



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

File No. 200706

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

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: Cory Piggott

DISCIPLINARY HEARING

Heard: June 28, 2007
Toronto, Ontario

DECISION and REASONS

Hearing Panel of the Ontario Regional Council:

Thomas J. Lockwood, Q.C.	Chair
Paul Griffin	Panel Member
Linda Anderson	Panel Member

Appearances:

Jason Bennett)	for Mutual Fund Dealers Association
)	of Canada
Cory Piggott)	In Person
)	(via teleconference)

1. THE ALLEGATIONS

By Notice of Hearing, dated the 21st day of March, 2007, the following allegations were made against Cory Piggott (“Respondent”):

Allegation #1: Between February 2005 and December 2005, the Respondent misappropriated approximately \$64,000 from two mutual fund clients, thereby failing to deal with the clients fairly, honestly and in good faith, contrary to MFDA Rule 2.1.1.

Allegation #2: Commencing May 2006, the Respondent failed to provide a report in writing as requested by the MFDA in the course of an investigation, contrary to Section 22.1 of MFDA By-law No. 1.

2. SERVICE

The Notice of Hearing provided for a First Appearance by teleconference before the Hearing Panel at 121 King Street West, Suite 1000, Toronto, Ontario, on Tuesday, May 15, 2007, at 10:00 a.m.

On May 15, 2007, the Respondent appeared by way of teleconference. He requested an adjournment of the proceedings as he stated that he was in the process of retaining counsel. On consent of all parties, the matter was adjourned to June 1, 2007, at 10:00 a.m.

On June 1, 2007, the Respondent appeared by way of teleconference. He had not, as yet, retained counsel. He also had not served and filed a Reply to the Notice of Hearing, as required by Rule 8.1(1) of the MFDA Rules of Procedure. The Respondent requested additional time to serve and file his Reply.

After hearing submissions from both Enforcement Counsel and the Respondent, and with the consent of all parties, the following Order was made:

“1. The hearing on the merits in this matter shall take place before the Hearing Panel in the hearing room located at 121 King Street West, Suite 1000, Toronto, Ontario on Thursday, June 28, 2007 commencing at 1:00 p.m. (Eastern) or as soon thereafter as the hearing can be held.

2. Counsel for Staff of the MFDA shall, by Wednesday, June 6, 2007, provide the Respondent with copies of all documents, and a list of items other than documents, upon which Counsel intends to rely at the hearing on the merits.

3. Counsel for Staff of the MFDA shall provide the Respondent with a copy of any affidavit upon which Counsel intends to rely at the hearing on the merits by Wednesday, June 6, 2007, or as soon thereafter as reasonably practicable, but in any event at least 14 days prior to the commencement of the hearing on the merits.

4. The Respondent shall, despite the expiration of time for serving and filing a Reply under Rule 8.1(1) of the *Rules of Procedure*, serve a Reply on Counsel for Staff of the MFDA and file a copy of the Reply with the Office of the Corporate Secretary by Friday, June 15, 2007 and in accordance with the requirements set out at pages 6-8 of the Notice of Hearing.”

3. HEARING ON THE MERITS

The Hearing on the merits took place on June 28, 2007. The Respondent participated by way of teleconference.

At the commencement of the proceedings, the Respondent indicated that he wished to seek an adjournment.

Enforcement Counsel had marked, as Exhibit 2, a chain of e-mail correspondence. The first e-mail in the chain was sent by the Respondent at 9:27 a.m. on June 28, 2007, the date set for the Hearing on the merits. This e-mail stated:

“Jason,

I had a family emergency in Florida and won't be back till Friday morning. I made a big mistake and thought the hearing was scheduled for Friday, as all other hearing (sic) was on a Friday. What should I do? Can it be rescheduled? Let me know ASAP.

Cory”

Yvette MacDougall, the MFDA Hearings Co-Ordinator, immediately responded to the Respondent's e-mail, in part, as follows:

“Good Morning Mr. Piggott,

Thank you for your e-mail respecting this afternoon's hearing.

