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: John David Elwood

Heard: August 19, 2020 by electronic hearing in Toronto, Ontario
Decision (Penalty): August 19, 2020
Reasons for Decision (Penalty): September 30, 2020

REASONS FOR DECISION
(Penalty)

Hearing Panel of the Central Regional Council:

Frederick H. Webber	Chair
Linda J. Anderson	Industry Representative
Brigitte J. Geisler	Industry Representative

Appearances:

Brendan Forbes	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Peter Tuovi	)	Counsel for the Respondent
John David Elwood	)	Respondent

I. FINDINGS OF MISCONDUCT

1. On February 20, 2020, the Hearing Panel issued its Reasons for Decision on Misconduct in the matter of John David Elwood (the "Respondent"). The Hearing Panel determined that the Respondent engaged in the following misconduct:

> **Contravention #1:** Between September 2012 and April 2017, the Respondent borrowed $16,000 from a client thereby engaging in personal financial dealings with the client that gave rise to an actual or potential conflict of interest that the Respondent failed to disclose to the Member or to the client in writing and failed to otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 1.1.2, and 2.1.1.
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> **Contravention #2:** Between September 2013 and January 2017, the Respondent misled the Member by providing false responses to Member questionnaires, thereby interfering with the Member's ability to supervise the Respondent, contrary to MFDA Rules 2.1.1 and 1.1.2.
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> **Contravention #3:** Between about February 2016 and April 2017, the Respondent failed to report that he had been named a defendant in a civil claim related to borrowing money from a client, contrary to MFDA Rules 1.4(b) and 2.1.1 and section 4 of MFDA Policy No. 6.

> *In the Matter of John David Elwood*, [2020] Hearing Panel of the Central Regional Council, MFDA File No. 201940 dated February 20, 2020 Decision on Misconduct,

2. The relevant facts are set out in the misconduct decision and need not be repeated here. However, it is necessary to summarize the 3 essential conclusions reached by the Hearing Panel in the Misconduct Hearing:

a) the financial transaction between the Respondent and his client, RW, was a loan from RW to the Respondent;
b) The Respondent provided false responses to Members' questionnaires by failing to disclose the loan; and

c) The Respondent failed to report that he was a defendant in a civil suit brought by RW, based on the loan from RW to him.

II. PROPOSED PENALTY

3. Pursuant to sections 24.1.1(i) and (j), a Hearing Panel has jurisdiction to impose any of the penalties listed in sections 24.1.1(a) – (f) if the Hearing Panel is of the opinion that:

a) any person under the jurisdiction of the MFDA has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA; or
b) has engaged in any business conduct or practice which the Hearing Panel considers unbecoming or contrary to the public interest.

A Hearing Panel may also require the Approved Person to pay all or part of the costs of the proceeding before the Hearing Panel pursuant to section 24.2 of MFDA By-law No. 1.

4. Having regard to the findings of the Hearing Panel and the factors applicable to the determination of penalties in enforcement proceedings, MFDA Staff proposed the following penalties against the Respondent in this case:

a) a permanent prohibition on the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member;
b) a fine in the amount of $25,000; and
c) costs in the amount of $12,500.

5. Respondent's counsel proposed the following penalties:

a) a reprimand;
b) A fine of $14,500; and
c) Costs of $5,000.

III. DETERMINING THE APPROPRIATE PENALTY

6. The Panel agrees with and has followed the principles and factors set out below in coming to its decision on penalty.

7. The primary goal of securities regulation is the protection of the investor. Sanctions should be preventative, protective and prospective in nature.

> *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 *per* Iacobucci J. at paras. 59, 68.

In *Tonnies (Re)* [2005], MFDA File No. 200503 at para. 45, the Hearing Panel cited the Ontario Securities Commission decision in *Re Mithras Management Ltd. et al.* (1990), 13 O.S.C.B. 1600 at 1610 for the proposition that:

> . . .[T]he role of this 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.

Factors Concerning the Appropriateness of Penalty

8. Numerous cases, including *Tonnies* (supra) have held that, in exercising its discretion to impose a penalty, the Hearing Panel should take into account the following considerations:

a) the protection of the investing public;
b) the integrity of the securities market;
c) specific and general deterrence;
d) the protection of the MFDA's membership; and
e) the protection of the integrity of the MFDA's enforcement process.

