

**Decision (Penalty) and Reasons**

**File No. 201916**



**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: Robert Eugene Palumbo**

Heard: December 13, 2019 in Toronto, Ontario  
Decision (Misconduct): December 13, 2019  
Decision (Penalty) and Reasons: February 10, 2020

**DECISION (PENALTY) AND REASONS**

Hearing Panel of the Central Regional Council:

Emily Cole  
Michael Coulter  
Melody Potter

Chair  
Industry Representative  
Industry Representative

Appearances:

Brendan Forbes	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Robert Eugene Palumbo	)	Respondent, not in attendance or represented by
	)	counsel
	)	

## **I. INTRODUCTION**

1. This was an uncontested disciplinary hearing pursuant to sections 20 and 24 of By-Law No.1 of the Mutual Fund Dealers Association of Canada (“MFDA”).
2. After reviewing the Notice of Hearing and the December 6, 2019 Affidavit of Lara Rowles and hearing the testimony of Ms. Rowles and Ms. Terri Ash and the submissions of counsel for Staff, the Hearing Panel found the Respondent contravened MFDA Rules 2.1.1, 2.1.4, 2.5.1, 2.10, 1.1.2 and section 22.1 of MFDA By-laws No. 1, as alleged in the Notice of Hearing and set out below. Here are the reasons for our decision:

## **II. ALLEGATIONS**

3. On March 4, 2019, Staff issued a Notice of Hearing in respect of Robert Eugene Palumbo (the “Respondent”) which alleged the following:

**Allegation #1:** Between March 2016 and May 2017, the Respondent misappropriated approximately \$195,626 from three clients, thereby failing to deal fairly, honestly and in good faith with clients, failing to observe high standards of ethics and conduct in the transaction of business and engaging in conduct which is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1.

**Allegation #2:** Between approximately September 2015 and December 2016, the Respondent engaged in personal financial dealings with a client which gave rise to a conflict of interest that he failed to disclose to the Member or address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the policies and procedures of the Member and MFDA Rules 2.1.4, 2.5.1, 2.10, 1.1.2 and 2.1.1.

**Allegation #3:** Between May 2014 and June 2017, the Respondent obtained, possessed, and in 6 instances used to process transactions, 13 pre-signed account forms in respect of 10 clients, contrary to MFDA Rule 2.1.1.

**Allegation #4:** Commencing in November 2017, the Respondent failed to co-operate with an investigation of his conduct by Staff of the MFDA (“Staff”), contrary to section 22.1 of MFDA By-law No. 1.

## **III. JURISDICTION OF THE HEARING PANEL**

### **Jurisdiction over Former Members**

4. An Approved Person is subject to the jurisdiction of the MFDA and remains subject to the MFDA’s jurisdiction after the individual has ceased to be an Approved Person. The MFDA is

entitled to commence disciplinary proceedings against an Approved Person for up to five years from the date upon which the person ceased to be an Approved Person.

*MFDA By-law No.1 section 24.1.4.*

5. Ms. Rowles, a Manager in the Investigations group of the Enforcement Department of the MFDA oversaw the investigation into the Respondent's conduct. The investigation was conducted by Mr. Ian Smith who has since retired from the MFDA. Ms. Rowles' testimony was based on her oversight of the investigation, reviewing the file and her involvement subsequent to Mr. Smith's departure. In addition to swearing a comprehensive affidavit with the correspondence between the MFDA and the Respondent and various other relevant documents, Ms. Rowles also gave testimony at the hearing about the investigation. She gave her evidence in a straightforward manner and we found her to be credible.

Affidavit of Lara Rowles, sworn December 6, 2019 with exhibits ("Rowles Affidavit"). Exhibit 6.

