

**Decision and Reasons (Misconduct)**

**File No. 201934**



**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: Derek Chapman**

Heard: October 28, 2020 by electronic hearing in Toronto, Ontario  
Decision and Reasons (Misconduct): December 2, 2020

**DECISION AND REASONS  
(Misconduct)**

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC  
Brigitte J. Geisler  
Melody Potter

Chair  
Industry Representative  
Industry Representative

Appearances:

Alan Melamud	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Derek Chapman	)	Respondent, not in attendance or represented by
	)	counsel
	)	

## Background

1. This is a Hearing under Sections 20 and 24 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”). The hearing was held as an electronic hearing on October 28, 2020. Derek Chapman (the “Respondent”) was not in attendance or represented by counsel at the hearing.
2. The Respondent was registered as a mutual fund salesperson (now known as a dealing representative) in Ontario from August 2, 2002 to November 1, 2016 and in Alberta from July 25 to November 1, 2016, with Quadrus Investment Services Ltd. (“Quadrus” or the “Member”), a Member of the MFDA.
3. On November 1, 2016, the Member terminated the Respondent’s registration as a result of the events that are the subject of this proceeding. At all material times, the Respondent carried on business in the St. Catharines, Ontario area. The Respondent is not currently registered in the securities industry in any capacity.
4. A Notice of Hearing involving the Respondent was commenced by the MFDA on April 25, 2019. A first appearance by teleconference was set for June 11, 2019. The Respondent appeared at the June 11 hearing in person and by counsel. A hearing date on the merits was set for December 17 and 18, 2019. This was later rescheduled to take place solely on December 18, 2019.

## Allegations

5. There were two allegations made against the Respondent in the Notice of Hearing. They were:

**Allegation #1:** Between December 2014 and October 5, 2016, the Respondent engaged in personal financial dealing with a client by borrowing \$600,000 from the client, thereby giving rise to an actual or potential conflict of interest, which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member’s policies and procedures and MFDA Rules 2.1.4, 2.1.1, 2.5.1, and 1.1.2.

**Allegation #2:** Beginning on or around February 13, 2018, the Respondent failed to cooperate with an investigation into his conduct by MFDA Staff, contrary to section 22.1 of MFDA By-law No. 1 and MFDA Rule 2.1.1.

## **An Electronic Hearing**

6. The hearing did not proceed on December 18, 2019. The Respondent's lawyer was no longer representing him, having withdrawn a few days before the hearing. A request for an adjournment by the Respondent to obtain new counsel was granted to April 6, 2020. At that hearing, with the uncertainty of the pandemic and because the Respondent would not consent to a videoconference hearing, the matter was adjourned with a hearing on the merits to take place on July 14, 2020. This was later adjourned to September 30 and October 1, 2020.

7. At a scheduled conference call on August 24, 2020, the Hearing Panel adjourned the scheduled September 30 and October 1, 2020 to October 28-29, 2020. The MFDA requested that the hearing be an electronic hearing. The Respondent objected. He had just engaged a new lawyer and planned to call three witnesses. The Panel was not prepared to order an electronic hearing at that time over the Respondent's objection.

8. At a conference call on September 30, 2020, MFDA counsel renewed the request for an electronic hearing under MFDA Rule 5.1. The pandemic had taken a turn for the worse and in-person hearings were not likely to take place for a considerable period of time. The Respondent, however, stated that he preferred an in-person hearing.

9. At the September 30, 2020 hearing, counsel for the MFDA filed a decision by the Ontario Securities Commission, dated September 11, 2020, *Re First Global Data Ltd.* (2020 ONSEC 23), in which the Commission ordered an electronic trial to proceed in a complex case involving issues of credibility, where the trial was likely to last for about 40 days and there would be about 25 witnesses. In contrast, the present hearing, *Re Chapman*, would be a relatively simple hearing. The MFDA evidence would likely be presented solely by a sworn affidavit by the MFDA investigator and, at most, the Respondent proposed to call three witnesses.

10. Under MFDA Rule 5.1 (1) "A Panel may hold an electronic hearing to determine: (a) any procedural matter; or (b) any other matter, unless a party objects and the Panel is satisfied that holding an electronic hearing is likely to cause significant prejudice to the party." We concluded that an electronic hearing would not likely cause significant prejudice to the Respondent and gave the following oral decision at the September 30, 2020 conference call:

“We have considered the issue of whether to proceed by a video conference hearing... We agree with counsel for the MFDA that we should proceed with a video conference on October 28<sup>th</sup> and 29<sup>th</sup> under MFDA Rule 5.1(1)(b). In light of the Ontario Securities Commission’s *Re First Global Data Ltd.* decision, the Panel is not satisfied that holding an electronic hearing is likely to cause significant prejudice to the Respondent.”