9. The cases also establish that Hearing Panels should consider the following factors:

a) the seriousness of the allegations proved against the Respondent;
b) the Respondent's past conduct, including prior sanctions;

c) the Respondent's experience and level of activity in the capital markets;
d) whether the Respondent recognizes the seriousness of the improper activity;
e) the harm suffered by investors as a result of the Respondent's activities;
f) the benefits received by the Respondent as a result of the improper activity;
g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
i) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
k) previous decisions made in similar circumstances.

10. The Hearing Panel also referred to the MFDA's Sanction Guidelines which came into effect on November 15, 2018 (the "Guidelines") The Guidelines are not mandatory or binding on the Hearing Panel, but provide a summary of the key factors upon which discretion can be exercised consistently and fairly. Many of the same factors that are listed above, which have been considered in previous decisions of MFDA Hearing Panels, are also reflected and described in the Guidelines.

Considerations in the Present Case

11. The Hearing Panel considered the following factors to be relevant in the present case:

Nature/Seriousness of the Misconduct

12. The Panel agrees with the MFDA submission that the Respondent's misconduct is serious.

13. Previous MFDA cases such as *Tonnies* (supra) have determined that where an Approved Person borrows money from a client, such circumstances give rise to a conflict of interest within the meaning of MFDA Rule 2.1.4; it was incumbent upon the Respondent to immediately disclose the conflict to the Member, and together with the Member to ensure that the conflict was addressed

by the exercise of responsible business judgment influenced only by the best interests of client RW and to ensure that the conflict was disclosed in writing to the client by the Member or in accordance with the Member's directions. The Respondent did not do so.

14. The Hearing Panel in *Davis (Re),* [2016] MFDA File No.201615 held that borrowing from a client in contravention of MFDA Rules 2.1.4 is considered serious misconduct which results in a direct benefit to the Approved Person. Specifically, the Hearing Panel held, at para. 58:

> "The Respondent borrowed $80,000, a significant sum of money, from his client for the purpose of establishing his own business. He has never repaid the funds and, as an undischarged bankrupt, likely never will. In the view of this Panel, such conduct is an actual conflict of interest between his duties to his client and his own personal business interests and as such, constitutes serious misconduct that violates MFDA rules 2.1.4 and 2.1.1. Moreover, he benefitted through his misconduct in securing funds for his venture.

15. Misleading the Member has also been held to constitute serious misconduct. As stated in *Nunweiler (Re)* [2012], MFDA File No. 201030,:

> "An Approved Person misleading his or her Member is very serious misconduct. MFDA Hearing Panels have consistently stated that the Rule encompasses "the most fundamental obligations of all registrants in the securities industry" see:
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> (1) Rule 2.1.1 of the MFDA Rules;
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> (2) In the Matter of Kenneth Roy Breckenridge, [2007] Hearing Panel of the Ontario Regional Council, MFDA File No. 200718, Hearing Panel Decision dated November 14, 2007 at pages 19 – 20;
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> (3) Wiseman, supra., at page 3; Page 15 of 26
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> (4) In the Matter of David MacIver Potter, [2011] Hearing Panel of the Central Regional Council, MFDA File No. 201038, Hearing Panel Decision dated January 24, 2012 at pages 5 and 10.
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> In *Breckenridge (Re)*, the Panel stated:
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> 'MFDA Rule 2.1.1 sets out the standard of conduct expected of Approved Persons. The Rule is designed to protect the public interest by requiring Approved Persons to adhere to a high standard of ethical conduct. The Rule articulates the most fundamental obligations of all registrants in the securities industry. It is clear that, by actively concealing from FundEX the business activity he was engaging in outside the accounts and facilities of FundEX, the Respondent failed to observe high standards of ethics and conduct in the transaction of business and also failed to refrain from engaging in

business conduct or practice which was unbecoming or detrimental to the public interest….'.

In the Matter of Kenneth Roy Breckenridge, [2007], MFDA File No. 200718, at pages 19-20."

16. In addition, the Ontario Securities Commission has held that the failure to provide accurate responses to requests for information reflects negatively upon the integrity of the registrant. The Panel in *Doe (Re)* 2010 LNOOSC 75 at paras 35-47*,* held that false responses on applications for registration reflect upon the integrity of the registrant regardless of whether the false information was provided intentionally or due to a "lack of competence" in answering the request for information. In our case, the Respondent has maintained that he believed he was answering truthfully because he did not believe the transaction with RW was a loan. However, this assertion was not made until the hearing had started, and in any event the Panel has found that the transaction was, in fact, a loan from RW to the Respondent.

