



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: Kimberley Mary Krahl

Heard: September 22, 2021 by electronic hearing in Toronto, Ontario
Decision (Penalty) and Reasons: November 3, 2021

DECISION (PENALTY) AND REASONS

Hearing Panel of the Central Regional Council:

Emily Cole
Michael Coulter
Eugene Park

Chair
Industry Representative
Industry Representative

Appearances:

Paul Blasiak)	Senior Enforcement Counsel for the Mutual
)	Fund Dealers Association of Canada
)	
)	
Justin Papazian)	Counsel for the Respondent
)	
)	
Kimberley Mary Krahl)	Respondent
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)	

I. INTRODUCTION

1. This was a hearing pursuant to sections 20 and 24 of By-Law No.1 of the Mutual Fund Dealers Association of Canada (the “MFDA”) to determine liability, the appropriate sanctions, and costs, if any, to be imposed upon Kimberley Mary Krahl (the “Respondent”).

2. An Agreed Statement of Facts signed by Staff and the Respondent on August 26, 2021 (the “ASF”) was filed for our consideration. In the ASF, the Respondent admitted to engaging in the following misconduct:

- a) between July 2014 and 2016, she failed to disclose or obtain approval with respect to all material aspects of an outside activity, contrary to the Member’s policies and procedures and MFDA Rules 1.2.1(c) (now Rule 1.3.2), 2.1.1, 2.5.1 and 1.1.2; and
- b) between 2014 and 2016, she engaged in personal financial dealings with a client which gave rise to a conflict or potential conflict of interest which the Respondent failed to disclose to the Member or 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, 2.1.1, 2.5.1, and 1.1.2.

3. After reading the ASF and hearing submissions from Staff and Counsel for the Respondent, the Hearing Panel found that the Respondent breached the Member’s policies and procedures and MFDA Rules 1.2.1(c) (now Rule 1.3.2), 2.1.1, 2.1.4, 2.5.1 and 1.1.2 as set out above in the contraventions.

4. We then heard further submissions from Staff and the Respondent regarding the appropriate sanctions. The Respondent also publicly apologized and expressed remorse. The Respondent did not oppose the imposition of a six-month prohibition of her authority to conduct securities related business as a mutual fund salesperson (now known as a dealing representative). Staff and the Respondent disagreed on the amount of fine and costs, if any.

5. We reserved our decision.

6. The Hearing Panel carefully reviewed Staff’s written submissions and considered the submissions made by the parties at the hearing. We decided the appropriate sanctions are:

- i) A six-month prohibition of the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with a Member of the MFDA, pursuant to section 24.1.1(e) MFDA By-law No. 1;
- ii) A fine in the amount of \$10,000 pursuant to section 24.1.1(b) of MFDA By-law No. 1.; and
- iii) Costs in the amount of \$5,000, pursuant to section 24.2 of MFDA By-law No. 1.

7. These are the reasons for our decision.

II. AGREED FACTS

8. The facts are set out in the ASF attached to these reasons as Schedule "1". The key facts are that while the Respondent was an Approved Person of a Member of the MFDA ("Approved Person"), the Respondent disclosed to the Member that on May 9, 2014, shortly after her brother's business became insolvent, the Respondent became the sole director of and opened a bank account for her brother's successor company carrying on the same business. She did so to help her brother who was unable to do these things because of the insolvency of the first business and the conditions imposed by his lenders. The Respondent also disclosed to the Member that in July 2014 she became a 25% owner of the Business.

9. The Respondent provided misleading responses on the "Outside business activity approval worksheet and checklist" that she submitted to the Member to seek approval to participate in the Business. She did not disclose Client LL's involvement.

10. The Member approved the outside activity noting: "*Very limited hours, family company (brother is owner), minority ownership.*"

11. In May 2014, the Respondent's Client LL who knew both the Respondent and the Respondent's brother began providing accounting services to the Business for which Client LL was paid \$250 per week.

12. Client LL held a Bachelor of Arts degree and a Bachelor of Commerce degree. Until 2014, Client LL worked for RBC Dexia in its US Tax Audit Department. Client LL had knowledge and experience in corporate finance, bookkeeping, accounting, and tax preparation.

13. In 2014, Client LL left her employment at RBC Dexia and opened her own company, which offered corporate and personal tax preparation, bookkeeping and accounting services. At that time,

the Respondent proposed to Client LL that she begin providing accounting services to the Business. Client LL continued to provide accounting services and was paid for doing so until early 2016.

