



**Decision and Reasons**

**Case No. 200511**

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

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: DONALD KENT COLEMAN**

**DISCIPLINARY HEARING**

Heard: March 21, 2006  
Panel Decision: April 10, 2006  
Toronto, Ontario

**DECISION and REASONS**

Hearing Panel of the Ontario Regional Council:

The Honourable John B. Webber, Q.C.  
Mr. Chuck Grace  
Mr. Selwyn Kossuth

Chair  
Panel Member  
Panel Member

Appearances:

H. C. Clement Wai	)	for the Mutual Fund Dealers Association
	)	of Canada
Donald Kent Coleman	)	In attendance personally
	)	

## **DECISION AND REASONS**

This matter was fixed for hearing on March 21, 2006. At the opening of the proceedings, the Panel was informed that the parties had arrived at an Agreed Statement of Facts. The Agreed Statement of Facts reads as follows:

### **I. INTRODUCTION**

1. By Notice of Hearing dated December 1, 2005, the Mutual Fund Dealers Association of Canada (the "MFDA") commenced a disciplinary proceeding against Donald Kent Coleman (the "Respondent") pursuant to ss. 20 and 24 of MFDA By-law No. 1.

2. The Notice of Hearing set out the following allegations:

**Allegation #1:** Between March 10, 2004 and July 9, 2004, the Respondent failed to deal fairly, honestly and in good faith with clients WC and AR by misappropriating from them the total amount of approximately \$18,234.45, contrary to MFDA Rule 2.1.1.

**Allegation #2:** Between March 10, 2004 and July 9, 2004, the Respondent failed to deal fairly, honestly and in good faith with clients WC and AR by processing redemptions in their mutual fund accounts without obtaining instructions, authorization or approval from the clients, contrary to MFDA Rule 2.1.1.

### **II. IN PUBLIC / IN CAMERA**

3. The Respondent and Staff of the MFDA ("Staff") agree that this matter should be heard in public pursuant to Rule 1.8 of the MFDA Rules of Procedure.

### **III. ADMISSIONS**

4. The Respondent has reviewed this Agreed Statement of Facts and admits the facts set out and the documents referred to in Part IV herein. The Respondent admits the facts contained herein constitute misconduct as alleged in Allegations #1 and #2 for which the Respondent may be penalized on the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

### **IV. AGREED FACTS**

5. Staff and the Respondent agree to make submissions on the appropriate penalty to be imposed on the Respondent based only on the agreed facts set out below, the Exhibits attached and on no other facts.

#### **Registration History**

6. From March 1994 to August 2004, the Respondent was registered in Ontario as a mutual fund salesperson for PFSL Investments Canada Ltd. ("PFSL").

7. Commencing November 11, 2003, the Respondent was registered as the branch manager of PFSL's branch located at 1615 North Rutledge Park, Suite 34, London, Ontario and subsequently at 747 Hyde Park Road, Suite 202, London, Ontario.

8. On August 12, 2004, the Respondent was terminated for cause when PFSL learned that he had engaged in the conduct that subsequently gave rise to this proceeding.

9. Since August 12, 2004, the Respondent has not been registered in the securities industry in any capacity.

10. PFSL has been a member of the MFDA since January 31, 2002.

### **The Respondent's Conduct**

11. As described in greater detail below, between March 10, 2004 and July 9, 2004 the Respondent misappropriated approximately \$18,234.45 from two clients.

12. The Respondent misappropriated these funds from clients who were vulnerable. One client was elderly and suffering from medical complications. The other lacked sophistication with respect to investments.

### **Client WC**

13. WC was a client of the Respondent. From time to time, WC would instruct the Respondent to redeem investments held in her mutual fund account and provide the proceeds to her.

14. Between March 11, 2004 and June 21, 2004, the Respondent processed six redemptions in the total amount of approximately \$24,186.69 from WC's mutual fund account. In each instance, with the exception of a redemption processed on June 3, 2004, the Respondent either did not obtain instructions, authorization or approval from WC to process the redemption or redeemed an amount greater than the amount that WC had requested.

