



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: Prabhdyal Singh Rai

Heard (Misconduct): May 23-24, 2019 in Toronto, Ontario
Decision (Misconduct): May 29, 2019
Heard (Penalty): June 27, 2019 in Toronto, Ontario
Decision and Reasons: July 24, 2019

DECISION AND REASONS

Hearing Panel of the Central Regional Council:

John Lorn McDougall QC
Brigitte J. Geisler
Kenneth P. Mann

Chair
Industry Representative
Industry Representative

Appearances:

Paul Blasiak)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Prabhdyal Singh Rai)	Respondent, in person
)	
)	

I. INTRODUCTION (MISCONDUCT)

1. By Notice of Hearing dated October 9, 2018, the Mutual Fund Dealers Association of Canada (“MFDA”) commenced a disciplinary proceeding against Prabhdyal Singh Rai (the “Respondent”).

2. The Notice of Hearing made the following allegations of violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: In March 2016, the Respondent submitted a line of credit application on his own behalf which contained false information and fabricated supporting documents, thereby failing to observe high standards of ethics and conduct in the transaction of business or engaging in conduct which is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1.

Allegation #2: Commencing in August 2017, the Respondent failed to cooperate with MFDA Staff during the course of an investigation into his conduct, contrary to section 22.1 of MFDA By-law No. 1.

3. The Respondent filed a brief Reply to the Allegations as follows:

To Mr. Paul Blasiak,

Included are my responses to the allegations made against me.

Allegation #1:

I totally deny that I ever falsified any documentation.

7. I was referred to the lady in Investors Group to get a LOC. I never met her before. I was told to go in the branch and sign the application. I never gave her any details of my assets and liabilities. I met her in the office. She confirmed my name and checked my drivers license and told me to sign the application. I did not provide any further documents to the advisor and any documents received, were not provided by me. After that I was told that my LOC was approved. I received a card and all the info by mail.

First time I came to know about the details of my asstes [sic] and liabilities through interview by MFDA officers. I was totally shocked because I never gave that information. So I totally denied at that time and denying it again. I never gave any false information to get LOC.

Allegation #2:

14. I had addressed them to the best of my ability. I had only ever submitted what was given to me. I was never aware of documents of documents [sic] being falsified and if I was aware, I would not have ever submitted the files. My job was to have all the documents signed by the client along with the application.

I deny all the allegations made against me.

Sincerely,

Prabhdyal Singh Rai

4. Thus, the main question to be decided is whether or not the Respondent provided the false information contained in the line of credit application and the fabricated supporting documents to EL, a dealing representative registered with Investors Group Financial Services Inc. (“Investors Group” or the “Member”) who completed the application form for the Solutions Banking line of credit in the amount of \$60,000.

5. The standard of proof in this case, as in all MFDA and other regulatory proceedings in the securities industry, is the civil standard of a balance of probabilities. The Supreme Court of Canada stated in *H. v. McDougall* that “there is only one civil standard of proof at common law and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.” Evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test but there is no objective standard to measure sufficiency.

Desgroseilliers (Re), [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201790, Panel Decision dated August 21, 2018, at para. 15.

6. EL had developed a referral relationship with an individual she described as being an investment broker, DS, beginning in 2015. Thereafter, DS referred a number of people to EL, largely to apply for Solutions Banking loans or lines of credit. Among those who were referred by DS to EL was the Respondent. It is notable that it appears that EL did not earn a commission on the loan applications she processed for those clients referred by DS, including the Respondent. She told the MFDA investigators that she performed the work in the hope that she would subsequently earn fees on further work for these clients. An internal investigation by the Member reached the

conclusion that EL was unaware that the Respondent's line of credit application and supporting material contained false information but there was no further evidence about the investigation.

7. EL was interviewed by MFDA enforcement staff and a transcript taken of her evidence which was attached as an exhibit to the affidavit of John James Gallimore ("Gallimore Affidavit"), a senior investigator in the Enforcement Department of the MFDA. This affidavit was filed as an exhibit at the hearing and Gallimore gave evidence at the hearing.

8. EL, for reasons unknown, ceased to cooperate with the MFDA in relation to this matter and did not respond to attempts to communicate with her. The MFDA requested the Hearing Panel to issue a subpoena to order her appearance at the hearing on May 23, 2019. The subpoena was granted and served but EL failed to appear as required. More will be said about this event and its consequences below.

9. From 2005 to 2007, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with WFG Securities Inc., Member of the MFDA. From April 2015 to September 2016, the Respondent was registered in Ontario as a dealing representative with Carte Wealth Management Inc. ("Carte"), a Member of the MFDA.

10. On September 13, 2016, the Respondent was terminated by Carte and he is not currently registered in the securities industry in any capacity. At all material times, the Respondent conducted business in the Toronto area.

11. While at Carte the Respondent had a referral relationship with DS much like the one DS had with EL. In fact, according to his evidence, he derived most if not all of his clients on referrals to him from DS. In his evidence he made it clear that, while he professed not to know DS's surname, he was his only significant source of work.

12. In addition to applying the civil standard of proof on a balance of probability, a hearing panel has extensive powers to receive evidence which is not admissible in court proceedings. Rule 1.6 of the MFDA Rules provides as follows:

1.6 Admissibility of Evidence

- (1) Subject to sub-Rule (3), 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 the technical or legal rules of evidence.
- (2) A Panel may admit a copy of any document or other thing as evidence if it is satisfied that the copy is authentic.
- (3) Nothing is admissible in evidence which would be inadmissible by reason of a statute or a legal privilege.

13. In addition to the Gallimore Affidavit and the extensive transcripts and exhibits including all the documentation in support of the Respondent's loan application, the Hearing Panel heard from Mr. Gallimore in detail about the results of his investigation. Importantly he established that this material was "fabricated", something that the Respondent readily admitted when he was examined, although he continued to deny he was responsible for preparing the fraudulent documentation.

14. EL having not appeared at the hearing in response to the subpoena or pursuant to her duty as a former dealing broker of the MFDA makes her evidence given on her interview subject, at the least, having less weight than it would have had had she appeared and it could be considered as having no weight because of her behaviour. Faced with this issue, the Hearing Panel decided to focus its consideration of the balance of probabilities primarily on the Respondent's story rather than that of EL. In that way the need to significantly rely on EL's evidence could be reduced, if not eliminated entirely.

Allegation No. 1 – Falsified Loan Application

15. This allegation is that the Respondent submitted a line of credit application for himself, not a client, which contained false information and fabricated supporting documents. In fact it appears likely he did not tell EL that he was in the securities business and was registered with the MFDA. EL prepared this material but she must have obtained the information and financial details of the Respondent from somewhere. Absent any evidence whatsoever as to another source, the inescapable conclusion has to be that it came from Mr. Rai.

16. Whether or not EL was complicit in the fabrication of the material submitted to Investors Group is largely irrelevant; the information she utilized to prepare the application itself could only have originated with Mr. Rai, whether it came to her directly or through some other person. That conclusion is corroborated by the fact that the signature on the application is that of Prabhdyal Singh Rai and he admitted having signed it.

17. In order to substantiate the false information contained in the LOC Application Form described above, the following documents were submitted for processing:

- (1) A paystub (for the period ending February 14, 2016) purportedly issued by Consolidated Aviation Services in respect of the Respondent showing “total earnings” in the amount of \$5,543.34;
- (2) A paystub (for the period ending February 28, 2016) purportedly issued by Consolidated Aviation Services in respect of the Respondent showing “total earnings” in the amount of \$5,543.34;
- (3) An account statement (dated February 26, 2016) purportedly issued by BMO Bank of Montreal showing that the Respondent held the following accounts at BMO Bank of Montreal:
 - a. A chequing account valued at \$16,198.02
 - b. A savings account valued at \$194,362.30
 - c. A non-registered account valued at \$410,499.11
 - d. An RRSP account valued at \$67,213.28; and
 - e. TFSA accounts valued at \$33,525.37
- (4) The Respondent’s purported Notice of Assessment for tax year 2013 showing total income in the amount of \$144,113; and
- (5) The Respondent’s purported Notice of Assessment for tax year 2014 showing total income in the amount of \$144,127.

18. During his interview with Staff, the Respondent admitted that the amounts and employment information on the documents described above in paragraph 17 were false.

19. Further, it is fundamental that the Respondent was granted a \$60,000 line of credit based on financial information Mr. Rai now admits was false while at the same time admitting that his

net worth is and was zero. He must have known that the \$25,000 he used from the line of credit was obtained by false pretenses. In the Hearing Panel's view that is conclusive of the matter. It is highly probable that the Respondent was responsible, directly or indirectly, for misleading the lender into granting him the letter of credit for which he was not in any way entitled.

20. If further corroboration were needed, the Respondent was dismissed by Carte when it was discovered that Mr. Rai was involved presenting false documentation to Investors Group in support of two applications for loans, each for \$200,000. These loans were to be to individuals who had been referred to the Respondent by DS and the financial information tendered in support of the applications bore a strong similarity, both in format and content, to the fabricated material used to support Mr. Rai's own application for the letter of credit.

21. Mr. Rai's evidence was riddled with contradictions and inconsistencies and changed substantially over time. One of the best examples of these inconsistencies is his initial denial that he knew EL or ever met with her. That changed to an acknowledgement that he met with her and signed the application for a loan. Another example was his denial of ever having done any business with EL only to be forced under cross examination to acknowledge grudgingly that he had an RRSP account with Investors Group and received regular statements of the RRSP account from her.

Allegation No. 2 – Failure to Cooperate

22. While the Respondent appeared to be interviewed by MFDA Staff, attended at the preliminary hearings and participated actively at the misconduct hearings, that was not nearly enough to satisfy his duty to cooperate with the MFDA in the exercise of its powers under s. 21 of MFDA By-Law No. 1.

23. Pursuant to s. 21 of MFDA By-law No. 1, the MFDA has a duty to conduct examinations and investigations of a Member, an Approved Person, and any other person under its jurisdiction as it considers necessary or desirable in connection with any matter related to that Member's or person's compliance with, among other things, the By-laws, Rules and Policies of the MFDA.

Section 21 of MFDA By-law No. 1

24. In carrying out its s. 21 duty, the MFDA is authorized by s. 22 to request and oblige a Member, Approved Person or any other person under its jurisdiction to:

- (a) submit a report in writing with regard to any matter involved in any investigation;
- (b) produce for investigation and provide copies of the books, records and account of such person relevant to the matters being investigated;
- (c) attend and give information respecting such matters; and
- (d) 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 MFDA.

Section 22.1 of MFDA By-law No. 1

25. The obligation to cooperate with an MFDA investigation which the Respondent was under as a former Approved Person is consistent with the duties owed by all members of self-governing professions. These obligations are the same as for all dealing representatives and continue for five years following the date a person ceases to be registered with the MFDA. In *Artinian v. College of Physicians and Surgeons of Ontario*, the Ontario Divisional Court stated that “fundamentally, every professional has an obligation to cooperate with his self-governing body”.

Artinian v. College of Physicians and Surgeons of Ontario (1990),
73 O.R. (2d) 704 (Div. Ct.), at para. 9.

26. There is ample authority for the proposition that an Approved Person must provide Staff with information and documents when requested to do so. To hold otherwise would hinder the MFDA’s ability to investigate the conduct of registrants in the mutual fund industry and prevent the MFDA from fulfilling its regulatory mandate to protect the public.

Kumar (Re), [2019] Hearing Panel of the Central Regional Council,
MFDA File No. 201859, Panel Decision dated March 27, 2019.

Bangyay (Re), [2013] Hearing Panel of the Central Regional
Council, MFDA File No. 201238, Panel Decision dated July 22,
2013.

Popen (Re), [2012] Hearing Panel of the Central Regional Council,
MFDA File No. 201136, Panel Decision dated September 24 2012.

Armani (Re), [2017] Hearing Panel of the Central Regional Council,
MFDA File No. 201701, Panel Decision dated August 3, 2017.

27. The Respondent repeatedly failed to provide information and documents requested by Staff during its investigation, including documents that he had undertaken to Staff to produce. Staff prepared the following chart which sets out the information and documents withheld. The chart was derived from the information contained in the Gallimore Affidavit.

Date	Communication	Method of Delivery	Result
8/17/2017	<p>Staff sent a letter advising the Respondent that he was required to bring certain documents relevant to the investigation to his interview on August 24, 2017.</p> <p>The document included the Respondent's Notices of Assessment for the 2014, 2015 and 2016 tax years (the "Notices of Assessment").</p>	Registered and regular mail	<p>Registered mail was signed for by "P. Rai" on August 21, 2017.</p> <p>On August 24, 2017, Staff interviewed the Respondent. The Respondent did not bring any of the requested documents to the interview.</p>
8/24/2017	<p>During the Respondent's interview with Staff, the Respondent gave undertakings to provide Staff with information and documents relevant to the investigation (the "Undertakings").</p> <p>The Undertakings included the Respondent's Notices of Assessment, which Staff had previously requested on August 17, 2017.</p>	In person	<p>The Respondent failed to provide the Undertakings, notwithstanding multiple attempts by Staff to obtain the responses to the Undertakings from him.</p>

Date	Communication	Method of Delivery	Result
8/28/2017	Staff sent a letter requesting that the Respondent provide the Undertakings and also copies of his paystubs from CLS Catering (the "CLS Pay Records") by September 12, 2017.	Registered and regular mail	Registered mail was signed for by "P. Rai" on August 29, 2017. The Respondent failed to respond.
9/19/2017	Staff sent a letter requesting that the Respondent provide the Undertakings and CLS Pay Records.	Process server	The Respondent's wife was personally served with the letter on September 20, 2017. The Respondent failed to respond.
10/4/2017	Staff sent a letter advising the Respondent that he was required to provide the Undertakings and CLS Pay Records by October 18, 2017.	Process server	The Respondent's wife was personally served with the letter on October 6, 2017. The Respondent failed to respond.
11/1/2017	Staff re-sent the October 4, 2017 letter and requested that the Respondent provide a "significant response" to the request for Undertakings and CLS Pay Records by November 8, 2017.	Email	The Respondent failed to respond.

28. It was for the foregoing reasons that the Hearing Panel, on May 29 2019, held that Allegation No. 1 and Allegation No. 2 had been established.

II. INTRODUCTION (PENALTY)

Proposed Penalty

29. Pursuant to s. 24.1.1(i) of MFDA By-law No. 1, if in the opinion of a Hearing Panel, an Approved Person has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA, a Hearing Panel can impose any of the penalties set out in s. 24.1.1(a)-(f).

Reference Section 24.1.1 of MFDA By-law No. 1.

30. A Hearing Panel may also require the Approved Person to pay the costs of the proceeding.

Reference Section 24.2 of MFDA By-law No. 1.

31. In the present case, Staff proposes the following penalties against the Respondent:

- (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 at least \$80,000; and
- (c) Costs in the amount of \$7,500.

Factors Concerning the Appropriateness of Penalty

32. The primary goal of securities regulation is the protection of the investor.

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

33. The Hearing Panel in *Tonnies (Re)*, stated that the role of a Hearing Panel, when imposing sanctions in furtherance of this goal, is as follows:

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 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.

Tonnies (Re), [2005] Hearing Panel of the Prairie Regional Council, MFDA File No.200503, Panel Decision dated June 27, 2005, at para. 45.

Desgroseilliers (Re), *supra*, at para 45.

34. Sanctions imposed by a Hearing Panel should therefore be protective, preventative, and intended to be exercised to prevent likely future harm to the markets. To determine whether a penalty is appropriate, the Hearing Panel should consider:

- (a) The protection of the investing public;
- (b) The integrity of the securities 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.

Tonnies, supra, at para. 46.

35. Previous Hearing Panels have identified the following as matters to consider when determining whether a penalty is appropriate, most of which are now included in the November 2018 Sanction Guidelines:

- (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.

Tonnies (Re), supra, at para 23.

MFDA Sanction Guidelines, November 15, 2018.

36. In his submissions, Staff asked the Hearing Panel to quantify the amount of the fine for the two allegations separately. After considering the matter, the Hearing Panel concluded that, at least in this case, the better course was to award a total unallocated amount on account of the two allegations.

37. There were several reasons for doing so. First, the two allegations are factually intertwined as they both concern the falsified application for a letter of credit and the investigation by Staff to establish the facts surrounding that application. Secondly, under the MFDA Sanction Guidelines, MFDA guidance by quantum was abandoned in favour of reference to past cases to establish an appropriate amount. It could be viewed as inconsistent with the purpose of the Guidelines to break down the total fine into component parts where the allegations are factually closely related, as is the case here.

38. The Hearing Panel, in reaching its conclusion that the minimum amount for the total fine suggested by Staff, \$80,000 was appropriate, considered the following factors:

Nature of the Misconduct

39. Completing loan applications with false information and fabricated supporting documents is fundamentally dishonest conduct. It prevents the Member and/or lender from assessing the suitability of the loan application, exposes the lender to significant financial harm should the borrower default on the loan, and undermines the reputation and integrity of the securities industry.

Kumar (Re), supra, at para. 51.

40. Such conduct is deceitful and is completely outside the bounds of conduct required by an Approved Person. It warrants significant penalties.

Kumar (Re), supra, at para. 51.

41. In addition, failing to cooperate with an MFDA investigation is very serious misconduct which demonstrates a fundamental breach of a registrant's obligations and illustrates that the registrant is ungovernable.

42. As a result of the Respondent's failure to cooperate with Staff's investigation, Staff has been unable to determine the full nature and extent of his conduct including determining the degree of his involvement in the fraudulent loan scheme identified by Investors Group.

Benefits Received by the Respondent

43. The Respondent used and ultimately obtained \$25,000 from the line of credit that is the subject of Allegation #1.¹ Therefore, he received a substantial monetary benefit from his misconduct.

The Respondent's Recognition of the Seriousness of the Misconduct

44. The Respondent does not recognize the seriousness of his misconduct. He continued to deny any wrongdoing throughout. The Respondent's failure to provide information and documents to Staff (including documents that the Respondent undertook to provide during an interview with Staff) demonstrates his unwillingness to comply with the regulation of the securities industry and a lack of remorse.

The Respondent's Past Conduct

45. Although the Respondent has no past disciplinary history with the MFDA, this factor should be given very little weight in light of the seriousness of the misconduct at issue in this proceeding. It also is relevant to determining the penalty that the Respondent denied and continued

¹ Gallimore Affidavit, para. 27.

to deny throughout the process that he was involved in what the Hearing Panel has now found to be untrue; he was complicit in the fraud which led to his being granted the letter of credit.

Risk to Investors and the Capital Markets

46. As stated above, the Respondent’s failure to cooperate with Staff’s investigation demonstrates that he is ungovernable. Therefore, we agree with Staff’s submission that he would pose a significant risk to other investors and the market at large if he is allowed to return to the industry and that a permanent prohibition is necessary to protect investors.

Deterrence

47. The proposed penalties will help prevent the Respondent from causing any further harm to the mutual fund industry and will deter others in the capital markets from engaging in similar activity.

Previous Decisions Made in Similar Cases

48. The proposed penalties are appropriated based on previous decisions made in similar circumstances, as set out in the chart below which was prepared and filed by Staff as follows.