14. Client LL also loaned approximately \$15,000 to the Business in cash or by using her personal credit card to purchase for supplies and to make deposits on vehicles for the use and benefit of the Business.

15. The Respondent did not disclose to the Member that Client LL was providing accounting services to the Business and earning compensation from the Business for those services or that Client LL had paid for expenses and provided loans to the Business. The Respondent also did not disclose that she regularly signed and provided cheques on behalf of the Business to compensate Client LL for her services and to repay amounts owed to her.

16. The Respondent states that she also informed Client LL that she was a director of the Business and had a 25% share ownership in the Business. However, the Respondent did not disclose her directorship or share ownership in the Business to Client LL in writing. In August 2020, Client LL died leaving the Hearing Panel without the benefit of her testimony.

17. In 2016, the Respondent's brother began experiencing personal financial difficulties again. He attempted to refinance his home but was unable to receive financing unless he ceased to have an ownership interest in the Business.

18. The Respondent agreed to increase her ownership in the Business from 25% of the shares to 100% of the shares of the Business. The Respondent did not update the Member when her share ownership increased from 25% to 100%.

III. ANALYSIS

The Hearing Panel's Jurisdiction on a Sanctions Hearing is Limited

19. Settlements including ASFs play an important and necessary role in facilitating the MFDA's principal goal of protecting the investing public. An administrative tribunal cannot adjudicate every matter that comes before it. Settlements provide an efficient and effective way for the MFDA to proscribe conduct that is harmful to the public, while providing a flexible remedy that can be tailored to address the interests of Staff and respondents:

But the power to settle, I find, is necessary if the Commission is going to carry out its purpose under s. 4(2) and its enforcement mandate under ss. 161 and 162 in an effective and efficient manner. Administrative tribunals do not and cannot adjudicate on every matter that commences before them.

Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation. Enforcement is rarely a concern because the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing.

British Columbia (Securities Commission) v. Seifert, 2006 BCSC 174 (BCSC) at paras. 48-49, aff'd, 2007 BCCA 484 at para. 31.

20. Where the parties agree on the facts and sign an ASF but cannot agree on penalty, our role is to determine the correct penalty having regard only to the facts and contraventions contained in the ASF. As the Ontario Securities Commission stated in *Vickers (Re)*, 2015 ONSEC 13 at para. 58:

In my view, the case law is clear. As stated by the Ontario Superior Court of Justice in McGarrigle, when parties to a disciplinary proceeding have entered into an agreed statement of facts, those are the only facts regarding the alleged improper conduct of the respondent that the panel is allowed to consider. This is entirely appropriate as respondents must know the case they have to meet. Hearing panels, including the Panel, are bound by, and limited to the facts set out in agreed statements of facts which are intended to substantially simplify proceedings by obviating the need for additional evidence.

21. In determining the appropriate sanctions to impose upon the Respondent we considered the primary purpose of securities regulation which is the protection of investors, including ensuring efficient capital markets and public confidence in the industry. In exercising our discretion, we also considered the protection of the governing body's membership and the protection of the integrity of the governing body's enforcement processes.

Re Parkinson, [2005] MFDA Case No. 200501

Factors to be Considered to Determine the Appropriate Sanctions

22. We then considered the following factors listed in the MFDA Sanction Guidelines together with the circumstances of this case to determine the appropriate sanctions to be imposed against the Respondent:

a) General and specific deterrence

23. The principles of general and specific deterrence are the foundation of sanctions which are reasonable and proportionate to the misconduct in issue and all the circumstances.

b) Public confidence

24. The securities industry is based upon public confidence in the trustworthiness and honesty of the individuals and dealers who handle people's savings and are responsible for their financial investments.

The penalty must re-affirm public confidence in the system, and to do this it must be seen to act as a general deterrent. Every member acts for highly susceptible investors, and the penalty must be sufficiently severe as to dissuade other members from any temptation to follow the predatory practices engaged in by [the respondent]. Moreover, the public is entitled to be protected from any further predatory activities by him.

Re Brown-John, 2005 CanLii 77709 at p. 5

c) The seriousness of the allegations proved against the Respondent

25. The contraventions admitted to by the Respondent are serious.

Failure to Disclose or Obtain Approval of All Material Aspects of an Outside Activity

26. MFDA Rule 1.3.2 (formerly 1.2.1(c)) required that the Respondent provide notice to the Member and seek approval of an outside activity.

