



**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: Seung Tung (Eric) Ng**

Heard: June 16, 2016, in Toronto, Ontario  
Reasons for Decision: July 8, 2016

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth	Chair
David W. Kerr	Industry Representative
Brian Nowak	Industry Representative

Appearances:

Maria L. Abate	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
Sung Tung (Eric) Ng	)	Not in attendance nor represented by Counsel
	)	
	)	

## BACKGROUND

1. On November 4, 2015, Staff issued a Notice of Hearing in respect of Sung Tung (Eric) Ng (the “Respondent”) which alleged the following:

**Allegation #1:** Between November 2011 and June 2013, the Respondent misappropriated approximately \$55,129 from at least four (4) clients and one (1) individual, thereby failing to deal fairly, honestly and in good faith with the clients and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

**Allegation #2:** Between November 2011 and June 2013, the Respondent opened at least four (4) mutual fund accounts and ten (10) bank accounts in the names of clients and individuals, and processed transactions in the accounts, without authorization from the clients and individuals and using falsified documentation, thereby failing to deal fairly, honestly and in good faith with the clients and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rules 2.3.1(a) and 2.1.1.

**Allegation #3:** Commencing on October 9, 2013, the Respondent failed to cooperate with Staff’s investigation into his conduct, contrary to section 22.1 of MFDA By-law No. 1.

2. The Respondent failed to file a reply to the Notice of Hearing, nor did the Respondent attend the First Appearance on January 7, 2016, although properly served with notice of the First Appearance as shown by the Affidavit of Service of Ray Patykewich sworn November 19, 2015, marked as Exhibit 2. At the First Appearance on January 7, 2016, the Hearing Panel ordered, among other things, that the Hearing of the matter on its merits takes place on June 16, 2016. In addition, the Hearing Panel stated that Staff of the MFDA be required to serve a copy of the Order setting the date of the Hearing on the merits and an accompanying letter, on the Respondent personally advising him of the date set for the hearing on the merits. Staff was also required to serve a copy of the Order and the accompanying letter on the Respondent by

registered and regular mail ensure that the Respondent was aware of the date of the discipline hearing to be held against him.

3. Affidavits of Service of Tito Acosta and Sofi Vasiliadis were filed as Exhibits 3 and 4 at the hearing on January 16, 2016, which confirmed that the terms of the Hearing Panel's Order of January 7, 2016 had been complied with and that the Respondent had received notice of the hearing on the merits scheduled for June 16, 2016.

4. Rule 7.3 of the Mutual Fund Dealer Association of Canada ("MFDA") Rules of Procedure make it clear that where a Respondent fails to attend a hearing on the date and at the time and location specified in the Notice of Hearing, the Hearing Panel may proceed with the hearing without further notice to and in the absence of the Respondent. The Rule also makes it clear that where a Respondent fails to attend a hearing, a Hearing Panel may accept the facts alleged and conclusions drawn by the corporation in the Notice of Hearing as proven and impose any of the penalties and costs described in Section 41.1 and 24.2 respectively, of the MFDA By-law No. 1.

5. The Respondent having had notice of the First Appearance on January 7, 2016 and having had notice of the hearing on the merits scheduled for June 16, 2016, and having failed to attend at either hearing, the Panel chose to make an order accepting the facts alleged and conclusions drawn by the corporation in the Notice of Hearing as proven. In addition, the Hearing Panel ordered that the substantial and detailed Affidavit of MFDA Investigator, Jessie Ching Siu be filed as Exhibit 5 in this proceeding. The Panel noted that the said Affidavit set out with particularity, the facts and supporting documentation that prove both the allegations and the particulars in the Notice of Hearing dated November 4, 2015.

## **THE FACTS**

6. As a result of the above described Order of the Hearing Panel, the particulars set out in the Notice of Hearing of November 4, 2015 are deemed to be the proven facts which are taken to

prove Allegations #1, #2 and #3 set out in the Notice of Hearing. Those facts included:

### **Registration History**

7. From December 4, 2003 to September 20, 2013 when he was terminated, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Royal Mutual Funds Inc. (“Royal Mutual”), a Member of the MFDA.

