



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: King Kwong Clement Chow

Heard: May 3, 2021 by electronic hearing in Edmonton, Alberta
Decision (Misconduct): May 3, 2021
Reasons for Decision (Misconduct): July 14, 2021

**REASONS FOR DECISION
(Misconduct)**

Hearing Panel of the Prairie Regional Council:

Sherri Walsh
Adam Dudley
Greg Wiebe

Chair
Industry Representative
Industry Representative

Appearances:

Sakeb Nazim)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
King Kwong Clement Chow)	Respondent
)	
)	

I. INTRODUCTION

1. By Notice of Hearing dated October 7, 2020 (“the Notice of Hearing”) the Mutual Fund Dealers Association of Canada (“the MFDA”) issued a notice regarding King Kwong Clement Chow (“the Respondent”) which set out the following allegation:

Allegation #1: Commencing in November 2018, 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.

2. The facts of this matter are straight forward. In the Fall of 2018, the MFDA commenced an investigation into the Respondent’s conduct regarding Leverage Risk Acknowledgement Letters he required certain clients to sign.

3. As part of its investigation, MFDA Staff (“Staff”) sent the Respondent a number of letters requesting information from him and asking him to contact them.

4. Although the Respondent was aware that Staff wanted to speak with him, he chose not to respond to them until he was served with the Notice of Hearing at which time he sent a letter to Enforcement Counsel citing a number of reasons for why he had not previously responded.

5. As discussed in this decision below, while the reasons the Respondent gave to Enforcement Counsel for why he did not respond to Staff’s requests for information prior to receiving the Notice of Hearing provide an explanation for his conduct, they do not excuse it.

6. As an Approved Person, the Respondent had an obligation to respond to Staff’s requests for information which were sent to him as part of its investigation. This was true even though he was no longer registered as an Approved Person at the time Staff carried out its investigation.

7. The allegation which was set out in the Notice of Hearing above, was considered by a Hearing Panel of the MFDA Prairie Regional Council (“the Panel”) at a Hearing on the Merits (“the Hearing”), which was held on May 3, 2021. At the conclusion of the Hearing, having considered the evidence and the submissions made on behalf of both parties, the Panel determined that the allegation had been proven and issued an oral decision to that effect with written reasons to follow.

8. These are the Panel’s reasons for its decision.

Procedural History

9. The Notice of Hearing was delivered to the Respondent by registered mail on November 6, 2020.

10. On November 20, 2020, Staff received a letter from the Respondent dated November 10, 2020, which was sent by both registered and regular mail (“the Response”).

11. The Response was addressed to Enforcement Counsel and set out the Respondent’s reasons for not having responded to what he referred to as Counsel’s “colleagues” letters. Those reasons may be summarized as follows:

- a) his feelings were hurt because he was being accused of not helping protect his clients’ leveraging investments, when, in his view, the Member’s Compliance Department had approved all of his leveraging recommendations;
- b) he withdrew his mutual fund license relationship with the Member because he felt the Member’s Compliance personnel had mistreated him and his clients with respect to issues relating to switching from deferred service charges; and
- c) his dealings with the Member caused him to lose his confidence and trust with the mutual fund system.

12. The Respondent concluded the Response by saying that he felt the truth of the investigation would only come out in front of “the judge of the civil court”.

13. The first appearance in this matter was held on December 8, 2020. Despite having been properly served with notice of the appearance, the Respondent did not attend the appearance and a date was scheduled for the Hearing on the Merits to take place on March 17, 2021.

14. Before the conclusion of the first appearance, in response to the Panel’s question about ensuring that the Respondent would receive notice of the date which had been set for the Hearing, Staff advised that it would be issuing a press release immediately following the appearance which they could also send to the Respondent, by registered mail. The Panel asked to be provided with confirmation that the Respondent had received notice of the Hearing date.

15. When the Hearing on the Merits commenced on March 17, 2021, and the Respondent was not in attendance, the Panel asked Enforcement Counsel whether he expected the Respondent to attend, to which Enforcement Counsel said that he did not. Enforcement Counsel further advised that, as would be clear from the Affidavit he would be filing in evidence, the Respondent had

changed his residence since the first appearance. Staff did not know the Respondent's current address and therefore was unable to serve him with notice of the date of the Hearing.

