



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: Barry Allan Hunt

Heard: May 6, 2014, in Toronto, Ontario
Reasons for Decision: July 18, 2014

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Thomas J. Lockwood, Q.C.	Chair
Guenther Kleberg	Industry Representative
Robert C. White	Industry Representative

Appearances:

Francis Roy)	Enforcement Counsel, Mutual Fund Dealers
)	Association of Canada
)	
Barry Allan Hunt)	Respondent, appeared in person
)	
)	

A. HISTORY OF PROCEEDINGS

1. On September 11, 2013, the Mutual Fund Dealers Association of Canada (“MFDA”) issued a Notice of Hearing, pursuant to Section 20.1 of By-law No.1, with respect to Barry Allan Hunt (“Respondent”).
2. The First Appearance was held before this Hearing Panel on November 25, 2013.
3. After considering the submissions made by MFDA Staff (“Staff”) and the Respondent, the Hearing Panel made a scheduling Order and adjourned the Hearing until January 15, 2014.
4. On January 15, 2014, after considering the submissions of Staff and the Respondent, the Hearing Panel ordered that the Hearing on the Merits was to commence on May 6, 2014, and was to continue, if necessary, on May 7, 2014.

B. AGREED STATEMENT OF FACTS

5. At the commencement of the Hearing on the Merits, on May 6, 2014, the Hearing Panel was presented with an Agreed Statement of Facts, executed by the parties.
6. It provided as follows:

“AGREED STATEMENT OF FACTS”

I. INTRODUCTION

1. By Notice of Hearing dated September 11, 2013, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a disciplinary proceeding against Barry Allan Hunt (the “Respondent”) pursuant to ss. 20 and 24 of MFDA By-law No. 1.
2. The Notice of Hearing set out the following allegations:

Allegation #1: Between September 12, 2007 and June 24, 2011, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member by selling, recommending, referring or facilitating the sale outside the Member of:

- (a) \$100,000 of a real estate investment product to client VM; and
- (b) \$660,000 of investments in a real estate development project that he owned and operated to clients VM, LT, BM and 11 other individuals; and
- (c) \$60,000 of investments in two housing restoration projects to client VM;

contrary to MFDA Rules 1.1.1(a) and 2.1.1.

Allegation #2: Between February 2008 and June 24, 2011, the Respondent had and continued in another gainful occupation that was not disclosed to and approved by the Member by:

- (a) selling, recommending, referring or facilitating the sale of \$100,000 of a real estate investment product to client VM outside the Member; and
- (b) owning, operating and selling investments in the real estate development project referred to in Allegation 1(b) above; and
- (c) selling, recommending, referring or facilitating the sale of investments in the housing restoration projects referred to Allegation 1(c) above;

contrary to MFDA Rules 1.2.1(d)¹ and 2.1.1.

Allegation #3: Between September 12, 2007 and June 24, 2011, the Respondent engaged in personal financial dealings with clients VM, LT and BM by:

¹ Effective February 22, 2011, the MFDA's rules were amended. As a consequence, MFDA Rule 1.2.1(d) was re-numbered as MFDA Rule 1.2.1(c) but otherwise remains unchanged.

- (a) selling an investment of \$60,000 in a property owned by the Respondent to each of clients VM, LT and BM; and
- (b) borrowing \$120,000 from client VM;

thereby giving rise to a conflict or potential conflict of interest between the interests of the Respondent and the interests of clients VM, LT and BM which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1.

II. IN PUBLIC / IN CAMERA

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

III. ADMISSIONS AND ISSUES TO BE DETERMINED

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

5. Subject to the determination of the Hearing Panel, Staff submits, and the Respondent does not oppose, that the appropriate penalty to impose on the Respondent is:

- (a) the payment of a fine in the amount of \$50,000.00 pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- (b) a 7 year prohibition from acting as a mutual fund salesperson, pursuant to section 24.1(e) of By-law No. 1; and

- (c) the payment of costs of the investigation in the amount of \$5,000.00 pursuant to section 24.2 of MFDA By-law No. 1.

IV. AGREED FACTS

6. Staff and the Respondent agree that submissions made with respect to the appropriate penalty are based only on the agreed facts in Part IV and no other facts or documents.