8. From December 2003 to May 2007, the Respondent was also registered as a mutual fund salesperson in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Quebec, Saskatchewan, Yukon and Northwest Territories and Nunavut.

9. From July 11, 2008 to September 30, 2013, the Respondent was registered in Ontario as a Branch Manager.

10. At all material times, the Respondent was, in addition to his mutual fund activities, employed as a Senior Account Manager with the Royal Bank of Canada (“RBC”) at an RBC branch located in Oakville, Ontario.

11. The Respondent was terminated by Royal Mutual and RBC on September 20, 2013 as a result of the events described below.

12. At all material times, the Respondent conducted business in Oakville, Ontario and the Greater Toronto Area.

### **Overview**

13. Between November 2011 and June 2013, the Respondent falsified account documents in order to open four (4) mutual fund accounts and at least ten (10) bank accounts in the names of clients and individuals, and process transactions in the accounts, without the knowledge or

authorization of the clients and individuals.<sup>1</sup> The Respondent used the accounts to misappropriate approximately \$55,129 from the clients and individuals, many of whom were elderly. The Respondent used the monies he misappropriated to pay his personal expenses. The Respondent subsequently failed to cooperate with Staff's investigation into his conduct.

***Accounts Opened in the Name of GL***

***RBC Bank Account No. 0932-\*\*\*\*243***

14. GL is a former banking client of RBC. In December 2011, GL closed all of his RBC accounts.

15. On May 24, 2012, the Respondent opened RBC bank account no. 0932-\*\*\*\*243 in the name of GL using falsified account documents.

16. On that same date, the Respondent changed the signature specimen for GL's account to Chinese characters and the mailing address for GL to the Respondent's residential address in Brampton, Ontario.

17. Between June 19, 2012 and June 11, 2013, the Respondent redeemed \$98,295.84 from mutual fund accounts held by client HE, client SYL, client MS, and client NP, and deposited the proceeds of these redemptions into bank account no. 0932-\*\*\*\*243 opened in the name of GL.

18. During this period, the Respondent withdrew \$21,746.45 from bank account no. 0932-\*\*\*\*243 and used these monies to pay his personal expenses.

19. The Respondent falsified account documents in order to open bank account no. 0932-\*\*\*\*243, process the mutual fund redemptions, and withdraw the proceeds of the mutual fund redemptions from the bank account.

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<sup>1</sup> The individuals were banking clients of RBC but were not clients of Royal Mutual.

20. The Respondent engaged in the conduct described above without the knowledge or approval of GL, client HE, client SYL, client MS, and client NP.

***RBC Bank Account No. 0932-\*\*\*\*143***

21. On May 24, 2012, the Respondent opened RBC bank account no. 0932-\*\*\*\*143 in the name of GL. The Respondent deposited monies misappropriated from client NP into this bank account.

22. On June 8, 2012, the Respondent redeemed \$300 from the mutual fund account of client NP and deposited these monies into RBC bank account no. 0932-\*\*\*\*143. On June 18, 2012, the Respondent withdrew \$300 from RBC bank account no. 0932-\*\*\*\*143 and used the monies for personal expenses.

23. On June 6, 2013, the Respondent redeemed \$1,000 from the mutual fund account of client NP and deposited these monies into RBC bank account no. 0932-\*\*\*\*143. On June 12, 2013, the Respondent withdrew \$1,000 from RBC bank account no. 0932-\*\*\*\*143 and used the monies for personal expenses.

24. The Respondent falsified account documents in order to open RBC bank account no. 0932-\*\*\*\*143, process the mutual fund redemptions, and withdraw the proceeds of the mutual fund redemptions from the bank account.

25. The Respondent engaged in the conduct described above without the knowledge or approval of GL and client NP.

***Accounts Opened in the Names of GL and Client NP***

***RBC Bank Account No. 0932-\*\*\*\*490***

26. On June 7, 2012, the Respondent opened RBC joint bank account no. 0932-\*\*\*\*490 in the names of GL and client NP.

27. On February 19, 2013, the Respondent redeemed \$9,969.09 from the mutual fund account of client NP and deposited the monies into joint bank account no. 0932-\*\*\*\*490.