16. Counsel then submitted that the Panel could proceed with the Hearing without further notice to and in the absence of the Respondent on the basis of the Respondent's failure to serve a proper Reply to the Notice of Hearing and his failure to attend the Hearing, in accordance with MFDA *Rules of Procedure* 8.4(1) and 7.3.

17. Those rules say:

8.4 Effect of Failure to Deliver a Proper Reply

- 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.

7.3 Failure to Attend Hearing

- 1) Where a Respondent fails to attend the hearing on the date and at the 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.

18. Enforcement Counsel also submitted that, in any event, the Response that the Respondent provided, i.e. his letter of November 10, 2020, indicated that he did not intend to be part of the proceedings.

19. Enforcement Counsel then entered the Affidavit of Patricia West, sworn March 8, 2021 into evidence, pointing out to the Panel that MFDA *Rule of Procedure* 1.6 specifically permits hearsay statements to be admitted as evidence and MFDA *Rule of Procedure* 13.4 permits evidence to be adduced by way of sworn statements unless an adverse party reasonably requires the attendance of the witness at the hearing for cross-examination.

20. Those Rules say:

1.6 Admissibility of Evidence

- 1) Subject to sub-Rule (3), a Panel may admit as evidence any testimony, document or other thing, including hearsay, which it considers to be relevant to the matters before it and is not bound by the technical or legal rules of evidence.
- 2) A Panel may admit a copy of any document or other thing as evidence if it is satisfied that the copy is authentic.
- 3) Nothing is admissible in evidence which would be inadmissible by reason of a statute or a legal privilege.

13.4 Evidence by Sworn Statement

- 1) The Hearing Panel may allow the evidence of a witness or proof of a particular fact or document to be given by sworn statement unless an adverse party reasonably requires the attendance of the witness at the hearing for cross-examination.

21. Enforcement Counsel further submitted that MFDA Hearing Panels and other regulatory bodies routinely consider and rely on both hearsay and affidavit evidence in making findings of fact, citing: *Tonnies*, MFDA File No. 200503, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated June 27, 2005 at paragraphs 10-12.

22. Enforcement Counsel asked Ms. West to be affirmed in order to have her adopt the contents of her Affidavit sworn March 8, 2021 along with all of the exhibits thereto and then invited the Panel to ask her any questions it had.

23. All of the Panel's questions related to the evidence in her Affidavit regarding the attempts which Staff had made to serve the Respondent with notice of the date of the Hearing, once it became aware on January 18, 2021, as the evidence indicated, that the Respondent had moved.

24. Among other things, Ms. West's Affidavit indicated that she was advised that Staff had sent a letter dated January 14, 2021, containing the date of the Hearing and the first appearance Order, to the Respondent by courier service but that both the correspondence and the Order could not be delivered to the Respondent as he had changed his residence.

25. Following the Panel's questions, Enforcement Counsel submitted that, relying on the evidence of Ms. West and the written submissions of Staff, which had been previously provided to the Panel, the Panel should find that the allegation against the Respondent had been proven.

26. The Panel took a brief adjournment and upon its return, expressed concern that based on the evidence, once it learned that he had moved, Staff had not taken any steps to try to locate or contact the Respondent, to provide him with notice of the Hearing date, as the Panel had requested, at the December 8, 2020, appearance.

27. Enforcement Counsel submitted to the Panel that the MFDA had done everything it could to contact the Respondent and that the Respondent went to the effort of changing his address without notifying the MFDA in order to avoid any further contact with the MFDA.

28. Notwithstanding this submission, and Staff's submissions that in accordance with *Rules of Procedure* 8.4 and 7.3, cited above, the Panel was entitled to proceed with the Hearing in the absence of the Respondent, the Panel was concerned that Staff had not made sufficient efforts to serve the Respondent with notice of the date of the Hearing. For example, it noted that no effort was made to use the phone number that was identified in the evidence as having been successfully used to contact the Respondent in the past.

29. Further, the Panel did not find there was any evidence upon which an assumption could be made that Respondent had moved in order to evade or avoid Staff, as Enforcement Counsel submitted.

30. The Panel expressed concern about procedural fairness and the fact that more steps could have been taken to give the Respondent notice of the date of the Hearing without it being onerous on Staff to do so.

