



**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 24.4 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Robert William Copland**

Heard: January 29, 2019 in Toronto, Ontario  
Decision: January 29, 2019  
Reasons for Decision: May 7, 2019

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC  
Brigitte J. Geisler  
Melody Potter

Chair  
Industry Representative  
Industry Representative

Appearances:

David Halasz	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Robert William Copland	)	Respondent, not in attendance or represented by
	)	counsel
	)	

## **Decision**

1. At a hearing on the merits in this matter on January 29, 2019, we determined that the Respondent had engaged in the following misconduct:

### **Under Allegation #1**

- (i) between about June 2013 and October 2015, the Respondent recommended, sold or facilitated investments by four clients in a retail coffee shop business, thereby engaging in securities related business outside the Member, contrary to MFDA Rules 1.1.1 and 2.1.1;

### **Under Allegation #2**

- (ii) between about June 2013 and October 2015, the Respondent engaged in outside business activities with respect to one or more coffee businesses, without the knowledge or approval of the Member, contrary to the Member's policies and procedures, and MFDA Rules 1.2.1(c) (now MFDA Rule 1.3), 1.1.2, and 2.1.1;

### **Under Allegation #3**

- (iii) between about June 2013 and October 2015, the Respondent engaged in personal financial dealings with clients when he, among other things:
  - a) established or operated a non-arm's length coffee business with a client;
  - b) opened a joint bank account with a client in respect of a non-arm's length coffee business;
  - c) recommended, sold or facilitated investments by clients in a retail coffee shop business;
  - d) arranged for a client to loan monies to a non-arm's length coffee business;
  - e) arranged for or accepted a personal loan from a client; or
  - f) accepted payments from a client and/or made payments to a client relating to one or more non-arm's length coffee businesses;

thereby giving rise to a conflict or potential conflict of interest which the Respondent failed to disclose to the Member, or failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to the Member's policies and procedures, and MFDA Rules 2.1.4, 1.1.2, and 2.1.1;

#### **Under Allegation #4**

- (iv) on or about May 31, 2014, the Respondent misrepresented himself as a client's property manager in a letter submitted in support of the client's application to unlock a pension on the basis of financial hardship, thereby failing to observe a high standard of conduct and ethics in the transaction of business, or engaging in conduct which is unbecoming or detrimental to the public interest, contrary to MFDA Rule 2.1.1; and

#### **Under Allegation #5**

- (v) Commencing May 31, 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.

### **Order**

2. As a consequence of the misconduct we made an order as follows:
  - i) The Respondent is permanently prohibited from conducting securities related business in any capacity while in the employ of, or in association with, any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
  - ii) The Respondent shall pay a fine in the amount of \$175,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
  - iii) The Respondent shall pay costs in the amount of \$7,500, pursuant to s. 24.2 of MFDA By-law No. 1; and
  - iv) If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to

exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure.

### **Background**

3. The Notice of Hearing in this matter was issued on June 20, 2018.
4. It was duly served on the Respondent.
5. The Respondent did not file a Reply to the Notice of Hearing.
6. The Respondent did not appear at the hearing.

### **Evidence**

7. Section 20.4 of MFDA By-law No. 1 allowed the Hearing Panel to accept the facts alleged in the Notice of Hearing as having been proven and to impose any of the penalties described in Section 24.1 of By-law No.1 where a Respondent does not serve a reply or attend at a hearing.
8. Staff introduced in evidence with respect to the alleged misconduct the affidavit of Lucy Alfenore sworn January 24, 2019 and the affidavit of LB sworn January 28, 2019, and made oral and written submissions.
9. We found that the evidence presented by Staff was clear, cogent and convincing and established the facts alleged in the Notice of Hearing on a balance of probabilities.
10. Consequently, we made our decision based on the evidence and also as allowed for us under Section 20.4.

## **Key facts**

### **The Respondent's registration history**

11. Between August 2005 and October 14, 2015, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Investors Group Financial Services Inc. ("IG"), a Member of the MFDA.
12. On October 14, 2015, IG terminated the Respondent as a result of unapproved outside business activities, personal financial dealings with clients, and a failure to comply with IG policies and procedures.
13. The Respondent is no longer registered in the securities industry in any capacity.