In light of your being out-of-town, we are making a teleconference facility available to allow you to participate in the hearing this afternoon. Please note that the Hearing Panel has discretion to proceed in your absence therefore it is important that you participate if there is any information you wish to provide.”

Teleconference information was provided, which the Respondent utilized to participate in the Hearing.

Enforcement Counsel also sent an e-mail to the Respondent at 10:37 a.m., as follows:

“Mr. Piggott,

It is my intention to proceed with today's hearing in any event, however the decision is ultimately that of the Hearing Panel. You

may wish to use the call-in numbers below to advise the Hearing Panel of the reasons you believe an adjournment is warranted.

You have been notified that today, June 28, 2007, is the date of the hearing on the following occasions:

- Friday, June 1, 2007 – First Appearance (continued from May 15, 2007) in which C. Piggott participated and acknowledged June 28, 2007 as the hearing date;
- Friday, June 1, 2007 – Email from J. Bennett to C. Piggott at 11:53 am, attaching draft Order showing June 28, 2007 as the date for Hearing on the Merits;
- Tuesday, June 5, 2007 – Email from J. Bennett to C. Piggott at 4:32 pm, attaching final Order showing June 28, 2007 as the date for Hearing on the Merits;
- Monday, June 25, 2007 – Email from J. Bennett to C. Piggott at 4:07 pm, attaching Submission of MFDA Staff and stating hearing date of June 28, 2007.

Furthermore, a News Release was issued June 1, 2007 and posted the MFDA website notifying the public that a hearing would be held on Thursday, June 28, 2007 in this matter.

Please govern yourself accordingly.

Regards,

Jason Bennett
Enforcement Counsel”

The Respondent conceded that he had received from Enforcement Counsel the documents referred to in paragraphs 2 and 3 of our Order of June 1, 2007. He indicated that he had not filed a Reply as required by paragraph 4 of the said Order. He stated that he had not done so as the disclosure was much more voluminous than anticipated and also a family emergency occurred.

The Respondent advised that, on June 10, 2007, he learned that his brother was going to have a kidney transplant on June 11, 2007, in Florida. The Respondent flew to Florida on June 11, 2007, and was still there at the time of the Hearing.

Despite the various items of notification as to the date and time of the Hearing referred to in Enforcement Counsel's e-mail, the Respondent stated that he thought the Hearing was on Friday, June 29, 2007, at 1:00 p.m. He said that he had made arrangements to fly to Toronto on June 29, 2007, and would arrive at 9:30 a.m. He indicated that he was prepared to proceed with the Hearing on June 29, 2007.

The Respondent indicated that he did not intend to retain counsel. He further stated that he had not had an opportunity to review the disclosure, although he had received the documents on June 6, 2007.

The Respondent advised that he had no documents which he wished to file at the Hearing. However, he intended to make submissions.

Enforcement Counsel told the Hearing Panel that he wished to proceed, that the Respondent knew about the Hearing date, had received the documents as ordered and had not filed a Reply. He submitted that the Respondent could make any submissions he wished to make by telephone.

The Hearing Panel retired to consider the matter. We then reconvened the Hearing and advised that we were going to proceed. We provided brief oral reasons for our decision, indicating that fuller written reasons would be forthcoming.

4. THE RULING

The Notice of Hearing was issued in this matter on March 21, 2007. The First Appearance was on May 15, 2007. Various attempts were made to serve the Respondent with the Notice. These are detailed in a document entitled "Service Brief", which was marked as Exhibit 6 to these proceedings.

Service was successful in that the Respondent attended the First Appearance via teleconference and sought an adjournment, which was granted, to June 1, 2007.

On June 1, 2007, the Respondent agreed that the Hearing on the merits would proceed on June 28, 2007, at 1:00 p.m. At that time, we ordered that the Respondent be provided with disclosure by June 6, 2007. This Order was complied with by Staff of the MFDA. The Respondent acknowledged that he had the disclosure before he left for Florida on June 11, 2007.

