has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- is otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose 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;

c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
d) revocation of the authority of such person to conduct securities related business;
e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time; and
f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel.

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondent pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondent must **serve** a **Reply** on Enforcement Counsel and **file** a **Reply** with the Office of the Corporate Secretary within twenty days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: Francis Roy
Email: froy@mfda.ca

A **Reply** shall be **filed** by:

a) providing four copies of the **Reply** to the Office of the Corporate Secretary by personal delivery, mail or courier to:

The Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: Office of the Corporate Secretary; or

b) transmitting one electronic copy of the **Reply** to the Office of the Corporate Secretary by e-mail at corporatesecretary@mfda.ca.

A **Reply** may either:

(i) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondent, and the conclusions drawn by the Respondent based on the alleged facts) any or all of the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing; or

(ii) admit the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the MFDA in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondent fails:

a) to **serve** and **file** a **Reply;** or

b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven and may impose any of the penalties described in the By-laws.

END.

DM 721877