### **IG's Policies and Procedures**

14. IG had policies and procedures in place that required:
  - a) that Approved Persons obtain prior approval from the Member before engaging in an outside business activity ("OBA");
  - b) that Approved Persons be aware of the possibility of conflicts of interest, and report potential conflicts of interest to a branch manager;
  - c) that Approved Persons avoid business relationships with clients (e.g., investing in a business), as such actions can affect business dealings with clients causing a potential conflict of interest and may constitute outside business activities; and
  - d) that Approved Persons, not, under any circumstances, borrow from or lend to a client.

### **Client RF**

15. Client RF was a client of IG whose accounts were serviced by the Respondent. On June 4, 2014, client RF filed a complaint with IG about his dealings with the Respondent, including about a joint business venture involving the Respondent and the Respondent's family, a joint bank account, and the Respondent having borrowed monies from him.

16. Client RF originally contacted the Respondent seeking his services upon client RF's retirement.

*Client RF - Investments in Mixed Bean*

17. In June 2013, the Respondent contacted client RF and advised him that the Respondent's wife, WC, and brother-in-law, CP, were opening a coffee business called "Mixed Bean" in Owen Sound. The Respondent offered client RF an opportunity to open up a store. Mixed Bean was a retail coffee business that offered "K-Cups".

18. The Respondent arranged that they would lease a store for one year in Port Hope.

19. To be a part of Mixed Bean in Port Hope, the Respondent advised client RF that it would cost \$40,000 in cash, and client RF would own 50% of the store, along with the Respondent's wife, WC, and brother-in-law, CP, who would each own 25%.

20. The Respondent and RF had a joint bank account at an RBC bank branch but only the Respondent had access to it.

21. Client RF withdrew \$40,000 of his investments with IG for the investment and used the redeemed funds from IG to invest in Mixed Bean.

22. In August 2013, the Respondent asked client RF for \$5,000 as a consultant fee for which the Respondent would promote the store, which client RF provided.

23. Client RF suggested to the Respondent they should look into a new location for a store in Newcastle. Client RF invested further in Mixed Bean. He provided the Respondent with \$25,000 for the name Mixed Bean, and obtained a 50% ownership, along with 25% each to WC and CP. The Respondent negotiated the lease of the Newcastle store location.

24. In August 2013, the Respondent asked client RF to make purchases of coffee beans and cups for the three stores, which client RF agreed to do. Client RF made additional personal payments of \$522.50 and \$8,547.27 for coffee products, which the Respondent advised client RF he would be reimbursed for at a later date, but was not reimbursed.

25. Client RF had received information that others invested in Mixed Bean after being asked by the Respondent. These included JH who invested in \$10,000, and client AB, who invested \$25,000 in the Mixed Bean store in Owen Sound.

26. Client RF had expectations of obtaining a return on his investment in Mixed Bean, which client RF has not seen.

27. The current status of the investments by client RF in Mixed Bean or R&R is not known.

*Client RF – Personal loan to the Respondent*

28. In July 2013, the Respondent told client RF that he was short of money and asked if client RF could lend the Respondent \$2,500 to purchase a diamond ring for the Respondent's anniversary, which client RF lent the Respondent and told the Respondent he could repay him when he could.

29. In October 2013, the Respondent asked to borrow \$2,500 for a school trip for the Respondent's son. By this time, the Respondent had already repaid client RF the loan to purchase the ring for the Respondent's spouse.

*Client RF – R&R Enterprises ("R&R") and joint bank account with the Respondent*

30. In August 2013, the Respondent advised client RF that they would need to create a "coffee service company" in order to become a Keurig Authorized Dealer, which would allow Mixed Bean to purchase K-Cups at a reduced price. R&R was created for the purpose of purchasing Keurig K-cups directly from Keurig Canada, which allowed Mixed Bean to obtain the K-Cups at a discount. R&R was the Respondent's idea.

31. Client RF obtained a business license under the name "R&R Enterprises".

32. On August 28, 2013, the Respondent and client RF attended at a BMO branch in Port Hope and opened a joint business account (R&R Account") under the name R&R where client RF deposited \$10,000.

33. The R&R Account was established on August 30, 2013, and was in operation until at least March 31, 2015.

34. Three cheques payable to IG client AB were written from the R&R Account between September 2013 and January 2014, totaling \$1,800.