Prior to June 11, 2007, he had also received copies of all of the Affidavit material upon which Enforcement Counsel intended to rely at the Hearing.

On June 1, 2007, at the Respondent's request, he was given until June 15, 2007, to serve and file his Reply. He chose not to do so.

Rule 8.4(1) of the MFDA Rules of Procedure states as follows:

8.4 *Effect of Failure to Deliver a Proper Reply*

- (1) Where a Respondent fails to serve and file a Reply in accordance with the requirements of Rules 8.1 and 8.2, the Hearing Panel may do any one or more of the following:
 - (a) proceed with the hearing without further notice to and in the absence of the Respondent;
 - (b) accept the facts as alleged and conclusions drawn by the Corporation in the Notice of Hearing as proven and impose any of the penalties and costs described in Sections 24.1 and 24.2 respectively of MFDA By-law No. 1;

- (c) order that the Respondent pay costs, at any stage of the proceeding, regardless of the outcome of the proceeding and in addition to any other penalties and costs imposed on the Respondent, in an amount which reflects the extent to which, in the Hearing Panel's discretion, the hearing will be or has been unnecessarily prolonged or complicated by the failure of the Respondent to deliver a proper Reply;
- (d) prohibit, restrict, or place terms on the right of the Respondent to call witnesses or present evidence at the hearing.

We chose not to impose any restrictions or sanctions on the Respondent for his failure to serve and file a Reply. Instead, we decided to proceed with the Hearing on the merits on June 28, 2007, and permit the Respondent to fully participate in same by teleconference.

We were persuaded that this was the appropriate course of action as it was clear that the Respondent had received all of the material that was going to be presented to the Hearing Panel by Enforcement Counsel a sufficient amount of time prior to the Hearing so that he could review it and make whatever submissions he felt were appropriate.

Also, although the Respondent stated that he had left for Florida on June 11, 2007, the first contact he had with the MFDA, subsequent to June 1, 2007, was his e-mail message at 9:27 a.m. on the date set for the Hearing on the merits.

We advised the Respondent that we were anxious to hear from him in response to the allegations. He had previously stated that he did not wish to present any documentary evidence. We, however, made it clear that he could

fully participate in the Hearing and make whatever submissions he deemed to be appropriate.

In our view, it was in the public interest that this matter proceed as scheduled and we so ordered.

5. MANNER OF PROCEEDING

Although, as indicated above, Rule 8.4(1)(b) of the Rules of Procedure authorized the Hearing Panel to accept the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing as proven, where the Respondent fails to serve and file a Reply in accordance with the requirements of Rules 8.1 and 8.2, Enforcement Counsel sought to prove the Allegations by means of admissible evidence. We agreed with that approach.

6. PRESENTATION OF EVIDENCE

The evidence before the Hearing Panel with respect to this matter consisted of the following Affidavits and the Exhibits referred to therein.

(a) An Affidavit of Thomas MacKichan, Director, Complaint Investigation and Management with Investors Group Financial Services Inc. (“Investors Group”), sworn June 5, 2007, along with 12 Exhibits. A redacted version of this Affidavit, removing personal information relating to the former clients of the Respondent, was marked as Exhibit 4. A full and unredacted version had been provided to the Respondent.

(b) An Affidavit of Ian R. Smith, a Senior Investigator with the MFDA, sworn June 5, 2007, along with 4 Exhibits. This was marked as Exhibit 5.

Rule 1.6(1) of the MFDA Rules of Procedure provides, in part, that:

“(1) a Panel may admit as evidence any testimony, document or other thing, including hearsay, which it considers to be relevant to the matters before it and is not bound by the technical or legal rules of evidence.”

Accordingly, we ruled that Exhibits 4 and 5 formed admissible evidence before us.

