Decision and Reasons

File No. 200606

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 and 24 OF BY-LAW NO. 1
OF THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA

RE: DALE MICHAEL GRAVELINE

DISCIPLINARY HEARING

Heard: November 10 and 27, 2006
Panel Decision: December 20, 2006
Toronto, Ontario

DECISION and REASONS

Hearing Panel of the Central Regional Council:

Hon. John W. Morden	Chair
Chuck Grace	Panel Member
Linda J. Anderson	Panel Member

Appearances:

H.C. Clement Wai	)	for the Mutual Fund Dealers Association of Canada
Dale Michael Graveline	)	Present by telephone conference on November 10, 2006 and by personal attendance on November 27, 2006

I. THE ALLEGATIONS

By Notice of Hearing dated July 6, 2006 the following allegations were made against Dale Michael Graveline ("the Respondent"):

Allegation #1: Between April 2003 and April 2005, the Respondent misappropriated from 20 of his mutual fund clients the sum of $45,500, more or less, and thereby failed to deal fairly, honestly and in good faith with his clients, contrary to MFDA Rule 2.1.1.

Allegation #2: Commencing May 2005, the Respondent failed to provide a report in writing and produce banking records requested by the MFDA in the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1.

II. SERVICE

The Notice of Hearing provided for a First Appearance by telephone conference before the hearing panel at 121 King Street West, Suite 1000, Toronto, Ontario on Wednesday, September 13, 2006 at 10:00 a.m. (Eastern). At that time the Respondent did not appear and no one appeared on his behalf.

On September 13, 2006 the hearing was adjourned to November 10, 2006. At that time the Respondent appeared by way of telephone conference. There is a complete verbatim transcript of the hearing on that date. At its conclusion, the hearing was further adjourned to November 23, 2006 and, by subsequent agreement by all concerned, this date was changed to November 27, 2006.

III. PRESENTATION OF EVIDENCE

The evidence before the hearing panel consisted of two affidavits. The first was an affidavit sworn by Ian Smith on November 1, 2006. The second was that of Yves Dominique Vachon sworn on November 7, 2006. These affidavits were marked Exhibits 4 and 5, respectively.

Rule 1.6(1) of the MFDA *Rules of Procedure* provides, in part:

> "…a Panel may admit as evidence any testimony, document or other thing, including hearsay, which it considers to be relevant to the matters before it and is not bound by technical or legal rules of evidence."

Rule 13.4 of the MFDA *Rules of Procedure* provides:

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

Accordingly, these two affidavits are properly admissible evidence before us.

Mr. Wai drew the attention of the Hearing Panel to the fact that Exhibits A, C, D, E, and F to Mr. Vachon's affidavit contain sensitive personal information relating to former clients and to the relevant powers of the panel under Rules 1.8(2) and 1.8(5) of the *Rules of Procedure*. We exercise our power under a combination of these rules and direct that the Hearings Registrar mark Exhibits A, C, D, E, and F "confidential".

IV. THE EVIDENCE

During the course of the hearing the Respondent made it clear that he did not take issue with either of the two allegations in the Notice of Hearing or with the evidence submitted in support of them. Accordingly, we shall state the evidence in outline, as opposed to in detail, and in doing so we shall be following substantially the statements in the Notice of Hearing.

Registration History

The Respondent was registered in Ontario as a mutual fund salesperson for Global Allocation Financial Group Inc. ("Global") from March 2001 to November 2003, at which time Global combined with Investia Financial Services Inc. ("Investia") and the Respondent continued as a mutual fund salesperson for Investia until May 2005.

Global became a member of the MFDA on July 15, 2002 and Investia became a member of the MFDA on June 7, 2002.

On May 6, 2005, the Respondent was terminated for cause by Investia as a result of the events described in these reasons. The Respondent is not currently registered in the securities industry in any capacity.

Misappropriation

Between April 2003 and April 2005, the Respondent made 28 separate redemptions (the "redemptions") from the accounts of various mutual fund clients totaling $48,565.43.

The Respondent misappropriated the net redemption proceeds of $45,721.67. The Respondent directed that the net redemption proceeds be deposited in a bank account under his control and for his benefit. The Respondent was not authorized or directed by any of the clients to deposit the redemption proceeds into his bank account. Details of the redemptions and amounts misappropriated are provided in the chart below.