15. The Respondent carried out each of the redemptions by submitting a photocopy of a prior redemption request form for WC's account that the Respondent had altered. In each instance, the Respondent caused the net proceeds of the redemption to be transferred electronically to his personal bank account by attaching to the redemption request form a photocopy of a cheque for

his personal bank account which he had altered by “cutting and pasting” WC’s name on to the cheque.

16. In order to conceal his conduct, the Respondent changed WC’s address in PFSL’s records to a fictitious address so that WC would not receive statements disclosing the activity in her account.

17. From time to time the Respondent would deposit funds directly to WC’s bank account. The Respondent led WC to believe that these deposits were the proceeds of a redemption that WC had requested him to make and did not disclose to WC that he had redeemed other amounts from her mutual fund account, all or part of which he had retained in his personal bank account.

18. As set out in the table below, the Respondent redeemed a gross amount of approximately \$24,186.69 from WC’s mutual fund account. The Respondent then electronically transferred the net redemption proceeds of \$22,984.45 to his personal bank account. Of this amount, the Respondent deposited approximately \$9,000.00 in total to WC’s bank account such that he misappropriated approximately \$13,985.45 from WC. The Respondent’s activity also caused \$1,202.24 in fees to be charged to WC’s mutual fund account.

Date	Gross Redemption (\$)	Net Redemption (\$)	Payment made to WC (\$)	Misappropriation by Respondent (\$)
March 11, 2004	10,531.02	10,000.00		10,000.00
April 28, 2004	3,155.34	3,000.00		13,000.00
May 3, 2004	3,155.89	3,000.00		16,000.00
May 5, 2004			2,000.00	14,000.00
May13, 2004	3,028.09	2,875.00		16,875.00
May 18, 2004			2,000.00	14,875.00

June 3, 2004	2,101.93	2,000.00		16,875.00
June 11, 2004			2,000.00	14,875.00
June 21, 2004	2,214.42	2,109.45		16,984.45
June 25, 2004			2,000.00	14,984.45
July 14, 2004			1,000.00	13, 984.45
<b>Total</b>	<b>24,186.69</b>	<b>22,984.45</b>	<b>9,000.00</b>	<b>13, 984.45</b>

### **Client AR**

19. Following the redemption on June 21, 2004, the balance in WC's mutual fund account, unbeknownst to WC, was zero. Shortly thereafter, WC contacted the Respondent requesting further redemptions from her mutual fund account.

20. As there were no further funds in WC's mutual fund account, the Respondent began misappropriating funds from another client, AR. Some of the funds misappropriated from AR's mutual fund account were used to satisfy WC's request for further redemptions.

21. As set out in the table below, on June 29, 2004 and July 9, 2004 the Respondent processed redemptions in the total amount of approximately \$4,870.20 from the mutual fund account of AR without obtaining instructions, authorization or approval from AR. The Respondent directed the net proceeds of the redemptions in the total amount of approximately \$4,250.00 to be transferred electronically to the Respondent's bank account, thereby misappropriating the funds. The Respondent's activity also caused \$620.20 in fees to be charged to AR's mutual fund account.

Date	Gross Redemption (\$)	Net Redemption (\$)	Misappropriation by Respondent (\$)
June 29, 2004	2,839.84	2,500.00	2,500.00
July 9, 2004	2,030.36	1,750.00	4,250.00
<b>Total</b>	<b>4,870.20</b>	<b>4,250.00</b>	<b>4,250.00</b>

22. The Respondent carried out the unauthorized redemptions from AR's mutual fund account in the same manner as those processed from WC's mutual fund account: he submitted a photocopy of a prior redemption request form that he had altered and caused the proceeds of the redemption to be transferred electronically to his personal bank account by attaching to the redemption request form a photocopy of a cheque for his personal bank account which he had altered by "cutting and pasting" AR's name on to the cheque.

23. In order to conceal his conduct, the Respondent changed AR's address in the records of PFSL to a fictitious address so that AR would not receive statements disclosing the activity in her account.

24. In total, the Respondent misappropriated approximately \$18,234.45 from WC and AR.

#### **Further Developments Since The Respondent's Conduct Was Discovered**

25. In August 2004, PFSL terminated the Respondent and conducted an internal investigation to determine the nature and extent of the Respondent's misconduct. The Respondent admitted to the misconduct and was cooperative with the PFSL internal investigation.