17. The Panel agrees with the MFDA submission that the Respondent's failure to respond truthfully to requests for information from the Member also reflects negatively upon his integrity as an Approved Person.

18. The Panel also agrees with the MFDA submission that Hearing Panels have held that the failure to comply with Rule 1.4(b) and section 4 of MFDA Policy No. 6 is serious misconduct.

In the Matter of Richard Kenneth Giuliani, [2018] MFDA File No. 2017103.

In the Matter of Kenneth Richard Showalter, [2019] MFDA File No. 201906.

By failing to report the civil claim advanced by client RW and by misleading the Member in respect of the loan on annual questionnaires, the Respondent avoided any impartial scrutiny or evaluation of whether the loan arrangement gave rise to a conflict of interest that could be addressed in a manner that safeguarded the best interests of the client and he directly contravened the policies and procedures of the Member.

19. The Respondent's borrowing from his client RW, his false statements to the Member on his Annual Questionnaires and his failure to report the civil claim based upon such borrowing are actions which are damaging to client confidence in Approved Persons, Members and the securities

industry as a whole. Such actions, individually and collectively, constitute serious misconduct by the Respondent

Benefits Received by the Respondent

20. The Respondent benefitted from his misconduct by obtaining a loan for personal use without the standard costs associated with institutional financing. Furthermore, the Respondent did not fully repay the loan to either client RW or to his estate. As evidenced by the Notice of Garnishment, the amount remaining to be paid under the loan agreement as at February 28, 2017 is $14,976.67. In the absence of any evidence of further repayment of the loan by the Respondent, the Respondent benefitted financially by avoiding the interest that ordinarily would have been payable for this type of loan and by retaining the portion of the original loan amount that he failed to repay, even after he signed minutes of settlement agreeing to repay client RW in order to bring a negotiated resolution to the civil proceeding that client RW had commenced against him.

The Harm Suffered by Investors as a Result of the Respondent's Activities

21. The Respondent did not fully repay the $16,000 loan to client RW or to his estate. As of February 28, 2017, $14,976.67 remains outstanding on this loan. Client RW or the estate of client RW has therefore suffered a loss of $14,976.67, not inclusive of additional fees associated with client RW's attempts to obtain repayment of the loan.

22. In addition, the Respondent deprived his Member of the ability to prevent or address the conflict of interest by failing to comply with his mandatory obligation to disclose the existence of a conflict or potential conflict of interest to the Member, falsely denying to the Member that he had obtained a loan from a client in his responses on several Annual Questionnaires, and by failing to report to the Member that the civil claim was commenced against him by client RW when he failed to repay the loan.

Client RW was a Vulnerable Client

23. This is a factor referred to in the Guidelines. Client RW was 66 years old at the time of becoming a client of the Respondent. Furthermore, the Respondent admitted during testimony that client RW suffered from compromised breathing and medical conditions which affected his quality of life. The Respondent submitted that RW was not vulnerable due to investing inexperience and

knowledge and his mental acuity. The Panel agrees with the MFDA submission that, notwithstanding client RW's experience and mental acuity, client RW was vulnerable due to his advanced age and compromised health condition resulting in very limited time in which to recoup any losses he was exposed to by granting the loan to the Respondent. In fact, he died on November 2, 2017, prior to recouping the outstanding balance of the loan.

The Respondent's Experience and Level of Activity in the Capital Markets

24. As stated in the Affidavit of Stephen Davis, the Respondent was licensed in the mutual fund industry from November 2000 until April 2017.

25. Furthermore, the Respondent signed Agreements of Approved Person with FundEX Investments Inc. on February 9, 2005 and with Queensbury Strategies Inc. on September 25, 2013 wherein he agreed "to be bound by, observe and comply with the MFDA Rules as they are from time to time amended or supplemented."

26. The Respondent has had ample experience in the mutual fund industry and should have been aware of his obligations to avoid conflicts of interest and to disclose and address conflicts in the best interest of clients, if conflicts arose. He also should have been aware of his obligation to report civil claims to the Member and to answer compliance questionnaires truthfully.

Damage Caused to the Integrity of Capital Markets by the Respondent's Actions

27. The Respondent's actions are an example of the type of conduct that can bring the reputation of the mutual fund industry into disrepute. The Respondent ought to have recognized the harm that such conduct could cause to the advisor-client relationship and the fact that such conduct contravened his duty to comply with his regulatory obligations and the policies and procedures of the Member.

28. The Respondent also provided false information on the Due Diligence Questionnaire and subsequent Annual Questionnaires that he submitted to the Member and failed to disclose the civil claim that was commenced against him by client RW.