Date	Client Name	Gross Redemption Amount	Net Redemption Proceeds Misappropriated By The Respondent
15-Apr-03	D. H.	$2,238.25	$2,000.00
28-Apr-03	D. M.	$2,336.56	$2,000.00
22-May-03	J. A. B.	$2,325.48	$2,000.00
08-Sep-03	D. H.	$3,349.38	$3,000.00
15-Jan-04	G. & E. S.	$2,000.00	$1,994.29
20-Jan-04	A. & N. M.	$2,000.00	$2,000.00
06-Feb-04	T. M.	$2,305.22	$2,000.00
06-Feb-04	B. M.	$1,151.42	$1,000.00
06-Feb-04	A. & N. M.	$1,048.72	$1,000.00
06-Feb-04	A. & N. M.	$2,086.87	$2,000.00
06-Feb-04	A. & N. M.	$1,047.64	$1,000.00
06-Feb-04	A. & N. M.	$1,058.33	$1,000.00
09-Feb-04	T. G.	$202.00	
09-Feb-04	T. G.	$370.14	
09-Feb-04	T. G.	$346.87	$791.29
01-Mar-04	S. M.	$500.00	$500.00
04-Jun-04	M. H.	$703.82	
04-Jun-04	M. H.	$410.82	
04-Jun-04	M. H.	$61.49	
04-Jun-04	M. H.	$1,095.97	$2,272.10

Date	Client Name	Gross Redemption Amount	Net Redemption Proceeds Misappropriated By The Respondent
08-Jul-04	M. P.	$155.35	
08-Jul-04	M. P.	$162.03	
08-Jul-04	M. P.	$41.17	
08-Jul-04	M. P.	$108.37	
08-Jul-04	M. P.	$89.02	$500.34
08-Jul-04	M. P.	$112.09	
08-Jul-04	M. P.	$1,122.72	
08-Jul-04	M. P.	$148.47	
08-Jul-04	M. P.	$64.69	$1,288.71
28-Jul-04	K. H.	$2,240.89	$2,000.00
26-Aug-04	R. G.	$988.62	
26-Aug-04	R. G.	$644.43	$1,633.05
20-Sep-04	S. D.	$1,127.26	$1,000.00
09-Nov-04	S. T.	$1,247.51	
09-Nov-04	S. T.	$517.02	$1,588.08
01-Feb-05	K. H.	$2,302.84	$2,000.00
01-Feb-05	J. B.	$2,260.26	$2,000.00
01-Feb-05	G. & E. S.	$2,000.00	$2,000.00
01-Feb-05	D. M.	$1,141.38	$1,000.00
01-Feb-05	D. M.	$1,137.53	$1,000.00
11-Apr-05	T. M	$2,000.00	$1,754.10
11-Apr-05	J. B.	$2,314.80	$2,000.00
	TOTAL:	**$48,565.43**	**$45,721.67**

The Respondent misappropriated the redemption proceeds by taking the following steps:

(a) The Respondent prepared and submitted a redemption request form. In some cases, the client signed the form and authorized the redemption. In other cases, the Respondent submitted a redemption request pursuant to a limited trading authorization.

(b) In all cases, the redemption request form directed the mutual fund company to pay the redemption proceeds by way of a cheque payable to the client delivered to the Respondent at the Respondent's business address in Pembroke, Ontario.

(c) The Respondent endorsed the redemption cheques, totaling $45,721.67, to

himself and deposited them in his personal bank account. None of the clients authorized the Respondent to deposit the redemption proceeds in his bank account.

The Respondent failed to deal fairly, honestly and in good faith with his mutual fund clients contrary to MFDA Rule 2.1.1. by misappropriating the redemption proceeds from the clients. We shall expand on this statement, which is taken from the Notice of Hearing, later in these reasons.

Response by the Member

In May 2005, Investia terminated the Respondent and conducted an internal investigation to determine the nature and the extent of the Respondent's misconduct. Investia has compensated some of the clients from whom redemption proceeds were misappropriated by the Respondent and is processing additional claims from the remaining clients.

Failure to Cooperate

On May 16, 2005 and July 20, 2005, the MFDA wrote to the Respondent requesting his comments with regard to the circumstances surrounding his termination by the Member. The Respondent did not reply to said correspondence.

By registered letter dated October 20, 2005, the MFDA notified the Respondent that an investigation was ongoing concerning the circumstances of his termination by Investia. The MFDA requested that the Respondent provide a report containing his comments with respect to the circumstances of his termination by Investia by November 4, 2005. The Respondent was also requested to provide copies of his personal bank statements (the "banking records") for the period from January 2004 to May 2005.

On November 4, 2005, the Respondent contacted the MFDA and requested an extension of time to respond to the letter of October 20, 2005. The extension of time was granted to November 15, 2005.