11. The Ontario Securities Commission Panel had stated at paragraph 22 of *First Global Data Ltd.*:

“The objective set out in the Rules, of conducting Commission proceedings expeditiously and cost-effectively, is consistent with the Commission’s statutory mandate to protect investors from unfair, improper or fraudulent practices, and to foster fair and efficient capital markets and confidence in capital markets. A delayed merits hearing would, by definition, be less expeditious. Delayed hearings are likely to be more expensive, because of the additional time required to refresh memories of those involved. Finally, delayed hearings exacerbate the problem of witnesses’ fading memories.”

This is equally applicable to MFDA hearings. Note that MFDA Rule 1.3.1 also encourages expeditious and cost-effective determinations, stating: “These Rules shall be liberally construed to secure the most expeditious and cost-effective determination of every proceeding on its merits consistent with the requirements of fairness.”

12. The issue of electronic hearing against the wishes of a Respondent also arose in the recent IIROC decision of October 5, 2020, *Re Bardya Ziaian 2020 IIROC 34*, where the Panel ordered an electronic hearing against the wishes of the Respondent and stated at paragraph 47:

“In assessing this particular issue, the Panel was helped by *Re First Global Data Ltd.*, the most recent decision of the OSC on holding a merits hearing via videoconference. In a similar motion, a similar argument was made, reliant upon some of the same authorities, regarding the need for an in-person hearing for complex matters of some length. The First Global matter involves 25 witnesses and 40 days of hearing. This matter involves nine witnesses and nine days of hearing.”

The IIROC decision has been appealed to the Ontario Securities Commission.

### **The Present Hearing**

13. The electronic hearing was to take place on October 28, 2020. Just before the hearing was to commence on October 28, 2020, an email from the Respondent was forwarded to the panelists

stating that the Respondent had hired a new lawyer and the Respondent was not going to appear at the hearing:

“I am very sorry I cannot attend this video hearing. I think this is an extremely unfair way for this to proceed which has always been my position. My new lawyer whom I have only been working with for a few days wrote a letter to the MFDA on Monday requesting an adjournment as he is not up to speed with all the material involved but was denied. I would like to ask the panel again to consider an adjournment. It has also just been brought to my attention that there is a 30 day window to appeal the September 30<sup>th</sup> decision which expires this Friday if an adjournment is not granted we will be considering this option. I hope that we will be able to figure something out and move forward on a basis that is fair. Thank you for your consideration.”

14. Counsel for the MFDA informed the Panel that he had been contacted by the recently-hired lawyer for the Respondent on Monday, two days before the hearing, who requested an adjournment of the hearing on the merits. Staff advised the lawyer the next day that the MFDA could not consent to an adjournment, but told the lawyer that he could appear at the hearing and make arguments on behalf of the Respondent for an adjournment. Respondent’s counsel replied, according to MFDA counsel. “that his retainer had concluded and he will not take any further steps.”

15. We agreed with MFDA counsel’s submissions that we should go ahead with the case, as planned. See *R. v Allen* [2001] I.D.A.C. No. 8; and *Re Frank* 2015 LNCMFDA 75. In *Re Frank*, the Panel stated (at para. 21) in a case where, as in the present case, there was ample opportunity to obtain counsel and a history of delay: “Furthermore, we believed that the denial was necessary in the interest of the justice system. Unnecessary delays inconvenience counsel, witness[es] and others who expect our legal system to operate in a fair and efficient manner. Justice delayed unduly, which becomes more expensive because of the delays, brings the system into disrepute.”

16. We determined, however, that we would only hear the alleged misconduct portion of the case in order to give the Respondent the opportunity to appear and present evidence, with or without counsel, at the penalty stage, if we found misconduct. This would have been the normal procedure in a contested case such as this.

## **Borrowing from a client**

17. The Respondent does not dispute that he borrowed \$600,000 from a client, LM, as alleged in Allegation #1. In the Respondent's Reply dated July, 26, 2019, Derek Chapman states: "**Allegation #1**: The Respondent, Derek Chapman, does not deny this allegation. However, and to be clear, client LM was reimbursed in full by Derek Chapman even before the involvement of the Mutual Fund Dealers Association." This admission is confirmed in a letter from the Respondent's then counsel to the MFDA counsel on November 14, 2019: "On behalf of Mr. Chapman, my client accepts paragraphs 1-16 of the Notice of Hearing as proven."