### **The Respondent's Registration History**

6. The Respondent first became registered in Ontario as a dealing representative in July 2010. The Respondent was also registered as a dealing representative in Alberta beginning in September 2014. Between May 2014 and June 2017, the Respondent was registered as a dealing representative in Ontario with the Member. As a result of the conduct that is described in the Rowles Affidavit, on June 16, 2017 the Member suspended the Respondent pending an investigation into his conduct and on June 19, 2017 the Respondent resigned from the Member.

Rowles Affidavit, paragraph 4-6, Exhibits 1A, 1B and 9.

7. The Respondent's registration history is summarized in a printout from the National Registration Database ("NRD") Form 33-109F and a summary of the Respondent's registration information contained within the NRD Database.

Rowles Affidavit, Exhibits 1A and 1B

8. The Respondent's registration history indicates that the Respondent has not been registered in the securities industry in any capacity since June 20, 2017 when his registration with the Member was terminated.

Rowles Affidavit, paragraph 6.

9. We therefore found that the MFDA had jurisdiction over the Respondent. These disciplinary proceedings were properly commenced against the Respondent within five years from the date he ceased to be an Approved Person as required by section 24.1.4 of MFDA Bylaw No 1.

### **Jurisdiction to Proceed in the Absence of the Respondent**

10. A Hearing Panel has jurisdiction to proceed with a hearing without further notice to and in the absence of the Respondent where the Respondent has been provided with reasonable notice of the proceedings.

*MFDA Rules of Procedure Rule 7.3.*

11. We found that the Respondent had been provided with reasonable notice of the proceedings. On March 23, 2019, the Respondent was personally served with the Notice of Hearing commencing this proceeding.

Affidavit of Ronald Premo, sworn March 24, 2019 with Notice of Hearing attached. Exhibit 1.

12. The Respondent did not serve or file a Reply to the Notice of Hearing.

13. Despite being properly served with the Notice of Hearing, the Respondent did not attend the first appearance in this matter on May 7, 2019. At that appearance, the Hearing Panel scheduled the hearing of this matter on its merits to proceed on September 24, 2019.

14. On August 3, 2019, the Respondent was personally served with a July 31, 2019 letter from Staff advising that on August 14, 2019, Staff would be seeking an adjournment of the hearing on the merits to December 2019.

Affidavit of Ronald Premo, sworn August 6, 2019 with July 31, 2019 letter attached. Exhibit 3.

15. Despite being properly served with notice that Staff would be seeking an adjournment of the hearing date, the Respondent did not attend the August 14, 2019 appearance. At the August 14, 2019 appearance, the hearing on the merits was adjourned to December 13, 2019.

16. On August 15, 2019, Mr. Wynnyckyj, MFDA Director of Hearings, notified the Respondent by email that the hearing had been adjourned to December 13, 2019.

August 15, 2019 email from Marco Wynnyckyj, Director, Hearings, to Robert Palumbo with news release announcing adjournment of the hearing attached. Exhibit 4.

17. We found that the materials for this hearing were also delivered to the Respondent. Ms. Ash, a Senior Administrative Assistant in the Enforcement Department of the MFDA testified at the hearing that she arranged for the Rowles Affidavit and covering letter to be delivered by Purolator courier to the Respondent at the same address he had been previously served at. She received confirmation from Purolator that the materials were delivered on December 9, 2019.

18. On December 10, 2019, Staff emailed the Respondent to confirm he had received the materials for the hearing. The Respondent replied stating that he no longer resided in that city. Staff replied by email and provided the Respondent with a link to the documents via the MFDA secure email system. The Respondent replied with thanks.

December 10, 2019 email string between Brendan Forbes, Enforcement Counsel and Robert Palumbo. Exhibit 5.

19. Based on the foregoing, we found that Staff had made reasonable efforts to notify the Respondent of the date, time and location of the hearing of the allegations against him. We were also satisfied that the Respondent received the Rowles Affidavit. At our request, out of an abundance of caution, on the morning of the hearing Staff emailed the Respondent to remind him of the hearing. Staff did not receive a reply.