31. Accordingly, the Panel ordered that more efforts be made to give the Respondent notice of the Hearing and the matter was adjourned to May 3, 2021 to allow Staff to provide the Respondent with that notice.

32. On May 3, 2021, at the beginning of the resumption of the Hearing, Staff entered another Affidavit of Patricia West - sworn April 27, 2021, into evidence. This Affidavit was identical to her previous Affidavit sworn March 8, 2021, except that it contained additional information regarding Staff's successful efforts to locate and serve the Respondent with notice of the Hearing date.

33. In her Affidavit, Ms. West confirmed that on March 17, 2021, after the Panel adjourned the Hearing to allow Staff to make further efforts to locate the Respondent, she contacted the Chief Compliance Officer of WFG Securities Inc. ("the Member") with whom the Respondent had previously been employed and obtained the Respondent's personal email address and new home address.

34. Ms. West also testified that she learned from the Member that the Respondent continues to work for the Member or a related company: World Financial Group Insurance Agencies of Canada, as an insurance agent.

35. Ms. West's Affidavit indicated that Enforcement Counsel served a letter dated April 1, 2021 on the Respondent by process server and registered mail which advised, among other things, that the Hearing of this matter on its merits was set to take place on May 3, 2021, and that prior to the commencement of the Hearing the Respondent was entitled to receive copies of the documents and witness statements that the MFDA would be relying on at the Hearing. Enforcement Counsel provided his contact information to allow the Respondent to make arrangements for delivery of any such materials.

36. According to Ms. West's Affidavit, the Respondent called Enforcement Counsel the day after he received Enforcement Counsel's letter, acknowledging receipt of the letter and asking to be given: copies of the MFDA witness list and will say statements; Patricia West's Affidavit; and

the MFDA's written submissions on misconduct - all of which Enforcement Counsel provided to the Respondent by email on April 23, 2021.

37. When the Hearing resumed on May 3, 2021, the Respondent was in attendance.

38. The Panel acknowledges the respectful participation of both Staff and the Respondent during the Hearing.

II. ISSUE

39. The only issue for the Panel to determine in this matter was whether the Respondent had committed the misconduct alleged in the Notice of Hearing:

Allegation #1: Commencing in November 2018, 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.

III. EVIDENCE

Evidence Tendered by Staff

40. The evidence tendered by Staff in support of the allegation against the Respondent consisted primarily of the Affidavit of Patricia West sworn April 27, 2021, as supplemented by her testimony at the Hearing.

41. Ms. West is employed as a Senior Investigator with the MFDA and was the individual who conducted an investigation of the Respondent's conduct, in his capacity as an Approved Person who was subject to the jurisdiction of the MFDA.

42. Her evidence was as follows.

Registration History

43. Between June 2012 and December 2017 and between March 2018 and June 2018 the Respondent was registered in Alberta as a dealing representative with the Member, WFG Securities Inc. ("WFG"), a member of the MFDA. The Respondent ceased his employment with the Member on June 28, 2018 and at the time of the proceedings was not registered in the securities industry in any capacity.

44. In October 2018 Staff commenced an investigation into the suitability of the Respondent's leveraging recommendations to clients and his use, without obtaining the Member's written approval, of leverage risk acknowledgement letters ("Leverage Risk Acknowledgment Letters"), wherein the clients acknowledged that they were aware of and were prepared to accept the risks associated with borrowing to invest. The Leverage Risk Acknowledgment Letters did not specify what risks were explained to or understood by the clients.

45. As part of its investigation, from November 2018 to October 2019 Staff made multiple attempts to contact the Respondent – all without success. Ms. West itemized those attempts in her Affidavit as follows:

9. On November 19, 2018, Staff sent a letter by regular and registered mail to the Respondent requesting that he provide a written statement by December 7, 2018, describing the circumstances and reasons for having clients sign the Leverage Risk Acknowledgment Letters, and an explanation of how he determined in the case of each client that the recommendation to borrow to invest was suitable. On November 22, 2018, the Respondent received and signed for the November 19, 2018 letter which was sent by registered mail. The Respondent did not respond to Staff's November 19, 2018 letter or otherwise provide the information that was requested in the letter.

