



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: Conrad Eagan

Heard: December 3, 2015 in Toronto, Ontario
Decision and Reasons: February 2, 2016

DECISION AND REASONS

Hearing Panel of the Central Regional Council:

The Hon. Patrick T. Galligan, Q.C.	Chair
Guenther W.K. Kleberg	Industry Representative
Robert C. White	Industry Representative

Appearances:

Maria L. Abate)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Conrad Eagan)	Did not appear in person or by counsel
)	
)	
)	

1. By *Amended* Notice of Hearing the Mutual Fund Dealers Association of Canada (the “MFDA”) made the following allegations of violations of the By-laws, Rules or policies of the MFDA against Conrad Eagan (the “Respondent”):

Allegation #1: Between February 2007 and August 2012, the Respondent misappropriated a total of at least \$3,732,775.45 from the following clients and one individual:

- (a) between December 15, 2008 and February 22, 2012, the Respondent misappropriated at least \$611,571.41 from the bank account of the estate of client JK and at least \$235,000 of the proceeds from the sale of client JK’s residence;
- (b) between February 20, 2007 and April 10, 2008, the Respondent misappropriated at least \$530,000 from the client, estate of PL;
- (c) between April 2012 and May 2012, the Respondent misappropriated \$173,346.35 from client JG;
- (d) in August 2012, the Respondent misappropriated \$120,657.69 from the account of client LDG;
- (e) beginning in November 2013, the Respondent misappropriated at least \$430,000 from the bank account of the estate of client YC; and
- (f) between November 12, 2008 and September 18, 2009, the Respondent misappropriated at least \$1,632,200 from client JR.

thereby failing to treat the clients fairly, honestly and in good faith and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

Allegation #2: Between April 2012 and August 16, 2012, the Respondent engaged in personal financial dealings with client JG by borrowing \$173,346.35 from her, which he has failed to repay or otherwise account for, thereby giving rise to a conflict or potential conflict of interest between the Respondent and client JG which the Respondent failed to

address by the exercise of responsible business judgment influenced only by the best interests of client JG, contrary to MFDA Rule 2.1.4 and 2.1.1.

Allegation #3: Commencing November 15, 2002, the Respondent acted as the executor of the estates of PL, JK and YC, these estates being clients of the Member, thereby acting upon a general power of attorney or similar authorization from a client in favour of the Respondent, contrary to MFDA Rules 2.3.1(a), 2.1.4 and 2.1.1.

Allegation #4: Between January 2004 and October 2011, the Respondent had and continued in another gainful occupation that was not disclosed to and approved by the Member by preparing wills for clients JK, YC and at least 11 other individuals, contrary to MFDA Rules 1.2.1(c) and 2.1.1.

Allegation #5: Between December 2008 and December 2014, the Respondent made statements and provided documents to the beneficiaries of the estate of client JK, the beneficiaries of the account of the estate of PL, the beneficiaries of the account of the estate of client YC, and client JG, which statements and documents he knew to be false, misleading or incorrect at the time and in the circumstances he made them, in order to deceive the clients and beneficiaries as to the amounts and whereabouts of their investments and monies, contrary to MFDA Rule 2.1.1.

Allegation #6: Commencing on April 10, 2013, the Respondent failed to cooperate with an investigation of his activities by the MFDA by:

- (a) making statements to the MFDA during the course of an interview that he knew to be false, misleading or incorrect at the time and in the circumstances he made them; and
- (b) failing to fulfill 7 undertakings to produce documents and other information requested by the MFDA during the course of the investigation;

contrary to section 22.1 of MFDA By-law No. 1 and MFDA Rule 2.1.1.

INTRODUCTION

2. At the hearing we were provided with voluminous affidavit evidence, admitted pursuant to Rule 13.4. In addition, Robert E. Lamshead, a MFDA investigator, testified orally. The Respondent did not file a Reply nor did he attend at the hearing. When served with the notice of motion to amend the Notice of Hearing he advised the process server that he did not intend to participate in these proceedings.

3. The evidence establishes, beyond any possible controversy, that the Respondent has committed a gross misappropriation of money that did not belong to him. We have been advised that there are outstanding criminal charges and civil lawsuits which arise out of the Respondent's misconduct. We have also been advised that there are other ongoing regulatory investigations.

4. We think that, in view of those other proceedings, we should be extremely cautious about referring specifically to any of the evidence which is before us, because in doing so, we might appear to prejudge issues which could arise in those other proceedings.

FACTUAL DETERMINATION

5. When a Respondent does not file a reply or attend the hearing, Rule 8.4(1)(b) and Rule 13.5 authorize a Hearing Panel to accept the facts alleged and the conclusions drawn in the Notice of Hearing as proven. In this case the evidence, as a whole, amply supports the facts alleged and the conclusions drawn in the Amended Notice of Hearing. We have no hesitation in exercising the authority conferred by those Rules. We specifically find that the facts and conclusions set out in paragraphs 1-126 and 128-131 inclusive of the Amended Notice of Hearing have been proven:

Registration History

1. From May 30, 2011 to August 16, 2012, the Respondent was registered as a mutual fund salesperson with Worldsource Financial Management Inc. ("Worldsource") in Ontario, Alberta and Quebec.

2. On August 16, 2012, Worldsource terminated the Respondent as a result of the events described herein.
3. From October 1987 to May 24, 2011, the Respondent had previously been registered as a mutual fund salesperson with Desjardins Financial Security Investments Inc. (“Desjardins”) in Ontario, Alberta and Quebec.
4. At all material times, the Respondent lived in the greater Ottawa area.
5. Desjardins has been a Member of the MFDA since November 15, 2002.¹
6. Worldsource has been a Member of the MFDA since May 10, 2002.

Allegation #1: Misappropriation of monies from clients and one individual

A. The Estate of Client JK

7. In December 1997, JK became a client of Desjardins. The Respondent was the mutual fund salesperson responsible for servicing her account.
8. On October 15, 2008, client JK died at the age of 87.
9. On September 17, 2012, MFDA Staff (“Staff”) received a written complaint from LD. LD is the daughter of client JK. In her letter, LD alleged that on or about January 16, 2008, client JK executed a Last Will and Testament prepared for her by the Respondent which appointed the Respondent as the executor of client JK’s estate.
10. In her complaint, LD alleged that despite repeated requests commencing shortly after the death of client JK and continuing over the following four years, the Respondent had not produced an accounting of client JK’s estate for the beneficiaries. LD believed the estate to have been fraudulently administered by the Respondent and was concerned that the estate’s assets had disappeared.
11. LD provided a copy of the will to Staff. The will stated on its cover page that it had been prepared by the Respondent, who was identified as client JK’s “financial advisor”. The will named the Respondent as the executor of client JK’s estate.
12. The will provided for, among other things, a one-time distribution of client JK’s personal property, such as furniture and jewellery, to two of her children and a one-time series of payments in differing amounts to a list of individuals and charities.