18. The Respondent also admitted that he knew that borrowing from a client was wrong. He told his branch manager during a compliance interview in June 2016 that he had not borrowed money from a client and knew it was improper to do so.

19. Paragraphs 5 to 16 of the Notice of Hearing reads as follows:

"Para. 5. At all material times, the Member's policies and procedures prohibited its Approved Persons from borrowing monies from clients.

Para. 6. In 2009, the Respondent became the Approved Person responsible for servicing the investment accounts of client LM. The Respondent also acted as client LM's life insurance agent.

Para. 7. In or around October 2014, the Respondent requested a \$600,000 loan from client LM. The Respondent advised client LM that the purpose of the loan was to purchase investment properties to resell at higher prices in the Turks and Caicos Islands ("TCI").

Para. 8. Client LM agreed to loan the Respondent \$600,000 as the Respondent requested. Client LM borrowed the money from his own whole life insurance policy (which the Respondent had sold to client LM) and advanced the proceeds to the Respondent. Client LM was required to pay interest on the monies borrowed from his insurance policy at a rate of 6% per year. The Respondent agreed to pay interest to client LM at a rate of 12% per year.

Para. 9. On December 30, 2014, the Respondent signed a promissory note acknowledging that he had borrowed \$600,000 from client LM and would pay client LM an annual interest rate of 12%. The principal of the loan was due to be repaid on August 15, 2015. The Respondent did not provide any collateral for the loan.

Para. 10. The Respondent did not disclose to the Member that he borrowed monies from client LM or that he was involved in the purchase and resale of investment properties in TCI.

Para. 11. The loan between the Respondent and client LM gave rise to a conflict of interest that the Respondent failed to disclose to the Member or address by the exercise of responsible business judgment influenced only by the best interests of the client.

Para. 12. Contrary to the terms of the promissory note, the Respondent failed to make all of the interest payments that were due on the loan and failed to repay the principal amount borrowed by August 15, 2015.

Para. 13. In March 2016, client LM surrendered the whole life insurance policy for its remaining cash value.

Para. 14. On August 10, 2016, client LM sent a complaint letter to London Life Insurance Company (“London Life”), the company that had issued the whole life insurance policy to client LM, advising of the loan and that the Respondent’s default had caused client LM to surrender the policy.

Para. 15. On August 26, 2016, client LM commenced a civil proceeding in the Ontario Superior Court of Justice against the Respondent and others seeking repayment of the promissory note with interest.

Para. 16. On or around October 5, 2016, the Respondent repaid client LM the full amount that he had borrowed with interest.”

20. Borrowing money from a client has consistently been held by other panels to be a conflict of interest under Rules 2.1.1 and 2.1.4. See, for example, *Re Piper* 2018 LNCMFDA 31, para. 12; *Re Latour* 2016 LNCMFDA 180 at para. 13; *Re Brauns* 2013 LNCMFDA 68 at paras. 58 and 83; and *Re Gaunt* 2013 LNCMFDA 63 at para. 47.

21. MFDA Member Regulation Notice 0047, dated October 3, 2005, takes a hard line on borrowing from clients, stating under the heading “Borrowing from Clients”: “Borrowing from a client by either the Member or Approved Person raises a significant and direct conflict that in almost all cases will be impossible to resolve in favour of the client. While such activity is not explicitly prohibited under MFDA Rules, MFDA staff are unaware of any circumstances where Members or Approved Persons proposing to enter into any such arrangements would be able to demonstrate that the conflict has been properly dealt with.”

22. Moreover, the Respondent failed to comply with the Member's policy against borrowing from a client. See *Re Franco* 2011 LNCMFDA 55 at para. 38 and *Re Frank* 2015 LNCMFDA 75 at para. 55-58.

23. The Respondent clearly contravened Allegation #1.

### **Failure to Cooperate**

24. The Respondent, through his then lawyer, denied that he contravened Allegation #2. He states in his Reply dated July 26, 2019: "**Allegation #2**: With respect, the Respondent Derek Chapman denies this allegation. It is the position of the Respondent that the investigators of the Mutual Fund Dealers Association attempted to investigate other financial dealings of the Respondent involving other individuals when there was no compelling reason to do so."

