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: Christine (Claudette) Levesque

Heard: June 3, 2022 by electronic hearing in Toronto, Ontario
Decision and Reasons: July 19, 2022

DECISION AND REASONS

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C., Q.C.	Chair
Edward V. Jackson	Industry Representative
Joseph Yassi	Industry Representative

Appearances:

Julie Grajales	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Christine (Claudette) Levesque	)	Respondent, not in attendance or represented by counsel

I. INTRODUCTION

1. This is a Hearing under Sections 20 and 24 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the "MFDA"). The Hearing was held electronically by videoconference on June 3, 2022. Christine (Claudette) Levesque (the "Respondent") was not in attendance or represented by counsel at the Hearing.

2. From March 24, 2014 to February 5, 2019, the Respondent was registered in Ontario as a dealing representative with Quadrus Investment Services Ltd., a Member of the MFDA (the "Member").

3. On February 5, 2019, the Member terminated the Respondent as a result of the conduct described in these reasons, and she is not currently registered in the securities industry in any capacity.

4. At all material times, the Respondent conducted business in the Eastern Ontario region of St-Andrews.

5. In 2014, the Respondent also became licensed as a Life Insurance and Accident and Sickness Agent, selling insurance products offered by the London Life Insurance Company (the "Insurance Affiliate"), an affiliate of the Member. In January 2020, the Insurance Affiliate amalgamated with several other affiliated companies to become Canada Life.

6. The evidence shows that while she was a dealing representative with the Member and was also selling insurance products with the Insurance Affiliate, the Respondent had only four clients, all relatives – her husband, JN, her mother-in-law, JM, her mother, AC, and her aunt, GL. Only one of these clients, her husband, JN, was an MFDA client.

7. On January 21, 2019, the Member filed a METS (Member Event Tracking System) Report with the MFDA. A second METS Report was filed in February 2019. As a result of these reports, the MFDA opened an investigation.

8. Following this investigation, the MFDA issued a Notice of Hearing, dated March 25, 2021.

9. In brief, the Respondent allegedly redeemed investments in JN's MFDA account without his knowledge or authorization and after forging his signature on various documents. There were 20 redemptions, amounting to $59,147. There were similar redemptions in two of the three insurance client accounts, done without their knowledge or authorization and after forging their

signatures. With respect to the third insurance client, the money given to the Respondent for investment purposes was never invested. The loss to the three insurance clients amounted to $144,802. The total loss of MFDA and Insurance Affiliated clients was $203,949.

10. The Member and the Insurance Affiliate have reimbursed all the clients for their losses.

11. As we will see below, the Respondent did not cooperate in any way in the MFDA investigation or in the present MFDA Hearing, although she did meet with the Member before the MFDA's involvement to discuss her conduct.

12. At the end of the Hearing, the Panel reserved its decision on the question of improper conduct and the penalty that should be imposed. These are our reasons for our findings of misconduct and the resulting penalty.

II. ALLEGATIONS

13. The MFDA alleged the following violations of the By-laws, Rules or Policies of the MFDA:

> **Allegation #1:** Between approximately September 2014 and February 5, 2019, the Respondent misappropriated or otherwise failed to account for monies obtained from a client and at least 2 individuals, contrary to MFDA Rule 2.1.1.
>
> **Allegation # 2:** Between approximately September 2014 and December 2015, the Respondent submitted for processing unauthorized redemptions in the account of a client, contrary to MFDA Rule 2.1.1.
>
> **Allegation #3:** Commencing April 5, 2019, the Respondent failed to cooperate with Staff's investigation of her conduct, contrary to section 22.1 of MFDA By-law No. 1.

14. The first appearance was scheduled for May 25, 2021. It took place by a video conference. The Respondent did not appear, nor had she filed a Reply. The Chair of the Panel determined at the May 25th hearing that the Respondent had been properly served and ordered that a hearing on the merits take place on December 7-8, 2021. The Notice of Hearing had been personally served on the Respondent on April 7, 2021. The Respondent later told the MFDA that she had not appeared at the May 25th hearing because she thought the Hearing was scheduled for May 26th. For various reasons, the date of Hearing was rescheduled to January 26-27, 2022. Just before that hearing, the Respondent asked for an adjournment in order to retain counsel. At an interim Hearing on February 15, 2022, the Respondent again wanted an adjournment to retain counsel. The Panel adjourned the hearing until June 3, 2022 at which time the Hearing would proceed, whether or not she had counsel.