7. THE EVIDENCE

The admissible evidence before us established the following:

From January 17, 2003, to March 1, 2006, the Respondent was registered in Ontario as a mutual funds salesperson with Investors Group. On February 28, 2006, the Respondent was terminated for cause by Investors Group as a result of the conduct which was the subject matter of this proceeding. Investors Group filed a Notice of Termination with the Ontario Securities Commission, effective March 1, 2006, which stated that the Respondent was dismissed for cause.

Allegation No. 1

From February 17, 2004, to January 12, 2006, the Respondent was the mutual fund salesperson at Investors Group responsible for the accounts of C.O. and L.O.

Between February 25, 2005, and December 13, 2005, the Respondent made 11 redemptions from the accounts of C.O. and L.O. at Investors Group totaling \$64,065.22 without the knowledge or authorization of his clients.

The Respondent, without the knowledge or authorization of his clients, directed that the net redemption proceeds of \$59,452.91 be deposited into one of two bank accounts held in his name or under his control.

Details of the redemptions and the amounts misappropriated are set out in the chart below:

	Client Name	Mutual Fund Account	Date of Redemption	Gross Redemption Proceeds	Net Redemption Proceeds
1.	CO & LO	1331590	February 25, 2005	\$20,727.65	\$19,587.62
2.	CO & LO	1331590	April 12, 2005	\$10,575.25	\$10,000.00
3.	CO & LO	1331590	May 9, 2005	\$7,367.90	\$6,974.43
4.	CO & LO	1331590	July 7, 2005	\$2,279.83	\$2,154.44
5.	CO & LO	1331590	July 26, 2005	\$492.89	\$492.89
6.	CO & LO	1331590	August 31, 2005	\$8,465.41	\$8,000.00
7.	CO & LO	1331590	September 26, 2005	\$2,632.76	\$2,487.95
8.	LO	603579	November 17, 2005	\$6,156.17	\$4,924.95
9.	LO	174976	November 22, 2005	\$2,222.22	\$2,000.00
10	LO	174976	December 1, 2005	\$1,552.61	\$1,397.35
11	LO	174976	December 13, 2005	\$1,592.53	\$1,433.28
				\$64,065.22	\$59,452.91

The Respondent misappropriated the net redemption proceeds, taking the following steps:

(a) He substituted his own bank account information, as well as the bank account information of an individual with the same last name as the Respondent, who would appear to be his father, for that of C.O. and L.O. by circumventing Investors Group's internal controls;

(b) He then processed a number of unauthorized redemptions, which resulted in the net proceeds being deposited into either his own bank account or another account under his control;

(c) He twice falsified C.O.'s and L.O.'s mailing address on record at Investors Group in order to misdirect the clients' mutual fund statements and thereby conceal his conduct;

At the Hearing on June 28, 2007, the Respondent stated that he did not have “any position” with respect to the evidence presented on the first allegation.

On the evidence, we have no hesitation in concluding that the Respondent misappropriated \$64,065.22 from C.O. and L.O. and received for his own benefit the net redemption proceeds in the amount of \$59,452.91.

Allegation No. 2

On February 28, 2006, Investors Group terminated the Respondent for cause. Investors Group then filed with the MFDA a copy of the Notice of Termination with an effective date of March 1, 2006.

By letter, dated April 18, 2006, sent to the Respondent by both registered and regular mail to the last known address of the Respondent as recorded in the National Registration Database, the MFDA requested that the Respondent provide information pertaining to his termination. Both the registered and regular letters were returned to the MFDA,

By letter, dated May 17, 2006, sent by both registered and regular mail, to an address identified by Investors Group as being where the Respondent was believed to be living, the MFDA requested the Respondent to submit a report in writing concerning the circumstances of his termination. A response was requested by May 31, 2006. The Respondent signed for the registered letter on May 24, 2006. The MFDA did not receive a response to this letter.

