



**Decision and Reasons**

**File No. 200602**

**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: SHAWN SANDINK**

**DISCIPLINARY HEARING**

Hearing: June 22, 2006

Decision: July 19, 2006

**DECISION and REASONS**

Hearing Panel of the Ontario Regional Council:

The Hon. Fred Kaufman, C.M., Q.C.  
Robert Hovianseian  
Paul Griffin

Chair  
Industry Representative  
Industry Representative

Appearances:

Robert DelFrate	)	for the Mutual Fund Dealers Association
	)	of Canada
Shawn Sandink	)	in attendance personally
	)	

## **Decision**

As set out in the Notice of Hearing, the Respondent, Shawn Sandink, was accused of conduct contrary to the By-laws, Rules or Policies of the MFDA and, more particularly, that, between January 1999 and August 2003, he misappropriated \$34,250 from one of his mutual fund clients, "thereby failing to deal fairly, honestly and in good faith with his client and engaging in business conduct that was unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1."

The facts, as stated in the Agreed Statement of Facts, are as follows:

### **Registration History**

6. From December 1996 to December 2004, the Respondent was registered in Ontario as a mutual fund salesperson for PFSL Investments Canada Ltd. ("PFSL"). PFSL became a Member of the MFDA on January 31, 2002.
7. On December 31, 2004, the Respondent was terminated by PFSL. He is not currently registered in the securities industry in any capacity.

### **The Respondent's Conduct**

8. As described in greater detail below, between January 27, 1999 and August 20, 2003, the Respondent misappropriated approximately \$34,250.00 from a mutual fund client.
9. In 1998, the Respondent opened an account for JY. Between 1998 and 2001, JY deposited \$140,000 into the Trimark Interest Fund (the "Trimark Fund"). The Trimark Fund allows clients to have cheque writing redemption privileges. JY made regular withdrawals from the Trimark Fund by this means.

10. As set out in the table below, between January 1999 and August 2003, the Respondent, without JY's knowledge or consent, forged ten cheques on the Trimark Fund, totaling \$34,250, payable to the benefit of the Respondent or the Respondent and his wife. Each of these cheques was deposited into the Respondent's or the Respondent and his wife's bank account.

<b>Date</b>	<b>Amount</b>	<b>Cheque Payable To</b>
January 27, 1999	\$10,600	Shawn and Sharon Sandink
April 6, 1999	\$3,000	Shawn Sandink
April 15, 1999	\$5,000	Shawn Sandink
May 20, 1999	\$5,000	Shawn Sandink
July 25, 1999	\$500	Shawn Sandink
August 13, 2002	\$2,500	Shawn Sandink
September 21, 2002	\$1,500	Shawn Sandink
May 25, 2003	\$2,000	Shawn Sandink
July 25, 2003	\$2,150	Shawn Sandink
August 20, 2003	\$2,000	Shawn Sandink
<b>Total</b>	<b>\$34,250</b>	

11. In order to conceal his conduct, the Respondent listed the client address for JY on the account documentation in respect of JY's investment in the Trimark Fund as 202 Huron St., Woodstock ON, N4S 7A1. This is the address of the PFSL sub-branch office at which the Respondent worked. As a result, all of JY's account statements in respect of the Trimark Fund were sent to this address and JY was unaware of the unauthorized withdrawals.
12. In 1999, the Respondent relocated from the sub-branch office at 202 Huron St. to the PFSL branch office located at 30 Metcalfe St., Woodstock On, N4S 3E7. On June 14,

1999, the Respondent directed his assistant to change the address on JY's account to 30 Metcalfe St.

13. In 1999, the Respondent told JY that he was going to use \$24,000, more or less, from the Trimark Fund to purchase gold options on JY's behalf. The Respondent never purchased the gold options. The Respondent later told JY that the gold options had expired on a fictitious strike date and were worthless. The Respondent fabricated this story in order to conceal the misappropriation.
14. In May 2005, PFSL commenced an investigation of the Respondent in response to a complaint made by JY. The Respondent admitted to the misconduct. In November 2005, PFSL compensated JY for losses attributable to the Respondent's conduct.
15. The Respondent has not repaid any of the misappropriated funds.

It is clear from the above that the offence alleged was, in fact, committed, and that the Respondent has violated MFDA Rule 2.1.1.

That established, the parties were invited to speak to the penalty.

Enforcement counsel stressed the gravity of the offence, the course of the Respondent's conduct over a long period of time, the harm to investors which conduct of this type occasions, the damage to market integrity, the personal benefit to the Respondent, and the aggravating factor of concealment by listing an incorrect address in order to divert statements away from his client.

On the other hand, this was the Respondent's first offence. Once discovered, he cooperated fully with MFDA staff, and in his Reply, as well as at the hearing, he conveyed his remorse to his client and to the MFDA. He is married and has three young children.

As was said on previous occasions, the duty to deal fairly, honestly and in good faith with clients is a fundamental requirement for everyone engaged in the industry, and any breach of the Rules must be punished severely. Previous cases suggest that a permanent prohibition should be imposed in cases of this kind. They also suggest that fine be imposed, as well as an amount for costs. We propose to take this course.

We note that part of the Respondent's misappropriation occurred before the MFDA acquired jurisdiction. But, as was said in *Re Crackower* (2005, MFDA Case No. 200506), when a Respondent's illegal activities "were in existence at the time of his membership and continued thereafter," the entire amount can be taken into consideration, and we will do so.

In the result, the sanctions imposed, and announced at the conclusion of the hearing, were as follows:

1. A permanent prohibition on the authority of the Respondent to engage in any securities related business in any capacity;
2. A fine in the amount of \$35,000.00; and
3. Costs in the amount of \$2,500.00.

Given at Toronto, Ontario, this 19<sup>th</sup> day of July, 2006.

"Fred Kaufman"  
The Hon. Fred Kaufman, C.M., Q.C.

"Robert Hovianseian"  
Robert Hovianseian, Industry Representative

"Paul Griffin"  
Paul Griffin, Industry Representative