III. THE PRESENT HEARING

15. The MFDA Rules of Procedure provide that if the Respondent fails to file a Reply to a Notice of Hearing (Rule 8.4) or to attend a Hearing (Rule 7.3) the Panel is entitled to accept the facts alleged and conclusions drawn by the MFDA. MFDA Staff elected, however, to present evidence at this Hearing on the Merits.

16. Counsel for the MFDA presented the oral evidence of three sworn witnesses, who had also provided sworn affidavits. The first witness was Robert Lambshead, an investigator with the MFDA, who had been assigned to the investigation of the conduct that is the subject of this Hearing. His affidavit and accompanying exhibits, sworn on January 20, 2022, was over 500 pages. He described in detail the steps taken by the MFDA to serve the Respondent with documents and to keep the Respondent informed of the proceedings. He also described the interactions of the Respondent and the clients.

17. The second oral witness was Frank Trafagander, Senior Investigator, Special Investigations Unit, for the Member and Canada Life, whose sworn affidavit, dated January 18, 2022, with exhibits, was over 1,500 pages. He also provided a transcript of an interview he conducted with the Respondent on February 5 and 18, 2019, the first date being the date that the Respondent was terminated by the Member.

18. The third oral witness was the Respondent's estranged husband, JN, whose sworn affidavit, dated January 12, 2022, was, with exhibits, about 150 pages.

19. At the conclusion of the evidence, the Panel reserved its decision on misconduct and heard the MFDA's submissions on penalty.

IV. THE FACTS IN GREATER DETAIL

20. The Respondent and JN started dating in 2001 and in 2004 bought a house together. In 2015, they were married. They split the household duties. The Respondent dealt with all their finances, including paying the mortgage, paying bills, paying taxes, and monitoring their joint bank account.

21. Although they had a joint bank account, JN rarely looked at it. He did not have a credit card, but had a debit card for the joint account. He stated: "I do not recall seeing any statements for the joint account at our house, and if I did, I would not have looked at them since I had delegated

that responsibility to the Respondent." The Respondent, in fact, had a separate account where her professional earnings were deposited. This was not known by JN, so even if he had seen their joint-account statements, he would have thought that they included her professional earnings and would not have been alerted to the fact that they were from the RRSP redemptions.

22. When the Respondent started working at the Member and the Insurance Affiliate in 2014, JN opened a registered retirement savings plan account with the Member, which the Respondent serviced. JN transferred from his other accounts approximately $58,000 into the RRSP account, which was all his savings. His other accounts were closed down. The RRSP was for his retirement. He never saw any statements from the Member.

23. In early 2019, JN was contacted by the Member and for the first time learned that money had been taken from his RRSP in 2014 and 2015. There were 20 unauthorized redemptions, totally $51,033. In each case, his signature was forged on the redemption documents. The money was then placed in their joint bank account. In each case, in order not to raise any suspicion about what the Respondent was doing, the cheque used to show JN's bank account, to which the funds were electronically transferred, was displayed in such a way as to make it appear that the Respondent was not involved in the joint account and that the account was solely JN's account.

24. In about 2015, JN received a reassessment notice from the Canada Revenue Agency ("CRA") advising him that he owed money. There was another reassessment notice in 2016. He had incurred tax liability because of the withdrawals from the RRSP. The total was about $10,000. He was assured by the Respondent that this was a mistake and that she and the Member were clearing it up. Nothing happened to clarify the situation and in 2018 the CRA garnished JN's wages. He arranged to pay the CRA through a personal loan from the Respondent's family.

25. Around October 2019, the Member reinstated JN's RRSP account to what it would have been if the Respondent had not taken the funds. The Member also resolved the problems caused by the reassessment by the CRA.

26. A few days after hearing about the redemptions to his RRSP and learning about the Respondent's misappropriation of funds from insurance accounts of other members of his family, he spoke to the Respondent on the telephone. He states in his affidavit: "On or about February 6, 2019, after the Respondent had been fired from the Member, I spoke to her on the telephone and told her not to come home. She asked me to let her explain why she had taken the money, but I told her I would let her know when I was ready to hear her out." They have not, he told the Panel,

spoken since then. He still lives in the jointly-owned house and does not know what will happen to the funds if he sells it.