By letter, dated October 10, 2006, sent to the Respondent by both registered and regular mail at the same address as the May 17, 2006 letter, the MFDA requested the Respondent to provide a written report pursuant to Section 22.1 of MFDA By-law No. 1. The Respondent was advised that, if he failed to respond in writing by October 24, 2006, authorization might be sought to

commence enforcement proceedings against him for failure to co-operate with the MFDA investigation. A delivery notification was left with respect to the registered letter. When the letter remained undelivered, it was returned to the MFDA. The letter sent by regular mail was not returned. The MFDA did not receive a response to this letter.

In fact, no response in writing had been made by the Respondent to the MFDA up to and including the date of the Hearing on June 28, 2007.

We are, unanimously, of the opinion that the Respondent has failed to submit a report in writing as required by the MFDA in the course of an investigation contrary to Section 22.1(a) of MFDA By-law No. 1.

8. APPLICABLE RULES

Allegation No. 1, in the Notice of Hearing, alleges a breach of MFDA Rule 2.1.1. This Rule states:

- “2.1.1 **Standard of Conduct.** Each Member and each Approved Person of a Member shall:
- (a) deal fairly, honestly and in good faith with its clients;
 - (b) observe high standards of ethics and conduct in the transaction of business;
 - (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and
 - (d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.”

Allegation No. 2, in the Notice of Hearing, alleges a breach of Section 22.1 of MFDA By-law No. 1. This Section states:

“22. INVESTIGATORY POWERS

22.1 For the purpose of any examination or investigation pursuant to this By-law, a Member, Approved Person of a Member or other person under the jurisdiction of the Corporation pursuant to the By-laws or the Rules may be required by the Corporation:

- (a) to submit a report in writing with regard to any matter involved in any such investigation;
- (b) to produce for inspection and provide copies of the books, records and accounts of such person relevant to the matter being investigated; and
- (c) to attend and give information respecting any such matters;
- (d) to make any of the above information available through any directors, officers, employees, agents and other persons under the direction or control of the Member, Approved Person or other person under the jurisdiction of the Corporation;

and the Member or person shall be obliged to submit such report, to permit such inspection, provide such copies and to attend, accordingly. Any Member or person subject to an investigation conducted pursuant to this By-law may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the persons conducting the investigation. The person conducting the investigation may, in his or her discretion, require that any statement given by any Member or person in the course of an investigation be recorded by means of an electronic recording device or otherwise and may require that any statement be given under oath.”

9. FINDINGS AND THE LAW

Enforcement Counsel presented the Hearing Panel with written Submissions, as well as a very extensive Casebook, for which we are indebted.

Allegation No. 1

We have found, as a fact, that between February 25, 2005, and December 13, 2005, the Respondent misappropriated \$64,065.22 from his clients C.O. and L.O. and directed \$59,452.91 of that amount into one of two bank accounts held in his name or under his control.

The Respondent, at all material times, was an Approved Person as that term is defined in Section 1 of By-law No. 1 of the MFDA. There, an Approved Person is defined as follows:

“Approved Person” means, in respect of a Member, an individual who is a partner, director, officer, compliance officer, branch manager, or alternate branch manager, employee or agent of the Member who conducts or participates in the dealer business of the Member and who (i) is registered, licensed or approved in the appropriate category, where required by applicable securities legislation, by the securities commission having jurisdiction, and (ii) is designated and qualified as such in accordance with the Rules, or (iii) is otherwise subject to the jurisdiction of the Corporation;”

In our view, misappropriation of client’s funds by an Approved Person is dishonest conduct which is inconsistent with the standard of conduct set out in MFDA Rule 2.1.1.

In the Matter of Robert Roy Parkinson [2005], MFDA File No. 200501, decision dated April 29, 2005 (“*Parkinson*”).

In the Matter of Raymond Brown-John, [2005], MFDA File No. 200502, decision dated June 27, 2005 (“*Brown-John*”).