7. In the event the Hearing Panel advises one or both of Staff and the Respondent of any additional facts it considers necessary to determine the issues before it, Staff and the Respondent agree that such additional facts shall be provided to the Hearing Panel only with the consent of both Staff and the Respondent. If the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel.

8. Nothing in this Part IV is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

Registration History

9. Between June 5, 2003 and June 24, 2011, the Respondent was registered in Alberta, Ontario and Quebec with Armstrong & Quaile Associates Inc. (“Armstrong & Quaile” or the “Member”) as a mutual fund salesperson.

10. Prior to that, the Respondent was registered as a mutual fund salesperson with the following Members:

- (a) Peak Financial Services Inc. from May 2002 to June 2003;
- (b) Berkshire Investment Group Inc. from January 2001 to March 2002; and
- (c) Independent Planning Group Inc. from August 1998 to December 2000.

11. The Respondent is no longer registered in the securities industry in any capacity.

A. The Brockville Real Estate Investment

12. In or about 2007, the Respondent was approached by the principals of a company known as Brockville Moorings Corporation (“BMC”). BMC was seeking financing of approximately \$500,000 for a condominium project they were developing in Brockville, Ontario. BMC asked the Respondent if he knew of any individuals who would be interested in purchasing preferred shares of BMC, which shares paid out monthly dividend payments of \$10 per share (equivalent to 24% per annum) (the “Brockville Real Estate Investment”).

13. BMC informed the Respondent that if any of the individuals he referred to them invested in the Brockville Real Estate Investment, he would be entitled to a premium on top of the 24% per annum rate of return he would make on any of his own shares he purchased in the Brockville Real Estate Investment. The Respondent states that he informed BMC that he could not accept commissions from BCM for the referral of individuals.

14. After conducting a review of the Brockville Real Estate Investment, the Respondent advised BMC that he would refer to them the names of individuals he thought would be interested in purchasing the Brockville Real Estate Investment.

15. The Brockville Real Estate Investment was not an investment product approved by Armstrong & Quaille for sale by its Approved Persons, including the Respondent. The Respondent never sought or obtained approval from Armstrong & Quaille to sell, recommend, refer or facilitate the sale of the Brockville Real Estate Investment.

16. On September 13, 2007, the Respondent personally invested \$25,000 in the Brockville Real Estate Investment, for which he received 50 preferred shares of BMC.

B. The Marsden Investments

17. In or about 2007, the Respondent was approached by the principal of a real estate development company known as Marsden Renovations. Marsden Renovations was seeking financing for a variety of house restoration projects. Marsden Renovations asked the Respondent

if he knew of any individuals who were interested in investing in various property renovations projects it owned in the Ottawa Valley (the “Marsden Investments”). Individuals who participated in the Marsden Investments would not be entitled to receive shares, a mortgage or titles to the properties they invested in. Marsden Renovations represented that the Marsden Investment would provide a 25% rate of return after 18 months.

18. The Marsden Investments were not investment products approved by Armstrong & Quaile for sale by its Approved Persons, including the Respondent. The Respondent never sought or obtained approval from Armstrong & Quaile to sell, recommend, refer or facilitate the sale of the Marsden Investments.

C. The Respondent’s Peterborough Property

19. In or about 2008, the Respondent became aware of a property for sale in Lakefield, Ontario for \$1.2 million (the “Peterborough Property”). The Respondent was interested in purchasing the Peterborough Property in order to develop it, but required financing to do so as he did not have sufficient funds.

20. As such, the Respondent solicited clients of Armstrong & Quaile and other individuals to purchase interests in the Peterborough Property and participate in any profits based on their proportionate share of the investment. The Respondent states that the people he approach [sic] included friends and other people.

21. On or about February 28, 2008, the Respondent sold, recommended or facilitated the sale of interests in the Peterborough Property to 3 clients (VM, LT and BM) and 11 other individuals² (the “Peterborough Property Investors”), as described below:

Client Name	Amount	Client of Armstrong & Quaile Serviced by the Respondent
RP and MP	\$60,000	No
BM	\$60,000	Yes
CG	\$60,000	No

² The Respondent kept a 1/12th interest in the Peterborough Property worth \$60,000 for himself.