¹ The Respondent first became subject to the jurisdiction of the MFDA on November 15, 2002, the date on which Desjardins, the mutual fund dealer at which the Respondent was then registered, became a Member of the MFDA.

13. The will provided that the residue of the estate was to be divided into 100 shares, which shares were to be held in trust for LD (40 shares), MD (client JK’s son, 40 shares) and JD (client JK’s granddaughter, 20 shares). The will designated the Respondent as the “Manager of the Trusts” and directed as follows:

The income and capital of these assets are to be distributed by cheque on the first day of the month following the first anniversary of my death in the amount of 7% (seven percent) of the value of the shares on the anniversary of my death every year. This distribution is to continue until the 20th (twentieth) anniversary of my death at which time all such assets are to be transferred to the named Beneficiary absolutely...”

14. The Respondent was not named as a beneficiary in the will.

(i) Misappropriation of monies from the estate of client JK

15. On November 26, 2008, the Respondent applied for and obtained a “Certificate of Appointment of Estate Trustee With a Will” from the Ontario Superior Court of Justice appointing him as estate trustee of the estate of client JK.

16. Commencing December 15, 2008 and continuing to February 22, 2012, the Respondent proceeded to write at least 11 cheques, totalling \$611,571.41, on client JK’s bank account (i.e. now, the bank account of the estate of client JK) payable to himself. (The Respondent had control over client JK’s bank account in his capacity as the executor and trustee of client JK’s estate.) The Respondent deposited these cheques in his personal TD bank account. Over roughly the same period, the Respondent transferred \$353,676.85 of these monies from his personal TD bank account to his personal TD Waterhouse trading account (the “TD Waterhouse account”) or another bank account owned or controlled by the Respondent, usually making the transfers on the same day he deposited the monies to his TD personal bank account, or within a few days thereafter. The deposits and transfers are set out in the following chart:

#	Cheque Amount	Date Deposited to Respondent’s TD Bank Account	Transfer Amount	Date Transferred to Respondent’s TD Waterhouse Account
1	\$10,571.41	December 15, 2008	---	
2	\$20,000	December 18, 2008	---	
3	\$200,000	December 18, 2008	\$150,000	December 18, 2008
4	\$30,000	December 19, 2008	\$30,000	December 19, 2008 ²
5	\$80,000	October 26, 2009	\$22,300	October 26, 2009

² This amount was in fact transferred to one of the Respondent’s other personal TD bank accounts, not to his personal TD Waterhouse account.

6	\$30,000	October 30, 2009	\$10,000	October 30, 2009
7	\$50,000	February 14, 2012	\$10,000	February 14, 2012
8	\$60,000	February 14, 2012	\$27,000	February 15, 2012
9	\$75,000	February 17, 2012	\$55,980.88	February 21, 2012
10	\$50,000	February 21, 2012	\$44,416.99	February 21, 2012
11	\$6,000	February 22, 2012	\$3,978.98	February 22, 2012
	\$611,571.41		\$353,676.85	

17. Over approximately a one month period, from September 23, 2009 to October 26, 2009, the Respondent processed redemptions in the total amount of \$670,125.48 from the following accounts of the estate of client JK at Desjardins, as set out below:

Account No.	Fund	Redemption Amount	Date
409685807	DYN-Precious Metals	\$51,105.80	September 23, 2009
136601	TDB-Precious Metals	\$26,070.11	September 24, 2009
410861355	DYN-Precious Metals	\$3,592.55	September 24, 2009
410861355	DYN-Precious Metals	\$32,332.99	September 24, 2009
49636772	AGF-Precious Metals	\$87,808.02	September 24, 2009
128382	TDB-Precious Metals	\$199,641.74	September 24, 2009
411184344	DYN-Precious Metals	\$18,429.23	September 30, 2009
151513	TDB-Precious Metals	\$63,412.91	September 30, 2009
1858687	SLM-Global Dividend Growth	\$22,858.54	September. 30, 2009
1858687	SLM-Monthly Income	\$32,370.58	September 30, 2009
10965523	MRC-Cash Management	\$100,509.59	October 20, 2009
10965523	MRC-Cash Management	\$31,993.42	October 26, 2009
	Total Redemptions	\$670,125.48	

18. The redemption proceeds were deposited in the bank account of the estate of client JK. As described in paragraph 16 above, from October 26, 2009 to February 22, 2012, the Respondent transferred \$611,571.41 from client JK's bank account to his personal TD bank accounts by writing cheques payable to himself and depositing them in his personal TD bank accounts (cheques #5 to #11 in the chart at paragraph 16). Staff has been unable to trace the remaining balance of the redemption proceeds deposited in the bank account of client JK, being \$58,554.07. During the course of MFDA Staff's investigation, the Respondent undertook to provide an accounting of all estate assets held in his personal accounts but he has failed or refused to do so. The failure to fulfill this undertaking is addressed in Allegation #6.

19. The Respondent deposited the monies belonging to the estate of JK in his personal accounts without segregating or accounting for the monies at the time and has failed to fully repay, disburse or account for the monies that he took from the estate. The Respondent also admitted during the course of Staff's investigation to using material amounts of the monies to pay personal expenses or for his personal benefit. Having regard to the totality of the

circumstances, Staff therefore alleges that the Respondent misappropriated the monies from the estate of client JK.

(ii) Misappropriation of the proceeds of sale of client JK's residence

20. In January 2012, the Respondent, acting in his capacity as the executor of client JK's estate, sold her place of residence.

21. On February 13, 2012, the lawyer handling the sale for the estate issued a cheque from his trust account payable to "Estate of JK" in the amount of \$281,746.98, representing the net proceeds after fees and disbursements from the sale of client JK's residence. The Respondent deposited the cheque in the bank account of the estate of client JK.

22. Over the following week, from February 14, 2012 to February 22, 2012, the Respondent wrote four cheques totalling \$235,000 from the bank account of the estate of client JK and deposited them in his personal TD bank account.

23. Shortly after depositing these monies in his personal TD bank account, the Respondent transferred \$137,397.87 from his personal TD bank account to his personal TD Waterhouse account.