27. The Respondent disclosed to the Member that she was the sole director of the Business and a minority shareholder but provided misleading responses on the "Outside business activity approval worksheet and checklist" that she submitted to the Member to seek approval to participate in the Business. She did not disclose that Client LL was providing accounting services to the Business and receiving compensation from the Business.

28. The Member approved the outside activity noting: "*Very limited hours, family company (brother is owner), minority ownership.*" While the Member approved the outside activity, it is unknown whether the Member would have done so if it had been fully informed.

29. The Respondent also failed to update the Member when her share ownership increased from 25% to 100%. From the notes set out above, the minority ownership appears to have been a factor that the Member considered. This information may have informed the Member's decision whether to continue to approve the Respondent's increased involvement in the outside activity.

The Hearing Panel is concerned that the Respondent failed to disclose to the Member the extent to which she had involved Client LL in the Business and the extent of her own involvement in the Business. The Respondent's failure to disclose all material aspects of her involvement in the outside activity is serious misconduct.

30. The rationale for the outside activity rule is to enable the Member to properly supervise their employee to ensure that the real or potential conflicts of interest are addressed and the activities of the AP do not compromise the regulation of the securities industry or expose the Member to litigation.

The need for a Member to know what other occupations and businesses its employee might be engaged in is obvious. There are many reasons why a Member must know what its employees are doing. We will mention only two of what seem to us to be the most important reasons. The first is that a failure to know about an employee's other commercial activities impinges upon the Member's ability to properly supervise its employee. The second reason is that the Member could be exposed to litigation alleging that the Approved Person's activity was within the scope of his/her employment with the Member.

Vitch (Re), [2011] Hearing Panel of the Central Regional Council, MFDA File No. 201103, Panel Decision dated September 22, 2011, at para. 53.

Sarang (Re), [2016] Hearing Panel of the Pacific Regional Council, MFDA File No. 201535, Panel Decision dated March 21, 2016, at para. 12

31. By not keeping the Member fully informed, the Respondent deprived the Member of its obligation to supervise her. Fortunately, the Member was not exposed to litigation nonetheless the Respondent's misconduct is serious.

Personal Financial Dealings

32. When an Approved Person engages in personal financial dealings with a client, the Approved Person breaches the MFDA standard of conduct and creates a conflict of interest. Borrowing or obtaining monies from clients is also prohibited by the Member's Policies and Procedures.

33. The Respondent engaged in personal financial dealings with Client LL and created a conflict of interest by permitting Client LL to loan approximately \$15,000 to the Business in cash or by using her personal credit card to purchase for supplies and to make deposits on vehicles for the use and benefit of the Business.

34. In *Nunweiler (Re)* the Hearing Panel explained that the conflict of interest created by borrowing money from a client in most if not all cases will be impossible to resolve in favour of the client because it is inherently not the exercise of responsible business judgment:

As can be seen, the conflict-of-interest rule requires an Approved Person, like the Respondent, to be alert to the creation of potential or actual conflicts of interest arising in connection with their business, and if such a potential or actual conflict of interest arises, it must immediately be disclosed in writing to the client in advance of the transaction. The Approved Person is required to have the potential or actual conflict of interest addressed by the exercise of reasonable judgment influenced only by the best interests of the client.

Where an Approved Person borrows money from a client or arranges investments by clients in companies in which the Approved Person has a personal interest, such conduct immediately raises a significant actual conflict of interest, a conflict that in most if not all cases will be impossible to resolve in favour of the client. It is patently obvious that facilitating investments by a client in your company or borrowing money from a client is not the exercise of responsible business judgment in the best interests of the client. [emphasis added]

Nunweiler (Re), [2012] Hearing Panel of the Pacific Regional Council, MFDA
File No. 201030, Panel Decision dated May 28, 2012, at para. 17.

35. Borrowing money from a client is most serious when it is solicited by the Approved Person and the funds are used for the Approved Person's own benefit. In this case, the Respondent did not solicit the loans and the funds were used to support the Business. Nonetheless it is serious misconduct.

36. By permitting Client LL to loan money to the Business, the Respondent exposed Client LL to the potential risk that Client LL could lose that money she lent to the Business. It also exposed Client LL to the potential risk that the Respondent's judgment and advice to Client LL about her investments could be clouded by the fact that Client LL was helping the Respondent's brother's failing business. Fortunately, there is no evidence that these risks were realized.