Client Name	Amount	Client of Armstrong & Quaille Serviced by the Respondent
RP	\$60,000	No
PD and ND	\$60,000	No
LT	\$60,000	Yes
PM	\$60,000	No
RG	\$30,000	No
KT	\$60,000	No
GW	\$30,000	No
VM	\$60,000	Yes
KR	\$60,000	No
Respondent	\$540,000	n/a
TOTAL	\$660,000	

22. On February 28, 2008, each of the investors in the Peterborough Property signed a Trust Agreement drafted by the Respondent confirming their participation in the Peterborough Property investment.

23. The Peterborough Property was purchased by the Respondent in January 2009. The Property is currently under development. All Peterborough Property Investors, with the exception of client VM, continue to be invested in the Peterborough Property. Only client VM complained to the Member about her investment in the Peterborough Property.³ None of the other Peterborough Property Investors made complaints against the Respondent.

24. The Peterborough Property was not an investment product approved by Armstrong & Quaille for sale by its Approved Persons, including the Respondent. The Respondent never sought or obtained approval from Armstrong & Quaille to sell investments in the Peterborough Property.

Client VM

25. On September 12, 2007, VM became a client of Armstrong & Quaille. The Respondent was the mutual fund salesperson responsible for servicing her account.

³ See paragraphs 32 to 39 below.

26. Between September 12, 2007 and June 24, 2011, client VM provided monies totaling \$813,000 to the Respondent. Of this amount, client VM invested \$473,000 in mutual funds and segregated funds approved for sale by Armstrong & Quaille. On the recommendation and advice of the Respondent, client VM invested the remaining balance of \$340,000 as follows:

- (a) on September 12, 2007, client VM invested \$100,000 in the Brockville Real Estate Investment for which she received 200 preferred shares of BMC;
- (b) on September 13, 2007, client VM loaned \$120,000 to the Respondent (the “Respondent Loan”);
- (c) on September 13, 2007, client VM purchased a \$20,000 interest in a house restoration project in the Ottawa Valley owned and operated by Marsden Renovations (the “First Marsden Investment”);
- (d) on February 28, 2008, client VM purchased a \$40,000 interest in a second house restoration project in the Ottawa Valley owned and operated by Marsden Renovations (the “Second Marsden Investment”); and
- (e) on February 28, 2008, client VM purchased a \$60,000 interest (a 1/12th share) in the Peterborough Property.⁴

27. BMC provided client VM with a share certificate with respect to her purchase of 200 preferred shares of the Brockville Real Estate Investment.

28. As stated above, on February 28, 2008, the Respondent executed a Trust Agreement prepared by the Respondent with respect to her purchase of a 1/12th interest in the Peterborough Property.⁵

29. Upon receiving the proceeds of the Respondent’s Loan, the Respondent verbally agreed to pay to client VM monthly interest payments of \$800 (equivalent to an annual interest rate of 8%). No documentation evidencing the Respondent’s Loan or its terms was provided to the Respondent until July 20, 2010.⁶

⁴ See also paragraph 15 above (sic).

⁵ See paragraph 16 above (sic).

⁶ See paragraph 28 (sic).

30. Client VM did not receive any documentation from the Respondent evidencing the First and Second Marsden Investments, including their terms, until July 28, 2010.⁷

31. In order to make the above-described investments totaling \$813,000, client VM provided to the Respondent:

(a) on September 12, 2007, a bank draft in the amount of \$500,000 made payable to herself, which she endorsed to Armstrong & Quaile and for which she instructed the Respondent, by way of a letter of direction drafted by the Respondent, to invest as follows:

- i. \$300,000 towards the purchase of segregated funds offered through Armstrong;
- ii. \$100,000 towards the purchase of mutual funds offered through Armstrong; and
- iii. \$100,000 to be paid to the trust account of an Ottawa based solicitor for purposes of making the Brockville Real Estate Investment;

(b) on September 13, 2007, a cheque in the amount \$140,000 made payable to the Respondent “in trust”, of which \$120,000 was used to fund the Respondent Loan and \$20,000 was used to make the First Marsden Investment;

(c) on November 2, 2007, a cheque in the amount of \$73,000 made payable to Armstrong & Quaile for the purposes of purchasing mutual funds and segregated funds offered through Armstrong; and

⁷ See paragraph 29 (sic).