24. Staff has been unable to trace the remainder of the proceeds from the sale of client JK's residence, being \$46,746.98, which the Respondent deposited in the bank account of the estate of client JK. During the course of MFDA Staff's investigation, the Respondent undertook to provide an accounting of all estate assets held in his personal accounts but he has failed or refused to do so. This failure is addressed in Allegation #5.

25. The Respondent deposited the monies from the sale of client JK's residence without segregating or accounting for the monies at the time and has failed to repay or otherwise account for the monies to the estate thereafter. Having regard to the totality of the circumstances, Staff therefore alleges that the Respondent misappropriated the monies from the estate of client JK.

LD's complaint

26. As described above, after the death of client JK in October 2008, the beneficiaries of JK's estate, led by her daughter LD, made multiple requests that the Respondent provide an accounting of the estate's assets. On September 17, 2012, after being unable to obtain an accounting of the estate from the Respondent for nearly four years, LD submitted a written complaint to the MFDA.

27. After the Respondent became aware of LD's complaint, the Respondent attempted to assuage her concerns by representing to LD that the estate's assets had been transferred to his personal TD Waterhouse account and he had used the monies to purchase investments for the estate which were generating a return of "0.0025% per month", compounding monthly to achieve a guaranteed annual return of approximately "3.04%", which the Respondent

represented was as good or better than the returns then being offered by savings accounts and 5 year guaranteed investment certificates. The Respondent further advised the beneficiaries of client JK's estate that the will permitted him the flexibility to invest the assets in any manner which he deemed appropriate in his capacity as the "Manager of the Trusts".

28. The Respondent's representations were false in so far as the Respondent had not invested the estate's assets in a manner so as to guarantee an annual rate of return of 3.04%. In fact, the Respondent had invested all or substantially all of the estate's monies that he had transferred to his personal TD Waterhouse account in the shares of a thinly traded gold mining company with a mine property in the early stages of development in South America. As of the date of this Notice of Hearing, the shares of the mining company trade at less than \$1 Canadian on the Toronto Venture Exchange.

29. During the course of Staff's investigation of this matter, the Respondent made the following admissions, among others:

- (a) the Respondent withdrew monies from client JK's bank account and deposited the monies in his personal TD bank account without segregating or separately accounting for the monies;
- (b) the Respondent used monies to pay personal expenses, including paying VISA and telephone bills, making payments on lines of credit, and writing four bank drafts in the total amount of \$35,000 payable to himself and to his spouse for personal use;
- (c) the Respondent used the monies which he transferred to his personal TD Waterhouse account to purchase shares in the above-described mining company; and
- (d) the Respondent had concocted the purported 3.04% return he had represented to the beneficiaries of client JK's estate that he was earning on the estates' monies he had purportedly invested on the estate's behalf.

B. Misappropriation of monies from the client, estate of PL

30. On December 13, 1996, an individual, PL, executed his last will and testament as prepared for him by the Respondent. In the will, PL appointed the Respondent as his executor. The Respondent was not named as a beneficiary in the will but was, as in the case of client JK described above, designated as the "Manager of the Trusts" to manage, invest and disburse the estate's assets over a period of years in accordance with PL's instructions as set out in the will.

31. On June 10, 1998, PL passed away at the age of 87.

32. On August 10, 1998, the Respondent applied for and obtained a "Certificate of Appointment of Estate Trustee With a Will" from the Ontario Court (General Division) appointing him as estate trustee of the estate of PL.

33. During the course of Staff's investigation of the complaint concerning client JK's estate, Staff identified three cheques totalling \$530,000 written by the Respondent on the bank account of the estate of PL that the Respondent had deposited in either the Respondent's

personal TD bank account or his personal TD Waterhouse account. The particulars of the three cheques are set out in the chart below:³

#	Cheque Amount	Deposited to	Deposit Date	Transferred to	Transfer Date	Transfer Amount
1	\$15,000	unknown	February 20, 2007	---		
2	\$150,000	TD Waterhouse	September 5, 2007	---		
3	\$365,000	TD bank account	April 10, 2008	TD Waterhouse	April 10, 2008	\$302,000
	\$530,000					

34. During the course of Staff’s investigation, the Respondent admitted, among other things, that:

- (a) he had written the three above-described cheques and deposited them in his personal accounts;
- (b) he had used the monies to pay personal expenses;
- (c) he had moved the monies between his personal accounts without segregating or separately accounting for the monies; and
- (d) the beneficiaries of the estate of PL were not aware that the Respondent held monies belonging to the estate of PL.

35. During his lifetime, PL was not a client of Desjardins. However, in January 1999, following the death of PL and the Respondent’s appointment as the executor of PL’s estate, the Respondent opened an account for the estate of PL at Desjardins. The Respondent was the mutual fund salesperson responsible for servicing the account of the client, estate of PL.

36. Similar to the representations the Respondent made to the beneficiaries of client JK’s estate, the Respondent represented to the beneficiaries of PL’s estate that he had invested the estate’s assets in interest bearing investments yielding returns of between 0.85% and 4.55%. The Respondent prepared a one-page document which purported to summarize the status of the estate’s investments, entitled “Current Interest Bearing Investments for the 12 months ending: June 10, 2009”, which reported that the value of the estate’s assets as of June 10, 2009 was \$538,219.40 (which was the total of cheques 2 and 3 as per paragraph 33, plus a percentage of the purported return).

37. The Respondent’s representations to the beneficiaries and the one-page summary were false. To the extent the Respondent invested any of the estate’s monies (including the monies he had misappropriated from the estate), he comingled the estate’s monies with monies from other parties in his personal TD Waterhouse account and used the monies to purchase shares of the speculative mining stock described above. The Respondent admitted

³ Staff notes that it also identified numerous cheques written by the Respondent on the bank account of the estate of PL payable to the beneficiaries of PL’s estate.

that the rates of return he provided to the beneficiaries of PL's estate simply reflected market rates of return posted at the time of their inquiries.

38. The Respondent deposited the monies belonging to the estate of PL in his personal accounts without segregating or accounting for the monies at the time and has failed to repay or account for the monies to the estate thereafter. The Respondent also admitted during the course of Staff's investigation to using amounts of the monies to pay personal expenses or for his personal benefit. Having regard to the totality of the circumstances, Staff therefore alleges that the Respondent misappropriated the monies from the client, estate of PL.

C. Misappropriation of monies from client JG

39. On May 27, 2011, the Respondent transferred from Desjardins to Worldsource.

40. JG had a registered account at Worldsource. The Respondent was the mutual fund salesperson responsible for servicing her account.

41. In February 2012, client JG approached the Respondent for investment advice. Client JG informed the Respondent that she was in poor health, unable to work and that her home required renovations to accommodate a permanent debilitating illness. At the time, client JG was 59 years old and single.