26. The Respondent has also been cooperative with the MFDA investigation into this matter. Attached as Exhibit "A" to this Agreed Statement of Facts is a

copy of an undated letter, received on October 15, 2004, from the Respondent to Brad Tasker, a Case Assessment Officer with the MFDA, admitting to the misconduct.

27. PFSL has compensated both WC and AR for the losses attributable to the Respondent's misconduct. The Respondent has made efforts to repay these amounts to PFSL. Attached collectively as Exhibit "B" to this Agreed Statement of Facts are thirteen (13) documents sent to Staff by the Respondent in support of these efforts.

28. As of the date of this Agreed Statement of Facts, the amount of \$12,245.84 remains outstanding.

### **Misconduct Admitted**

29. The Respondent admits that by misappropriating the total amount of approximately \$18,234.45 from WC and AR, he has failed to deal fairly, honestly and in good faith with his clients, contrary to MFDA Rule 2.1.1.

30. The Respondent admits that by processing redemptions in WC's and AR's mutual fund accounts without obtaining instructions, authorization or approval, he has failed to deal fairly, honestly and in good faith with clients, contrary to MFDA Rule 2.1.1.

### **DECISION OF THE PANEL**

We are satisfied that the misconduct alleged in paragraph 2 of the Agreed Statement of Facts has been proven on the principle of the balance of probabilities applicable to allegations of this nature. In addition, Mr. Coleman by correspondence, by the execution of the Agreed Statement of Facts and by his submissions to the Panel today has admitted and confirmed the misconduct.

The issue of penalty is a matter of great concern. We are aware of the applicable principles found in the cases referred to by counsel. It is essential that the penalty imposed reflect the following principles:

1. The protection of the investor;
2. A reflection and condemnation of abusive conduct;
3. Affirmation of public confidence; and
4. Most importantly, general deterrence.

In accordance with counsel's careful written submissions, we have considered the items found in paragraph 13 of the submissions.

In addition, we have also considered carefully the other factors mentioned in paragraph 14 of those written submissions. It is our view that the proposed sanctions suggested by counsel for the Association under normal circumstances for a branch manager would be entirely appropriate. However, there are some very important factors which must be considered in favour of the Respondent:

1. The Respondent has no previous past misconduct or disciplinary history;
2. The response of the Respondent recognizes the seriousness of his conduct and expresses his remorse;
3. The harm suffered by the investors has been fully remedied;
4. The Respondent received no benefits as a result of what has taken place;
5. The Respondent has cooperated throughout commencing at the earliest time with his first meeting with his superior at PFSL and his

full admission of his conduct and the promise to pay all amounts outstanding at that time;

6. The Respondent has maintained his admission of his misconduct. See in that regard Exhibit 2 as filed;
7. The Respondent has made efforts to make restitution. These efforts have affected him personally and financially and impacted upon his family;
8. We are impressed by these efforts, and in addition his undertaking to us that all outstanding debt to PFSL will be paid. See, again, Exhibit 2 as filed;
9. He accepts that a fine must be imposed as well as costs. Subject to the amount, he has undertaken to the Panel that he will pay the fine. His concern is that the fine, as suggested by counsel for the Association, cannot be paid given his present income and the payments he has made to date and the payments he must make in the future to satisfy the outstanding debt to PFSL.

Under all of these circumstances and given the facts of this case only, we conclude the following sanction is appropriate:

A. A permanent prohibition from conducting securities-related business in any capacity pursuant to MFDA by-law No. 1, Section 24.1.1(e);

B. A fine in the amount of \$10,000.00 pursuant to MFDA by-law No. 1, Section 24.1.1(b); and

C. Costs attributable to conducting the investigation and prosecution in this matter to be paid by the Respondent in the amount of \$2,500.00 pursuant to MFDA by-law No. 1, Section 24.2.

Dated at Toronto, this 10<sup>th</sup> day of April, 2006.

“John B. Webber”

The Honourable John B. Webber, Q.C.  
Chair

“Chuck Grace”

Chuck Grace  
Panel Member

“Selwyn Kossuth”

Selwyn Kossuth  
Panel Member