28. On February 20, 2013, the Respondent withdrew the redemption proceeds from joint bank account no. 0932-\*\*\*\*490 and used the monies to pay his personal expenses.

29. The Respondent falsified account documents in order to open RBC bank account no. 0932-\*\*\*\*490, process the mutual fund redemptions, and withdraw the proceeds of the mutual fund redemptions from the bank account.

30. The Respondent engaged in the conduct described above without the knowledge or approval of GL and client NP.

***Accounts Opened in the Name of NP***

***RBC Bank Account No. 0932-\*\*\*\*710***

31. On March 1, 2012, the Respondent opened a mutual fund account with Royal Mutual in the name of client NP.

32. On or about June 4, 2013, the Respondent opened RBC bank account no. 0932-\*\*\*\*710 in the name of client NP.

33. On August 8, 2012, the Respondent redeemed \$250 from the fraudulent mutual fund account opened in the name of client NP and deposited the monies into bank account no. 0932-\*\*\*\*710. On the same date, the Respondent withdrew the monies from the bank account.

34. The Respondent falsified account documents, including an electronic trade ticket, in order to open bank account no. 0932-\*\*\*\*710, process the mutual fund redemption, and withdraw the proceeds of the mutual fund redemption from the bank account.

35. The Respondent engaged in the conduct described above without the knowledge or approval of client NP.

***RBC Bank Account No. 0932-\*\*\*\*660***

36. On or about June 4, 2012, the Respondent opened RBC bank account no. 0932-\*\*\*\*660 in name of NP.

37. On June 13, 2012, the Respondent redeemed \$2,000 from the legitimate mutual fund account of client NP using an online trade ticket and deposited the proceeds of the redemption into RBC bank account no. 0932-\*\*\*\*660.

38. On June 14, 2013, the Respondent withdrew \$2,000 from bank account no. 0932-\*\*\*\*660 and used the monies to make an online payment to an unknown account.

39. The Respondent falsified account documents in order to open bank account no. 0932-\*\*\*\*660, process the mutual fund redemption, and withdraw the proceeds of the mutual fund redemption from the bank account.

40. The Respondent engaged in the conduct described above without the knowledge or approval of client NP.

***Royal Mutual Investment Account No. 597\*\*\*\*77***

41. On April 9, 2013, the Respondent opened Royal Mutual Joint Investment Account no. 597\*\*\*\*77 in the names of client NP and GL.

42. Between April 9, 2013 and May 27, 2013, the Respondent purchased approximately \$14,000 in mutual funds using money misappropriated from the legitimate bank account of client NP, which were held in investment account no. 597\*\*\*\*77.

43. By May 28, 2013, the Respondent had redeemed all of the mutual funds held in investment account no. 597\*\*\*\*77 and directed the proceeds into bank account no. 0932-\*\*\*\*43 (referred to in paragraph 42 above) which he then misappropriated from this bank account.

44. At all material times, the Respondent utilized investment account no. 597\*\*\*\*77 as a “flow through” account to move monies that he was misappropriating from clients and individuals.

45. The Respondent falsified account documents in order to open investment account no. 597\*\*\*\*77 and process transactions in the investment account.

46. The Respondent engaged in the conduct described above without the knowledge or approval of client NP or GL.

***Royal Mutual Investment Account No. 587-\*\*\*\*30***

47. On March 1, 2012, the Respondent opened Royal Mutual investment account no. 587\*\*\*\*30 in the name of client NP.

48. Between March 1, 2012 and February 11, 2013, the Respondent purchased \$12,000 in mutual funds using money misappropriated from the legitimate bank account of client NP, which were held in investment account no. 587\*\*\*\*30.

49. By February 19, 2013, the Respondent had redeemed \$11,769 of the mutual funds held in investment account no. 587\*\*\*\*30 and directed the proceeds into bank accounts he had set up in the names of GL and client NP, namely RBC bank account nos. 0932-\*\*\*\*243 and 0932-\*\*\*\*143, 0932-\*\*\*\*860, and 0932-\*\*\*\*490. The Respondent then misappropriated the monies from these bank accounts and used the monies to pay his personal expenses.