42. The Respondent recommended that client JG borrow monies against her home, which she owned outright, and use the proceeds to purchase income-generating investments that she was led to believe would be held in an account at Worldsource. The Respondent accompanied client JG to a mortgage broker to assist her in obtaining an investment loan.

43. On March 15, 2012, client JG applied for and was granted a mortgage in the amount of \$200,000 secured against her residence. The mortgage provided that the monies would be advanced to client JG on March 30, 2012 and thereafter she would be required to make monthly mortgage payments of \$850.81. The Respondent advised client JG that she would receive payments of approximately \$1,000 per month from the investments in her account, which would be sufficient to cover her monthly mortgage payments.

44. On March 29, 2012, at the Respondent's direction, client JG signed a Worldsource account opening document for the purpose, she believed, of opening a non-registered account at Worldsource in which she would deposit the proceeds of the mortgage scheduled to be advanced the following day and from which she would subsequently receive \$1,000 monthly withdrawals. As described below, however, none of the mortgage proceeds were ever deposited in the account and no payments were ever made to her from the account.

45. On March 30, 2012, the lawyer handling the mortgage for client JG wrote three cheques to disburse the net proceeds of the mortgage from his trust account in accordance with client JG's directions, as set out below:

- a) a cheque in the amount of \$25,000 payable to client JG personally to be used by her to pay for the renovations to her house;
- b) a cheque in the amount of \$165,000 payable to a specific TD Waterhouse account (subsequently determined to be the Respondent's personal TD Waterhouse account) which monies client JG believed were going to be invested on her behalf through Worldsource; and
- c) a cheque in the amount of \$8,346.35 payable to "Worldsource Financial Management Plan No. ["*account #*"]⁴, which client JG initially intended to put in her account at Worldsource and invest in money market funds. At or around that time, however, she changed her mind and directed her lawyer to issue a replacement cheque payable to her personally in the same amount.

46. On April 2, 2012, client JG deposited the cheque in the amount of \$25,000 payable to herself in her personal bank account.

47. On April 2, 2012, the Respondent deposited the second cheque in the amount of \$165,000 in his personal TD bank account and then transferred the monies to his personal TD Waterhouse account the same day.

48. On May 7, 2012, client JG deposited the third cheque in the amount of \$8,346.35 payable to her personally in her personal bank account. On or about the same date, she provided the Respondent with a cheque in the same amount payable to him personally with the understanding that he would combine this money with the \$165,000 lump sum she had previously provided to him to invest. On May 9, 2012, the Respondent deposited this cheque in his personal TD bank account and then transferred the monies to his personal TD Waterhouse account.

49. None of the proceeds of client JG's mortgage were ever deposited in an account at Worldsource.

The Respondent is terminated by Worldsource

50. On August 16, 2012, Worldsource terminated the Respondent following its investigation of the Respondent's misappropriation of monies from client LDG, as described in Section D below. At or around the time of his termination by Worldsource, the Respondent led client JG to believe that he had arranged for the transfer of client JG's accounts, including the one holding her investments purchased using the mortgage proceeds, from Worldsource to another Member of the MFDA. The Respondent did, in fact, arrange for the transfer of client JG's registered account to the other Member.

51. In January 2013, client JG contacted the other Member to inquire about the status of her accounts. The Member told client JG that it had no record of her account holding the investments purchased with the mortgage proceeds. Client JG then contacted Worldsource and was informed that there were no monies in her non-registered account. (As mentioned

⁴ The account number has been redacted for privacy reasons. This account number was the same account number as was stated on the account opening documentation client JG signed on March 29, 2012.

above, although the Respondent had arranged for client JG to open a non-registered account in March 2012 to hold the mortgage proceeds, no monies were ever deposited in it.)

52. After learning that the mortgage proceeds were not in an account at either Worldsource or the other Member, client JG contacted the Respondent.

53. Client JG eventually met with the Respondent and represented to her that the reason she had no investments in her account at Worldsource was because she had used the loan proceeds to make a personal loan to the Respondent in the amount of \$165,000.

54. At the meeting, the Respondent produced a document that purported to evidence a loan made by client JG to the Respondent on April 2, 2012 (i.e. immediately after the mortgage proceeds were advanced) in the amount of \$165,000 for a period of one year at a rate of 5% per annum.⁵ The loan document, which appeared to be signed by client JG, contained a reference to a specific TD Waterhouse account.⁶ The Respondent led client JG to believe that this TD Waterhouse account was hers. In fact, the TD Waterhouse account identified on the loan document was the Respondent's personal TD Waterhouse account.

55. Following her meeting with the Respondent, client JG contacted TD Waterhouse, which informed client JG that she did not have an account with them. When client JG confronted the Respondent with this information, he expressed surprise and advised her that he would contact TD Waterhouse himself and arrange for copies of her TD Waterhouse account statements to be provided to her. In the interim, he said he would prepare his own summary of client JG's account and provide it to her.

56. Shortly thereafter, the Respondent provided client JG with a document entitled "Investment Account for JG as of January 26, 2013, Funds are in TD Waterhouse Account ["*account #*"] earning 5% interest" that the Respondent himself had prepared. This document appeared to confirm that \$165,000 and \$8,346.35 from the mortgage proceeds had been invested in a TD Waterhouse account and was earning 5% interest. The document listed, by date, the \$1,000 amounts purportedly withdrawn from the account and paid to client JG, as well as the dollar amounts of interest purportedly earned on the account. The document stated that the current value of the account, described as the "funds invested less funds withdrawn and interest earned", was \$165,549.53.

57. The Respondent reviewed the documents with client JG, who acknowledged that she had been receiving payments of \$1,000 per month since taking the mortgage.

58. In fact, the monthly \$1,000 payments that client JG had been receiving were not coming from investments in the TD Waterhouse account or her account at Worldsource but were being paid by the Respondent from his personal bank accounts or from cash he kept on hand.

⁵ A \$165,000 investment returning 5% per year would pay only \$687.50 monthly, substantially less than the \$1,000 per month the Respondent represented to client JG she would receive from her investments.

⁶ The TD Waterhouse account was referred to by its account number.

59. At all material times, the Respondent had on-line access to the TD Waterhouse account and the ability to print off account statements. Despite promising to provide client JG with copies of account statements for “her” TD Waterhouse account, the Respondent never did so.