10. On December 17, 2018, Staff sent a letter by regular and registered mail to the Respondent stating that if he did not provide a written response by January 7, 2019, Staff would consider commencing disciplinary proceedings to address his failure to co-operate with the MFDA investigation into his conduct. The December 17, 2018 letter was sent by registered mail and was delivered on December 21, 2018. The Respondent did not respond to the December 17, 2018 letter.

11. On May 10, 2019, Staff sent a letter to the Respondent requesting that he contact Staff to schedule an interview by May 19, 2019. Staff sent the May 10, 2019 letter by regular and registered mail. On May 15, 2019, the Respondent received and signed for the copy of the May 10, 2019 letter that had been sent by registered mail. The Respondent did not respond to the May 10, 2019 letter from Staff.

12. On July 3, 2019, Staff sent another letter to the Respondent requesting that he contact Staff by July 31, 2019 to schedule an interview in August 2019. The letter also warned the Respondent that if he did not contact Staff by July 31, 2019, then an interview would be scheduled on August 15, 2019. The letter could not be delivered to the Respondent by personal service despite multiple attempts because the Respondent would not agree to accept delivery of the letter from the process server who contacted him to arrange to deliver the July 3, 2019 letter from Staff.

13. On October 21, 2019, Staff sent a letter by registered and regular mail to the Respondent informing him of Staff's previous attempts to schedule an interview with him and that in light of

the Respondent's failure to respond to Staff's request for an interview, Staff would seek authorization to commence enforcement proceedings against the Respondent to address his failure to co-operate with the Staff's investigation. On October 23, 2019, the copy of the October 21, 2019 letter that was sent by registered mail was delivered to the Respondent's residence. The Respondent did not reply to Staff's October 23, 2019 letter.

14. The Respondent has failed to provide Staff with a written statement, and did not contact Staff to schedule an interview to give information relevant to matters under investigation.

(emphasis added)

46. Copies of each of the letters referenced by Ms. West in her evidence were attached as exhibits to her Affidavit sworn April 27, 2021.

47. Ms. West's evidence was that because of the Respondent's failure to cooperate with Staff's investigation, Staff was unable to determine the full nature and extent of the Respondent's conduct in relation to the leveraged investment recommendations that he made to clients. Among other things, Staff was unable to ascertain: whether or not the leveraged investment recommendations that the Respondent made to clients were suitable; whether the Respondent adequately described the risks associated with the leveraged investment strategies that he recommended to the clients; and whether the Leverage Risk Acknowledgment Letters that he asked clients to sign were false or misleading.

48. The letters that Staff sent to the Respondent on November 19, 2018, December 17, 2018, May 10, 2019 and July 3, 2019, among other things, advised the Respondent that he was required to provide the information requested in accordance with his obligations as an Approved Person pursuant to section 22.1 of MFDA By-Law No. 1. They also indicated that despite the fact that he was no longer employed as an Approved Person by WFG, the obligations which were imposed on him as an Approved Person who was subject to the MFDA's jurisdiction, continued for a period 5 years following his termination of employment with the Member.

49. In her testimony, Ms. West said that during the course of her investigation, in addition to the letters that were referenced in her Affidavit, she also left the Respondent a telephone message to contact her, to which she received no response.

50. In the course of her testimony, Ms. West was asked by Enforcement Counsel to comment on a letter which the Respondent relied on, as part of his defence to the allegation. The letter was dated September 26, 2018 and was from Sheila Wong, Managing Director, Case Assessment, for the MFDA.

51. The Respondent gave that letter to Enforcement Counsel on April 27, 2021, shortly before the resumption of the Hearing on May 3, 2021, and asked that it be entered into evidence.
52. Ms. West testified that the Respondent had never raised this letter or its contents to her or any other Staff, before April 27, 2021.
53. She also explained that the letter did not relate to the matter which forms the subject of these proceedings. It related to letters of direction which the Respondent had directed four clients to sign, regarding 10% free unit switches to be completed in their accounts. While the clients may have been related, between that matter and the matter that was the subject of these proceedings, she testified, the topics under investigation for which the MFDA sought the Respondent's cooperation were unrelated.
54. Ms. West confirmed that the matter which was the subject of the investigation in these proceedings, related to Leverage Risk Acknowledgment Letters.
55. She also pointed out that the September 26, 2018 letter referred to a different file number than the file number which Staff identified in its correspondence in the investigation which is the subject of these proceedings.
56. In her testimony, Ms. West explained that the purpose of the September 26, 2018 letter was to inform the Respondent of the outcome of the file in that other matter.
57. Specifically, she said that the letter of September 26, 2018 noted that Staff had made several attempts to request additional written statements from the Respondent regarding his conduct to which he did not respond and that the letter was essentially a warning to the Respondent about his having failed to cooperate with Staff's attempts to investigate his conduct in that matter.
58. Ms. West explained that the issuance of a warning letter can mean a number of different things. In this case she said the letter indicated that Staff were concerned about the Respondent's conduct but that they had determined they would not proceed formally against him.
59. Among other things, the September 26, 2018 letter said:

