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: Gerard (Gerry) Andrew Mok

Heard: January 11, 2016 in Toronto, Ontario
Reasons for Decision: February 3, 2016

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. Patrick T. Galligan, Q.C.	Chair
Michael R. Elliott	Industry Representative
David W. Kerr	Industry Representative

Appearances:

Francis Roy	)	Counsel for the Mutual Fund Dealers Association of Canada
Paul Stern	)	Counsel for the Respondent

1. Gerard (Gerry) Andrew Mok (the "Respondent") appears in response to a Notice of Hearing by which the Mutual Fund Dealers Association of Canada (the "MFDA") alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between about January 2003 and October 17, 2012, the Respondent misappropriated at least $835,541 from at least 6 clients, and at least $245,395 from at least 3 other individuals, thereby failing to deal fairly, honestly and in good faith with the clients and engaging in a business conduct or practice which was unbecoming or detrimental to the public interest, contrary to MFDA Rule 2.1.1.

Allegation #2: Commencing on or about March 28, 2013, the Respondent has failed to attend an interview to provide a statement and to produce information, documents and records as requested by MFDA Staff during the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1.

2. At the opening of the hearing counsel for the parties filed an Agreed Statement of Facts and advised us that no other evidence would be called. (The Agreed Statement of Facts is attached as Schedule "A" to these Reasons). Counsel then advised us that they would make a joint submission requesting penalty.

3. We heard oral submissions from both counsel. We adjourned the hearing and withdrew to consider our decision. After deliberation we decided that, based upon the agreed facts, the allegations admitted in the Agreed Statement of Facts had been established. We also decided that we should accept the joint submissions and impose the penalty which had been submitted to us.

4. We returned to the hearing room and announced our decision. Counsel provided us with an Order which gave effect to our decision. We signed that order, and stated that written reasons for our decision would follow. These are those reasons.

LIABILITY

5. The facts agreed upon are succinctly set out in the Agreed Statement of Facts and need not be reviewed in detail.

6. What the Respondent did was to offer, to certain clients and some other persons, to invest their money in investments which were not products offered by the Member. He failed to repay or account for approximately $455,000 of investors' money.

7. During the MFDA investigation he failed to provide documentation requested. He sought and obtained a number of postponements of an interview. Ultimately he did not appear for his interview.

8. In paragraph 37 of the Agreed Statement of Facts, the Respondent admits that:

(a) between about January 2003 and October 17, 2012, he failed to repay or account for at least $455,000 of the $1,816,920.58 he solicited and accepted from at least 6 clients and at the $148,000 and US$166,000 he solicited from at least 3 other individuals, thereby failing to deal fairly, honestly and in good faith with the clients and other individuals and engaging in a business conduct or practice which was unbecoming or detrimental to the public interest, contrary to MFDA Rule 2.1.1; and

(b) commencing on or about March 28, 2013, he has failed to attend an interview to provide a statement and to produce information, documents and records as requested by MFDA Staff during the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1.

PENALTY

9. The joint submission is that the appropriate penalty to be imposed upon the Respondent is the following:

(a) a permanent prohibition from conducting securities related business in any capacity over which the MFDA has jurisdiction, pursuant to s. 24.1.1(c) of MFDA By-law No. 1;

(b) a fine in the amount of $500,000, pursuant to section 24.1.(b) of MFDA By-law No. 1; and

(c) costs of this proceeding in the amount of $7,500 pursuant to s. 24.2 of MFDA By-law No. 1.

10. This hearing is not a Settlement Hearing pursuant to Rule 15, where we may only accept or reject the proposed settlement. Our duty is to impose the penalty which we deem to be an appropriate one under all of the circumstances. We are entitled to impose a penalty which is different from that in the joint submission. The question is whether we should do so.

11. Jurisprudence in the courts is consistent that there must be good reason before a sentencing tribunal should exercise its right to depart from a penalty jointly submitted by the parties.