In the Matter of Earl Crackower, [2005], MFDA File No. 200506, decision dated August 22, 2005 (“*Crackower*”).

In the Matter of Stephan Headley [2006], MFDA File No. 200509, decision dated February 21, 2006 (“*Headley*”).

In the Matter of Dale Michael Graveline [2006], MFDA File No. 200606, decision dated December 20, 2006 (“*Graveline*”).

The evidence clearly establishes that on 11 separate occasions the Respondent obtained funds from his clients without their knowledge or consent and took the majority of these funds for his own use. Despite numerous requests, he has never accounted for these funds.

In our view, it is clear that the Respondent did not deal fairly, honestly and in good faith with his clients, C.O. and L.O., as alleged in the first Allegation. We, unanimously, find that MFDA Rule 2.1.1 has been breached by the Respondent and that Allegation No. 1 has been established.

Allegation No. 2

The evidence clearly establishes that the MFDA made repeated requests of the Respondent for a report in writing relating to its investigation of the circumstances of his termination for cause by Investors Group. As indicated above, no response has ever been made in writing by the Respondent up to and including the date of the Hearing in June of 2007.

We agree with the submissions of Staff that the MFDA has a duty to conduct such examinations and investigations of a Member, an Approved Person or any other person under its jurisdiction as it considers necessary or desirable in connection with any matter related to that Member’s or person’s compliance with, *inter alia*, the By-laws, Rules and Policies of the MFDA.

We, further, agree with Staff that in carrying out this duty, the MFDA is authorized to require an Approved Person, such as the Respondent, to submit a written report concerning any matter being investigated by the MFDA.

In our view, the failure of an Approved Person to comply with repeated requests by the MFDA for a written report, made pursuant to Section 22.1(a) of the By-law, is serious misconduct.

The actions of the Respondent subverted the ability of the MFDA to perform its regulatory functions by fully investigating these alleged misappropriations and determining, in an expeditious manner, all of the relevant facts. The repeated failure by the Respondent to provide the written report requested, in our view, undermined the integrity of the self-regulatory system and the effectiveness of its operations.

Other MFDA Panels have come to the same conclusion. See:

Re: *Parkinson*, supra p.25.

Re: *Brown-John*, supra p. 4.

Re: *Crackower*, supra pp. 9-10.

Re: *Headley*, supra pp. 22-23.

Re: *Graveline*, supra pp. 6-7.

We are, unanimously, of the view that Allegation No. 2 has been established.

10. PENALTY REQUESTED

Enforcement Counsel sought the following sanctions:

- (a) A permanent prohibition of 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) A fine in the amount of \$65,000 for misappropriation of client funds contrary to MFDA Rule 2.1.1.

- (c) A fine in the amount of \$50,000 for failure to co-operate contrary to Section 22.1 of MFDA By-law No. 1; and
- (d) Costs attributable to conducting the investigation and prosecution of this matter in the amount of \$7,500.00.

The Respondent advised the Hearing Panel that he had no submissions to make with respect to penalty.

11. FACTORS TO BE CONSIDERED

The primary goal of securities regulation is the protection of the investor.

Pezim v. British Columbia (Superintendent of Brokers) [1994] 2 S.C.R. 557 at paragraph 59.

Parkinson, supra, at pages 20-21.

In the Matter of Arnold Tonnies [2005] MFDA File No. 200503, decision dated June 27, 2005, at page 21.

Sanctions should be preventative, protective and prospective in nature.

Tonnies, supra, at page 22.

Headley, supra, at page 24.

In exercising its discretion to impose a penalty, the Hearing Panel should take into account the following considerations:

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

Parkinson, supra, at page 21.

Tonnies, supra, at page 22.

Headley, supra, at page 24.