(d) on February 28, 2007, a cheque in the amount of \$100,000 made payable to the Respondent, of which \$40,000 was used to make the Second Marsden Investment and \$60,000 was invested in the Peterborough Property for client VM.

Client VM's Complaint

32. On June 7, 2010, client VM appointed her brother and sister-in-law, CS and JW, as her powers of attorney.

33. On June 21, 2010, CS and JW met with the Respondent to discuss client VM's investments.

34. On July 15, 2010, CS and JW sent a letter to Armstrong & Quaille stating, among other things:

We found [that client VM's] investments were not of the caliber we would have expected from a professional financial advisor, and the documentation on many of them was weak or non-existent. We sent [the Respondent] a letter on June 22, 2010 summarizing our discussion and requesting some action but have had no response to date...

As we explained to [the Respondent], we do want the investments liquidated as soon as possible, with the exception of the mutual and segregated funds...

35. On July 20, 2010, the Respondent provided CS and JW with a promissory note regarding the Respondent Loan which stated as follows:

I, [the Respondent], promise to pay [client VM] the principal sum of ONE HUNDRED and TWENTY THOUSAND dollars (\$120,000) ... no later than August 30, 2012.

The above note shall bear interest at the rate of eight per cent (8%) per annum, repayable Monthly.

36. On July 28, 2010, the Respondent provided CS and JW with a promissory note regarding the Second Marsden Investment which stated as follows:

I, [the Respondent], promise to pay [client VM] the sum of FORTY THOUSAND dollars (\$40,000) if the Marsden Renovations project does not repay the money that [client VM] invested.

The investment does not bear interest but rather is intended to repay the investors a percentage of the profit resulting from the resale of the renovated homes.

The note will be paid on or before July 31, 2012.

37. On August 16, 2010, the principal of Marsden Renovations advised the Respondent that he would be unable to provide a 25% rate of return on the First and Second Marsden Investments and stated that instead, he would pay to client VM, amongst others, \$63,000 representing the reimbursement of her First and Second Marsden Investments plus interest of 5%.

38. On October 27, 2010, the Respondent provided client VM with a personal cheque in the amount of \$31,500 as partial reimbursement of the First and Second Marsden Investments. On December 14, 2010, the Respondent provided client VM with a personal cheque in the amount of \$31,500 as final reimbursement of the First and Second Marsden Investments.

39. In or about April 2012, client VM received \$185,000, which payment represented repayment of the Respondent Loan (\$120,000)⁸ plus the return of client VM's investment in the Peterborough Property (\$60,000) together with interest in the amount of \$5,000.⁹

Armstrong's policies and procedures

40. At all material times, Armstrong's policies and procedures prohibited its mutual fund salespersons from, among other things:

- (a) engaging in business activities other than those involving the products and services offered by Armstrong & Quail without Armstrong & Quail's authorization;

⁸ Commencing in or about October 2007, the Respondent made monthly interest payments on the Respondent Loan to client VM, as he had agreed to.

⁹ \$180,000 of the \$185,000 paid to client VM was provided by the Respondent and the balance (\$5,000) was paid to client VM by the Respondent's errors and omissions insurer.

- (b) entering into business relationships with clients other than those involving the products and services offered by Armstrong & Quaille; and
- (c) borrowing from or lending to clients.

Misconduct Admitted

41. By engaging in the conduct described above, the Respondent admits that:

(a) Between September 12, 2007 and June 24, 2011, he engaged in securities related business that was not carried on for the account and through the facilities of the Member by selling, recommending, referring or facilitating the sale outside the Member of:

- i. \$100,000 of a real estate investment product to client VM; and
- ii. \$660,000 of investments in a real estate development project that he owned and operated to clients VM, LT, BM and 11 other individuals; and
- iii. \$60,000 of investments in two housing restoration projects to client VM;

contrary to MFDA Rules 1.1.1(a) and 2.1.1; and

(b) Between September 12, 2007 and June 24, 2011, he engaged in personal financial dealings with clients VM, LT and BM by:

- i. selling an investment of \$60,000 in a property owned by the Respondent to each of clients VM, LT and BM; and
- ii. borrowing \$120,000 from client VM;

thereby giving rise to a conflict or potential conflict of interest between his interests and the interests of clients VM, LT and BM which he failed to address

by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1.