27. In addition to client JN, the Respondent, using methods not dissimilar to those described above, misappropriated monies from two insurance clients (her mother-in-law, JM; and her aunt, GL), by processing unauthorized redemptions in the insurance accounts of the clients. The total misappropriated was $144,800. In the case of her mother, AC, it was not a redemption. AC had provided the Respondent with a cheque for $5,000 to invest in the individual's insurance policy, which was never invested. In all three cases, the funds were deposited into Respondent's joint bank account. The three insurance clients were unaware of these activities, until her mother-in-law discovered a discrepancy in her retirement investment fund account at the Insurance Affiliate**.** Both her mother and her mother-in-law reported the misappropriation to the police. There was no evidence presented to us about whether any criminal proceedings were commenced or are proceeding. As stated above, all three insurance clients were made financially whole.

28. The Panel accepts without any doubt the evidence presented to us by the MFDA. The oral evidence coupled with the three main affidavits makes it clear that there was misconduct by the Respondent. Indeed, in the interview with Frank Trafagander on February 25, 2019, the Respondent admitted her misconduct. During that interview, he asked the Respondent why she took money from her husband, JN:

> "Mr. Trafagander: And is there a reason that you took money out of your husband's RRSPs without his knowledge: Because he didn't know…Can you explain why you took this money?
>
> Respondent: There's no right explanation, even if I tell you.
>
> Mr. Trafagander: Well, I'm not necessarily looking for a right explanation, I'm just looking for the explanation…
>
> Respondent: My right explanation, I don't think it's going to make a difference, Frank, even if I tell you.
>
> Mr. Trafagander: Why?
>
> Respondent: Because at the end, it's wrong, 100 percent. And I'll take the consequence for it. But it's not going to make a difference.

V. THE LAW

29. The Respondent's conduct in misappropriating funds alleged in Allegation 1 is clearly a breach of MFDA Rule 2.1.1, which requires that each Member and Approved Person deal fairly, honestly, and in good faith with clients, observe high standards of ethics and conduct in the

transaction of business, and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest. Cases have noted that "misappropriation is among the most serious types of misconduct encountered by securities regulators." See *Re Ng* MFDA File No. 201539 at para. 1067; *Re Douglas* MFDA File No. 201824; *Re Davies* MFDA File No. 201968 at para. 25; *Re Vanlandschoot* MFDA File No. 202024; and *Re Rojas Diaz* 2021 ONSEC 24 at para. 44.

30. MFDA cases have also held that processing redemptions without client authorization is also a breach of MFDA Rule 2.1.1. See *Re Stolarz* MFDA File No. 201642; *Re Tobac* MFDA File No. 201840; and *Re Stutz* MFDA File No. 201829.

31. Hearing Panels have also held that misappropriation of monies from a source unrelated to mutual funds or mutual fund clients is a breach of the standard of conduct set out in Rule 2.1.1. See *Re Ramgolam* MFDA File No. 202044; *Re Hothi* MFDA File No. 202012; *Re Lee* MFDA File No. 201914; and *Re Aksomitis* MFDA File No. 201531. In *Re Ramgolam*, the Panel stated (at para. 34): misappropriation from a non-mutual fund source affiliate still has "the potential to negatively impact the reputation of the Member and the securities industry as a whole."

32. Finally, Allegation 3 on failure to cooperate is clear and needs no authority for the Panel to conclude that the Respondent failed to cooperate. Without her cooperation, the MFDA cannot be sure it has the full picture of the extent of the Respondent's misconduct.

33. It should be noted that an Approved Person continues to be subject to MFDA jurisdiction for five years after the person leaves the MFDA. See MFDA By-law No. 1, s. 24.1.4. See *Taub v. Investment Dealers Association of Canada*, 2009 ONCA 628.

VI. PENALTY

34. The MFDA proposes the following penalties:

a) permanent prohibition on the Respondent's authority to conduct securities related business while in the employ of or affiliated with a Member of the MFDA, pursuant to section 24.1(e) of MFDA By-law No. 1;
b) fine of at least $300,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
c) costs of $20,000, pursuant to s. 24.2 of MFDA By-law No. 1.