12. That jurisprudence has been adopted by the MFDA Hearing Panel in *Re McAuley*, [2011] M.F.D.A. No. 201018 at paragraph 4:

> … There is ample authority for the principle that a hearing panel should not interfere with a joint recommendation of MFDA Staff and the Respondent unless the recommendation is seen to be manifestly unfit. In the matter of *R. v. R.W.E.*, [2007] O.J. No. 2515 (Ont. C.A.), at paragraph 22, the Court of Appeal states as follows:
>
> > It is trite law that a sentencing judge is not bound to accept a joint submission. It is well-settled, however, that a judge should not reject a joint submission unless it is contrary to the public interest and the sentence would bring the administration of justice into disrepute: *R. v. Cerasuolo* (2001), 151 C.C.C. (3d) 445 (Ont. C.A.); *R. v. Dorsey* (1999), 123 O.A.C. 342 (C.A.).

13. It should also be noted that in *R. v. Cerasuolo, (supra)* at paragraph 9, the Court of Appeal said that a sentencing judge should:

> … explain in what way a particular joint submission is contrary to the public interest and would bring the administration of justice into disrepute.

14. In the light of those principles we have considered the seriousness of the allegations admitted by the Respondent, the harm suffered by investors, the benefits obtained by the Respondent, the risk to investors and to the capital markets, the damage to the integrity of the capital markets and the need for general deterrence. We have considered the Penalty Guidelines. We have considered the decisions of MFDA Hearing Panels in *Re Parkinson*, [2005] MFDA 200501; *Re Headley*, [2006] MFDA 200509; and *Re Longchamps*, [2010] MFDA 200829.

15. After all of those considerations we are quite unable to say that the penalties jointly submitted to us are contrary to the public interest or would bring the administration of justice into disrepute.

16. Accordingly, we impose the following penalty upon the Respondent.

(a) a permanent prohibition from conducting securities related business in any capacity over which the MFDA has jurisdiction, pursuant to s. 24.1.1(c) of MFDA By-law No. 1;
(b) a fine in the amount of $500,000, pursuant to section 24.1.(b) of MFDA By-law No. 1; and
(c) costs of this proceeding in the amount of $7,500 pursuant to s. 24.2 of MFDA By-law No. 1.

DATED this 3rd day of February, 2016.

"Patrick T. Galligan"

The Hon. Patrick T. Galligan, Q.C.
Chair

"Michael R. Elliott"

Michael R. Elliott
Industry Representative

"Daniel W. Kerr"

Daniel W. Kerr
Industry Representative

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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: Gerard (Gerry) Andrew Mok

AGREED STATEMENT OF FACTS

I. INTRODUCTION

1. By Notice of Hearing dated April 20, 2015, the Mutual Fund Dealers Association of Canada (the "MFDA") commenced a disciplinary proceeding against Gerard (Gerry) Andrew Mok (the "Respondent") pursuant to ss. 20 and 24 of MFDA By-law No. 1.

II. IN PUBLIC / IN CAMERA

2. 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

3. 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.

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

(a) a permanent prohibition prohibited from conducting securities related business in any capacity over which the MFDA has jurisdiction, pursuant to s. 24.1.1(c) of MFDA By-law No. 1;
(b) a fine in the amount of $500,000, pursuant to section 24.1.(b) of MFDA By-law No. 1; and
(c) costs of this proceeding in the amount of $7,500 pursuant to s. 24.2 of MFDA By-law No. 1.

5. On July 14, 2014, the Respondent filed a Notice of Intention To Make A Proposal pursuant to the Canada *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3. The Respondent claims to be impecunious and unable to pay any amount towards either a fine or costs.

IV. AGREED FACTS

6. Staff and the Respondent agree that submissions made with respect to the appropriate penalty are based only on the agreed facts in Part IV and no other facts or documents. In the event the Hearing Panel advises one or both of Staff and the Respondent of any additional facts it considers necessary to determine the issues before it, Staff and the Respondent agree that such additional facts shall be provided to the Hearing Panel only with the consent of both Staff and the Respondent. If the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel.