25. The Respondent admits to paragraph 7 of the Notice of Hearing that states that he initially "advised client LM that the purpose of the loan was to purchase investment properties to resell at higher prices in the Turks and Caicos Islands ("TCI")."

26. The Respondent and his then lawyer engaged in extensive correspondence with the Member and the MFDA investigators relating to the reason for borrowing the money from LM. These are thoroughly documented in the sworn affidavit of the MFDA Investigator, Sheila Daneshvaziri, dated October 6, 2020.

27. The affidavit and its supporting documents show that over the course of the investigation the Respondent gave differing explanations for the loan.

28. On August 10, 2016, Client LM complained to the Member that the \$600,000 he had loaned to the Respondent had not been repaid. This was followed later that month by LM's civil proceeding for repayment of the promissory note plus interest.

29. On August 22, 2016, the Member filed a report on the MFDA's Member Event Tracking System (METS), stating that a client of the Respondent had made a complaint that the Respondent had failed to repay a loan made to the client. There was a further METS report after the civil proceeding was launched.

30. The Investigator's affidavit observes in paragraph 6: "Following receipt of the METS Reports, the MFDA commenced an investigation into the business practices of the Respondent. As part of the investigation into the Respondent's borrowing, the MFDA made inquiries into the reasons for the loan from his client, [LM]." The paragraph goes on to conclude: "As detailed below, the Respondent gave differing and contradictory answers to the Member and Staff."

31. Paragraph 19 of the Notice of Hearing accurately sets out the following information supplied by the Respondent or his lawyer in response to inquiries about his conduct:

a) On August 25, 2016, during a telephone interview by London Life and the Member, the Respondent advised that the purpose of the loan was to buy 'estate sale' investment properties to resell in TCI. The Respondent further advised that he had used the borrowed funds to purchase such a property, but claimed that he had been unable to sell the property.

b) In an email to the Member dated September 15, 2016, the Respondent advised that although he owned vacation property in TCI, he had never taken a loan from any individual to buy such property, and the property that he owned in TCI had been purchased through a corporation.

c) In a letter from the Respondent's lawyer to Staff dated November 22, 2016, the Respondent stated that the \$600,000 had been borrowed and used to "pursue a real estate opportunity".

d) In a letter from the Respondent's lawyer to Staff dated December 23, 2016, the Respondent stated that none of the proceeds of the loan from client LM had been used to purchase real estate in TCI, and that a corporation had been established to acquire vacation property in TCI.

e) On December 6, 2017, during an interview with Staff, the Respondent stated that while he had bought-out two partners with whom he co-owned a condominium property in TCI, he had not used the money borrowed from client LM to finance the purchase of the condominium property or buy-out the interests of his partners in that property. Instead, the Respondent claimed that the \$600,000 had been used to repay a shareholder loan and other personal expenses.

f) On January 22, 2018, during a second interview with Staff, the Respondent stated that the shareholder loan that he had repaid using the proceeds of the loan from client LM, had financed the purchase of real estate in TCI. The Respondent also stated that neither he, nor any corporations that he owned, held property in the TCI. The Respondent's property interests in TCI were held in the names of the Respondent's spouse or corporations that she controlled."

32. The major shift in the Respondent's story was from saying that he used the borrowed funds for investment in properties in TCI to using the funds to repay a shareholder loan.

33. It is understandable that with this major shift in why the funds were borrowed, the MFDA wanted to obtain documentary evidence of what actually took place. There were also issues of the involvement of a corporation called Comptoy as well as the involvement of the Respondent's wife in these outside activities.

34. The Respondent denied any connection to any corporate entities involved in the purchase of real estate in TCI, stating that his wife was connected to Comptoy which had been established in 2009. His wife would not provide any information to the MFDA. In an exchange of correspondence between Staff and the Respondent's counsel, dated February 2, 2017 and February 17, 2017, the Respondent's counsel advised that: (1) Comptoy was registered in TCI; (2) the Respondent was not a shareholder or corporate officer of Comptoy; (3) the Respondent did not know the business of Comptoy; and (4) the Respondent could not provide a list of all current and former shareholders of Comptoy.

35. There was considerable follow-up correspondence. The Notice of Hearing accurately states the following in paragraphs 20 to 22, as shown by the Investigator's sworn affidavit:

“Paragraph 20. Commencing February 13, 2018, as part of Staff's investigation of the Respondent's conduct, Staff sent correspondence to the Respondent's counsel requesting documents and seeking additional information in connection with the Respondent's \$600,000 loan from client LM and further information and corroboration concerning how the proceeds of that loan were used.