35. We agree that the Respondent's conduct is so egregious that she should never be readmitted to the securities industry. The improper conduct started in 2014 when she joined the Member's firm, so the fact that this is her first disciplinary proceeding is not a mitigating factor.

36. Her conduct not only hurt her clients – although fortunately they were made whole – but such conduct also hurts the securities industry and the Member, who had no knowledge of the conduct. A large measure of general deterrence is required in the present case. Misappropriation of funds is often given publicity and so is particularly harmful to the securities industry.

37. The determination of an appropriate fine in the present case is not an easy matter to determine. We agree with Staff that a fine of $300,000 is an appropriate fine in the present case. It could have been higher if the Member's client and the Insurance Affiliate clients had not been reimbursed because harm to the clients is a factor to be taken into account when determining a penalty. (See section 6 of the MFDA Sanction Guidelines.)

38. Some of the money taken came from insurance clients. The penalty includes loss from those transactions. Hearing Panels have held that misappropriation of monies from a source unrelated to mutual funds or mutual fund clients is a breach of the standard of conduct set out in Rule 2.1.1. See *Re Vanlandschoot* MFDA File No. 202024; *Re Hothi* MFDA File No. 202012 and *Re Lee* MFDA File No. 201914.

39. MFDA Hearing Panels have often included in a fine the sum misappropriated, whether taken from MFDA accounts or non-MFDA accounts. A recent Ontario Securities Commission decision, *Re Rojas Diaz* 2021 ONSEC 24 held that the MFDA must include in calculating disgorgement the benefits obtained by a Respondent, regardless of whether or not the money was taken from a mutual fund account.

40. Whether the full amount misappropriated should be included in the fine is another question. The insurance clients were not MFDA clients and the Respondent was not dealing with them in her capacity as a dealing representative. In *Diaz*, it should be noted, the Respondent took funds from a line of credit from an affiliated bank. In contrast with the present case, the person harmed was an MFDA client and the Respondent, as his MFDA advisor, urged him to set up the line of credit. The victims of the insurance misappropriations in the present case were neither MFDA clients, nor was the Respondent acting as an MFDA advisor. The amount that should be disgorged in determining the fine should depend on many factors.

41. The failure of the Respondent to cooperate with the MFDA is a significant factor in the penalty. The Respondent had been given numerous opportunities to respond to Staff's investigation and engage in this proceeding. The failure to cooperate prevents the MFDA and this Panel from having a complete picture of the Respondent's activities.

42. There are many things that the MFDA and this Panel do not know. We do not know whether the Respondent has any assets. Will she get funds from the sale of the house if and when it is sold? Will the Member seek reimbursement from the Respondent for making the clients financially whole? Are there other civil cases? Are there criminal proceedings, with the possibility of a fine?

43. It appears that the body regulating insurance agents, the Financial Services Regulatory Agency of Ontario, has not taken any action in this case. Had they done so and imposed a fine, the MFDA fine would likely have taken that action into account. (See section 8 of the MFDA Sanction Guidelines.)

44. A global figure taking into account the client losses and the conduct of the Respondent is, we think the best approach. In the circumstances of this case, the figure of $300,000 is a reasonable penalty. The failure of the Respondent to cooperate with the MFDA is an important component in determining the fine.

45. The fine we are imposing in the present case is not out-of-line with the many cases cited to us by counsel and the MFDA Sanction Guidelines. The penalty imposed is a substantial one because of the serious harm done to the clients, the potential harm to the securities industry, and the failure of the Respondent to cooperate with the MFDA. We leave to the good judgment of the MFDA, if it is able to collect money from the Respondent, whether the Member should be reimbursed for its action in covering the losses.

46. The MFDA suggests that costs be assessed in the sum of $20,000. We accept the $20,000 figure for costs.

47. We therefore order:

a) that the Respondent be permanently prohibited from conducting securities related business in any capacity while in the employ of, or in association with, any MFDA Member pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

b) that the Respondent pay a fine in the amount of $300,000 for breaches of Allegations #1 to #3; and

c) that the Respondent pay costs in the amount of $20,000, pursuant to s. 24.2 of MFDA By-law No. 1.

DATED this 19th day of July, 2022.

"Martin L. Friedland"
Martin L. Friedland, C.C., Q.C.,
Chair

"Edward V. Jackson"
Edward V. Jackson
Industry Representative

"Joseph Yassi"
Joseph Yassi
Industry Representative

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