35. Investment funds for Mixed Bean were deposited into the R&R Account, including \$25,000 from client GK by cheque dated November 21, 2013, and TKT in the amount of \$15,000 by cheque dated September 10, 2013. The memo lines for the cheques indicate either payments or loans.

36. The R&R Account was used for various payments related to Mixed Bean.

*Client RF – Respondent misrepresents that he is property Manager*

37. Client RF was in need of monies to meet his financial needs, and the Respondent suggested he file for financial hardship to release funds from his locked-in retirement account. The Respondent advised client RF to have his landlord issue a letter advising he was in arrears which would allow him to file for financial hardship. The Respondent advised client RF to write a letter under the Respondent's birth name, (Robert Allen Weaver, used from 1956-1975) and the Respondent would sign and pretend he was his landlord.

38. The Respondent facilitated the processing of a redemption from client RF's LIF account at IG using a letter "Robert Allen Weaver, Property Manager" dated May 5, 2014, which was a letter filed in support of a request to redeem \$26,250 from client RF's LIF account at IG under the premise that client RF's rent was in arrears. This document was filed in order to unlock for financial hardship for client RF.

*Client RF – Financial difficulties*

39. Client RF complained about the operations of Mixed Bean, particularly dealings with creditors for expenses purchased for the stores, and concerns about transactions by the Respondent he observed in the account of R&R.

40. The Respondent approached client RF to provide a loan to Mixed Bean, to which the Respondent advised he did not have the financial ability.

41. In July 2014, client RF was without financial resources and walked away from Mixed Bean.

42. Client RF borrowed monies from friends and family to meet his needs. He obtained a license to allow him to drive trucks. Client RF complained of experiencing financial hardship and an uncertain financial future as a result of his dealings with the Respondent.

43. These matters have taken a significant personal and financial toll on client RF and his family.

*Client RF - compensation*

44. In November 2015, client RF accepted a payment of compensation from IG.

**Client GK**

45. Client GK was a client of IG whose accounts were serviced by the Respondent.

46. During IG's investigation into the Respondent's conduct, client GK contacted IG and advised that he had invested monies in the Respondent's businesses.

*Client GK – Personal payments to the Respondent and investments*

47. Banking information provided by client GK to IG shows payments of approximately \$203,850 during the period November 2012 to May 2014, which is during the period the Respondent was registered with IG and client GK was a client of IG. Client GK sought a meeting with the Respondent to discuss the information, but that meeting has not yet occurred.

48. Redemptions from client GK's accounts at IG correspond to deposits into client GK's bank account. On a number of occasions, the deposits of the redemption proceeds into client GK's account occur within close proximity to transfer or debits payable to the Respondent.

49. Client GK knew about Mixed Bean through the Respondent, which the Respondent discussed with him periodically when discussing his options with IG. Mixed Bean was a coffee shop business the Respondent, his wife and family member started up.

50. The Respondent asked client GK to invest in other projects, including a fishing lure patent, short term loans for friends of the Respondent, and his wife's kitchen business.
51. The Respondent also recommended R&R as a business opportunity for client GK, recommended an office coffee business, and sought investment from client GK for a coffee roasting plant.
52. Regarding Mixed Bean, it was the Respondent who recommended it as a business opportunity to client GK. The Respondent was client GK's only contact at Mixed Bean.
53. Client GK had no role at Mixed Bean other than investing monies in the business which were derived from redemptions of his IG investments.
54. Client GK invested \$25,000 by cheque payable to R&R dated November 21, 2013. Client GK advised that this cheque was drawn from a line of credit for which he was still (as of July 25, 2016) paying \$200 per month.
55. Client GK invested a further \$11,000 by cheque payable to the Respondent personally dated December 31, 2013.
56. The amounts client GK provided the Respondent were difficult for client GK to understand as he never received documentation.
57. Client GK expected to see monthly payments from the business and to choose whether to reinvest. Client GK did not see money back from his investment in Mixed Bean or other non-IG investments.
58. The Respondent borrowed from client GK on a guarantee he would repay in a timely manner.
59. Client GK is no longer involved in Mixed Bean.
60. The current status of client GKs investment in Mixed Bean is not known.