50. The Respondent falsified account documents in order to open investment account no. 597\*\*\*\*77, process transactions in the investment account, and process transactions in RBC bank account nos. 0932-\*\*\*\*243, 0932-\*\*\*\*143, 0932-\*\*\*\*860, and 0932-\*\*\*\*490.

51. The Respondent engaged in the conduct described above without the knowledge or approval of client NP or GL.

***Royal Mutual Investment Account No. 597\*\*\*\*68***

52. On February 20, 2013, the Respondent opened Royal Mutual investment account no. 597\*\*\*\*68 in the name of client NP.

53. Between February 20, 2013 and March 28, 2013, the Respondent purchased \$1,800 in mutual funds using monies misappropriated from the legitimate bank account of client NP.

54. By April 9, 2013, the Respondent had redeemed the mutual funds held in investment account no. 597\*\*\*\*68 and directed the proceeds into client NP's legitimate bank account.

55. There is no evidence that the Respondent misappropriated monies using investment account 597\*\*\*\*68.

56. The Respondent falsified account documents in order to open investment account no. 597\*\*\*\*68, purchase transactions in the investment account, and transfer monies to client NP's bank account.

57. The Respondent engaged in the conduct described above without the knowledge or approval of client NP.

***Accounts Opened in the Name of Client PB***

***Bank Account No. 0932-\*\*\*\*993***

58. Client PB was 87 years old.

59. On or about July 10, 2012, the Respondent opened RBC bank account no. 932-\*\*\*\*993 in the name of client PB.

60. On September 4, 2012, the Respondent redeemed \$2,700 from client PB's Registered Retirement Income Fund ("RRIF") account with Royal Mutual and directed the proceeds of the redemption into RBC bank account no. 0932-\*\*\*\*993.

61. On September 10, 2012, the Respondent misappropriated the \$2,700 held in RBC bank account no. 0932-\*\*\*\*993 when he used the monies to pay his personal expenses (i.e., two personal loan payments).

62. On March 6, 2013, the Respondent redeemed a further \$1,000 from client PB's RRIF account and directed the proceeds into RBC bank account no. 0932-\*\*\*\*93.

63. On March 7, 2013, the Respondent misappropriated \$900 of the redemption proceeds which he had deposited into RBC bank account no. 0932-\*\*\*\*993 and used the monies to pay his personal expenses (i.e., to make a personal loan payment).

64. The Respondent falsified account documents in order to open RBC bank account no. 0932-\*\*\*\*993, process transactions in the bank account, and process transactions in client PB's RRIF account.

65. The Respondent engaged in the conduct described above without the knowledge or approval of client PB.

***Accounts Opened in the Name of Client HE***

***RBC Bank Account No. 0932-\*\*\*\*252***

66. Client HE was 82 years old.

67. On or about November 16, 2011, the Respondent opened RBC bank account no. 0932-\*\*\*\*252 in the name of client HE.

68. On November 16, 2011, the Respondent redeemed \$1,000 from client HE's Money Market account with Royal Mutual and directed the proceeds of the redemption into RBC bank account no. 0932-\*\*\*\*252.

69. On February 2, 2012, the Respondent redeemed \$2,043.68 from client HE's Money Market account with Royal Mutual and directed the proceeds into RBC bank account no. 0932-\*\*\*\*252.

70. On February 3, 2012, the Respondent misappropriated \$2,043.68 deposited into RBC bank account no. 0932-\*\*\*\*252, and withdrew these monies in cash to pay his personal expenses.

71. On March 7, 2013, the Respondent misappropriated \$1,000 of the redemption proceeds which had been deposited into RBC bank account no. 0932-\*\*\*\*252 and used the monies to pay his personal expenses (i.e., to make a personal loan payment).

72. The Respondent falsified account documents in order to open RBC bank account no. 0932-\*\*\*\*252, process transactions in the bank account, and process transactions in client HE's Money Market account.