37. Staff asked us to find that an aggravating factor in this case is that the Business was in a precarious financial condition. The Hearing Panel disagrees. The Hearing Panel finds that Client LL had full knowledge at all times of the risk she assumed. Paragraph 44 of the ASF states that:

As a service provider providing accounting and bookkeeping services to the Business, Client LL was aware that the Business was not profitable. Notwithstanding the Business' precarious financial situation, Client LL agreed to provide services to the Business and to loan money to the Business...

38. While Client LL's investments were not used to loan money to the Business and the Respondent/Business repaid Client LL, the Respondent's misconduct is serious for the reasons set out above.

d) Whether the Respondent recognizes the seriousness of the misconduct.

39. The Respondent accepted responsibility for her actions. She admitted her misconduct and the facts in the ASF saving the MFDA the time and expense of a hearing on the merits. The Respondent also did not contest a six-month prohibition. The Respondent also publicly apologized and expressed remorse at the hearing.

e) The benefits received by the Respondent because of the misconduct

40. The Respondent did not financially benefit because of the misconduct. The \$15,000 injection by Client LL over a period of almost two years appeared to merely keep the Business on life support. Significantly none of the funds advanced by Client LL were obtained from her investments managed by the Respondent.

f) The harm suffered by investors because of the Respondent's misconduct.

41. The Respondent signed Business cheques and paid Client LL \$250.00 per week for her services. In addition, the Respondent signed Business cheques and repaid the \$15,000 advanced to the Business by Client LL.

g) The Respondent's past conduct, including prior sanctions.

42. The Respondent had a long and unblemished career before this misconduct. She was aware that she must not borrow money from clients. Her relationship with her brother and her personal relationship with Client LL appears to have blurred the line between her personal and business relationships such that she did not see it. The Respondent appears to have been motivated by a desire to help her brother with his failing business and to help Client LL by referring her to the Business and providing her with some accounting work to start her nascent business. Client LL appears also to have been motivated by a desire to help the Respondent's brother. Despite the Respondent's motives however, she engaged in serious misconduct.

43. The Respondent has not been the subject of client complaints or any prior disciplinary actions.

44. The Respondent has not been the subject of any client complaints. The complaint in this case was lodged by a peer.

h) Previous decisions made in similar circumstances.

45. Staff provided several MFDA decisions which addressed similar misconduct. None of these cases were precisely on point, however the *Alam Re* case had several similarities. *Alam Re* is a 2020 decision. It also concerned personal financial dealings.

46. The most significant distinctions between the Alam case and the Respondent's case are that Mr. Alam actively solicited a loan from one of his clients and advised his client to use funds from his line of credit to fund the loan. There is no evidence that the Respondent solicited funds from Client LL or even suggested that Client LL use funds from her investments managed by the Respondent.

47. Mr. Alam also engaged in a transaction with client SH (the "SH Transaction") whereby client SH paid \$17,000 to the Respondent and at approximately the same time, a third-party individual who the Respondent was acquainted with paid the equivalent of \$17,000 CAD to client SH's brother outside of Canada. This transaction was inherently deceitful.

48. Another distinction between the two cases is that the Respondent's personal financial dealings continued undetected for approximately two years whereas Mr. Alam's misconduct occurred in a single day.

49. Like Ms. Krahl, Mr. Alam cooperated with Staff. He represented himself and settled. Ms. Krahl was represented by counsel. She admitted the contraventions and signed an ASF to assist the MFDA in its prosecution against her. The Respondent's counsel advocated on her behalf about the quantum of the fine and costs, arguing that in the circumstances of this case the Hearing Panel should not impose a fine or costs.

50. Mr. Alam settled the allegations against him by agreeing to a penalty of six months prohibition, a fine of \$7,500 and costs of \$3,750. Settlements attract lower fines than cases that proceed by an agreed statement of facts as the MFDA is still required to hold a contested case on penalty.

i) For multiple violations, the total or cumulative sanction should appropriately reflect the totality of the misconduct

51. Based on a review of these cases and taking into consideration the factors discussed above, we are satisfied the sanctions that we have determined fall within a reasonable range of appropriateness.

52. The Respondent admitted to two contraventions. The Hearing Panel is satisfied that the total sanctions appropriately reflect the totality of the misconduct.

j) Ability to pay is a consideration when imposing an appropriate monetary sanction.

53. The parties filed Supplementary evidence about the Respondent's financial circumstances. We were unable to give this evidence much weight because it did not provide a complete picture of the Respondent's financial circumstances.