29. Each of the Respondent's contraventions caused harm to the integrity of the capital markets and warrant a significant sanction in order to show the industry and the investing public that such misconduct will not be tolerated.

The Respondent's Past Conduct including Prior Sanctions

30. As a mitigating factor, the MFDA acknowledged that the Respondent has not previously been the subject of MFDA disciplinary proceedings.

Respondent's Recognition of Seriousness of his Actions

31. This factor was raised by the Respondent at the hearing. In particular in a written statement, and verbally, he accepted that what he did with client RW was unauthorized personal financial dealing, expressed sorrow for his conduct, its effects on client RW and family, his relations with RW and family and its impact on the industry. The Panel accepts the sincerity of the Respondent's acknowledgment of misconduct, but notes that this acknowledgment did not occur at any time prior to this hearing. Consequently, this recognition of the seriousness of his misconduct is limited as a mitigating factor.

32. Similarly, the Respondent testified at the misconduct hearing and reiterated at the penalty hearing that he did not think the transaction with client RW was a loan, and therefore that his answers to the Members questionnaires were true in his mind. Again, there was no evidence from the Respondent prior to the misconduct hearing that he did not think the transaction was a loan; to the contrary, as concluded by the Panel in its Misconduct Hearing Reasons, there was ample evidence that the transaction was a loan, and given his long experience in the industry, he should have been much more attuned to the nature of the transaction. Respondent's counsel submitted to the Panel that RW had a change of mind about the transaction being a loan. There was no evidence to substantiate any such change of mind and, as shown in the Panel's Misconduct Hearing Reasons, ample evidence that RW considered the transaction was a loan to the Respondent.

33. Lastly, in his statement at this hearing, the Respondent stated that he "now understands that the trigger for disclosing the small claims court matter…was when it was filed, not later…" The requirement to disclose the small claims court case when it was brought should have been obvious

to the Respondent, in particular given his experience. This detracts from his "understanding" as a possible mitigating factor especially as it occurred only at this late stage in the proceedings.

Deterrence

34. Given that the primary goal of securities regulation is the protection of the investor (see *Pezim*, supra), in order to properly protect investors, penalties imposed by Hearing Panels should effect proper deterrence, both specific deterrence of the wrongdoer as well as general deterrence of other participants in the capital markets.

35. The Respondent's counsel submitted that the penalties proposed by the MFDA are unnecessary to achieve specific deterrence of the Respondent, given his age, infirmity and retirement from the industry for 3 years. However, specific deterrence of the Respondent is not as important in this case as general deterrence of other industry participants, and the Panel believes that the imposition of such penalties is necessary to send a message to other industry participants that the misconduct in this case will not be tolerated. The Panel notes that a prohibition on further participation in the industry would not, in fact, not be penal to the Respondent as suggested by his counsel, since he has been retired from the industry for 3 years and advised the Panel that he has no intention of returning.

36. General deterrence is an important factor for Hearing Panels to take into account when determining an appropriate penalty as penalties should discourage other registrants from engaging in the harmful conduct for which the Respondent is being disciplined. The effect of general deterrence should thereby advance the goal of protecting investors. As stated by the Supreme Court of Canada in *Cartaway Resources Corp. (Re)*, 2004 SCC 26, at para. 61:

> The *Oxford English Dictionary* (2nd ed. 1989), vol. XII, defines "preventive" as "[t]hat anticipates in order to ward against; precautionary; that keeps from coming or taking place; that acts as a hindrance or obstacle". A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction under s. 162. The respective importance of general deterrence as a factor will vary according to the breach of the Act and the circumstances of the person charged with breaching the Act.

37. In this case the Panel has concluded that general deterrence is a very important factor in deciding on the appropriate penalties to impose and that the sanctions proposed by the MFDA will achieve that.

38. In determining the amount of the fine to be imposed, Hearing Panels have usually imposed fines that, at a minimum, result in the disgorgement of the apparent financial benefit derived by the Respondent as a consequence of the misconduct.

> *In the Matter of Carmel Touissaint*, [2011], MFDA File No. 201039, Hearing Panel Decision dated September 26, 2011 at para 14

39. The Panel agrees with the MFDA that the principles of specific and general deterrence mandate that the fine amount imposed by this Hearing Panel should be greater than the amount outstanding on the loan (just under $15,000) in order to disgorge any financial benefit received by the Respondent under the loan agreement and in a case like this where no interest was promised or paid to the lender, the fine should also offset the benefit that the Respondent received by paying no interest on the loan. The Panel has concluded that a fine of $25,000 in respect of all elements of misconduct found by this Panel, is appropriate in this case.