On November 15, 2005, the Respondent sent an e-mail message to the MFDA advising that he was working to answer the MFDA's request for information. However, no response was provided to the MFDA's request for a report and banking records. The MFDA responded by advising the Respondent that a full answer to the MFDA's request for information and banking records was required by November 22, 2005. The Respondent failed to reply by that date.

By registered letter dated November 28, 2005, the MFDA acknowledged that, in spite of the extensions of time, the Respondent had failed to reply. The MFDA specifically warned the Respondent that a failure to respond may result in disciplinary proceedings against the Respondent for failure to cooperate. The Respondent was required to provide a full reply on or before December 12, 2005. The Respondent failed to reply.

The Respondent failed to provide a response to the aforementioned request for a written report and banking records made by the MFDA in a course of an investigation, and, as such, has failed to cooperate in an MFDA investigation contrary to section 22.1 of MFDA By-law No. 1.

V. THE APPLICABLE MFDA LEGISLATION

With respect to Allegation #1, Rule 2.1.1 of the Rules of the MFDA provides:

> "**Standard of Conduct**. Each Member and each Approved Person of a Member shall:
>
> (a) deal fairly, honestly and in good faith with its clients;
>
> (b) observe high standards of ethics and conduct in the transaction of business;
>
> (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and
>
> (d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1., or as may be prescribed by the Corporation."

With respect to Allegation #2, s. 22.1 of MFDA By-law No. 1 provides:

> "For the purpose of any examination or investigation pursuant to this By-law, a Member, Approved Person of a Member or other person under the jurisdiction of the Corporation pursuant to the By-laws or the Rules may be required by the Corporation:
>
> (a) to submit a report in writing with regard to any matter involved in any such investigation;
>
> (b) to produce for inspection and provide copies of the books, records and accounts of such person relevant to the matters being investigated;
>
> (c) to attend and give information respecting any such matters; and
>
> (d) to make any of the above information available through any directors, officers, employees, agents and other persons under the direction or control of the Member, Approved Person or other person under the jurisdiction of the Corporation; and the Member or person shall be obliged to submit such report, to permit such inspection, provide such copies and to attend, accordingly."

VI. FURTHER EVIDENCE AND OUR FINDINGS

We now shall refer to some details that are not in the Notice of Hearing, at least in complete form. The affidavit of Yves Vachon states that there were 16, not 20 as alleged in the Notice of Hearing, mutual fund clients from whose accounts the Respondent made the redemptions. This appears to be confirmed by the detailed chronology that appears in the Notice of Hearing, quoted above, and which is also set out in Mr. Vachon's affidavit. The affidavit confirms that the net redemption proceeds that the Respondent deposited into his bank account amounted to $45,721.67.

Further details respecting how the Respondent carried out the redemptions is set forth in the following paragraphs of Mr. Vachon's affidavit:

> "15. In each case, Mr. Graveline arranged for the net redemption proceeds to be deposited into his personal bank account by taking the following steps:
>
> (a) Mr. Graveline prepared and submitted a redemption request form. In some cases, the client signed the form and authorized the

redemption. In other cases, Mr. Graveline, without client authorization, submitted a redemption request pursuant to a limited trading authorization.

(b) The redemption request form directed the mutual fund company to pay the redemption proceeds by way of a cheque payable to the client delivered to Mr. Graveline at the Pembroke Office.

(c) Mr. Graveline forged the client's signature on the redemption cheque and deposited it into his personal bank account.

16. Mr. Graveline was not authorized or directed by any of the clients to deposit the redemption proceeds into his personal bank account.…"

We have no doubt that the two allegations in the Notice of Hearing have been amply proven and, also, that the conduct amounted, in each case, to a contravention of the applicable legislation. The bases of our conclusions are (i) the unchallenged sworn evidence of Mr. Vachon and Mr. Smith; (ii) the effect of Rule 8.4(1)(b) of the *Rules of Procedure* which, in the present circumstances, enables the Hearing Panel to "accept the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing as proven"; and (iii) the Respondent agreed with the truth of the allegations. He also said that he was "technically guilty", a matter to which we shall return when we consider the proper penalty.

Near the end of the hearing we announced our conclusions in this regard and then turned to the consideration of the matter of the penalty.