## **Client AB**

61. Client AB was a client of IG whose accounts were serviced by the Respondent.

### *Client AB – Investment in Mixed Bean*

62. The Respondent approached client AB to invest in Mixed Bean, which he recommended to client AB as a business opportunity.

63. The Respondent personally signed an agreement borrowing \$30,000 from client AB, which came from client AB's personal funds.

64. Client AB provided additional payments of \$5,000, \$6,000, and \$10,000, some of which has been repaid. Client AB invested a total of \$60,000 in Mixed Bean.

65. The Respondent entered into two agreements with client AB. The first agreement was between the Respondent personally and client AB, wherein it stated that client AB agreed to lend \$20,000 to the Respondent for a 30% share in a K-Cup coffee store in Owen Sound. In the agreement, the Respondent agreed to personally secure the payments.

66. Client AB redeemed \$20,000 on June 3, 2013, which date corresponds to the timing of the investment on June 3, 2013 to Mixed Bean.

67. In the second agreement, client AB provided Mixed Bean with a loan for \$30,000. Mixed Bean agreed to give client AB 6% of the whole Mixed Bean operations, and would pay the monthly interest on the line of credit. The Respondent signed this agreement on behalf of Mixed Bean.

68. Client AB provided the monies with the expectation he would receive monthly repayments, which he assumed were from Mixed Bean. The payments were to be \$700, and they were not always made.

69. In February 2013, client AB expected that his investment in Mixed bean would result in him owning 30% of the Owen Sound stores.

70. AB's role in Mixed Bean was that of silent partner and investor.

71. The current status of client AB's investment in Mixed Bean is not known.

## **Client CM**

72. Client CM was a client of IG whose accounts were serviced by the Respondent.

### *Client CM – Investment in Mixed Bean*

73. The Respondent recommended that client CM invest in Mixed Bean. In early February/March 2014 client CM invested \$12,000 using his RRSP at IG.

74. Two redemptions totaling \$14,485 occurred in client CM's RRSP account on February 11, 2014 and March 31, 2014.

75. Client CM signed a loan agreement and expected to receive a 5% return.

76. Client CM's role in Mixed Bean was only as an investor. The Respondent was client CM's contact for Mixed Bean and client CM understood the Respondent was a co-owner.

77. Client CM is no longer involved in Mixed Bean.

78. Client CM requested repayment of his investment but only received two payments of \$400 and \$100.

79. The Respondent did not make further recommendations to invest in other business ventures to client CM, but did solicit further monies from client CM to invest in Mixed Bean.

80. The current status of client CM's investment in Mixed Bean is not known.

### *Losses resulting from Respondent's misconduct*

81. Although much is unknown, it appears that the clients involved with the Respondent probably lost between \$175,000 to \$226,000. We had no evidence of the amount that IG paid as compensation to RF.

## **Respondent's activities were done without the prior knowledge or approval of IG**

82. The Respondent submitted an OBA approval form to IG in respect of his involvement in R&R dated March 13, 2014. The OBA approval form indicated that the business activity started on October 1, 2013. The OBA approval form was submitted after the Respondent opened the R&R

Account with client RF in August 2013. The October 1, 2013 date for activity of R&R indicated by the Respondent is also subsequent to the August 2013 R&R account opening date.

83. In July 2014, IG did not approve the R&R outside business activity application by the Respondent for, among other reasons, a conflict of interest arising due to the ownership of R&R by client RF. On July 8, 2014, the IG Division Director, advised IG compliance that the Respondent advised he was getting out of the coffee business, and the Respondent expected “this to be completely wrapped up in the next 6-8 weeks”.

84. The Respondent never submitted an OBA approval form relating to his involvement in Mixed Bean.

85. Consequently, the Respondent’s activities involving the clients and individuals described above were done without the prior knowledge and approval of IG contrary to the policies and procedures of IG.

#### **Failure to cooperate with Staff’s investigation**

86. The Respondent failed to attend an interview with MFDA Staff or to provide Staff with all documents requested during the course of an investigation into his conduct. As a result, the full nature and extent of the Respondent’s conduct with respect to R&R and Mixed Bean is not known.