Execution of Agreed Statement of Facts

42. This Agreed Statement of Facts may be signed in one or more counterparts which together shall constitute a binding agreement.
43. A facsimile copy of any signature shall be effective as an original signature.

DATED this 2nd day of May, 2014.

“Barry Allan Hunt”

Barry Allan Hunt

“Shaun Devlin”

Staff of the MFDA

Per: **Shaun Devlin**

Senior Vice-President, Member Regulation -
Enforcement”

C. ALLEGATION #2 WITHDRAWN

7. In the Agreed Statement of Facts, it is to be noted that, in paragraph 41, the Respondent admitted Allegations #1 and #3 as set out in the Notice of Hearing. At the Hearing on the Merits, Staff advised that Allegation #2 had been withdrawn.

D. MFDA RULES BREACHED BY RESPONDENT

8. In the Agreed Statement of Facts, the Respondent admitted that he had breached MFDA Rules 1.1.1(a), 2.1.1 and 2.1.4. They provide as follows:

1.1 BUSINESS STRUCTURES

1.1.1 **Members.** No Member or Approved Person (as defined in By-law 1.1) in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in By-law 1.1) except in accordance with the following:

(a) all such securities related business is carried on for the account of the Member, through the facilities of the Member (except as expressly provided in the Rules) and in accordance with the By-laws and Rules, other than:

(i) such business as relates solely to trading in deposit instruments conducted by any Approved Person not on account of the Member; and

(ii) such business conducted by an Approved Person as an employee of a bank and in accordance with the *Bank Act (Canada)* and the regulations thereunder and applicable securities legislation.

2.1.1 **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.

2.1.4 Conflicts of Interest

(a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.

(b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d).

(c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.

(d) Each Member shall develop and maintain written policies and procedures to ensure compliance with Rules 2.1.4(a), (b) and (c).

E. SETTLEMENT AGREEMENTS and AGREED STATEMENTS OF FACTS CONTRASTED

9. Section 24.4 of MFDA By-law No. 1 provides a code for the entering into of Settlement Agreements and the consideration of same by a Hearing Panel. When presented with a Settlement Agreement, the Hearing Panel must either accept or reject it.

10. In contrast, when presented with an Agreed Statement of Facts, the Hearing Panel, while confined to the facts and misconduct admitted, is not required to either accept or reject any of the penalties which may be proposed. Except when the parties make a joint submission as to penalty, the Hearing Panel may impose any of the penalties prescribed in Section 24.1.1 of MFDA By-law No. 1 that it deems appropriate.

F. JOINT SUBMISSION AS TO PENALTY

11. Staff and the Respondent made a joint submission on what they considered to be the appropriate penalties in light of the admitted facts and misconduct.

12. A Hearing Panel should not interfere with such a joint submission unless it considers the recommendation to be manifestly unfit. In the criminal law context, the standard most often cited by the Courts for rejection of a joint submission as to sentence is that it would be “contrary to the public interest” and would “bring the administration of justice into disrepute.”

Re: In the Matter of McAuley, [2011] Central Regional Council, File No. 201018, Hearing Panel Decision, dated April 11, 2011, at para. 5.

Re: R. v. R.W.E., [2007] O.J. No. 2515 (Ont. C.A.), at para. 22.

G. FACTORS CONCERNING THE APPROPRIATENESS OF THE PENALTY

13. Factors which Hearing Panels frequently consider when determining an appropriate penalty include the following:

(a) The seriousness of the allegations proved against the respondent;

- (b) The respondent's experience in the capital markets;
- (c) The level of the respondent's activity in the capital markets;
- (d) The harm suffered by investors as a result of the respondent's activities;
- (e) The benefits received by the respondent as a result of the improper activity;
- (f) The risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;
- (g) The damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;
- (h) 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;
- (i) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
- (j) Previous decisions made in similar circumstances.

Re: In the Matter of Breckenridge, [2007] Central Regional Council, File No. 200718, Hearing Panel Decision, dated November 14, 2007, at para. 77.