VII. THE PROPER PENALTY

Section 24.1.1 of By-law No. 1 of the MFDA provides for penalties in the following terms:

"A Hearing Panel of the applicable Regional Council shall have power to impose upon an Approved Person or any other person under the jurisdiction of the Corporation any one or more of the following penalties:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) $5,000,000.00 per offence; and

(ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;

(c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;

(d) revocation of the authority of such person to conduct securities related business;

(e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;

(f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel;

if, in the opinion of the Hearing Panel, the person:

(g) has failed to carry out any agreement with the Corporation;

(h) has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or any regulation or policy made pursuant thereto;

(i) has failed to comply with the provisions of any By-law, Rule or Policy of the Corporation;

(j) has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or

(k) is otherwise not qualified whether by integrity, solvency, training or experience."

In general terms, the primary goal of securities regulation is the protection of the investor. A proper penalty is one that protects the public interest by removing from the capital markets those whose past conduct is such as to warrant apprehension of future conduct detrimental to the integrity of the capital markets. A penalty should affirm the public confidence in the regulatory system and ensure that the misconduct is not repeated by others in the industry.

There is ample authority in previous decisions of MFDA hearing panels that the discretion exercised in determining the appropriate penalty should take into

account the following considerations:

(a) the protection of the investing public;

(b) the integrity of the capital markets;

(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 processes.

We turn to the conduct of the Respondent. He misappropriated client funds in the net amount of $45,721.67. He has made partial restitution by repaying the client T.G. $791.29.

We need not elaborate on why misappropriation is amongst the most serious types of misconduct that is encountered by securities regulators. It encompasses a serious breach of trust, causes real harm to the clients affected, and undermines the reputation and integrity of the securities industry.

Over a two-year span the Respondent misappropriated the funds in a series of 28 redemptions from 16 different mutual fund clients. This was not an instance of compulsive conduct or isolated occurrence of poor judgment. The Respondent's conduct only stopped when it was discovered.

The Respondent admitted his guilt but said on more than one occasion, and in different ways, that he was only "technically" guilty. His intention was to better the condition of his clients by investing the misappropriated money in a real estate investment. If the Respondent's statements are taken at face value, they indicate a regrettable lack of insight and appreciation of the true nature of his acts. These acts involved forging his clients' signatures and keeping his clients in the dark with respect to what he was doing. There is nothing "technical" about the nature of the Respondent's guilt.

Following his misappropriations, the evidence established that the Respondent entirely failed to cooperate in the investigation. He failed to produce the documents that were requested from him by the MFDA investigator. It is a general principle that every professional has an obligation to cooperate with his or her self-governing body.

In determining the penalties to impose it is appropriate that we consider the following aggravating factors:

(a) the Respondent's misconduct was planned and deliberate, the misappropriation being carried out through a series of transactions over a two-year period;

(b) the Respondent failed to cooperate with the investigations of the Member and the MFDA;

(c) the Respondent has not shown a significant understanding of the gravity of his conduct and, accordingly, any remorse with respect to it; and

(d) the Respondent personally benefited from his misconduct in the amount of approximately $45,500.

On the mitigating side of the ledger the Respondent has no disciplinary history and has made partial restitution by repaying T.G. $791.29.

In the total picture before us these mitigating factors have little, if any, weight in the determination of the appropriate penalty.

MFDA hearing panels have consistently imposed permanent prohibitions on individuals who misappropriate client funds. Further, they have upheld the principle that the fines in such cases should be, at a minimum, approximately equal to the amount misappropriated by the Approved Person that has not been repaid by the

time of the hearing. With respect to the failure of the Respondent to comply with a request by the MFDA investigator made pursuant to section 22.1 of the By-law, in previous cases where a respondent has failed to cooperate in a material manner, the MFDA panels have imposed a permanent prohibition and a fine of $50,000.

Having regard to the foregoing we impose the following penalty:

(a) a permanent prohibition from conducting securities related business in any capacity pursuant to section 24.1.1(e) of MFDA By-law No. 1;

(b) a fine in the amount of $50,000 for misappropriation of client funds contrary to MFDA Rule 2.1.1, pursuant to section 24.1.1(b) of MFDA By-law No.1;

(c) a fine in the amount of $50,000 for failure to cooperate, contrary to section 22.1 of MFDA By-law No. 1, pursuant to section 24.1.1(b) of MFDA By-law No. 1; and

(d) costs attributable to conducting the investigation and prosecution of this matter be paid by the Respondent, in the amount of $7,500 pursuant to section 24.2 of MFDA By-law No. 1.

"John W. Morden"
Hon. John W. Morden
Chair

"Chuck Grace"
Chuck Grace
Panel Member

"Linda Anderson"
Linda J. Anderson
Panel Member

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