Paragraph 21. The Respondent refused to provide additional documents or answer the questions communicated in that correspondence.

Paragraph 22. By failing or refusing to produce documents or provide information requested by Staff in furtherance of its investigation of his conduct, the Respondent has undermined Staff's ability to complete its investigation of his activities, including the extent of his real estate business activities in TCI.”

### **MFDA's Duty to Conduct Examinations and Investigations**

36. Pursuant to section 21 of MFDA By-law No. 1, the MFDA has a duty to conduct such examinations and investigations as the MFDA deems necessary relating to matters of compliance

with the MFDA's by-law, rules, or policies. Note that the section that follows says "shall make," not "may make." Section 21 of MFDA By-law No. 1 states:

"The Corporation [i.e., the MFDA] shall make such examinations of and investigations into the conduct, business or affairs of any Member, Approved Person of a Member or any other person under the jurisdiction of the Corporation pursuant to the By-laws and/or the Rules as it considers necessary or desirable in connection with any matter relating to compliance by such person with ... the By-laws, Rules or Policies of the Corporation..."

37. Under section 22.1 of MFDA By-law No. 1, an Approved Person has a corresponding obligation to provide the documents and answer the questions posed by Staff. Section 22.1 states:

"For the purpose of any examination or investigation pursuant to this By-law, a Member, Approved Person of a Member... may be required by the Corporation: (a) to submit a report in writing with regard to any matter involved in any 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; and (c) to attend and give information respecting any such matters..."

38. As stated by the Ontario Divisional Court in *Artinian v. College of Physicians and Surgeons of Ontario* (1990), 73 O.R. (2d) 704 at para. 9: "Fundamentally, every professional has an obligation to co-operate with his self-governing body."

39. MFDA hearing panels have repeatedly held that an Approved Person's failure to cooperate with an MFDA investigation undermines the MFDA's regulatory obligations under section 21 of MFDA By-law No. 1. The MFDA requires cooperation from Members and approved Persons to investigate the conduct of registrants in the mutual fund industry and fulfil its regulatory mandate of investor protection.

40. As stated by the Hearing Panel in *Re Vitch* 2011 LNCMFDA 63 at paras. 55:

"There can be no exceptions to that obligation. The fulfillment of that obligation is particularly important to the MFDA because it has no statutory power to search and seize or to compel the production of documents. Without the cooperation of Members and Approved Persons, the MFDA's ability to investigate and discipline its Members and Approved Persons is gravely fettered. "

41. See also *Re Armani* 2017 LNCMFDA 185, para.9, where the Panel states:

“There are, of course, many cases that make it clear that an Approved Person must provide Staff with information and documentation when requested to do so. 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 fulfilling its regulatory mandate to protect the public.”

### **Respondent’s Objections to Supplying Information**

42. Throughout the investigation, the Respondent and his lawyer objected to answering questions relating to a number of other individuals. In the Respondent’s Reply in July 2019, as set out earlier, it is stated: “It is the position of the Respondent that the investigators of the Mutual Fund Dealers Association attempted to investigate other financial dealings of the Respondent involving other individuals when there was no compelling reason to do so.”

43. The MFDA had a number of specific questions following two oral interviews (on December 6, 2017 and January 22, 2018) that the MFDA conducted with the Respondent, who appeared with his lawyer. The Respondent’s position was that he borrowed money from LM and paid it back and the involvement of other persons in how the money was obtained to pay back LM is irrelevant. The Investigator wrote to the Respondent’s lawyer as follows on May 3, 2018, after the Respondent commented on some follow-up questions:

“I am writing to respond to your letter dated March 16, 2018 wherein you indicated your view that the majority of the questions in MFDA Staff’s letter to you dated February 13, 2018 have no relevancy to the issue at hand. We do not agree with that assessment...The questions asked in our letter of February 13, 2018 are relevant to our investigation. Information being sought relates to Mr. Chapman’s borrowing of money from [LM], and this includes matters related to and circumstances surrounding the loan, the repayment of the loan, and an assessment of Mr. Chapman’s conduct while he was an Approved Person of Quadrus Investment Services Ltd.”

44. A number of specific questions were then asked by the Investigator related to such questions as the Respondent’s possible business partners, documents related to the buyout of the Respondent’s business partners in 2015, and “real estate properties purchased and/or sold between January 1, 2009 to December 31, 2015 and which were owned, in whole or in part, and directly or indirectly, by Mr. Chapman.”