Staff’s investigation

60. During the course of Staff’s investigation:

- (a) the Respondent acknowledged receiving a total of \$173,346.35 from client JG (consisting of two payments of \$165,000 and \$8,346.35) but maintained that the monies were a loan from client JG;
- (b) client JG stated she had no recollection of loaning any monies to the Respondent or signing the document purporting to evidence a \$165,000 loan to the Respondent;
- (c) despite giving an undertaking to do so, the Respondent failed or refused to produce the original loan document purportedly signed by client JG evidencing her \$165,000 loan to him; and
- (d) the Respondent was unable to produce any documents evidencing the purported \$8,346.35 loan from client JG.

61. The Respondent deposited the monies belonging to client JG in his personal accounts without segregating or accounting for the monies at the time and has failed to repay or otherwise properly account for the monies. The Respondent claims that client JG loaned him a total of \$173,346.35 but there is insufficient or no documentary evidence to support his claim and client JG has no recollection of lending monies to him. Having regard to the totality of the circumstances, Staff therefore alleges that the Respondent misappropriated the monies from client JG.⁷

D. Misappropriation of monies from client LDG

62. On August 7, 2012, Dynamic Funds (“Dynamic”), an investment funds company, received a redemption request for an account in the name of an individual, LDG. The amount of the redemption request was \$120,657.69.

63. The account of client LDG had been inactive for 32 years. The account was opened in 1980 to hold monies LDG inherited from her father upon his death in 1980. Between the initial purchase of mutual funds in the account in 1980 and the redemption request in August 2012, there had been no client initiated activity in the account. The Respondent was assigned the dormant account when he joined Desjardins in 1987. In July 2011, when he transferred to Worldsource, the Respondent arranged for the transfer of the account from Desjardins to Worldsource by submitting account transfer forms purportedly signed by client LDG.

64. On August 10, 2012, Worldsource flagged the redemption request for review due to its large amount and the fact that it appeared to have been placed directly with Dynamic, as opposed to having been processed by the Respondent through the accounts and facilities of

⁷ In the alternative, see Allegation #2.

Worldsource. Dynamic provided Worldsource with a copy of the redemption request form, which revealed the following:

- a) the redemption request form had purportedly been signed by client LDG;
- b) the redemption request form had been faxed to Dynamic from the same fax number as that of the Respondent's branch office at Worldsource;
- c) client LDG's signature on the redemption request form had purportedly been signature guaranteed by an Approved Person at the Respondent's branch office;
- d) the redemption request form directed that the redemption proceeds be paid out in the form of a cheque mailed to a specific address, which address was the address of the Respondent's branch office; and
- e) the redemption request form requested that the cheque be made payable to a specific TD Waterhouse account, which account was subsequently determined to be the Respondent's personal TD Waterhouse account.

65. Dynamic also informed Worldsource that the Respondent had called Dynamic on August 7, 2012 to inquire about the status of the free units and deferred sales charge ("DSC") fees applicable to the mutual funds held in the account.

66. On August 10, 2012, in response to queries from Worldsource, the Respondent denied prior knowledge of the redemption request and claimed that the transaction only came to his attention after it had already occurred.

67. On August 14, 2012, the Respondent received the redemption proceeds cheque in the amount of \$120,657.69 issued by Dynamic and deposited it in his personal TD Waterhouse account, thereby misappropriating the monies.

68. On August 15, 2012, the Respondent's branch manager reported to Worldsource that the TD Waterhouse account identified on the redemption request form belonged to the Respondent and that the Respondent had asked a colleague at the branch two days earlier if a cheque had arrived for him.

69. Worldsource was unable to reconcile the Respondent's responses to their queries regarding the redemption in client LDG's account with the evidence it had gathered, which appeared to show his involvement in the transaction. On August 16, 2012, Worldsource terminated the Respondent and referred the matter to Ottawa Police Services.

70. During the course of Staff's subsequent investigation, the Respondent informed Staff that, contrary to the initial denial he gave to Worldsource of having any knowledge of the redemption request, client LDG had in fact gifted the redemption proceeds to him. The Respondent made the following claims, among others, to Staff:

- (a) He had been friends with client LDG for over 20 years;
- (b) He had spoken with client LDG by telephone on two occasions about the redemption;
- (c) Client LDG wanted to give him the redemption proceeds because she was leaving the country and no longer needed the monies;

- (d) Client LDG had dropped off the signed redemption request form at his branch office; and
- (e) Client LDG was now travelling outside of Canada and he did not know when she intended to return.

71. During the course of Staff's investigation, Staff managed to track down client LDG, who had reverted to her maiden name following her divorce in 1979 and now resides in Victoria, British Columbia, where she has lived since 1983. Contrary to the statements the Respondent gave to Staff, client LDG informed Staff of the following, among other things:

- (a) She did not know the Respondent and had never met, talked to or communicated with the Respondent at any time;
- (b) She had no knowledge or recollection that she held assets in her name at Dynamic or had an account at Worldsource;
- (c) She had never gifted any monies to the Respondent;
- (d) She had not authorized the redemption in her account;
- (e) The signature on the redemption request form (and on the form the Respondent had submitted to transfer her account from Desjardins to Worldsource) was not hers; and
- (f) She was not familiar with the TD Waterhouse account identified on the redemption request form.

72. The Respondent deposited the monies belonging to client LDG in his personal accounts without client LDG's knowledge, authorization or approval. The Respondent has failed to repay or otherwise account for the monies. Having regard to the totality of the circumstances, Staff therefore alleges that the Respondent misappropriated the monies from client LDG.

E. The Estate of Client YC

73. YC was a long-time client of Desjardins. The Respondent was the mutual fund salesperson responsible for servicing her account.

74. On May 30, 2011, the Respondent became registered as a mutual fund salesperson at Worldsource.

75. On June 17, 2011, client YC transferred her accounts to Worldsource where the Respondent remained the mutual fund salesperson responsible for servicing her account.

76. On October 11, 2011, the Respondent prepared a will for client YC. The will prepared by the Respondent also named himself as the executor of client YC's estate upon her death.

77. On September 13, 2013, client YC died.

78. On November 13, 2014, Staff was contacted by RM. RM is the niece and primary beneficiary of client YC and had become aware of the NOH issued against the Respondent through its posting on the MFDA website.

79. RM contacted Staff to report that the Respondent was named as the executor of her aunt's estate, client YC, and that similar to the other allegations against the Respondent in the NOH, the Respondent had not been able to produce an accounting of client YC's estate for the beneficiaries and had failed to make any distributions to the rightful heirs.

80. RM advised Staff that the Respondent had led the beneficiaries of client YC's estate to believe that value of the estate was approximately \$430,000 and that the funds were securely invested through Springvalley Holdings Inc. ("Springvalley Holdings") and could not be withdrawn until maturity on March 20, 2015.

81. RM advised Staff that she requested evidence of the investments in Springvalley Holdings and was provided two (2) documents by the Respondent: a letter from Springvalley Holdings confirming the maturity date of the investments and a one page itemized list of each of the investments made on behalf of the estate of client YC.

82. After receiving this information, RM attempted to contact Springvalley Holdings. After RM was unable to locate the Springvalley Holdings office, RM contacted Springvalley Holdings client representative Daniel Alexander, the signatory on the letter provided by the Respondent, who agreed to meet with her at an Oakville, Ontario coffee shop.

83. On December 6, 2014, RM met Daniel Alexander of Springvalley Holdings in Oakville, Ontario. Unsatisfied with the information Daniel Alexander provided to her and unable to confirm his identity, RM contacted the police to report her dealings with the Respondent, his accomplices and his activities with respect to the estate of her aunt, client YC.

84. The Respondent's representations to RM and the documents provided to her purporting to confirm investments in Springvalley Holdings by the estate of client YC were false and Springvalley Holdings appears to be a fictitious company.

85. Staff's investigation of this matter confirmed that in November 2013, the Respondent, acting in his capacity as executor of the estate of YC, redeemed the account of client YC, which by this time had been transferred to Assante Wealth Management Inc. The Respondent then deposited the proceeds into a bank account set up in the name of the estate of YC and controlled solely by the Respondent. As far as Staff is aware, there have been no distributions of the estate of YC to the rightful heirs and having regard to the totality of the circumstances, Staff alleges that the Respondent misappropriated monies from the estate of client YC.

86. In April 2015, the Respondent was charged by the Ottawa Police Services with fraud under section 465(1) (c) and the intent to defraud under section 336(1.1) of the Criminal Code in respect to his activities regarding the estate of client YC.

87. In June 2015, Ottawa Polices Services also charged an accomplice of the Respondent and the individual posing as the Springvalley Holdings client representative, Daniel Alexander, with fraud.

F. Misappropriation of monies from client JR

88. In December 2007, JR became a client of Desjardins. The Respondent was the mutual fund salesperson responsible for servicing her accounts.

89. On August 5, 2008, client JR invested approximately \$1,200,000 into her pre-existing Desjardins account.

90. On October 22, 2008, client JR invested a further \$159,000 into her Desjardins accounts.

91. Commencing on November 7, 2008 through to September 16, 2009, the following fifteen (15) redemptions were made in client JR's accounts:

#	Account No.	Date of Redemption	Redemption Amount
1.	01950922	November 7, 2008	\$10,000
2.	4361711	November 7, 2008	\$20,000
3.	4361711	November 21, 2008	\$30,000
4.	4361711	January 8, 2009	\$121,698
5.	01950922	January 13, 2009	\$50,956
6.	01950922	January 29, 2009	\$71,465
7.	01950922	March 18, 2009	\$17,085
8.	49723500	May 5, 2009	\$43,938
9.	411519101	June 8, 2009	\$129,009
10.	0110220	June 8, 2009	\$111,242
11.	49723500	June 23, 2009	\$139,382
12.	0110220	July 27, 2009	\$88,224
13.	41151910	August 5, 2009	\$244,012
14.	20051603	September 15, 2009	\$182,823
15.	411519101	September 16, 2009	\$284,952
		Total Redemptions	\$1,544,786

92. In 2010, client JR's health began to deteriorate and she became unable to handle her financial affairs. Client JR had previously appointed her friend NM as power of attorney ("POA").

93. In July 2014, as part of her duties as POA for client JR, NM contacted Desjardins to inquire about client JR's accounts. NM was advised that client JR maintained a small Registered Retirement Income Fund ("RRIF") at Desjardins, but that client JR's primary

account had been fully redeemed on September 16, 2009 and the proceeds sent to a TD bank account.

94. After speaking with Desjardins, NM attended at TD Bank in Ottawa to request further information on client JR's accounts.

95. TD Bank provided NM with a "Deposit Account History" ("Account History") for the account of client JR for the period of October 30, 2008 to September 28, 2009. The Account History indicated that the proceeds of client JR's Desjardins accounts (as well as additional monies) were deposited into her TD bank account and promptly transferred into another two (2) TD bank accounts.

96. Commencing November 12, 2008 through to September 18, 2009, the following twenty-two (22) transfers were made from client JR's TD bank account to two (2) other TD bank accounts:

#	Transfer Date	Transfer Amount	Transfer To Account No.
1.	November 12, 2008	\$20,000	****666
2.	November 14, 2008	\$30,000	****666
3.	November 25, 2008	\$30,000	****666
4.	November 28, 2008	\$15,000	****666
5.	December 2, 2008	\$5,000	****816E
6.	January 12, 2009	\$100,000	****666
7.	January 14, 2009	\$10,000	****816E
8.	January 15, 2009	\$40,000	****6666
9.	January 29, 2009	\$5,000	****6666
10.	February 2, 2009	\$65,000	****6666
11.	February 9, 2009	\$30,000	****6666
12.	March 18, 2009	\$2,800	****816E
13.	March 25, 2009	\$100,000	****6666
14.	May 4, 2009	\$2,500	****6666
15.	May 7, 2009	\$52,500	****6666
16.	May 12, 2009	\$1,500	****6666
17.	June 10, 2009	\$235,000	****6666
18.	June 25, 2009	\$132,000	****6666
19.	July 29, 2009	\$84,000	****816E
20.	August 7, 2009	\$230,000	****6666

21.	September 17, 2009	\$174,000	****6666
22.	September 18, 2009	\$267,000	****816E
		Total Transfers	\$1,632,200

97. In January 2015, after reading about the allegations against the Respondent in the Ottawa Sun newspaper, NM contacted Staff to determine if client JR's accounts were affected by the Respondent's fraudulent activities.

98. The two (2) other TD bank accounts to which client JR's monies were transferred from her personal TD bank account were accounts known to be one of the Respondent's personal TD bank accounts and his TD Waterhouse account.

99. The funds transferred from the personal TD bank account of client JR appear to be the redemption proceeds from her Desjardins account as well as additional funds belonging to client JR.

100. On February 10, 2015, client JR died at the age of 90.

101. The Respondent was not named as a beneficiary of client JR's estate and having regard to the totality of the circumstances, Staff alleges that the Respondent misappropriated monies from client JR.

G. Summary of misappropriation allegations

102. In summary, the Respondent misappropriated a total of at least \$3,732,775.45 from the following clients and one individual:

- (a) between December 15, 2008 and February 22, 2012, the Respondent misappropriated at least \$611,571.41 from the bank account of the estate of client JK and at least \$235,000 of the proceeds from the sale of client JK's residence;
- (b) between February 20, 2007 and April 10, 2008, the Respondent misappropriated at least \$530,000 from the client, the estate of PL;
- (c) in or around April 2012, the Respondent misappropriated \$173,346.35 from client JG;
- (d) in August 2012, the Respondent misappropriated \$120,657.69 from the account of client LDG;
- (e) beginning in November 2013, the Respondent misappropriated at least \$430,000 from the bank account of the estate of client YC; and
- (f) between November 12, 2008 and September 18, 2009, the Respondent misappropriated at least \$1,632,200 from client JR.

Allegation #2: Personal financial dealings with client JG

103. In the event the Respondent's conduct in relation to client JG's monies as described in Allegation #1 C. above did not constitute misappropriation, then the Respondent borrowed the monies from client JG (as he has claimed) and failed to repay or otherwise account for the monies.

104. By borrowing monies from client JG and failing to repay or otherwise account for the monies, the Respondent engaged in personal financial dealings with client JG that gave rise to a conflict or potential conflict of interest between the Respondent and client JG which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of client JG, contrary to MFDA Rules 2.1.4 and 2.1.1.

Allegation #3: Acting as an executor

105. As described in Allegation #1, the Respondent was named in PL's will, dated December 13, 1996, as the executor of his estate. On August 10, 1998, the Respondent applied for and was granted an appointment as the executor of PL's estate.

106. In January 1999, the Respondent opened an account at Desjardins for the estate of PL. The Respondent was the mutual fund salesperson responsible for servicing the account of the estate of PL.

107. On November 15, 2002, the Respondent became subject to the jurisdiction of the MFDA when Desjardins became a member on that date.

108. As described in Allegation #1, the Respondent was named in client JK's will, dated January 16, 2008, as the executor of her estate. On November 26, 2008, the Respondent applied for and was granted an appointment as the executor of the estate client JK. The Respondent was the mutual fund salesperson responsible for servicing the account of the estate of client JK.

109. As described in Allegation #1, the Respondent was named in client YC's will, dated October 11, 2011 as the executor of her estate. On October 25, 2013, the Respondent applied for and was granted an appointment as the executor of the estate of client YC. The Respondent was the mutual fund sales person responsible for servicing the account of client YC.

110. At all material times, MFDA Rule 2.3 prohibited an Approved Person from accepting or acting upon a general power of attorney or similar authorization from a client in favour of the Approved Person.

111. Commencing November 15, 2002, the Respondent, by accepting and acting on his appointment as the executor of the estates of PL, JK and YC acted upon a general power of attorney or similar authorization from a client in favour of the Respondent, contrary to MFDA Rules 2.3.1(a), 2.1.4 and 2.1.1.

Allegation #4: Outside Business Activities – preparation of wills

112. As described in Allegation #1, while he was registered at Desjardins, the Respondent prepared a will for client JK, which she executed on January 16, 2008.

113. In December 2008, Desjardins became aware that the Respondent had prepared client JK's will when the estate attempted to claim the proceeds of a Desjardins life insurance policy that the Respondent had sold to client JK.

114. On December 17, 2008, Desjardins sent an email to the Respondent's branch manager regarding its investigation of, among other things, the Respondent's preparation of client JK's will. At Desjardins' direction, the branch manager forwarded the email to the Respondent.

115. The email advised the Respondent that, among other things, the preparation of wills was not an approved outside business activity that the Respondent was permitted to engage in, whether or not the individuals were clients of Desjardins, and directed the Respondent to immediately cease preparing any further wills. The email requested that the Respondent provide a list of all the wills that he had prepared while employed by Desjardins.

116. The email further stated that the prohibition on will preparation had been made clear to all Desjardins mutual fund salespeople at multiple training sessions and by its Compliance department.

117. On January 12, 2009, the Respondent replied to Desjardins' email. In his response, the Respondent stated, among other things, that he was unaware that will preparation was not an approved outside business activity. The Respondent assured Desjardins that he would no longer prepare wills and provided a list of the names of 6 individuals for whom he had prepared wills between January 2004 and October 2008. The list of 6 individuals did not include PL or client JK, notwithstanding the fact that in client JK's case, the Respondent had sought and obtained the Court order appointing him as the executor of client JK's estate as recently as November 26, 2008.

118. During the course of Staff's investigation:

- (a) the Respondent admitted that he had been preparing wills since the mid-1990's and had prepared an additional 4 wills that were not on the list he provided to Desjardins; and
- (b) the Respondent's licensed assistant at Desjardins provided a list to Staff of 9 other individuals for whom he believed the Respondent had prepared wills.

119. In total, the Respondent is known to have prepared wills for at least 11 individuals while at Desjardins: the 6 he disclosed to Desjardins in his response of January 12, 2009, and client JK, and 4 others admitted to by the Respondent during the course of Staff's investigation.⁸

120. On May 30, 2011, the Respondent became registered as a mutual fund salesperson at Worldsource. While registered as a mutual fund salesperson at Worldsource, the Respondent prepared the will of client YC.

⁸ The Respondent prepared PL's will in 1996, prior to being subject to the MFDA's jurisdiction. PL's will is therefore not included as part of Allegation #4.

121. On October 11, 2011, the Respondent prepared a will for client YC and named himself as the executor of her estate. The Respondent did not disclose nor seek approval for this activity from Worldsource.

122. By engaging in the preparation of wills for clients JK, YC, and at least 10 other individuals between January 2004 and October 2011, the Respondent had and continued in another gainful occupation that was not disclosed to and approved by the relevant Member with whom the Respondent was registered, contrary to MFDA Rules 1.2.1(c) and 2.1.1.

Allegation #5: Misleading clients

123. As described in Allegation #1, between December 2008 and December 2014, the Respondent made statements and provided documents to clients when they inquired as to the amounts and whereabouts of the investments and monies in their accounts which the Respondent knew were false, misleading or incorrect at the time and in the circumstances he made them:

- (a) the Respondent led the beneficiaries of the estate of client JK to believe that the estate assets had been used to purchase investments with a guaranteed annual return of 3.04% and provided the beneficiaries with a falsified accounting of all transactions with the estate assets from December 2009 to October 2012, when in fact, he had misappropriated all or part of the monies for his own benefit and to purchase investments in his own accounts;
- (b) the Respondent led the beneficiaries of the account of the estate of PL to believe that the estate assets had been used to purchase interest bearing investments with returns between 0.85% and 4.55% and provided the beneficiaries with a falsified accounting of the investments when, in fact, he had misappropriated all or part of the monies to purchase his own personal investments;
- (c) the Respondent led the beneficiaries of the account of the estate of client YC to believe that the estate assets had been used to purchase interest bearing investments with a fixed rate of return of 2.4% and a maturity date of March 20, 2015 and provided the beneficiaries with a falsified accounting of the investments when, in fact, it appears that he and an accomplice had misappropriated all or part of the monies; and
- (d) the Respondent led client JG to believe that a TD Waterhouse account was opened on her behalf with the monies held in the account earning 5% interest and provided client JG with a falsified accounting of the fictitious account when, in fact, he had misappropriated the monies.

124. By making statements and providing documents which he knew to be false, misleading or incorrect to beneficiaries of the estate of client JK, the beneficiaries of the account of the estate of PL, the beneficiaries of the estate of client YC and client JG, the Respondent failed to treat the clients fairly, honestly and in good faith and engaged in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

Allegation #6: Failure to cooperate with Staff's investigation

125. During the course of its investigation, Staff interviewed the Respondent on April 10 and 11, 2013.

(a) Misleading Staff

126. During the interview, the Respondent made statements to Staff concerning the nature of his relationship with client LDG and the activity in her account which he knew were false, misleading or incorrect at the time and in the circumstances he made them. The Respondent made the statements to Staff with the intention of obstructing, misdirecting or avoiding further review and investigation of his activities by Staff with respect to his misappropriation of the redemption proceeds from client LDG's account.

...

(b) Failure to fulfill undertakings to provide documents and information

128. During Staff's interview of the Respondent, the Respondent gave 11 undertakings to produce documents and information to the MFDA in furtherance of the investigation. By letter dated May 7, 2013 to the Respondent's lawyer, Staff confirmed the 11 undertakings in writing. The Respondent undertook to, among other things, provide a complete accounting of client monies that he had deposited in his TD Waterhouse account or any other account owned or controlled by the Respondent at any time, as well as a full accounting of PL's estate. The Respondent was required to fulfill the undertakings, or provide a response as to why he could not fulfill them, on or before May 31, 2013.

129. To date, the Respondent has failed or refused to fulfill 7 of the undertakings and has not informed Staff as to why he is unable to fulfill them.

130. By providing false, misleading and incorrect responses during the course of Staff's investigation, and by failing or refusing to fulfill his undertakings, the Respondent has interfered with Staff's investigation and prevented Staff from determining the full nature and extent of the Respondent's misconduct including, among other things, the number of clients and other individuals from whom the Respondent may have misappropriated monies and the amounts of those misappropriations.

131. By engaging in the conduct described above, commencing April 10, 2013 the Respondent failed to cooperate with an investigation of his activities by the MFDA, contrary to section 22.1 of MFDA By-law No. 1 and MFDA Rule 2.1.1.

DETERMINATION OF LIABILITY

6. It is to be noted that, while the Amended Notice of Hearing (para. 102) alleges that the misappropriation totalled \$3,732,775, in his testimony Mr. Lamshead estimated it at \$3,497,775. We, therefore, accept the latter amount as our finding

7. Based upon our acceptance of the facts and conclusions set out above, and upon the whole of the evidence, oral and affidavit, we have decided that each of the six allegations made against the Respondent in the Amended Notice of Hearing have been established to the requisite degree of proof. We must, therefore, consider the appropriate penalty.

PENALTY

8. By themselves, each of the violations covered by Allegations #2 to #6 is a serious matter and it would be necessary to apply the usual principles, applicable to the imposition of penalty, to each of them. However great as their gravity is, individually or even cumulatively, it is subsumed by the grand theft, which is the reality of the misconduct specified in Allegation #1. The penalty which we impose will cover the six violations which have been provided against the Respondent.

9. The evidence shows that Conrad Eagan is a thief. He stole approximately \$3,500,000. In all but one case he stole from people who had put their trust in him as their financial advisor.

10. It is not necessary for us to cite authority to say that the primary purpose of the MFDA Rules is the protection of the investing public. It is also intended to earn public confidence in the market system and to assist in the maintenance of market efficiency. The circumstances in this case are grave. The flagrant violation of some of the most important rules of professional conduct must be treated very seriously. Conduct such as that of the Respondent in this case strikes at the very heart of a regulatory system intended to protect members of the investing public. His conduct strikes at the heart of a civilized society.

11. When determining an appropriate penalty a tribunal must always consider any mitigating circumstances. In this case we can see none, but we can see circumstances of aggravation. What is seriously aggravating is the fact that the Respondent is a sophisticated person with long experience in the financial industry. He should have known better. He must have known better. He was cavalier of his most fundamental obligations to his clients and their beneficiaries who suffered serious financial harm as a result of his misconduct. His misconduct was obviously deliberate and calculated. It extended for years. In those circumstances we think an extract from *Re Tonnies*, [2005] MFDA No. 200503, at p. 22, is apposite:

The Ontario Securities Commission has set out succinctly its role, not dissimilar to the role of this Panel, in determining penalty in *Re Mithras Management Ltd. et al.* (1990), 13 O.S.C.B. 1600. The Commission stated at 1610:

... [T]he role of the Commission is to protect the public interest by removing from the capital markets - wholly or partially, permanently or temporarily as the circumstances may warrant - those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct, that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient.

12. In order to do what we can to restrain future prejudicial conduct by this Respondent we think that a permanent prohibition of his authority to conduct securities related business in any capacity over which the MFDA has jurisdiction is called for.

13. In some cases, where the maximum prohibition is imposed, a fine may not be imposed, or if one is imposed, it is a moderate one. Sometimes there is little purpose to be served by imposing a fine when it is obvious that it is unlikely to be paid. This case, however, is so egregious that it seems to us that the requirement of general deterrence calls for the imposition of a substantial fine. If there is ever a case for a maximum fine, it is this one. We fix the amount of the fine at \$5,000,000.

14. The MFDA is entitled to its costs. The amount which it seeks is reasonable. We fix costs in the amount of \$15,000.

DECISION

15. Pursuant to By-law 24.1.1 we impose the following penalty upon the Respondent:

- (a) a permanent prohibition of the authority of the Respondent to conduct securities-related business in any capacity over which the MFDA has jurisdiction;
- (b) a fine in the amount of \$5,000,000; and
- (c) costs in the amount of \$15,000.

DATED this 2nd day of February, 2016.

“Patrick T. Galligan”

The Hon. Patrick T. Galligan, Q.C.
Chair

“Guenther W.K. Kleberg”

Guenther W.K. Kleberg
Industry Representative

“Robert C. White”

Robert C. White
Industry Representative

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