While your conduct set out above is a serious matter, in light of all the circumstances, including other cases under review, the MFDA has decided that it will not initiate formal disciplinary proceedings against you at this time, with respect to the matters referenced above. The MFDA is sending you this letter as a warning to ensure that there will be no similar breaches of the MFDA's

By-law, Rules and Policies, provincial securities legislation, and any other applicable legislation in the future. Should any additional information or evidence come to the attention of the MFDA, we may reconsider this matter and also initiate formal disciplinary proceedings against you. Should this conduct persist, this Warning Letter may be taken into account in determining whether to initiate formal disciplinary proceedings.

If disciplinary action is taken regarding subsequent breaches of a similar nature, this Warning Letter may be introduced as evidence at that hearing and considered when assessing the severity of the penalty that might be sought. This Warning Letter may also be disclosed in relation to any hearing where it may be relevant or where the MFDA is compelled by law to publicly disclose this letter.

We will keep a copy of this letter on file. Please note that this letter is being copied to the Alberta Securities Commission.

If you wish to discuss the contents of this letter or seek clarification on any issue contained in this letter, please contact me at your convenience.

We now consider our review of the above-noted aspects of MFDA File No. 067090/18/06/AB to be complete and will close the file.

60. The Panel notes that this letter was not put into evidence by Enforcement Counsel who advised the Panel that he did not become aware of it until the Respondent sent it to him just prior to the resumption of the Hearing and that in any event, as Staff, he would not have entered it into evidence at the misconduct Hearing because it was prejudicial to the Respondent.

Respondent's Evidence

61. In his testimony, the Respondent elaborated on the matters which he had set out in the Response he provided, dated November 10, 2020.

62. He confirmed that he had not previously responded to Staff's request for information because he felt badly and because he did not understand how the MFDA could close one file and then open another one without explanation. Plus, he said, he felt that he was not able to provide any further information to the MFDA because by the time of the first letter they sent him, dated November 19, 2018 he had already resigned from being an Approved Person.

63. He also said that he felt the Notice of Hearing was not accurate because it said he was terminated when in fact, he said, he voluntarily resigned.

64. He testified he felt it was impossible for him to respond to the MFDA Case Assessment Officer who wrote to him in November 2018 because he no longer had a valid license by that time.

He also felt he could not go back to his clients or collect information and that that was in fact the job of the investigator.

65. He also spent time telling the Panel about the recognition that he had received throughout his career for his professional achievements including having received: congratulatory letters from the Member's President and CEO who recognized him as being a WFG hero at the Convention of Champions 2001 Gala Award Ceremony; and recognition in *Forbes Magazine* and *Canadian Business Magazine* for his achievements while he was employed with the Member.

66. The Respondent testified that he viewed himself as a role model and that when he felt that he was being treated by the MFDA investigators like a criminal, he could not stand it and suffered mentally and emotionally as the result.

67. In cross-examination, he confirmed that he had received all but one of the letters from Staff which were identified by Ms. West in her evidence and that he did not respond to any of Staff's requests for information. He said that the only letter which he did not receive was the one dated July 3, 2019 and acknowledged that was because although he spoke with the person who attempted to deliver the letter to him, he refused to accept it from her.

68. He also confirmed that after receiving all the letters from Staff, he never contacted either Ms. West or any other Staff person and that in fact the only Staff person he ever contacted regarding the subject of these proceedings was Enforcement Counsel, and that was not until November, 2020.