Ability to Pay and Other Factors

40. In support of the request for the more lenient sanctions proposed by the Respondent, Respondent's counsel submitted that the Respondent was impecunious. This was reiterated by the Respondent in his written and verbal statements to the Panel. Since the Respondent's submissions and statement were not received by the MFDA until the night before the hearing, this issue was not addressed in the MFDA written submissions, but were addressed by MFDA counsel at the hearing.

41. The Guidelines provide that the Respondent's ability to pay may be one of the factors to be considered along with all other factors, including specific and general deterrence and the need to ensure public confidence in the MFDA's disciplinary process. Under the Guidelines the "burden is on the Respondent to…provide evidence of… a bona fide inability to pay…" such as tax returns or audited financial statements, in order to obtain a reduction or waiver of a fine or instalment

payments thereof. No such evidence was provided by the Respondent, either before or at the penalty hearing, even though the Panel's decision on misconduct was issued in February 2020.

42. Statements by the Respondent suggested that he has serious financial limitations, but his failure to provide confirmatory evidence of impecuniosity despite ample opportunity to do so, the Panel could not be certain of his inability to pay the fine requested. The Panel did not disbelieve the Respondent regarding his limited financial resources and gave some limited consideration to this factor. However, in weighing this factor along with all other factors dealt with above and other cases referred to below, the Panel concluded that the sanctions requested by the MFDA were appropriate. This conclusion is supported by the cases of *David Jeremy Dean (Re),* MFDA File No. 2018104 and the following statement from *Brauns (Re),* MFDA File No. 201203 at para. 16:

> "…any inability to pay the fine (while relevant) is trumped by the need to articulate the seriousness of the Respondent's misconduct, and to at least impose a fine that bears some relationship to the benefit obtained as a result of the misconduct and/or the loss to those affected. "

43. The Respondent urged the Panel to consider his age (74), ill health and his desire to continue doing the charity work that he had done for many years, including, in particular, the charity "Best Buddies Canada". The Respondent's age and ill health were not in issue. In his written statement to the Panel, the Respondent stated that "My goodwill and reputation has been affected, and my ability to act as a board member for charities has been made nearly impossible." In response to a question from the Panel, the Respondent confirmed that he had not yet informed the charity about these proceedings, notwithstanding that the misconduct hearing was completed in February 2020. As stated by the Respondent, his ability to do his charitable work "has been made nearly impossible." The misconduct decision was issued in February 2020. It is the Panel's conclusion that the Respondent's reputation and resulting ability to continue his charitable work will not be additionally affected by our penalty decision.

Previous Decisions Made in Similar Cases

44. MFDA counsel referred the Panel to a number of cases cited in the chart below in order to assist this Panel in making a decision consistent with similar cases:

CASE	MISCONDUCT	PENALTIES	OTHER FACTORS:
In the Matter of Steven Thomas Bott, [2017] Hearing Panel of the Central Regional Council, MFDA File No. 2016101, Hearing Panel Decision dated April 18, 2017, Staff's Book of Authorities, **Tab 14**.	The Respondent: • was indebted to a client in the amount of approximately $14,050 and was a joint owner of a bank account with the client, thereby engaging in personal financial dealings with a client which gave rise to a conflict that the Respondent failed to address by the exercise of responsible business judgment.	Uncontested • Permanent prohibition; • Fine of $25,000; • Costs of $5,000.	Client was not repaid Panel held that: • fine amount has relationship to amount borrowed • Respondent was ungovernable as he did not participate in proceeding.
Touissaint, *supra*, Staff's Book of Authorities, **Tab 13**.	The Respondent: • borrowed a total of $20,000 from two clients which he failed to repay in full thereby placing his personal interests above those of his clients, failing to deal fairly, honestly and in good faith with clients and failing to comply with policies and procedures of the Member by failing to disclose to the Member his personal financial dealings with the clients, thereby interfering with the ability of the Member to supervise his activities.	Agreed Statement of Facts • Permanent prohibition; • Fine of $10,000; • Costs of $2,500	Clients were repaid $14,700 of $20,000. Borrowing occurred after Respondent promised Member he would not borrow from clients. Fine should be at least equal to unpaid amount. Respondent had serious health and financial concerns.