73. The Respondent engaged in the conduct described above without the knowledge or approval of client HE.

***RBC Bank Account No. 0932-\*\*\*\*021***

74. On an unknown date, the Respondent opened RBC bank account no. 0932-\*\*\*\*021 in the name of client HE.

75. Between June 13, 2012 and August 14, 2012, the Respondent redeemed \$10,800 from client HE's legitimate investment accounts with Royal Mutual and directed the proceeds of these redemptions into RBC bank account no. 0932-\*\*\*\*021.

76. The Respondent misappropriated the redemption proceeds which had been deposited into RBC bank account no. 0932-\*\*\*\*021 and used the monies to pay his personal expenses.

77. The Respondent falsified account documents in order to open RBC bank account no. 0932-\*\*\*\*021, process transactions in the bank account, and process transactions in client HE's investment account with Royal Mutual.

78. The Respondent engaged in the conduct described above without the knowledge or approval of client HE.

***Royal Mutual Investment Account No. 5898\*\*\*66***

79. On June 7, 2012, the Respondent opened Royal Mutual investment account no. 5898\*\*\*66 in the name of client HE. On that same day, the Respondent purchased \$8,000 in mutual funds for this account using monies from a Guaranteed Investment Certificate ("GIC") belonging to an unidentified individual.

80. Between June 12, 2012 and July 20, 2012, the Respondent misappropriated the monies held in Royal Mutual investment account no. 5898\*\*\*66. The Respondent transferred these monies into bank accounts he had opened in the names of client HE and GL, and then withdrew these monies to pay his personal expenses.

81. The Respondent falsified account documents in order to open Royal Mutual investment account no. 5898\*\*\*66, process transactions in the bank account, and process transactions in bank accounts held by client HE and GL.

82. The Respondent engaged in the conduct described above without the knowledge or approval of client HE and GL.

*Accounts Opened in the Name of Client KCL*

***RBC Bank Account No. 0932-\*\*\*\*776***

83. Client KCL was 93 years old.

84. On or about July 9, 2012, the Respondent opened RBC bank account no. 0932-\*\*\*\*776 in the name of client KCL.

85. On July 9, 2012, the Respondent redeemed \$1,200 in mutual funds held in client KCL's legitimate investment account with Royal Mutual and directed the redemption proceeds into RBC bank account no. 0932-\*\*\*\*776. On July 11, 2012, the Respondent used the monies held in RBC bank account no. 0932-\*\*\*\*776 to pay his personal expenses.

86. On August 23, 2012, the Respondent redeemed \$2,500 from client KCL's legitimate investment account with Royal Mutual and directed the proceeds into RBC bank account no. 0932-\*\*\*\*776. On August 28, 2012, the Respondent used \$1,500 of the monies held in RBC bank account no. 0932-\*\*\*\*776 to pay his personal expenses.

87. The Respondent falsified account documents in order to open RBC bank account no. 0932-\*\*\*\*776, process transactions in the bank account, and process transactions in investment accounts held by client KCL.

88. The Respondent engaged in the conduct described above without the knowledge or approval of client KCL.

**Allegation #1: Misappropriation**

89. By virtue of the foregoing, the Respondent misappropriated approximately \$55,129 from at least four clients and one individual, thereby failing to deal fairly, honestly and in good faith

with the clients and engaged in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

**Allegation #2: Using Falsified Documents to Open Unauthorized Investment and Bank Accounts**

90. By virtue of the foregoing, the Respondent opened four mutual fund accounts and at least ten bank accounts in the names of clients and individuals, and processed transactions in the accounts, without authorization from the clients and individuals and used falsified documentation, thereby failing to deal fairly, honestly and in good faith with the clients and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rules 2.3.1(a) and 2.1.1.

**Allegation #3: Failure to Cooperate**

91. On October 9, 2013, Staff contacted the Respondent by registered and regular mail requesting a response to the allegations being made against him. The Respondent confirmed receipt of Staff's letter on October 10, 2013, but failed to provide a response to the allegations by November 1, 2013 deadline.

92. On November 19, 2013, Staff contacted the Respondent by registered and regular mail with a second request for a response to the allegations being made against him. The Respondent confirmed receipt of Staff's letter on November 20, 2013, but failed to provide a response to the allegations by the December 4, 2013 deadline.

93. On February 7, 2014, Staff sent a letter by registered and regular mail and email to the Respondent requesting his attendance at an interview and making a further request for a written response to the allegations being made against him. The Respondent failed to contact Staff to set an interview date and failed to provide a response to the allegations by the February 24, 2014 deadline.

94. On February 19, 2014, Staff contacted the Respondent by telephone at his home. The Respondent confirmed that he had received the letter and email dated February 7, 2014, but directed Staff to contact his lawyer.

95. On February 25, 2014, Staff sent a letter to the Respondent's lawyer by registered and regular mail and email requesting the Respondent's attendance at an interview and requesting the Respondent's written response to the allegations made against him. Staff did not receive a response to its letter.

96. On March 13, 2014, Staff sent a letter to the Respondent by registered and regular mail, email and personal service advising the Respondent that he had failed to cooperate with Staff's investigation into the allegations made against him and providing three (3) dates for an interview to be scheduled. Neither the Respondent nor his lawyer, who was copied on the letter, replied to Staff by the March 27, 2014 deadline.

97. On April 1, 2014, Staff sent a letter to the Respondent by registered and regular mail, email and personal service setting an interview date of April 24, 2014 at 10:00 a.m. at the MFDA offices. Neither the Respondent nor his lawyer, who was copied on the letter, replied to Staff.

98. The Respondent did not attend the interview scheduled for April 24, 2014 nor did he provide a written statement regarding the allegations made against him.

99. To date, the Respondent has failed to provide Staff with a written statement regarding the allegations made against him and attend at an interview as requested by Staff, thereby failing to cooperate with Staff's investigation into his activities, contrary to Section 22.1 of MFDA By-law No. 1.

100. Again, as a result of the Rule 7.3 Order made by the Hearing Panel, the aforementioned facts and conclusions drawn by the corporation in the Notice of Hearing are deemed to be proven.

## RESULT

101. For all the above reasons, the Panel concluded that Allegations #1, #2 and #3 in the Notice of Hearing dated November 4, 2015, had been proven.

## PENALTY

102. In coming to its decision with respect to penalty, the Panel reviewed the facts of the case, the case law to which it had been referred, the penalty guidelines and the submissions of Staff of the MFDA:

### General Considerations

103. The Panel considered that the primary goal of securities regular is the protection of the investor.

*Pezim v. British Columbia (Superintendent of Brokers)* [1994], S.C.J. 58, *Iacobucci, J.* at paragraphs 59 and 68.

104. The Panel further considered the case law that confirmed, when exercising its discretion to impose a penalty, the Hearing Panel shall take into account the following considerations:

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

*In the Matter of Robert Roy Parkinson* [2005], MFDA File No. 200501, decision dated April 29, 2005 at p. 21.

*In the Matter of Arnold Tonnies* [2005], Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, decision dated June 27, 2005.

105. The Hearing Panel also considered other factors that Hearing Panels frequently consider when determining an appropriate penalty, including the following:

- (a) the seriousness of the allegations proved against the Respondent;
- (b) the Respondent's past conduct, including prior sanctions;
- (c) the Respondent's experience in capital markets;
- (d) the level of the Respondent's activity in the capital markets;
- (e) whether the Respondent recognizes the seriousness of the improper activity;
- (f) the harm suffered by investors as a result of the Respondent's activities;
- (g) the benefits received by the Respondent as a result of the improper activity; and
- (h) previous decisions made in similar circumstances.

*Parkinson, supra* at p. 22

*Tonnies, supra* at p. 23.

#### Considerations in the Present Case

106. Staff submitted that misappropriation is among the most serious types of misconduct encountered by securities regulators, as it usually involves a significant breach of trust, causes serious harm to the clients affected and undermines the reputation and integrity of the securities industry. The Hearing Panel agreed with that submission.

107. Staff further submitted that the Respondent was in a position of trust as a financial advisor to his clients, and in particular to clients who were elderly and shared a similar cultural, linguistic or ethnic heritage with the Respondent. The Respondent exploited this trust by misappropriating client funds for his own personal use through the creation of multiple unauthorized bank and investment accounts opened by using falsified or fraudulent documents or through online banking.

Aggravating and Mitigating Factors

108. The Panel was of the view that in determining the penalties to impose, it is important to consider the aggravating factors which exist in this case and are:

- (a) the Respondent committed three of his acts of misappropriation against senior citizens, client PB was 87 years old at the time of the fraud, client HE was 82 years old at the time of the fraud and client KCL was 93 years old at the time of the fraud, targeting one of the most vulnerable groups of investors;
- (b) the Respondent also committed a number of his acts of misappropriation against clients of a similar cultural, ethnic or linguistic heritage, client NP, individual GL and client KCL, targeting another vulnerable group of individuals who may have an affinity with the perpetrator of the theft committed against them;
- (c) the Respondent misused personal and confidential client and bank or Member data for fraudulent and criminal purposes;
- (d) the acts of misconduct by the Respondent displayed an extraordinary and complicated level of deceit and planning by the Respondent in order to avoid detection by RBC and Royal Mutual;
- (e) the Respondent did not repay any of the funds determined to have been misappropriated from mutual fund clients;
- (f) the full extent of the fraud perpetuated by the Respondent was unable to be determined by RBC and Royal Mutual despite a lengthy and detailed investigation which required forensic accountants to assess numerous accounts and transactions;
- (g) the Respondent did not admit to the misconduct to either RBC, Royal Mutual or the MFDA;
- (h) the Respondent failed to cooperate with the investigation of the MFDA in any meaningful way despite being aware of these proceedings; and
- (i) the Respondent obstructed and delayed the investigation by asserting he was represented by legal counsel when this was very likely a false claim to delay the proceeding and Staff's numerous attempts at personal service.

109. The above aggravating factors were weighed against the mitigating factor that the Respondent has no previous disciplinary history. The Panel felt that this factor should be given little weight, when one considers the gravity of the misconduct, the large amount misappropriated and the subsequent fallout from the Respondent's actions.

110. The Panel was mindful that MFDA Hearing Panels have consistently imposed permanent prohibitions on individuals who misappropriate client funds. In addition, MFDA Hearing Panels have upheld the principle that the fines in such cases should be, at a minimum, approximately equal to the amount misappropriated by the AP that has not been repaid by the time of the Hearing and any additional fines for the Respondent's other violations.

*In the Matter of Earl Crackower* [2005], MFDA File No. 200506, decision dated July 20, 2005.

111. The Panel considered that the failure of the Respondent to comply with a request by an MFDA investigator made pursuant to section 22.1 of MFDA By-law No. 1 is serious misconduct as it undermines the MFDA's ability to fully investigate a matter and determine the nature and extent of any underlying misconduct.

112. The Hearing Panel further considered that the appropriate penalty for a failure to cooperate must be such as to communicate to both the public and the industry that serious consequences will befall those who frustrate the MFDA in performing its regulatory mandate. In previous cases where a Respondent failed to cooperate in a material manner, MFDA Hearing Panels have imposed a permanent prohibition and a fine of \$50,000.

*Parkinson, supra* at p. 25;  
*Crackower, supra* at pp. 9-10;  
*Tonnies, supra* at pp. 26-27.

113. It was the conclusion of the Hearing Panel, that on all the evidence, the appropriate Order to be imposed in this matter was as follows:

- (a) pursuant to section 24.1.1(e) of MFDA By-law No. 1, a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member;
- (b) pursuant to section 24.1.1(b) of MFDA By-law No. 1, a fine in the amount of \$150,000 for misappropriation of client funds, unauthorized and discretionary trading and for the failure to cooperate with the MFDA contrary to MFDA Rule 2.1.1, MFDA Rule 2.3.1(a) and section 22.1 of MFDA By-law No. 1;
- (c) pursuant to section 24.2 of MFDA By-law No 1, costs attributable to conducting the investigation and prosecution of this matter in an amount of \$10,000; and
- (d) if at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

**DATED** this 8<sup>th</sup> day of July, 2016.

“Frederick W. Chenoweth”

Frederick W. Chenoweth  
Chair

“David W. Kerr”

David W. Kerr  
Industry Representative

“Brian Nowak”

Brian Nowak  
Industry Representative