54. The MFDA Sanction Guidelines explicitly state that: *The burden is on the Respondent to raise the issue and to provide evidence of inability to pay, such as tax returns or audited financial statements* (emphasis added). The Respondent did not provide her 2020 tax return to corroborate her income. At the hearing the Respondent advised us that her accountant is in the process of filing the Respondent's tax return. We note that the tax return was due approximately five months ago.

55. In addition, the Respondent relied on evidence of household assets and liabilities but did not provide evidence of her husband's income. She stated that her husband is 80 years old and is on a fixed income.

56. Without a tax return to corroborate the Respondent's income or disclosure of her household income, we were unable to determine whether the Respondent has a *bona fide* inability to pay.

k) Whether the Respondent made voluntary acts of compensation, restitution, or disgorgement to remedy the misconduct

57. The Respondent voluntarily signed cheques on behalf of the Business which repaid the \$15,000 that Client LL advanced to the Business.

l) The Respondent's proactive and exceptional assistance to the MFDA

58. As discussed above, the Respondent cooperated with the MFDA. She admitted her misconduct and the facts against her and signed an ASF. Her cooperation after her misconduct was

discovered cannot negate the need for substantial sanctions which reflect the gravity of her misconduct.

MFDA Sanction Guidelines

Costs

59. The costs award is appropriate and consistent with previous MFDA disciplinary proceedings that proceeded by way of an ASF.

IV. CONCLUSION

60. We are of the view that the sanctions, including a six-month prohibition of the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with a Member of the MFDA, the \$10,000 fine and \$5,000 in costs will serve as a specific deterrence to the Respondent, Ms. Krahl, and as general deterrence to others in the industry who may contemplate engaging in personal financial dealings with clients in the future.

DATED this 3rd day of November, 2021.

“Emily Cole”

Emily Cole
Chair

“Michael Coulter”

Michael Coulter
Industry Representative

“Eugene Park”

Eugene Park
Industry Representative



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: Kimberley Mary Krahl

AGREED STATEMENT OF FACTS

I. INTRODUCTION

1. By Notice of Hearing dated January 7, 2021, the Mutual Fund Dealers Association of Canada (the "MFDA") commenced a disciplinary proceeding against Kimberley Mary Krahl (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 2015 and 2016, the Respondent failed to disclose or obtain approval for changes to an approved outside activity, contrary to the Member's policies and procedures and MFDA Rules 1.3.2, 2.1.1, 2.5.1 and 1.1.2.

Allegation #2: Between 2014 and 2016, the Respondent engaged in personal financial dealings with a client which gave rise to a conflict or potential conflict of interest which the Respondent failed to disclose to the Member or 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, 2.1.1, 2.5.1, and 1.1.2.

3. On August 23, 2021, Allegation #1 in the Notice of Hearing was amended on consent of the parties to the following:

Allegation #1: Between July 2014 and 2016, the Respondent failed to disclose or obtain approval with respect to all material aspects of an outside activity, contrary to the Member's policies and procedures and MFDA Rules 1.2.1(c) (now Rule 1.3.2), 2.1.1, 2.5.1 and 1.1.2.

II. IN PUBLIC / IN CAMERA

4. 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

5. 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.

6. Staff and the Respondent jointly request that the Hearing Panel determine, on the basis of this Agreed Statement of Facts, the appropriate penalty to impose on the Respondent.

IV. AGREED FACTS

7. 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 information, facts or documents, subject to the content of this paragraph and paragraph 8 below.

8. In the event that the Hearing Panel advises one or both of Staff and the Respondent of any additional facts that it considers necessary in order to determine the issues before it, Staff and the Respondent agree that such additional facts may be provided to the Hearing Panel, either: (a) with the consent of both Staff and the Respondent if the additional facts are agreed upon; (b) if the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel; or (c) if the parties are both present at the hearing and are not in agreement about the additional facts requested by the Hearing Panel, the parties will be given a reasonable opportunity to lead evidence concerning the additional facts. In circumstances where a party leads evidence concerning additional facts requested by the Hearing Panel, the opposing party may cross-examine any witness tendered to lead such evidence and shall be given a reasonable opportunity to lead responding evidence if they wish to do so.

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

Registration History

10. From March 4, 2010 to April 30, 2020, the Respondent was registered in Ontario as a dealing representative with Investors Group Financial Services Inc. (the “Member”), a Member of the MFDA. In 2017, the Respondent also became registered in British Columbia, Nova Scotia, and Quebec.