45. The Respondent's lawyer replied on June 20, 2018: "having regard to your new request for information, I remain of the view that you have not demonstrated relevance. It appears to me that your office...continues to engage in a *fishing expedition* which is not germane or relevant to the issues at hand."

46. The Respondent had told the Investigator at his oral interview that he had obtained the funds to pay off LM by mortgaging the family home that was in the name of the Respondent's wife. The Respondent had transferred the property to his wife in 2016. Enforcement counsel wrote to the Respondent on 21 August 2019, asking a series of questions about EI, the mortgagee, such as whether he was a mutual fund and/or insurance client of Mr. Chapman. There was no reply and the Investigator followed up on 1 October 2019 with another request for information on EI, stating that Staff had "received information from a whistleblower that Mr. Chapman obtained the \$900,000 from [EI] by having him borrow against a Manulife insurance policy."

47. The Respondent's lawyer replied on October 23, stating that EI "was never a mutual fund client of the Respondent," but questioned the relevance of whether he was an insurance client. Enforcement counsel replied the next day, stating: "[E]ven if [EI] was not a mutual fund client, whether he was the insurance client of Mr. Chapman is relevant to the MFDA proceeding. In his Reply [in July 2019], Mr. Chapman relies on the repayment of [LM] as mitigating his admitted contravention of the MFDA's rules. If Mr. Chapman made that repayment by borrowing funds from an insurance client, while not a violation of the MFDA's rules, the fact is relevant to the issue of the appropriate sanction."

48. On 13 February 2020, Enforcement Counsel wrote to the Respondent saying that his former lawyer "did not deliver any additional disclosure "and went on to state: "Staff has repeatedly inquired with [your former lawyer] about whether Mr. [EI] is or was an insurance client of yours...Please discuss answering Staff's questions with your new lawyer once one is retained."

49. No further disclosure was provided by the Respondent and no new lawyer was engaged by the Respondent except a lawyer to seek an adjournment of the October 28, 2020 hearing.

## Conclusion

50. The Respondent wished to limit the scope of the investigation to the original loan of \$600,000 and the fact that it was repaid. The MFDA wanted to inquire into details of that transaction and surrounding activities, such as where the money came from to repay the loan, what properties were purchased by the Respondent in the West Indies, what the corporation, Comptoy, that was apparently in his wife's name, was used for, what Comptoy's corporate banking records showed, who the shareholders were that the Respondent bought out, what the nature of the shareholder's loan was that the Respondent paid back, what role the Respondent's wife played in the various outside activities engaged in by the Respondent, and other questions.

51. The Respondent did not assist the MFDA in understanding what was going on. Moreover, some of the other key players such as LM and the Respondent's wife and the shareholders of Comptoy, were not willing to assist the MFDA.

52. The standard of proof to show that the Respondent contravened the allegations is a simple balance of probabilities. See *Re Brauns* 2013 LNCMFDA 68 at para. 15 and the Supreme Court of Canada case of *F.H. v. McDougall*, [2008] 3 S.C.R. 41 at para. 15. We accept the facts set out in the Investigator's sworn affidavit. They have been proven beyond a balance of probabilities.

53. In the light of the Respondent's changing story and his possible involvement in other improper activities, we believe that the MFDA was entitled to broaden the investigation into other matters apart from the simple fact that there was an improper loan of \$600,000 and that it was repaid.

54. One additional issue arose fairly late in the day, when the MFDA had cause to suspect that EI, the person who gave the Respondent \$900,000 for a mortgage on the home of the Respondent's wife, had obtained the funds through an insurance policy that the Respondent may have sold him. The Respondent told the MFDA that EI was not a mutual fund client, but would not say whether he was an insurance client. We are left wondering what the true story is on this and many other matters.

55. We therefore find that the Respondent contravened Allegation 2 that “Beginning on or around February 13, 2018, the Respondent failed to cooperate with an investigation into his conduct by MFDA Staff, contrary to section 22.1 of MFDA By-law No. 1 and MFDA Rule 2.1.1.”

56. The MFDA Secretary is requested to arrange for a hearing on the penalty to be imposed for the contravention of the two allegations of misconduct.

**DATED** this 2<sup>nd</sup> day of December, 2020.

“Martin L. Friedland”

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Martin L. Friedland, CC, QC  
Chair

“Brigitte J. Geisler”

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Brigitte J. Geisler  
Industry Representative

“Melody Potter”

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Melody Potter  
Industry Representative

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