CASE	MISCONDUCT	PENALTIES	OTHER FACTORS:
In the Matter of Daniel Lipovetsky, [2013] Hearing Panel of the Central Regional Council, MFDA File No. 201252, Hearing Panel Decision dated July 25, 2013, Staff's Book of Authorities, **Tab 15**.	The Respondent: • engaged in personal financial dealings with at least two clients by borrowing $10,000 from each client thereby giving rise to conflicts of interest between the Respondent and each of the clients, that he failed to address by the exercise of responsible business judgment; • failed to comply with the Member's policies and procedures prohibiting Approved Persons borrowing from clients, thereby interfering with the Member's ability to supervise the Respondent; and • failed to attend an interview to provide a statement as requested by MFDA Staff.	Uncontested • Permanent prohibition; • Fine of $30,000 in respect of Allegations #1 and 2; • Fine of $50,000 in respect of Allegation #3; • Costs of $7,500.	Clients were repaid.
Davis, *supra*, Staff's Book of Authorities, **Tab 5**.	The Respondent: • engaged in personal financial dealings with a client by borrowing at least $80,000 from the client, thereby giving rise to a conflict which the Respondent failed to address by the exercise of responsible business judgment; • had and continued in a dual occupation that was not disclosed to and approved by the Member; • misled the Member by falsely answering an Annual Compliance Certification when he stated that he did not engage in any dual occupations, thereby interfering with the ability of the Member to supervise his conduct; and • obtained and maintained at least 17 pre-signed account forms in respect of 9 clients.	Uncontested. • Permanent prohibition; • Fine of $90,000 in respect of Allegation #1; • Fine of $50,000 in respect of Allegations #2 and 3; • Fine of $10,000 in respect of Allegation #4; • Costs of $10,000.	Clients were not repaid. Respondent displayed no remorse. No prior disciplinary history.

CASE	MISCONDUCT	PENALTIES	OTHER FACTORS:
In the Matter of Geoffrey Gaunt, [2013] Hearing Panel of the Atlantic Regional Council, MFDA File No. 201232, Hearing Panel Decision dated September 20, 2013, Staff's Book of Authorities, **Tab 16**.	The Respondent: • engaged in personal financial dealings with a client when he solicited a series of loans totaling approximately $26,000 to pay personal expenses, thereby creating a conflict of interest that he failed to address by the exercise of responsible business judgment; • failed to comply with the policies and procedures of the Member by accepting loans from a client; and • failed to report to the Member two criminal charges against him, one of which he pled guilty to and one that was subsequently withdrawn.	Uncontested • Permanent prohibition; • Fine of $40,000; • Costs of $5,000.	Client was not repaid. The Respondent had 17 years of experience in the financial services industry.
In the Matter of Clinton Wayne, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201507, Decision on Penalty, Hearing Panel Decision dated February 7 2019, Staff's Book of Authorities, **Tab 17**.	The Respondent: • engaged in a dual occupation (real estate) that was not disclosed to or approved by the Member; • issued advertisements or sales communications that were not reviewed and approved by the Member; and • failed to report a civil law suit against him that related to a real estate investment corporation in which he had been a principal.	Contested • Permanent prohibition; • Fine of $7,500; • Costs of $5,000.	Staff did not prove that the Respondent borrowed from a client and failed to repay the loan. No client harm. Although the Respondent borrowed money from close relatives to finance his business, he repaid the loans.

45. The Panel reviewed each of these cases and Respondent's counsel's submissions about them. The Panel also reviewed the additional cases to which it was referred by Respondent's counsel. While none of these cases is precisely the same as this case, they are sufficiently similar to enable this Panel to be satisfied that the sanctions proposed by the MFDA are consistent with those cases, in particular, the *Bott (Re)* and *Gaunt (Re)* cases.

Costs

46. The MFDA submissions had a Bill of Costs attached showing total costs incurred by the MFDA of $23,362.50. The MFDA has requested that the Respondent pay costs of $12,500. Respondent's counsel took no issue with the MFDA Bill of Costs, but simply suggested that costs of $5,000 would be more appropriate. The Hearing Panel has no information regarding any settlement discussions, but the case was contested by the Respondent as was his right. This contributed to the MFDA costs. Given that fact, and having regard to the other factors discussed above, the Hearing Panel decided that a costs award of $12,500 would be appropriate in this case.

DATED this 30th day of September, 2020.

"Frederick H. Webber"
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Chair

"Linda J. Anderson"
Linda J. Anderson
Industry Representative

"Brigitte J. Geisler"
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