20. As a result, we concluded that we had jurisdiction under the MFDA Rules particularly Rule 7.2 to hear the merits in the absence of the Respondent.

#### IV. FACTS

##### **Allegation 1 – Misappropriation**

21. In a June 19, 2017 email to his business partner, the Respondent admitted he misappropriated \$109,000 from two clients. He admitted he deposited the funds to his bank account and gambled it all away. He expressed remorse and advised his partner that the funds were in the process of being returned to the bank (who had reimbursed the clients) and would be returned within a few days.

*I Know we need to talk. I just with my family now. Dealing with the situation at the bank. I stole money J. The bank has been or is in the process of being paid back. All debt will be paid back by Wednesday.*

*Your family and M and her family and F and his are all I have been thinking about.*

*\$109,000. Fraud. From WL and AK. Signed their names on cheques. Deposited to my bank account. I gambled it all away.*

*Bank has returned their money. SS from our head office compliance knows everything.*

*This all went down on Friday. As well W the manager of the bank at BMO where my personal account is.*

*Right now I'm with my family trying to get this sorted out.*

Rowles Affidavit, Exhibit 4.

22. During the Member's investigation, the Respondent's business partner told the Dealer that the Respondent had some recent personal family issues.

Rowles Affidavit, Exhibit 4, Final Investigation Report

23. In response to an inquiry from Staff, the Respondent admitted that he took money in an "un honest" manner from three clients: AK, WL and EC.

Rowles Affidavit, Exhibit 14, November 28, 2017 email from Robert Palumbo to Staff

24. The Respondent provided the following details:

*As stated in my previous communication. The money taken from AK, WL, and EC were taken in an un honest manner. The funds were used to pay corporate bills as well as support gambling addiction which I have and still continue to receive treatment for. Including counselling and addiction services as well as seeing a therapist on a biweekly basis.*

*As far as I can remember. Much time has passed and it was a dark time in my life. [AK] were falsified signatures and [WL] and [EC] as well.*

Rowles Affidavit, Exhibit 14, November 28, 2017 email from Robert Palumbo to Staff

25. The Respondent expressed remorse and offered to help Staff with its investigation.

*If there is anything else I can do to help the process of having this file sorted out and done with please do not hesitate to contact me.*

*Again. I honestly am sorry for what I've done. I regret it. Am ashamed of it. Have given up my business and walked away from the industry permanently. This was a dark time in my life. Filled with gambling and abuse of alcohol. The clients have been fully reimbursed. My family has cleared the obligation of the money stolen and I am now working to pay them back with deductions off my biweekly pay checks.*

Rowles Affidavit, Exhibit 14, November 28, 2017 email from Robert Palumbo to Staff

26. Staff reviewed the Order Entry forms and subsequent redemption cheques provided by the Member. Staff concluded that the Respondent misappropriated the following amounts from the accounts of clients AK, EC and WL:

<b>DATE PROCESSED</b>	<b>CLIENT</b>	<b>AMOUNT</b>	<b>DEPOSITED INTO</b>
May 16, 2016	client EC	\$38,500	Corporate Bank Account
June 9, 2016	client EC	\$12,000	Corporate Bank Account
June 29, 2016	client EC	\$16,000	Corporate Bank Account
July 28, 2016	client AK	\$25,000	Corporate Bank Account
February 1, 2017	client AK	\$16,500	Personal Bank Account
February 22, 2017	client AK	\$9,500	Personal Bank Account
March 8, 2017	client AK	\$12,000	Personal Bank Account
March 29, 2017	client AK	\$9,800	Personal Bank Account
April 11, 2017	client AK	\$14,800	Personal Bank Account
May 3, 2017	client AK	\$11,500	Personal Bank Account
January 18, 2017	client WL	\$13,525.51	Personal Bank Account
May 16, 2017	client WL	\$16,500	Personal Bank Account

Rowles Affidavit, paragraphs 20.