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

Registration History

8. The Respondent has been registered in the mutual fund industry since November 1991.

9. The Respondent was registered as a mutual fund salesperson (now known as a dealing representative) with HollisWealth Advisory Services Inc. ("HollisWealth"), a Member of the MFDA, and its predecessor firms, Dundee Private Investors Inc. ("Dundee") or Cartier Partners Financial Services Inc., in Ontario from October 2001 to October 17, 2012 and in Newfoundland & Labrador from June 1, 2004 to December 31, 2009.

10. At all material times, the Respondent conducted business from Mississauga, Ontario area.

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

Contravention #1 – The Respondent failed to account for funds solicited and accepted from clients and other individuals

12. Between about January 2003 and October 17, 2012, the Respondent solicited and accepted at least $1,816,920.58 from at least 6 clients, and at least $148,000 and US$166,000 from at least 3 other individuals. Details of the monies solicited and accepted by the Respondent are set out below:

Clients of Dundee / HollisWealth		**Other individuals**	
Name	**Amount Accepted**	**Name**	**Amount Accepted**
GR[1]	$845,008.52	TR	$114,000
GR Company	$55,000	DA	$34,000
JR	$112,000	NS	US$166,000
FA	$492,912.06		
MS[2]	$189,500		

[1] GR, JR, TR, FA and DA are all members of the same extended family.

[2] MS and NS are spouses.

JH	$125,000		
Total	**$1,816,920.58**	**Total**	**$148,000 + US$166,000**

13. After soliciting and accepting the monies from the 6 clients and 3 other individuals, the Respondent provided them with promissory notes, pursuant to which he agreed to personally repay the monies according to a defined amortization schedule. The promissory notes were signed by the Respondent and identified him as the "debtor" in respect of the monies provided by the clients and other individuals.

14. When soliciting the monies from the 6 clients and 3 other individuals, the Respondent made the following representations:

(a) the 6 clients and 3 other individuals would receive better returns than investments in the mutual funds in which they were invested;
(b) the 6 clients and 3 other individuals could expect a high rate of return, in excess of 10% per year; and
(c) the monies provided to the Respondent were secured and guaranteed by the Respondent.

15. Dundee / HollisWealth did not know that the Respondent had solicited and accepted monies from the 6 clients and 3 other individuals described at paragraph 12 above.

16. The Respondent deposited the monies he solicited and accepted from the 6 clients and 3 other individuals in one or more bank accounts under his control and used the monies for his benefit.

17. Between January 2003 and October 17, 2012, the Respondent made payments to the clients and other individuals identified in paragraph 12 above, which the Respondent states were payments of interest and portions of the principal amounts due under the terms of the promissory notes. The Respondent made these payments from his personal bank accounts.

18. The Respondent resigned from HollisWealth on October 17, 2012. After that time, the Respondent ceased making regular payments to clients and other individuals who had provided the monies described at paragraph 12 above.

19. Notwithstanding the payments made by the Respondent to the clients and other individuals between January 2003 and October 17, 2012 (prior to his resignation from HollisWealth), the Respondent admits that he continues to owe at least $455,000 in respect of the funds he solicited and accepted to the 6 clients and 3 other individuals.

20. Following the Respondent's resignation from HollisWealth, the Member received a number of complaints from, and was named as a defendant in civil claims commenced by, the clients and other individuals who had provided monies to the Respondent.

21. In an effort to repay the clients, the Respondent states that he liquidated his personal investments and savings, including his home and RRSPs.

22. As stated above, on July 14, 2014, the Respondent filed a Notice of Intention To Make A Proposal pursuant to the Canada *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3. There is little to no prospect of the clients and other individuals who advanced the monies to the Respondent from recovering their funds.

Contravention #2 – The Respondent failed to cooperate with an MFDA investigation

23. On March 7, 2013, during the course of its investigation into the Respondent's activities, MFDA Staff ("Staff") sent a letter to the Respondent requesting that he provide documents and a statement to Staff, no later than March 28, 2013, responding to complaints that he had misappropriated funds from Dundee / HollisWealth clients.