11. On April 30, 2020, the Respondent resigned from the Member.

12. The Respondent is not currently registered in the securities industry in any capacity.

13. At all material times, the Respondent carried on business in the Toronto, Ontario area.

Member’s Policies and Procedures

14. At all material times, the Member’s policies and procedures required its Approved Persons to:

- a) obtain the approval of the Member prior to engaging in any proposed outside business activities; and
- b) report to the Member within two business days if any changes arose with respect to any previously approved outside business activities.

15. At all material times, the Member’s policies and procedures also prohibited its Approved Persons from borrowing from clients and engaging in other types of personal financial dealings with clients.

16. In addition, at all material times, the Member’s policies and procedures:

- a) prohibited its Approved Persons from writing personal cheques to clients; and
- b) stated the following with regard to engaging in business relationships with clients: “[Approved Persons] should avoid business relationships with clients, (i.e. investing in a business), buying or selling property or other items from or to a client.

These actions can affect your dealings with the client causing a potential conflict of interest and may constitute outside business activities.”

Background: Draft Systems Inc. – The Predecessor Company to the Outside Activity

17. From approximately 2000 to 2014, the Respondent’s brother, KR, owned and operated a company called Draft Systems Inc., which carried on business as a draft beer equipment installation and maintenance company.

18. The Respondent was not employed by or on behalf of Draft Systems Inc., and she was not involved in its operations.

19. In 2014, Draft Systems Inc. became insolvent.

The Outside Activity – 8882649 Canada Inc.

20. On May 9, 2014, shortly after the insolvency of Draft Systems Inc., KR incorporated 8882649 Canada Inc. (“Draft Systems 2” or the “Business”).

21. The Business was the successor company to Draft Systems Inc.

22. As a result of the insolvency of Draft Systems Inc., as a condition of advancing money to the Business, lenders to the Business prohibited KR from serving as a director of the Business or opening a bank account on behalf of the Business.

23. On or about May 9, 2014, the Respondent agreed to become the sole director of the Business and she opened a bank account for the Business.

24. Commencing in May 2014, LL, a client of the Member whose accounts were serviced by the Respondent, began providing the Business with accounting services in exchange for compensation, and also provided additional financial support to the Business. Client LL’s involvement in the Business was facilitated by the Respondent and is described in greater detail below.

25. On no later than July 7, 2014, KR assigned the Respondent a 25% share ownership in the Business.

26. As described in more detail below, on or about July 7, 2014, the Respondent submitted an “Outside business activity approval worksheet and checklist” (the “Worksheet”) to the Member in

order to seek approval to participate in the Business as an outside activity. The Respondent submitted the Worksheet approximately two months after becoming a director of the Business and opening a bank account for the Business. She did not disclose client LL's involvement in the Business on the Worksheet.

27. In 2014, in addition to being its sole director, the Respondent's responsibilities on behalf of the Business included maintaining the bank account for the Business, managing payroll and invoicing, some bookkeeping and a role in the hiring of employees. The Respondent had also arranged to set up a benefits and pension plan through the Member for the benefit of employees of the Business. The Respondent assumed these responsibilities on behalf of the Business prior to obtaining approval from the Member to engage in the Business.

Client LL's Involvement in the Outside Activity

28. In 2005, the Respondent met LL while commuting to work. At that time, LL was not a client of the Member. LL was also acquainted with the Respondent's brother, KR.

29. In 2012, the Respondent started servicing the investment accounts of client LL at the Member. At all material times, the Respondent continued to service client LL's accounts.

30. LL held a Bachelor of Arts degree and a Bachelor of Commerce degree. Until 2014, LL worked for RBC Dexia in its US Tax Audit Department. LL had knowledge and experience in corporate finance, bookkeeping, accounting and tax preparation.

31. In 2014, LL left her employment at RBC Dexia and opened her own company, which offered corporate and personal tax preparation, bookkeeping and accounting services.

32. At that time, the Respondent proposed to LL that she begin providing accounting services to the Business.

33. At all material times, client LL was aware that the Respondent was involved in the operations of the Business.

34. The Respondent states that she also informed client LL that she was a director of the Business and had a 25% share ownership in the Business. However, the Respondent did not disclose her directorship or share ownership in the Business to client LL in writing.

35. Between May 2014 and early 2016, client LL provided accounting services to the Business including bookkeeping, tax preparation and invoicing receivables for which the Business paid client LL \$250 per week.