27. EC, WL and AK were 64 years old, 78 years old and 84 years old respectively. Due to their advanced age, Staff consider each of the three clients to be a vulnerable client.

Rowles Affidavit, paragraphs 15 and 16.

28. Based on the Respondent's admissions and the evidence of Staff, including the review of the Order Entry forms and subsequent redemption cheques provided by the Member, we agree with Staff's conclusion and find that between March 2016 and May 2017, the Respondent misappropriated approximately \$195,626 from three vulnerable clients contrary to MFDA Rule 2.1.1.

### **Allegation 2 – Personal financial dealings**

29. In response to an inquiry from Staff, the Respondent admitted he borrowed money from client MC and repaid the loan within a year. He was unclear about the date and amount of the loan.

Rowles Affidavit, paragraph 41, Exhibit 15, December 7, 2017 email from Robert Palumbo to Staff

30. MC advised Staff that he is the Respondent's cousin. MC loaned the Respondent approximately \$10,000. The Loan was not documented and had no terms or interest. It was repaid about a year after the funds were loaned.

Rowles Affidavit, paragraphs 42-43, Exhibit 18.

31. Based on the Respondent's admission, the information provided by MC to Staff and Ms. Rowles' testimony, we found that in or about September 2015, the Respondent borrowed approximately \$10,000 from client MC which the Respondent repaid in or about December 2016 thereby engaging in personal financial dealings with a client contrary to the policies and procedures of the Member and MFDA Rules 2.1.4, 2.5.1, 2.10, 1.1.2 and 2.1.1.

### **Allegation 3 – Pre-signed forms**

32. During its investigation into the Respondent's conduct, the Member identified potential pre-signed forms in the files of 10 clients serviced by the Respondent. The Member stated that six of the pre-signed forms had been used to process transactions for five of the 10 clients. Staff

reviewed and identified deficiencies in the pre-signed forms. The Respondent provided an explanation but that did not excuse the pre-signed forms.

Rowles Affidavit, paragraphs 47 – 50, Exhibits 20A- 20K.

33. Based on the evidence of Ms. Rowles and a review of the forms, we found that the Respondent obtained, possessed and, in some instances used to process transactions, 13 pre-signed forms in respect of 10 clients. The Member advised the MFDA that in six instances pre-signed forms had been used to process transactions for five of the 10 clients.

#### **Allegation 4 – Failure to Cooperate**

34. Between August 10, 2017 and April 18, 2018, Staff made repeated requests for information from the Respondent. On November 10, 2017, Staff also began making specific requests of the Respondent to provide his personal bank statements. Finally, on April 18, 2018, Staff advised the Respondent he would have to attend an interview with Staff to provide the requested information. The Respondent did not give Staff copies of his personal bank statements and did not contact staff to schedule an interview.

Rowles Affidavit, paragraphs 52 – 83, Exhibits 21- 37B.

#### **V. PROPOSED PENALTY**

35. Staff proposes the following penalties against the Respondent:

- a) A permanent prohibition on the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member;
- b) a fine in the amount of at least \$150,000;
- c) costs in the amount of \$7,500.

#### **VI. THE SERIOUSNESS OF THE MISCONDUCT**

36. The Respondent's misconduct was very serious. There were four separate contraventions: (1) misappropriation; (2) personal financial dealings; (3) pre-signed account forms; and (4) failure to cooperate.

## **Allegation 1 – Misappropriation**

37. The Respondent misappropriated \$195,626 from three vulnerable clients. He falsified their signatures and submitted the documents for processing without their knowledge or authorization.

38. Misappropriation of client funds is a very serious contravention of MFDA rules. Trust is the foundation of a healthy relationship between clients and Approved Persons. Misappropriation is an irreparable breach of trust.

Misappropriation is among the most serious types of misconduct encountered by securities regulators

*Re Lee* [2019] Hearing Panel of the Central Regional Council, MFDA File No 201914, Hearing Panel Decision dated September 3, 2019.