69. He said on cross-examination that the reasons he did not respond to Staff's requests for information in this matter were because:

- a) Having already resigned in June of 2018 he felt he did not have access to the information being requested;
- b) He was having difficulty mentally absorbing the request because of the stress he was experiencing in being asked to respond to what he felt were Staff's accusations; and
- c) The letter of September 26, 2018 said that the MFDA had closed that file so he was concerned that he not put himself in any jeopardy by responding further; plus he did not feel that he was obliged to respond further, until he received the correspondence from Enforcement Counsel giving notice of these proceedings.

70. He confirmed that the letters that he received from Patricia West and other Staff requesting information about the investigation which is the subject of these proceedings, had a different file number from the file referenced in the letter he received from Sheila Wong on September 26, 2018.

71. He testified that he understood that in Ms. Wong's letter the MFDA had given him a warning because he had not responded to requests for information relating to the matters described in that letter.

72. In response to questions from the Panel asking why he never contacted Staff to tell them that he felt he was not able to respond because he was no longer registered, the Respondent said that: he felt that as investigators it was their duty to find the relevant information on which they based an accusation because they were in a better position to review the file material; he did not have access to the material as he had already resigned; and he only wanted to communicate with someone who was in charge, which is why he responded ultimately, to Enforcement Counsel.

73. He also told the Panel that he was depressed when Staff were requesting information from him, that he felt very anxious and angry when he resigned and felt that he was being subjected to mental abuse.

74. He said that the reason he did not mention the letter of September 26, 2018 to either Ms. West or her colleagues was because he felt that that file had been closed and that Staff's attempts to seek information from him in these proceedings were the result of an internal miscommunication which they could figure out because they would have access to that letter in their file.

IV. THE PARTIES' POSITIONS

Staff's Submission

75. At the conclusion of the evidence, Staff submitted that all of the evidence, including the evidence of Ms. West and the Respondent, established that despite numerous efforts to elicit information from the Respondent regarding the Leverage Risk Acknowledgment Letters, the Respondent had failed to cooperate with the MFDA's investigation into his conduct.

76. With respect to the warning letter dated September 26, 2018 which the Respondent relied upon in response to the allegation in these proceedings, Staff submitted that that letter clearly said that it was dealing with a different matter and that the Respondent acknowledged that he knew that was the case.

77. Staff acknowledged that while the Respondent may have been confused, as he testified, about the investigation which is the subject of these proceedings, the important point is that he did nothing about his confusion. The Respondent did not contact anyone at the MFDA about his concerns and simply continued to ignore the MFDA's correspondence until he received notice of these proceedings and responded to Enforcement Counsel.

78. Enforcement Counsel also submitted that the Panel should not put any weight on the Respondent's evidence as to why he did not cooperate with the investigation in these proceedings because, as the letter of September 26, 2018 indicated, he did not even cooperate with Staff in its previous investigation.

79. With respect to the Respondent's evidence that one of the reasons he did not respond to Staff's requests for information was because by the time he got those requests he was no longer employed, Enforcement Counsel pointed out that in the letters which the Respondent acknowledged receiving, Staff said that notwithstanding the fact that he was no longer registered, an Approved Person remains within the jurisdiction of the MFDA for up to five years after they cease to be registered and therefore the Respondent still had to provide the information requested.

80. With respect to the Respondent's evidence that he did not respond because he did not want to do the MFDA's job, Enforcement Counsel submitted that that is not how the MFDA works. Every self-regulatory body is dependent on its registrants, both Members and Approved Persons, to provide truthful information when requested.

81. Finally, Staff submitted that the Panel should put no weight on the Respondent's explanation that he only wanted to communicate with someone in charge because, regardless of the Respondent's views as to who might be in charge, Approved Persons are obliged to respond to requests for information made of them by investigators and case assessment officers.

82. Further, Enforcement Counsel pointed out that the Respondent never said to any of the Staff that he only wanted to speak to someone in charge. He simply never responded and, therefore, he failed to cooperate with the MFDA's investigation as outlined in Allegation No. 1 in the Notice of Hearing.

The Respondent's Submission

83. The Respondent in his submission, focused primarily on the fact that when he received the requests for information that are the subject of these proceedings, because he believed that the

letter he received from Sheila Wong on September 26, 2018 meant that the MFDA had closed its file regarding investigating or seeking information from him, he believed that there must have been some internal confusion at the MFDA.