#### **The misconduct**

##### **Allegation #1 - Securities related business outside the Member and Standard of Conduct**

87. Rule 1.1.1 of the MFDA Rules deals with securities related business outside the accounts and facilities of the Member. It is fundamental to the regulatory mandate of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry. MFDA Rule 1.1.1(a) creates a regime whereby an Approved Person is only permitted to provide investment advice about and to sell investments that have first been approved for sale by the Member (following appropriate product due diligence) and are sold through the facilities of the Member (thereby ensuring the activity is subject to appropriate review and supervision). By limiting the authority of an Approved Person to trade only in securities approved for sale by the

Member and through the facilities of the Member, MFDA Rule 1.1.1(a) protects primarily the interest of Member clients, but also the interests of Members and Approved Persons.

88. The Respondent recommended, sold or facilitated investments by clients in the Mixed Bean Coffee shop business.

89. IG was not aware of and did not approve the Respondent's activities in raising monies from clients to invest in Mixed Bean. None of the Respondent's activities facilitating client investment in Mixed Bean were carried on the books or records of IG.

90. Rule 2.1.1 sets the standard of conduct expected of Approved Person in the mutual fund industry. The Respondent's conduct demonstrated that he failed to deal fairly, honestly and in good faith with his clients; and engaged in business conduct or practice which is unbecoming or detrimental to the public interest.

91. By virtue of the foregoing, the Respondent acted contrary to MFDA Rules 1.1.1(a) and 2.1.1.

**Allegation #2 – Unapproved outside business activities**

92. MFDA Hearing Panels have consistently found that engaging in business activities outside the business of the Member without so advising the Member and obtaining the approval of the Member, contrary to MFDA Rule 1.2.1.(c) (now 1.3), is a serious offence. This Rule seeks to ensure that: securities legislation and internal procedures are being complied with; clients are aware that the outside activity is not the business or responsibility of the Member; any actual or potential conflicts of interest are dealt with appropriately; and the MFDA, its Members, and the mutual fund industry are not being brought into disrepute by way of improper or inappropriate outside business activities carried on by Approved Persons.

93. While registered with IG, the Respondent engaged in outside business activities involving R&R and Mixed Bean for which he did not disclose to or receive prior approval from IG to operate.

94. Such activity was contrary to the member's policies and procedures.

95. The Notice of Hearing, in allegations #2 and #3, stated that MFDA Rule 2.5.1 was also violated by the Respondent by his conduct.

96. Rule 2.5.1 requires Members (not an Approved Person) to establish policies and procedures to ensure that the handling of their business is in compliance with MFDA by-laws, rules, and policies and applicable securities legislation. IG did so.

97. An Approved Person has a corresponding obligation to comply with those policies and procedures pursuant to Rule 1.1.2. The Respondent failed in this regard.

98. Because Rule 2.5.1 does not apply to an Approved Person, the Respondent's conduct did not violate that rule directly, as alleged. However, as we found, his misconduct did violate Rule 1.1.2 and the policies and procedures of IG; and the consequences regarding an appropriate penalty for the misconduct alleged, without regard to Rule 2.5.1, do not change.

99. In conclusion, while registered with IG, the Respondent engaged in outside business activities involving R&R and Mixed Bean which he did not disclose to or receive prior approval from IG to operate. By virtue of the foregoing, the Respondent acted contrary to the member's policies and procedures, and MFDA Rules 1.2.1(c), 1.1.2, and 2.1.1.

### **Allegation #3 - Personal Financial Dealings with clients – Conflict of Interest**

100. Since February 27, 2006, Rule 2.1.4 explicitly imposes obligations on Approved Persons to be aware of the possibility of conflicts of interests or potential conflicts of interest with clients, to disclose such conflicts to the Member, and together with the Member, to ensure that any conflict is addressed by the exercise of responsible business judgment influenced only by the best interests of the client.

101. MFDA Hearing Panels have consistently held that borrowing from clients gives rise to a conflict of interest and the failure of an Approved Person to address the conflict by the exercise of responsible business judgment influenced only by the best interests of the client constitutes a serious contravention of MFDA Rule 2.1.4.

102. The Respondent engaged in conduct that gave rise to a conflict of interest which the Respondent failed to disclose to the Member, or failed to address by the exercise of responsible

business judgment influenced only by the best interest of the clients, contrary to IG's policies and procedures and MFDA Rules, 2.14, 1.1.2, and 2.1.1.