Previous Hearing Panels have set out a number of additional factors which should be considered when determining an appropriate penalty. These include:

- (a) The seriousness of the allegations proved against the respondent;
- (b) The respondent's experience in the capital markets;
- (c) The level of the respondent's activity in the capital markets;
- (d) The harm suffered by investors as a result of the respondent's activities;
- (e) The benefits received by the respondent as a result of the improper activity;
- (f) The risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;
- (g) The damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;
- (h) The need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- (i) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
- (j) Previous decisions made in similar circumstances.

Parkinson, supra, at page 22.

Tonnies, supra, at page 23.

Headley, supra, at pages 25 and 26.

We considered the following aggravating factors:

1. The actions of the Respondent in misappropriating funds from C.O. and L.O. were planned and deliberate.
2. His status as an Approved Person permitted the Respondent to gain the trust of his clients.
3. The Respondent abused this trust in the most fundamental fashion.
4. The above continued over more than a 10 month period.
5. The Respondent actively concealed his misappropriations from his clients by diverting their quarterly account statements and other correspondence from Investors Group away from their home address.
6. The Respondent intentionally circumvented Investors Group's internal controls and abused his access to its electronic trading system.
7. The Respondent has not demonstrated any remorse, despite being given ample opportunity to do so at the Hearing on the merits.
8. The Respondent has made no attempt at restitution of the misappropriated funds, nor has he attempted to reimburse Investors Group for its efforts to compensate the clients for their losses.
9. The Respondent failed to co-operate with the investigation of the MFDA into these matters.
10. The Respondent personally benefited from his misconduct in the amount of \$59,452.91.

On the mitigating side, we considered that the Respondent did participate in the proceedings before the Hearing Panel on May 15, June 1 and June 28, 2007. We also considered that the Respondent has no discipline history.

12. PENALTIES IMPOSED

(a) Allegation No. 1

In our view, it is incumbent upon the Hearing Panel to communicate to the Respondent, to the public and to the mutual fund industry as a whole that serious consequences will befall those who are engaged in activities similar to those of

the Respondent. In our view, there should be 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.

We are also firmly of the view that the fine which should be imposed in cases of this nature, pursuant to the provisions of Section 24.1.1(b) of MFDA By-law No. 1, should, at a minimum, be approximately equal to the amount misappropriated by the Approved Person where that amount has not been repaid by the time of the Hearing.

Accordingly, we are unanimously of the view that a fine in the amount of \$64,065.22 should be imposed with respect to Allegation No. 1.

(b) Allegation No. 2

Enforcement Counsel provided us with a series of Decisions outlining the views of various Hearing Panels as to the appropriate fine to be imposed in the case of an individual who breaches Section 22.1 of MFDA By-law No. 1. These cases included:

Parkinson, supra, page 25.

Crackower, supra, pages 9-10.

Tonnies, supra, pages 26-27.

Headley, supra, page 30.

In each case, the fine imposed was \$50,000.

In our view, the appropriate penalty for failure to co-operate must be such as to communicate to both the public and the mutual fund industry that serious consequences will befall those who seek to frustrate the MFDA in performing its regulatory mandate.

Accordingly, with respect to Allegation No. 2, we believe it is appropriate to follow the consistent lead of previous Hearing Panels and impose a fine in the amount of \$50,000.

(c) Costs

Section 24.2 of By-Law No. 1 provides that:

“A Hearing Panel may in any case in its discretion require that the . . . Approved Person pay the whole or part of the costs of the proceedings before the Hearing Panel and any investigations relating thereto.”

Staff of the MFDA requested that an Order for Costs be made against the Respondent in the amount of \$7,500 as that amount will permit the MFDA to recover from the Respondent a portion of the costs attributed to conducting the investigation and prosecution of this matter.

We believe that the imposition of costs in the circumstances of this case is appropriate and order same to be fixed in the amount of \$7,500.

Dated at Toronto, this 29th day of October 2007.

“Thomas J. Lockwood”

Thomas J. Lockwood, Q.C.
Chair

“Paul Griffin”

Paul Griffin
Panel Member

“Linda Anderson”

Linda Anderson
Panel Member