84. He also stressed to the Panel that the combination of his believing that the MFDA was mishandling the matter because they had already told him they were closing his case and the fact that he felt he could not answer the MFDA's request for information because he was no longer registered, caused him tremendous distress and had a negative impact on his physical and mental health.

V. ANALYSIS

85. The only allegation in this matter is that the Respondent contravened section 22.1 of MFDA By-law No. 1 by failing to cooperate with Staff's investigation of his conduct.

86. Pursuant to section 21 of MFDA By-Law No. 1, the MFDA has a duty to conduct such examinations and investigations of a Member and an Approved Person as it considers necessary or desirable in connection with any matter related to that Member or Approved Person's compliance with the By-laws, Rules and Policies of the MFDA.

87. In carrying out its duty pursuant to section 21, the MFDA is authorized to request and require a Member, Approved Person or any other person under its jurisdiction to:

- a) Submit a report in writing with regard to any matter involved in any investigation;
- b) Produce for investigation and provide copies of the books, records and accounts of such person relevant to the matters being investigated;
- c) Attend and give information respecting such matters; and
- d) Make any of the above information available through any directors, officers, employees, agents and other persons under the direction or control of the Member, Approved Person or other person under the jurisdiction of the MFDA.

88. Section 22.1 of By-law No. 1 says that the Member, Approved Person or other person under investigation has a corresponding obligation to cooperate with the MFDA's requests for such information.

89. That section reads as follows:

22.1 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 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;
- d) to make any of the above information available through any directors, officers, employees, agents and other persons under the direction or control of the Member, Approved Person or other person under the jurisdiction of the Corporation;

and the Member or person shall be obliged to submit such report, to permit such 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. The person conducting the investigation may, in his or her discretion, require that any statement given by any Member or person in the course of an investigation be recorded by means of an electronic recording device or otherwise and may require that any statement be given under oath.

90. The obligation set out in s.22.1 is consistent with the duties which are owed by all members of self-governing professions. For example, in *Artinian v. College of Physicians and Surgeons of Ontario*, the Ontario Divisional Court stated that “fundamentally, every professional has an obligation to cooperate with his self-governing body”.

Artinian v. College of Physicians and Surgeons of Ontario, [1990] O.J. No. 1116
at page 4

91. The Panel agrees with the submission made by Staff that there is ample authority for the proposition that an Approved Person must provide Staff with information and documentation when requested to do so. Failure to cooperate with Staff’s requests for information hinders the MFDA’s ability to investigate the conduct of registrants in the mutual fund industry and prevents the MFDA from fulfilling its regulatory mandate to protect the public.

Armani, MFDA File No. 201701, Hearing Panel of the Central Regional Council
Panel Decision, Decision and Reasons dated August 3, 2017

92. The Panel finds the facts in this case very clearly show that the Respondent did not respond to any of Staff's requests for information and documents - starting with the letter of Sandra Truong, Case Assessment Officer, dated November 19, 2018 and concluding with the letter sent by Patricia West, Senior Investigator to the Respondent, dated October 21, 2019.

93. The Respondent does not deny that he did not respond to any of Staff's requests seeking information from him; he has simply provided a number of reasons for why he did not cooperate with Staff's investigation.

94. The Panel finds that although the Respondent's evidence and submission as to why he did not respond to Staff's attempts to communicate with him provide an explanation for his conduct, that explanation does not take away from or excuse the fact that he did not respond to Staff's requests for information, as he ought to have done.

95. Pursuant to the MFDA's By-laws and Rules, when the Respondent received Staff's requests for information, he was still under the MFDA's jurisdiction. He therefore had an obligation to respond to Staff's requests. Had he done so, he could have given Staff the explanations he gave to the Panel at the Hearing, at which time Staff would have been able to provide him with further clarification about his obligation and ability to respond to them. Unfortunately, instead, the Respondent simply chose to ignore Staff's attempts to communicate with him and its requests for information and in doing so he failed to cooperate with an investigation by MFDA Staff contrary to section 22.1 of MFDA By-Law No. 1.

96. Accordingly, the Panel finds that the allegation set out in the Notice of Hearing has been established.

DATED this 14th day of July, 2021.

“Sherri Walsh”

Sherri Walsh
Chair

“Adam Dudley”

Adam Dudley
Industry Representative

“Greg Wiebe”

Greg Wiebe
Industry Representative

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