24. On March 25, 2013, Staff received a letter from the Respondent's counsel stating:

> [The Respondent] has asked us for advice concerning your letter of March 7, 2013, which he acknowledges receiving.
>
> He advises us that he resigned in good standing, effective November 1, 2012, and retired from being a mutual fund representative at that time.
>
> Accordingly, we are surprised to see your request. While [the Respondent] is supplying us with information which may be responsive, could you please explain the basis upon which you say he must respond to you? Furthermore, while he has instructed us that he wishes to cooperate with you, would you please explain the consequences if he does not, particularly as he is no longer a member of your corporation?

25. On March 27, 2013, Staff responded to the Respondent's counsel's letter stating, among other things, that the Respondent was required to respond to Staff's requests for information and that, should he fail to do so, disciplinary proceedings could be commenced against the Respondent for failing to cooperate with an investigation, pursuant to section 22.1 of MFDA By-law No. 1.

26. Between April 15, 2013 and November 22, 2013, Staff and the Respondent's counsel exchanged correspondence wherein Staff requested that the Respondent provide documents and a statement responding to complaints that he had misappropriated funds from Dundee / HollisWealth clients, and wherein the Respondent's counsel requested extensions of time for the Respondent to respond to Staff.

27. On April 26, 2013, the Respondent, through counsel, sent a letter to Staff explaining the purpose of the financial arrangements he had entered into with complainants[3], which Member clients he had solicited and accepted monies from and, without providing supporting documentation, the Respondent's estimate of outstanding monies he has failed to account for.

28. On September 23, 2013, Staff sent a letter to the Respondent requesting, among other things, that the Respondent provide, by October 9, 2013, a written statement with respect to additional complaints made against him after April 2013.

[3] Including the clients and other individuals referred to in paragraph 13 above.

29. On October 8, 2013, the Respondent's counsel informed Staff that, as a result of the Respondent's mother's illness, the Respondent required an extension of time to respond to Staff's September 23, 2013 request. Staff agreed to an extension to November 1, 2013.

30. On October 31, 2013, again as a result of the Respondent's mother's illness, the Respondent's counsel requested a further extension to respond to Staff's September 23, 2013 letter. Staff agreed to extend the response date to November 15, 2013.

31. On November 19, 2013, having not received the information requested by the Respondent in its September 23, 2013 letter, Staff sent an email to the Respondent's counsel again requesting that the Respondent provide the information requested of him on September 23, 2013, and further requesting a written explanation about his delay in providing such information.

32. On November 22, 2013, the Respondent's counsel sent a letter to Staff informing that he no longer represented the Respondent.

33. On December 19, 2013, Staff sent a letter to the Respondent requesting that he contact Staff, no later than January 6, 2014, to schedule a time to attend at the MFDA offices to be interviewed.

34. On January 6, 2014, the Respondent left a voice message for Staff informing that he would contact MFDA Staff on or before February 6, 2014 to schedule an interview. Staff did not receive any further communication from the Respondent.

35. To date, the Respondent has not provided a written statement or documents, as requested by Staff, nor has he attended at the MFDA offices to be interviewed.

36. Due to the Respondent's failure to cooperate with Staff's investigation, Staff was unable to determine the full nature and extent of the Respondent's misconduct and, in particular, whether he solicited, accepted and/or failed to account for additional monies from the clients and

other individuals identified during the investigation, or from clients and individuals who were not identified during the investigation.

Misconduct Admitted

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

(a) between about January 2003 and October 17, 2012, he failed to repay or account for at least $455,000 of the $1,816,920.58 he solicited and accepted from at least 6 clients and at the $148,000 and US$166,000 he solicited from at least 3 other individuals, thereby failing to deal fairly, honestly and in good faith with the clients and other individuals and engaging in a business conduct or practice which was unbecoming or detrimental to the public interest, contrary to MFDA Rule 2.1.1; and

(b) commencing on or about March 28, 2013, he has failed to attend an interview to provide a statement and to produce information, documents and records as requested by MFDA Staff during the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1.

Execution of Agreed Statement of Facts

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

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

DATED this 4th day of December, 2015.

"Gerrard (Gerry) Andrew Mok"

Gerard (Gerry) Andrew Mok

"Shaun Devlin"

Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President, Member Regulation - Enforcement

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