**Allegation #4 – Misrepresentation**

103. The Respondent misrepresented himself as client RF's property manager in a letter submitted in support of client RF's application to unlock a pension held in an IG account on the basis of financial hardship.

104. In so doing, the Respondent failed to observe high standards of ethics and conduct in the transaction of business; and engaged in business conduct or practice which is unbecoming or detrimental to the public interest contrary to MFDA Rule 2.1.1 .

**Allegation #5 - Failure to Cooperate with an investigation**

105. Section 22.1 of MFDA By-law No. 1 states that:

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;

...

106. This provision of the By-law empowers the MFDA to compel individuals under its jurisdiction to attend interviews and to provide information and produce documents relevant to an investigation undertaken by Staff.

107. Pursuant to s. 24.1.4 of MFDA By-law No. 1, for purposes of the enforcement processes set out in sections 20-24 of MFDA By-law No. 1, the MFDA retains jurisdiction over a Member, Approved Person or other person subject to the jurisdiction of the MFDA notwithstanding the fact

that the person has ceased to be an Approved Person. Accordingly, the Respondent continued to be bound to comply with section 22.1 of MFDA By-law No. 1 even after his termination from IG.

108. The Respondent failed or refuse to participate in an interview scheduled with the MFDA and to provide all requested documents during Staff’s investigation into his conduct. The information sought by Staff from the Respondent was material to Staff’s investigation.

109. The Respondent’s failure to co-operate with the investigation by the MFDA, by not attending interviews requested and by failing to provide information and documentation requested by Staff constituted a contravention of section 22.1 of MFDA By-law No. 1.

**Penalty**

110. In determining an appropriate penalty for the Respondent’s misconduct we considered Staff’s submissions and the cases referred to by Staff.

**Precedent cases**

111. In the following cases, MFDA Hearing Panels have found that Respondents who engage in conduct similar to the Respondent in the present case engage in misconduct contrary to MFDA Rules and MFDA By-law No. 1 and imposed the penalties indicated.

Case and Facts	Sanction
<p><b>Lui (2012) (Re)</b><sup>1</sup></p> <ul style="list-style-type: none"> <li>• <b>Engaged in personal financial dealings with two clients</b> in relation to amounts ranging from \$170,000 to \$118,000 that the clients loaned to a company in which the Respondent had an interest and that the Respondent had personally guaranteed to repay, thereby giving rise to a conflict of interest</li> <li>• <b>Personally guaranteed to repay</b>, and then failed to repay or otherwise account for \$118,000 (as well as interest payments owing on that amount) that the Respondent had arranged for two clients to lend to a company in which the Respondent had an interest.</li> <li>• Between August 4, 2005 and February 2006, <b>the Respondent had and continued in another gainful occupation</b> that was not approved by the Member in respect of his involvement in and activities on behalf of two companies in which he had an interest.</li> </ul>	<p><u>Uncontested</u></p> <ul style="list-style-type: none"> <li>• Permanent prohibition</li> <li>• \$150,000 fine</li> <li>\$7,500 costs</li> </ul>

<sup>1</sup> Lui (Re), (2012) Reasons for Decision of a Hearing Panel of the Central Regional Council, MFDA File No. 201124.

Case and Facts	Sanction
<p><b>Wiseman (Re) (2012)<sup>2</sup></b></p> <ul style="list-style-type: none"> <li>Engaged in <b>personal financial dealings</b> with clients by: (a) selling, recommending or facilitating the sale of shares in a company, 575954 B.C. Ltd., also known as Granite Mountain Properties Ltd., in which he had a direct or indirect interest, which company was the developer of a real estate project known as the “88 Creekside Project” to at least 3 clients; and (b) borrowing \$38,000 from client DD.</li> <li>Engaged in <b>securities related business</b> that was not carried on for the account and through the facilities of the Member by selling, recommending or facilitating the sale of investment products to at least clients JP, GC, TE and RK outside the Member.</li> <li>Misleading statements to the Member.</li> <li><b>Failed to cooperate.</b></li> </ul>	<p><u>Uncontested</u> Permanent Prohibition</p> <p>Fine of \$150,000 Costs of \$7,500</p>
<p><b>Ryan (Re) (2011)<sup>3</sup></b></p> <ul style="list-style-type: none"> <li>Accepted and held a general power of attorney from client DG in favour of himself.</li> <li><b>Engaged in personal financial dealings</b> with a client by accepting a total of \$32,000</li> <li><b>Borrowed \$40,000 from a client</b> which he has failed to repay or otherwise account for</li> <li><b>Failed to answer undertakings</b> during an investigation</li> </ul>	<p><u>Uncontested</u> Fine of \$100,000</p> <p>Permanent prohibition</p> <p>Costs of \$7,500</p>
<p><b>Gabrielson (Re) (2011)<sup>4</sup></b></p> <ul style="list-style-type: none"> <li>Engaged in <b>securities related business by selling shares in a hotel project to a client</b></li> <li><b>Undisclosed and approved activity acting as the owner and an officer and a director of a hotel project</b></li> <li><b>Failed to provide information to Staff during its investigation</b></li> <li>Respondent had disclosed his involvement in other OBAs, but neglected to disclose his involvement in the hotel project; and</li> <li>Client was fully repaid, but the panel considered the time it took for the client to be repaid to be a harm.</li> </ul>	<p><u>Settlement Hearing</u></p> <p>Permanent prohibition</p> <p>Fine of \$10,000</p> <p>Costs of \$2,500</p>
<p><b>Cronin (Re) (2015)<sup>5</sup></b></p> <ul style="list-style-type: none"> <li>Over a nine year period Respondent <b>engaged in an undisclosed and unapproved business activity</b> by arranging private loans and</li> </ul>	<p><u>Settlement</u> 10 year prohibition</p> <p>Fine of \$10,000</p>

<sup>2</sup> **Wiseman** (Re), (2011) Reasons for Decision of a Hearing Panel of the Pacific Regional Council, MFDA File No. 201104.

<sup>3</sup> **Ryan** (Re), (2011) Decisions and Reasons of the Hearing Panel of the Central Regional Council, MFDA File No. 20104.

<sup>4</sup> **Gabrielson** (Re), Decision and Reasons, dated January 17, 2011, Hearing Panel of the Prairie Regional Council, MFDA File No. 200938.

<sup>5</sup> **Cronin** (Re), Decision and Reasons, dated January 19, 2015, Hearing Panel of the Central Regional Council, MFDA File No. 201414.

Case and Facts	Sanction
<p>mortgages for third-party borrowers and lenders, some of whom were clients.</p> <ul style="list-style-type: none"> <li>Received fees in respect of the loans</li> <li>The Respondent had partially disclosed to his second Member that he arranged private loans, but failed to adequately explain, or omitted to explain, the true nature and extent of his activity in relation to arranging private loans and mortgages.</li> </ul>	<p>Costs of \$2,500</p>
<p><b>Franco (Re)</b><sup>6</sup></p> <ul style="list-style-type: none"> <li><b>Failed to disclose or seek approval from Member to facilitating participation in the total amount of \$428,279 by twenty-six (26) clients in four charitable donation programs</b></li> <li>Recommended and facilitated the participation of twenty-six (26) clients in four charitable donation programs without disclosing to the clients that he would receive, in total, \$80,176 in commissions for doing so</li> <li>The clients at issue were notified by the CRA that Charitable Donation Programs were disallowed, and consequently, the clients faced the possibility of substantial losses stemming from reassessments</li> </ul>	<p><u>Agreed Facts and Penalty</u></p> <p>A five year suspension</p> <p>Fine of \$40,000</p> <p>Costs of \$5,000</p>
<p><b>Fauth (2017)</b><sup>7</sup></p> <ul style="list-style-type: none"> <li>Had and continued in other gainful occupations that <b>were not disclosed to or approved by the Member, in respect of her activities relating to 3 companies</b></li> <li>Respondent provided accounting and admin services to companies and earned fees</li> <li><b>Failed to disclose conflicts or potential conflicts of interest to the Member</b> and ensure the conflicts were addressed by the exercise of responsible business judgment influenced only by the best interests of the clients.</li> <li><b>Clients invested monies in companies controlled by the Respondent's spouse.</b></li> </ul>	<p><u>Agreed Facts and Penalty</u></p> <p>fine of \$20,000,</p> <p>a 3 year suspension</p> <p>costs of \$5,000.</p>
<p><b>Sarang (Re) (2015)</b><sup>8</sup></p> <ul style="list-style-type: none"> <li>Engaged in personal financial dealings with a client when he <b>borrowed \$29,015 from the client</b>, or arranged for the client to loan \$29,015 to a third party, for investment in a non-arm's length corporation;</li> <li><b>Engaged in undisclosed and unapproved business activity</b></li> <li>Misled the Member about personal financial dealings and other gainful occupations outside the Member.</li> <li>The Respondent repaid the client.</li> </ul>	<p><u>Settlement Agreement</u></p> <p>permanent prohibition</p> <p>Fine of \$7,500</p> <p>Costs of \$2,500</p>

<sup>6</sup> **Franco** (Re), Reasons for Decision of a Hearing Panel of the Central Regional Council, MFDA File No. 201016.

<sup>7</sup> **Fauth** (Re), (2017) Reasons for Decision of a Hearing Panel of the Prairie Regional Council, MFDA File No. 201610.

<sup>8</sup> **Sarang** (Re), 2015, Reasons for Decision of a Hearing Panel of the Pacific Regional Council, MFDA File No. 201535.

Case and Facts	Sanction
<p><b>Cuthbert (Re) (2011)</b><sup>9</sup></p> <ul style="list-style-type: none"> <li>• <b>Borrowing from a client on two occasions a total of approximately \$14,300</b>, which the Respondent failed to repay in accordance with the terms of two promissory notes</li> <li>• <b>Failed to comply with the policies and procedures</b> of the Member in respect of conflicts of interest and borrowing from clients</li> </ul>	<p><u>Penalty contested</u> fine of \$5,000; costs of \$2,500;</p> <p>Prohibition for 18 months or until monies repaid</p> <p>Pass a course</p>
<p><b>Mihajlovic (2017)</b><sup>10</sup></p> <ul style="list-style-type: none"> <li>• <b>Borrowed \$5,000 from a client contrary</b> to the policies and procedures of the Member and MFDA Rules</li> <li>• Amount was below range of cases, but given Financial information of Respondent panel satisfied the penalty would have significant impact.</li> <li>• Client made whole by the Member.</li> </ul>	<p><u>Settlement Agreement</u></p> <p>One-year prohibition</p> <p>\$5,000 fine</p>

### Staff's recommendation

112. Staff did not make a specific recommendation as to penalty; but through listening to Staff's comments on the precedent cases and from Staff's answers to questions from the panel, we believed that Staff would consider the penalty we ultimately decided upon to be appropriate.

### Analysis as to appropriate penalty

113. The Respondent had demonstrated that he was ungovernable. We determined that his misconduct was egregious and that a permanent prohibition was necessary to protect the public from future misconduct by him in the securities business.

114. In arriving at a global fine of \$175,000 for all of the Respondent's misconduct, we determined that \$25,000 was an appropriate amount for the misrepresentation under allegation #4, that \$50,000 was an appropriate amount for the failure to co-operate under allegation #5, and that \$100,000 was an appropriate amount for the misconduct under allegations #1, #2, and #3 considered together.

<sup>9</sup> **Cuthbert (Re) (2011)**, Decision and Reasons of a Hearing Panel of the Pacific Regional Council, MFDA File No. 201013.

<sup>10</sup> **Mihajlovic (Re) (2017)**, Reasons for decision of a Hearing Panel of the Central Regional Council, MFDA File No. 201783.

115. We considered the global fine to be fair and reasonable in the circumstances, taking into account probable losses and the fact that the lack of more information on the extent and consequences of the Respondent’s misconduct was due in large part to the non-cooperation of the Respondent contrary to his obligation to cooperate.

116. The fine is within the range of reasonableness when compared to fines in similar cases, with appropriate adjustments for the particular facts of our case.

117. We concluded that the penalty would provide an adequate deterrent for the Respondent and for others in the industry who might be inclined to engage in similar misconduct.

118. We determined that a costs award of \$7,500, as requested by Staff, was fair and reasonable in the circumstances.

**DATED** this 7<sup>th</sup> day of May, 2019.

“Paul M. Moore”

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Paul M. Moore, 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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