39. Clients not only suffer a financial loss, they also lose their faith in the Approved Person who misappropriated their money. Misappropriation of funds has a negative ripple effect on all those who work in the securities industry. The misconduct of one Approved Person tarnishes the reputation of every other Approved Person and taints the integrity of the securities industry.

40. We agree with Staff's submission that the fact that the Respondent's conduct was directed at vulnerable clients is an aggravating factor worthy of a greater sanction.

MFDA Sanction Guidelines, November 15, 2018.

## **Allegation 2 – Personal financial dealings**

41. The Respondent borrowed approximately \$10,000 from a client who is also the Respondent's cousin. The Respondent repaid the loan. There was no financial harm to the client.

42. Regardless of whether the client MC was the Respondent's cousin, the Respondent was obligated to refrain from personal financial dealings with that individual because s/he was a client. Such personal financial dealings give rise to a conflict of interest and are a contravention of MFDA Rule 2.1.4.

43. While the loan was repaid and there was no direct financial harm to the client, personal financial dealings and the real or perceived conflict of interest that results causes harm to the securities industry.

### **Allegation 3 – Pre-signed forms**

44. The Respondent's contravention of the prohibition against pre-signed forms is serious because the Respondent obtained, possessed and, in several instances used to process transactions, 13 pre-signed forms in respect of 10 clients.

45. The use of pre-signed forms adversely affects the integrity and reliability of account documents, destroys the audit trail and prevents the Member from effectively supervising its Dealing Representatives and protecting clients.

### **Allegation 4 – Failure to Cooperate**

46. The seriousness of the Respondent's misconduct was aggravated by his failure to cooperate with Staff's investigation. While the Respondent responded to some of Staff's initial inquiries, he ignored others. Despite a protracted email exchange with Staff about producing his personal bank statements, the Respondent failed to deliver them. He also refused to submit to an interview by Staff.

47. The Respondent's failure to cooperate with Staff, ignored his duties and responsibilities as an Approved Member and thwarted Staff's ability to complete its investigation into certain matters.

## **VII. AGGRAVATING AND MITIGATING FACTORS**

48. We considered the following aggravating factors:

- The clients from whom the Respondent misappropriated funds were vulnerable clients.

49. We also took into consideration the following mitigating factors:

- The clients were repaid by the Respondent's family. The Respondent advised Staff that he in turn was working to repay his family by deductions from his biweekly paychecks;
- The Respondent has not previously been the subject of MFDA disciplinary proceedings;
- The Respondent had some recent personal family issues;

- The Respondent expressed remorse;
- The Respondent advised Staff that he was suffering from a gambling addiction and abuse of alcohol. He had been receiving treatment for his addiction since he had left the Member

Rowles Affidavit, Exhibit 14, November 28, 2017 email from Robert Palumbo to Staff.

## **VIII. GENERAL AND SPECIFIC DETERRENCE**

50. Taking into consideration the seriousness of the misconduct, particularly the misappropriation of funds from vulnerable clients, we find that a permanent prohibition is both necessary and appropriate.

51. While there were some mitigating factors, the Respondent's misconduct was so serious that it is necessary to protect the public from a recurrence by removing the Respondent from the securities markets.

52. A global fine in the amount of \$120,000 is an appropriate financial penalty, given that the Respondent has repaid a total of \$195,626 to the clients who suffered financial harm. Based on the Bill of Costs provided by Staff at the hearing which totaled \$8775, we find an order of costs of \$7500 to be appropriate.

**IX. CONCLUSION**

53. We order the following penalties against the Respondent:

- a) A permanent prohibition on the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member;
- b) a fine in the amount of \$120,000; and
- c) costs in the amount of \$7,500.

**DATED** this 10<sup>th</sup> day of February, 2020.

“Emily Cole”

Emily Cole  
Chair

“Michael Coulter”

Michael Coulter  
Industry Representative

“Melody Potter”

Melody Potter  
Industry Representative

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