36. In addition, between May 2014 and early 2016:

- a) the Business borrowed monies from client LL; and
- b) with client LL's knowledge and authorization, the Business used client LL's personal credit cards to purchase supplies and to make deposits on vehicles for the use and benefit of the Business.

37. The amounts that the Business borrowed from client LL, and the amounts of the payments that client LL paid on behalf of the Business, totaled approximately \$15,000.

38. At all material times, the Respondent was aware of the services and lending that client LL provided to the Business and was aware that accordingly, amounts were owed by the Business to client LL.

39. There was no verbal or written agreement between the Business and client LL setting out the terms or timing of repayment of the monies advanced to the Business by client LL.

40. Between May 2014 and early 2016, the Respondent had sole signing authority on the Business' bank account and authorization to pay expenses and deposit receivables including by issuing cheques on behalf of the Business. During this period, the Respondent signed and provided cheques on behalf of the Business to client LL to:

- a) pay client LL for the tax and accounting services that she provided to the Business; and
- b) reimburse client LL approximately \$15,000 for the amounts that client LL had loaned to the Business or paid on its behalf.

41. The Respondent did not disclose to the Member that:

- a) client LL was providing accounting services to the Business, or that she was earning compensation from the Business in exchange for providing accounting services;

- b) client LL had provided loans to and paid expenses on behalf of the Business to assist the Business to manage its precarious financial circumstances; or
- c) the Respondent regularly signed and provided cheques on behalf of the Business to compensate client LL for services that she provided and to repay amounts owed to her.

42. In early 2016, client LL ceased providing services to the Business. By that time, client LL had been paid the compensation that was owed to her and she had been reimbursed for almost all of the expenses that she had paid on behalf of the Business.

43. The Respondent did not disclose to client LL that her involvement in the Business gave rise to a conflict or potential conflict of interest.

44. As a service provider providing accounting and bookkeeping services to the Business, Client LL was aware that the Business was not profitable. Notwithstanding the Business' precarious financial situation, client LL agreed to provide services to the Business and to loan money to the Business as described above.

45. In May of 2017, another Approved Person reported to the Member that the Respondent borrowed money from client LL, prompting the Member to investigate the allegation.

46. In June of 2017, after receiving inquiries from the Member about her dealings with the Respondent, LL wrote to the Approved Person who had made submitted the May 2017 report to the Member and advised that Approved Person, among other things, that she was fully aware of when circumstances warrant an official complaint and that she (LL) was fully capable of making her own judgement calls as to when a breach of compliance needs to be reported.

47. In August 2020, client LL passed away.

The Outside Activity Worksheet and Checklist

48. As noted in paragraph 27 above, on or about July 7, 2014, the Respondent submitted an "Outside business activity approval worksheet and checklist" (the "Worksheet") to the Member in order to seek approval to participate in the Business as an outside activity.

49. In the Worksheet, the Member asked the Respondent, among other things, to describe the Business, the nature of her position and duties, and how much time would be devoted to it.

50. In the Worksheet, the Member also required the Respondent to report to the Member within two business days “All subsequent changes to the outside business activity (e.g. duties, responsibilities, number of hours, position, cessation of the outside business activity, etc.)”

51. The Respondent completed the Worksheet and disclosed, among other things, the following:

- a) the proposed start date of the Business was July 7, 2014;
- b) the Respondent was a 25% owner and voting director of the Business;
- c) she would not receive any compensation, whether monetary or non-monetary for her activities in the Business;
- d) she would be devoting two hours per month to the Business;
- e) she had recently implemented a group benefits and pension plan through the Member for the benefit of employees of the Business;
- f) she had authorization to pay expenses and deposit receivables of the Business;
- g) she was involved in hiring employees for the Business; and
- h) she indicated that her activities with the Business would *not give rise to any conflicts of interest or involve clients of the Member* (except to the extent that she had recently arranged to set up the group benefits and pension plan for the Business’ employees). [emphasis added]

52. In addition, the Worksheet asked the Respondent whether:

- a) there were any *potential* conflicts of interest with her duties and responsibilities as a registrant, to which she responded “none”; [emphasis added]
- b) any Member clients would be associated with the Business, to which she responded “no”;
- c) the Business involved any Member clients and how the clients would be involved, to which she responded only that she had set up a group benefits and pension plan for the employees of the Business; and
- d) any Member clients would be associated with or use the services of the Business, to which she responded “no”.