CASE	MISCONDUCT	PENALTIES
<p><i>Kumar (Re), supra</i></p>	<p>The Respondent:</p> <ul style="list-style-type: none"> • <u>submitted a loan application and a line of credit application for himself which contained false information and a fabricated account statement</u> • arranged for two individuals to submit line of credit applications which contained false information and fabricated account statements; • processed a loan application for a client which contained a fabricated account statement; and • failed to cooperate with Staff’s investigations into his conduct by, among other things, <u>failing</u> 	<ul style="list-style-type: none"> • Permanent prohibition • Fine of \$250,000 • Costs of \$10,000

CASE	MISCONDUCT	PENALTIES
	<p><u>to adequately respond to undertakings that he gave during an interview with Staff.</u></p>	
<p><i>Bangyay (Re)</i>, [2013] Hearing Panel of the Central Regional Council, MFDA File No. 201238, Panel Decision dated July 22, 2013</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> • solicited and accepted a loan from a client in the amount of \$100,000, which the Respondent failed to repay; • engaged in an undisclosed gainful occupation; and • <u>failed to provide documents and information to Staff, which he undertook to provide during an interview with Staff.</u> 	<ul style="list-style-type: none"> • Permanent prohibition • Fine of \$250,000 • Costs of \$10,000
<p><i>Popen (Re)</i>, [2012] Hearing Panel of the Central Regional Council, MFDA File No. 201136, Panel Decision dated September 24, 2012</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> • engaged in an undisclosed gainful occupation; • borrowed a total of \$225,000 from 3 clients, and of this amount failed to repay approx. \$185,000; and • failed to provide documents and records to Staff, which he undertook to provide during an interview with Staff. 	<ul style="list-style-type: none"> • Permanent prohibition • Fine of \$25,000 for undisclosed gainful occupation • Fine of \$185,000 for personal financial dealings • Fine of \$50,000 for failure to cooperate • Costs of \$7,500
<p><i>Bytnar (Re)</i>, [2011] Hearing Panel of the Prairie Regional Council, MFDA File No. 201015, Panel Decision dated April 6, 2011.</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> • sold an unapproved investment product to four individuals; • provided misleading responses to his Member during the Member’s investigation; and • <u>failed to provide bank statement to Staff, which he undertook to provide during an interview with Staff.</u> 	<ul style="list-style-type: none"> • Permanent prohibition • Fine of \$90,000 for selling unapproved product • Fine of \$10,000 for misleading Member • Fine of \$50,000 for failure to cooperate • Costs of \$7,500
<p><i>Nguyen (Re)</i>, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201895, Panel</p>	<p>The Respondent:</p> <ul style="list-style-type: none"> • <u>failed to cooperate with Staff’s investigation.</u> 	<ul style="list-style-type: none"> • Permanent prohibition • Fine of \$75,000 • Costs of \$6,500

CASE	MISCONDUCT	PENALTIES
Decision dated March 28, 2019.		
<i>Gizzo (Re)</i> , [2011] Hearing Panel or the Central Regional Council, MFDA File No. 201024, Panel Decision dated March 16, 2011.	The Respondent: <ul style="list-style-type: none"> • <u>failed to cooperate with Staff's investigation.</u> 	<ul style="list-style-type: none"> • Permanent prohibition • Fine of \$85,000 • Costs of \$7,500

49. The *Kumar (Re)* case is directly related to the present case and many of the people are common to both but the Hearing Panels were different. This Hearing Panel was doubtful that we should rely overmuch on the *Kumar* Panel's penalty findings and we did not do so in making our findings.

Summary on Penalty

50. The Hearing Panel agrees with Staff's submission that the proposed penalties are in keeping with the purpose of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring a high standard of conduct by Members and Approved Persons.

51. Staff asked that the MFDA be awarded costs in the amount of \$7,500 and filed a Bill of Costs in that amount in support of that request. A review of that document made it obvious that it is far from a claim for a full indemnification of the true cost of this proceeding. The Hearing Panel is therefore content to accept Staff's costs submission and awards the requested \$7,500.

52. In summary, having found that the two allegations made in the Notice of Hearing have been established, the Hearing Panel orders:

- (1) 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;
- (2) A fine in the amount of \$80,000; and

(3) Costs in the amount of \$7,500.

DATED this 24th day of July, 2019.

“John Lorn McDougall”
John Lorn McDougall, QC
Chair

“Brigitte J. Geisler”
Brigitte J. Geisler
Industry Representative

“Kenneth P. Mann”
Kenneth P. Mann
Industry Representative

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