14. The Hearing Panel was also provided with excerpts from the MFDA Penalty Guidelines. These Guidelines are not mandatory but are intended to assist Hearing Panels, Staff and Respondents when considering appropriate penalties in MFDA disciplinary proceedings.

H. CONSIDERATIONS IN THE PRESENT CASE

15. At the Hearing on the Merits, Staff provided the Hearing Panel with extensive written submissions, for which we are grateful.

16. Included in these submissions was Staff's detailed analysis of the factors relevant to a consideration of the appropriate penalty. This analysis included both aggravating and mitigating factors.

17. We considered the following aggravating factors:

- (a) The actions of the Respondent involved material non-compliance with a number of MFDA requirements.
- (b) The Respondent clearly ought to have known that his conduct was in violation of the Member's policies and procedures as well as the MFDA Rules, Policies and By-laws.
- (c) By his actions, the Respondent exposed his clients to significant risk of loss having regard to the high risk nature of the investments as well as the lack of the Member's due diligence and regulatory oversight of these investments.
- (d) Since none of the investments at issue in this proceeding had been approved for sale by the Member, none of the purchases were processed for the account of or through the facilities of the Member. Consequently, none of the transactions were reviewed by the Member to assure that they were suitable for the clients. Also, there was no investigation to ascertain whether the clients qualified as accredited investors who were, in fact, eligible to purchase the investments.
- (e) Although with respect to the Peterborough Property, there was only one client complaint and no current losses, that does not excuse or ameliorate the Respondent's conduct.
- (f) With respect to the Brockville Real Estate Investment and the First and Second Marsden Investments, VM could have lost a significant portion of her funds had the Respondent not personally reimbursed her.

18. Against the aggravating factors, we weighed the following mitigating factors:

- (a) The Respondent has no discipline history with the MFDA.
- (b) The Respondent co-operated with the MFDA throughout the course of its investigation and during the disciplinary proceeding.
- (c) By entering into the Agreed Statement of Facts, the Respondent has accepted responsibility for his actions, saved the MFDA from having to expend additional resources to conduct a full disciplinary proceeding and demonstrated that he recognizes the seriousness of his misconduct.
- (d) The Respondent has expressed remorse for his actions.
- (e) The Respondent did provide personal funds to VM to make her whole.

I. PENALTY GUIDELINES AND DECISIONS MADE IN SIMILAR CIRCUMSTANCES

19. We find that the proposed penalties are consistent with both the Penalty Guidelines and the Decisions in, *inter alia*, the following cases:

- (a) In the Matter of Smiechowski, [2010] Pacific Regional Council, File No. 201007, Hearing Panel Decision, dated December 31, 2010;
- (b) In the Matter of Lambros, [2011] Central Regional Council, File No. 201022, Hearing Panel Decision, dated March 15, 2011;
- (c) In the Matter of Chiang, [2012] Pacific Regional Council, File No. 201105, Hearing Panel Decision, dated February 6, 2012;
- (d) In the Matter of Hesselink, [2013] Central Regional Council, File No. 201315, Hearing Panel Decision, dated October 16, 2013.

J. DECISION AND PENALTIES IMPOSED

20. After carefully considering the Agreed Statement of Facts, the written and oral submissions of Staff and the oral submissions of the Respondent, we have unanimously concluded that Allegations #1 and #3, set out in the Notice of Hearing, dated September 11, 2013, have been established and that the following penalties should be imposed:

- (a) The Respondent shall be prohibited from acting as a mutual fund salesperson for a period of seven (7) years, commencing on the date of the Hearing on the Merits, namely May 6, 2014, pursuant to Section 24.1(e) of By-law No. 1;
- (b) The Respondent shall pay a fine in the amount of \$50,000.00, pursuant to Section 24.1(b) of By-law No. 1; and
- (c) The Respondent shall pay the costs of this proceeding in the amount of \$5,000.00, pursuant to Section 24.2 of By-law No. 1.

DATED this 18th day of July, 2014.

“Thomas J. Lockwood”

Thomas J. Lockwood, Q.C.
Chair

“Guenther Kleberg”

Guenther Kleberg
Industry Representative

“Robert C. White”

Robert C. White
Industry Representative

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