53. At the time when the Respondent completed the Worksheet on or about July 7, 2014, client LL had already commenced providing accounting services to the Business and providing loans and paying expenses on behalf of the Business as described above in paragraphs 36 and 37.

54. On March 24, 2015, a Vice President at the Member signed the Worksheet granting approval to the Respondent to engage in the Business on the basis of the disclosure about her role in the Business that the Respondent had submitted in the Worksheet. On the Worksheet, the Vice President provided the following reasons for approving the outside activity: “Very limited hours, family company (brother is owner), minority ownership”.

55. The Member also required the management of the pension plan of the Business to be transferred from the Respondent to another Approved Person at the Member in order to avoid any conflicts or potential conflicts of interest associated with the administration of the pension plan.

56. On March 30, 2015, the Member informed the Respondent that it had approved her outside activity on behalf of the Business.

57. No later than July 20, 2015, the Respondent ceased to manage the pension plan of the Business.

58. On August 20, 2015, the Member wrote to the Respondent and informed her that its approval of her outside activity on behalf of the Business was subject to certain conditions. One of the conditions of approval required the Respondent to inform her Branch Manager if there were any changes to her activities in the Business, and in such circumstances to also complete a new outside business activity approval worksheet and checklist. The Member also requested that the Respondent confirm that she was in agreement with the conditions of approval.

59. On September 8, 2015, the Respondent sent an email to the Member accepting the conditions of approval described above.

60. Contrary to the terms and conditions of the Member’s approval of her involvement in the Business, the Respondent did not disclose to the Member any information with respect to client LL’s involvement in the Business on the original Worksheet that she submitted, and she did not complete a new outside business activity approval worksheet and checklist to reflect client LL’s involvement in the Business at the time or after approval of the outside activity was granted.

The Respondent’s Increased Ownership Interest in the Outside Activity

61. In 2016, KR began experiencing personal financial difficulties again. He attempted to refinance his home, but was unable to receive financing unless he ceased to have an ownership interest in the Business.

62. The Respondent agreed to increase her ownership in the Business from 25% of the shares to 100% of the shares of the Business.
63. As noted above, the Member's approval of the Respondent's engagement in the Business took into consideration the fact that she was merely a minority shareholder in the Business.
64. Contrary to the terms and conditions of the approval by the Member of her involvement in the Business, the Respondent did not disclose to the Member that her ownership interest in the Business had increased from 25% to 100%, and she did not complete a new outside business activity approval worksheet and checklist to reflect her increased ownership interest in the Business.
65. On February 7, 2020, nearly four years after her ownership interest in the Business was increased, and after Staff interviewed the Respondent as part of its investigation into her conduct, the Respondent informed the Member for the first time that her percentage ownership in the Business had changed from 25% to 100%.

Additional Factors

66. There is no evidence that client LL or any other client suffered a financial loss associated with the conduct of the Respondent that is described in this Agreed Statement of Facts.
67. No clients have complained with regard to the matters described herein.
68. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
69. The Respondent is 58 years old.
70. The Respondent states that her only source of income are payments that she is receiving from the Member's "assured value plan". These payments commenced following the Respondent's resignation from the Member in April 2020, and will cease in approximately April 2025. The Respondent has provided evidence to Staff substantiating that she earns a modest income from these payments.
71. The Respondent has not provided her tax records to Staff in order to corroborate her statement that her only source of income are payments from the Member's "assured value plan".

72. The Respondent has provided evidence to Staff substantiating that she has high levels of personal debt.

Misconduct Admitted

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

- (a) between July 2014 and 2016, failed to disclose or obtain approval with respect to all material aspects of an outside activity, contrary to the Member's policies and procedures and MFDA Rules 1.2.1(c) (now Rule 1.3.2), 2.1.1, 2.5.1 and 1.1.2; and
- (b) between 2014 and 2016, engaged in personal financial dealings with a client which gave rise to a conflict or potential conflict of interest which the Respondent failed to disclose to the Member or 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, 2.1.1, 2.5.1, and 1.1.2.

Execution of Agreed Statement of Facts

74. This Agreed Statement of Facts may be signed in one or more counterparts which together shall constitute a binding agreement.

75. A facsimile copy of any signature shall be effective as an original signature.

DATED this 26th day of August, 2021.

“Kimberley Mary Krahl”

Kimberley Mary Krahl

“Charles Toth”

Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement