



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 Andrew Shaw

Heard: July 23, 2014, in Toronto, Ontario
Reasons for Decision: November 3, 2014

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Thomas J. Lockwood, Q.C.)	Chair
Guenther Kleberg)	Industry Representative
Teri L. Ryan)	Industry Representative

Appearances:

Maria L. Abate)	For the Mutual Fund Dealers Association of
)	Canada
)	
Robert Andrew Shaw)	In Person
)	
)	

A. THE ALLEGATIONS

1. By Notice of Hearing, dated January 29, 2014, the Mutual Fund Dealers Association of Canada (the “MFDA”) made the following Allegations against Robert Andrew Shaw (the “Respondent”):

Allegation #1: Between February 1, 2012 and June 30, 2012, the Respondent misappropriated approximately \$437,000 from 4 clients by processing unauthorized redemptions in the clients’ accounts and arranging for the redemption proceeds to be deposited in his personal bank account or in the bank accounts of other individuals, contrary to MFDA Rule 2.1.1.

Allegation #2: Commencing February 2012, the Respondent misled the Member during the course of its supervision and investigation of the Respondent’s activities by making statements to the Member which he knew to be false, misleading or incorrect at the time and in the circumstances he made them, thereby engaging in conduct unbecoming an Approved Person contrary to MFDA Rule 2.1.1.

Allegation #3: Commencing July 31, 2012, the Respondent failed to cooperate with an investigation of his activities by the MFDA by failing to comply with requests to provide a written statement regarding allegations of unauthorized redemptions from client accounts and misappropriations of client monies, contrary to section 22.1 of MFDA By-law No. 1.

B. FIRST APPEARANCE

2. The First Appearance in this matter took place on April 2, 2014, by teleconference before the Hearing Panel.

3. At the First Appearance, the Respondent appeared in person. Service of the Notice of Hearing was confirmed.

4. With the consent of the parties, the Hearing Panel set dates for the serving and filing of a Reply, as well as disclosure by Staff of the MFDA.

5. Also, on consent, the Hearing Panel ordered that the Hearing on the Merits was to take place on July 23, 2014.

C. HEARING ON THE MERITS

6. The Respondent attended the Hearing on the Merits in person. He had not filed a Reply. He advised that he did not intend to file a Reply as he did not dispute the substance of the Allegations against him.

7. MFDA Staff then had marked as Exhibits, a lengthy Affidavit of Lara Rowles, as well as a series of e-mails to and from the Respondent. The Respondent did not object to these documents being received by the Hearing Panel.

8. Staff Counsel then made submissions with respect to Rule 8.4 of the Rules of Procedure, which provides 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 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.

9. The Respondent indicated that he did not intend to call any witnesses or seek to provide any evidence in dispute of any of the Allegations.

10. After considering the submissions of MFDA Counsel, as well as the statements of the Respondent, the Hearing Panel decided to proceed with the Hearing on the Merits with the Respondent present and participating.

11. We note that Rule 8.4 uses the word "may" not the mandatory word "shall". We also note that Rule 1.5(1) provides that a Hearing Panel "may: (b) waive or vary any of the Rules at any time on such terms and conditions as it considers appropriate."

12. In the end, the presence of the Respondent was very helpful to the Hearing Panel in its deliberations. He at no time sought to diminish the nature or extent of his wrong-doing. He expressed deep remorse for his actions and added clarifying details on certain factual matters.

D. THE EVIDENCE

13. The majority of the evidence before the Hearing Panel with respect to the Allegations comes from the 43 paragraph Affidavit of Lara Rowles and the 33 Exhibits attached thereto.

14. The evidence presented establishes the following:

Registration History

- (a) The Respondent was registered in Ontario as a mutual fund salesperson with Investors Group Financial Services Inc. ("Investors Group"), a Member of the MFDA,

from April 25, 2007 to July 23, 2012, when he was terminated by the Member as a result of the hereinafter described activities.

Background

(b) On August 13, 2010, the Respondent signed a "Letter of Intent" with SL whereby SL and the Respondent agreed to become business partners and SL agreed to purchase 30% of the Respondent's mutual fund book of business for \$400,000. SL made an initial payment of \$250,000 directly to the Respondent, with the remaining balance of \$150,000 to be paid by way of the Respondent retaining 30% of the income generated by the book of business until the full amount owing was paid. The agreement also included, among other things, an exit clause which permitted SL to terminate the arrangement within two years.

(c) On September 22, 2011, SL was registered in Ontario as a dealing representative with Investors Group and, shortly thereafter, SL and the Respondent signed the Member's Associate Agreement whereby the Respondent agreed to mentor and work with her to provide services to clients.

(d) A few months after becoming the Respondent's business partner, SL conducted a valuation of the business and determined that the income generated from the book of business was not meeting her expectations. SL elected to terminate the agreement with the Respondent and requested the return of the amount paid to the Respondent under the agreement.

(e) On November 28, 2011, the Respondent signed a promissory note promising to repay SL \$400,000, the entirety of the amount paid to the Respondent, no later than January 31, 2012.

(f) On January 31, 2012, the Respondent failed to repay \$400,000 to SL in accordance with the terms of the promissory note. After failing to receive payment from

the Respondent, SL retained legal counsel to assist her in recovering the monies owing to her.

Allegation #1 Misappropriation of Client Monies

(i) Client ML

(g) On January 24, 2012, the Respondent submitted a client update form with a void cheque for processing in relation to client ML's account. The Respondent had forged client ML's signature on the client update form and the attached void cheque was for the personal bank account of client CM. Client ML had not authorized any such changes to be made to her account and was not aware that any such changes were being made.

(h) On February 2, 2012, the Respondent processed a redemption in the amount of \$52,910.05 from client ML's account, the net proceeds of which (\$50,000) were deposited in the personal bank account of client CM. Client ML had not instructed the Respondent to process the redemption.

(i) On or about February 2, 2012, the Member's Regional Coordinator questioned the Respondent about the change in banking information for client ML's account. The Respondent told the Member that client ML was client CM's uncle and client CM was borrowing the money to purchase a property.

(j) This was subsequently determined to be false. During the course of the Member's subsequent investigation, client ML and client CM denied any connection to each other.

(k) At the Hearing on the Merits, the Respondent advised the Hearing Panel that neither CM nor ML were related to each other or to himself.

(l) According to the Respondent, CM had a gambling problem and requested the Respondent to redeem certain securities which had been invested on a long-term basis.

He allegedly threatened the Respondent over the fees charged on the redemption. The Respondent then made what he described as a “terrible decision”. He processed the unauthorized redemption in ML’s account and transferred the proceeds into CM’s account, as he stated that he was afraid of him.

(m) The Respondent agreed that the transaction was completely improper.

(ii) Client LT

(n) On April 23, 2012, the Respondent submitted a client update form dated April 19, 2012, with a void cheque for processing in relation to client LT's account. The Respondent had forged client LT's signature on the client update form and the attached void cheque was for the Respondent's personal bank account. Client LT had not authorized any changes to be made to her account and was unaware that any such changes were being made.

(o) On April 24, 2012, the Respondent processed a redemption in the amount of \$78,534.03 from client LT's account, the net proceeds of which (\$75,000) were deposited in the Respondent's personal bank account. Client LT had not instructed the Respondent to process the redemption.

(iii) Client DCJ

(p) On June 6, 2012, the Respondent submitted a client update form dated June 5, 2012, with a void cheque for processing in relation to client DCJ's account. The Respondent had forged client DCJ's signature on the client update form and the attached void cheque was for the Respondent's personal bank account. Client DCJ had not authorized any changes to be made to her account and was not aware that any such changes were being made.

(q) On June 7, 2012, the Respondent processed a redemption in the amount of \$42,218.92 from client DCJ's account, the net proceeds of which (\$40,000) were deposited in the Respondent's personal bank account. Client DCJ had not instructed the Respondent to process the redemption.

(r) On June 13, 2012, the Member's Divisional Director RR sent the Respondent an email inquiring about the \$42,218.92 redemption in client DCJ's account as the transaction had been flagged due to the high redemption fee associated with the transaction. The Respondent advised RR that the client required the redemption proceeds to purchase a vacation property.

(iv) Client JPS

(s) On June 19, 2012, the Respondent submitted a client update form with a void cheque for processing in relation to client JPS's account. The Respondent had forged client JPS's signature on the client update form and the attached void cheque was for the bank account of the Respondent's business partner, SL. Client JPS had not authorized any such changes to be made to his account and was not aware that any such changes were being made.

(t) On June 20, 2012, the Respondent processed a redemption in the amount of \$263,157.89 from client JPS's account, the net proceeds of which (\$250,000) were deposited in SL's personal bank account.

Client Complaint and Member Investigation

(u) On July 19, 2012, client DCJ contacted the Member regarding the unauthorized redemption from her account on June 7, 2012 in the amount of \$42,218.92, which appeared on her account statement dated June 30, 2012. Client DCJ informed the Member that she had not authorized the redemption.

(v) On July 20, 2012, the Member's Divisional Director WA discussed the redemption in client DCJ's account with the Respondent, who acknowledged verbally that he had processed the redemption without being instructed to do so and stated that it was an isolated incident.

(x) On July 23, 2012, WA interviewed the Respondent's business partner, SL. During the interview, SL advised WA that the Respondent had owed her \$400,000, the amount that she had invested in his business in August 2010 before she decided to terminate her agreement with him.

(y) On this same date, client DCJ signed a "Declaration of Unauthorized Redemption and Non-Receipt of Funds Form" (the "Declaration"). The Declaration was client DCJ's written confirmation that she had not authorized the \$42,218.92 redemption from her account and that she had not received the proceeds of the redemption. After speaking with SL and receiving the signed Declaration for client DCJ, the Member terminated the Respondent.

(z) On July 30, 2012, the Respondent provided the Member with a bank draft in the amount of \$310,000 on account of the monies he had misappropriated from the client accounts.

(aa) On July 31, 2012, the Member's Compliance Department contacted client ML after its investigation had identified the redemption in client ML's account as a suspicious transaction. Client ML advised the Member that he had not authorized the redemption and that he did not know client CM. When contacted by the Member, client CM confirmed that he did not know client ML.

(bb) On August 2, 2012, the Member's Compliance Department contacted client JPS after its investigation had identified the redemption in client JPS's account as a suspicious transaction. Client JPS advised the Member that he had not authorized the redemption.

(cc) On August 14, 2012, the Member obtained a Declaration from client ML confirming that he had not authorized the redemption from his account and that he had not received the proceeds of the redemption.

(dd) On July 23, 2012, the Member contacted client LT after the Respondent admitted that he had processed the \$78,534.03 redemption from her account on April 24, 2012, without her knowledge or instructions. On August 15, 2012, client LT provided the Member with a Declaration confirming that she had not authorized the redemption and had not received the proceeds of the redemption.

(ee) Also on August 15, 2012, the Member obtained a Declaration from client JPS confirming that he had not authorized the redemption from his account and that he had not received the proceeds of the redemption.

(ff) On August 15, 2012, the Member reversed the unauthorized redemptions in the accounts of all four affected clients and offered to compensate them for the forgone appreciation in their accounts had the unauthorized redemptions not occurred.

(gg) On August 20, 2012, the Member's Compliance Department met with the Respondent and, contrary to his earlier statement to the Member that the redemption from client DCJ's account had been an isolated incident, the Respondent admitted that he had misappropriated monies from the accounts of the three other clients the Member had identified during the course of its investigation.

(hh) The Respondent misappropriated a total of approximately \$437,000 from the 4 clients.

Allegation #2: Misleading the Member

(ii) As stated above, on or around February 2, 2012, the Member's Regional Coordinator questioned the Respondent concerning the change in client ML's banking information. The Respondent told the Member that client ML was client CM's uncle and that client CM was borrowing the money to purchase a property. The Respondent conceded at the Hearing on the Merits that these statements were false.

(jj) As stated above, on June 13, 2012, the Member's Divisional Director RR sent the Respondent an email inquiring about the \$42,218.92 redemption in client DCJ's account which had been flagged due to the high redemption fee. The Respondent advised RR that client DJ required the redemption proceeds to purchase a vacation property. The Respondent's statement was false.

(kk) As stated above, on July 20, 2012, the Member's Divisional Director WA contacted the Respondent to discuss the redemption in client DCJ's account. The Respondent acknowledged verbally that he had processed the redemption without being instructed to do so but stated that it was an isolated incident. The Respondent's statement was false in so far as he had by that time misappropriated monies from the accounts of three other clients. The Respondent's statement was false.

Allegation #3: Failure to Co-Operate

(ll) On July 31, 2012, MFDA Case Assessment Staff ("CAS") sent a letter by registered and regular mail to the Respondent requesting that he provide a written statement regarding the Member Event Tracking System ("METS") reports submitted by the Member to the MFDA. On August 7, 2012, the Respondent accepted and signed for CAS's letter at the post office.

(mm) On August 17, 2012, the Respondent contacted CAS to request until August 24, 2012 to provide his response. The Respondent was granted an extension. On August 29,

2012, CAS had yet to receive a response from the Respondent and contacted him for an update on its status. The Respondent advised CAS that his lawyer was preparing a response and that it would be delivered shortly.

(nn) On September 7, 2012, CAS sent a second letter by registered and regular mail to the Respondent requesting that he provide a written statement regarding the events reported by the Member. On September 10, 2012, CAS's registered letter was successfully delivered to the Respondent.

(oo) On December 6, 2012, CAS arranged for a third letter to be personally served on the Respondent requesting that he provide a written statement regarding the events reported by the Member and copies of his personal banking records.

(pp) On December 18, 2012, CAS sent a letter by registered and regular mail to the Respondent requesting that he provide a written response to the allegations stemming from the METS event filed on August 27, 2012. On December 24, 2012, CAS's letter was accepted and signed for at the post office.

(qq) On February 22, 2013, CAS contacted the Respondent by telephone to follow up on the status of any written response the Respondent would be providing to the METS reports filed by the Member. The Respondent advised CAS that he would require more time to provide a response and that he would send it by email to CAS. CAS agreed to provide the Respondent a further extension until March 11, 2013 to file his reply.

(rr) On March 12, 2013, CAS sent a final letter to the Respondent by registered and regular mail advising him that his obligation to co-operate with any and all investigations into his activities while he was a mutual fund salesperson and providing a final opportunity to submit a written response to the events reported by the Member. On March 18, 2013, the Respondent accepted and signed for CAS's letter at the post office.

(ss) To the date of the issuance of the Notice of Hearing, on January 29, 2014, the Respondent failed to provide a written or other response to the Allegations made against him and reported to the MFDA by the Member. As a result of the Respondent's failure to co-operate with the MFDA's investigation, the MFDA was unable to confirm the full nature and extent of the Respondent's potential misappropriation of client monies.

E. FINDINGS ON LIABILITY

15. On clear, convincing and incontrovertible evidence, it was established that between February 1, 2012 and June 30, 2012, the Respondent misappropriated approximately \$437,000 from 4 clients by processing unauthorized redemptions in the clients' accounts and arranging for the redemption proceeds to be deposited in either his personal bank account or the bank accounts of other individuals.

16. MFDA Rule 2.1.1 provides as follows:

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.

17. MFDA Hearing Panels have consistently held that misappropriation of client funds by an Approved Person is dishonest conduct, which is inconsistent with the standard of conduct set out in Rule 2.1.1.

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 July 20, 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*").

(Re) Cory Piggott [2007], MFDA File No. 200706, Decision dated October 29, 2007.

18. We unanimously find that Allegation #1 has been established.

19. Rule 2.1.1 requires an Approved Person to "observe high standards of ethics and conduct in the transaction of business." These terms are not defined. Nor do they need to be. It falls to the Hearing Panel, two of which are members or former members of the profession, to judge the conduct of the Respondent by the objective standards of his own profession.

20. A Member has the right to expect that an Approved Person will deal with it in an upright and honest manner, particularly when responding to inquiries about activities in client accounts.

21. There is no possible rational excuse for an Approved Person to consciously and deliberately mislead the Member about the state of a client's account. When, as here, the conscious and deliberate misleading of the Member was done to seek to cover up misappropriations by the Approved Person, the conduct is even more egregious.

22. On three occasions, the Respondent was sent an email from the Member's Compliance team identifying an unusual trade and asking for an explanation in order to ensure that the transaction was not completed in error, that the client understood the ramifications of the trade and that the client had requested the particular trade to be completed.

23. On each occasion, the Respondent advised the Member that the redemptions had been requested by the clients and were being used to provide loans to family members in the case of clients ML and JPS or that the clients themselves (DCJ) were seeking to purchase a vacation

home. All of these explanations, to the knowledge of the Respondent, were false and were intended to cover up misappropriations of the very client funds by the Respondent.

24. The deliberate misleading of the Member by the Respondent impaired the ability of the Member to meet its own regulatory obligations to adequately supervise its salespersons, investigate allegations of misconduct in an efficient manner and report findings to the MFDA in a timely fashion.

25. We are unanimously of the opinion that by resorting to the actions outlined above, the Respondent engaged in conduct unbecoming an Approved Person contrary to MFDA Rule 2.1.1 and that Allegation #2 has been established.

26. By Section 21 of MFDA By-law No. 1, the MFDA has a duty to conduct such examinations of a Member, Approved Person of a Member 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.

27. Section 22 of MFDA By-law No. 1 grants the MFDA wide investigatory powers, including the ability to require Approved Persons to submit a written report concerning any matter under MFDA investigation, produce for inspection or provide copies of documents relevant to the matters being investigated and to attend and give information respecting matters being investigated. The Approved Person is obliged to co-operate with this requirement.

28. MFDA Hearing Panels have consistently held that a failure to provide information, documents or a report requested in the course of an MFDA investigation constitutes a failure to co-operate, contrary to section 22 of MFDA By-law No. 1.

Brown-John, supra at p.4.

Crackower, supra at pp.9-10.

Graveline, supra at pp.6-7.

29. The evidence clearly establishes that, commencing on July 31, 2012 and continuing at least up to the date of the issuance of the Notice of Hearing on January 29, 2014, the Respondent failed to co-operate with an investigation of his activities by the MFDA by failing to comply with numerous requests to provide a written statement regarding allegations of unauthorized redemptions from client accounts and misappropriation of client monies.

30. We are unanimously of the view that Allegation #3 has been established.

F. PENALTIES

31. In its written and oral submissions, MFDA Staff proposed the following penalties:

- 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;
- b) pursuant to Section 24.1.1(b) of MFDA By-law No. 1, a fine in the range of \$150,000 to \$200,000 for misappropriation of client funds, for misleading the Member during its investigation and for failing to co-operate with the MFDA contrary to MFDA Rule 2.1.1 and Section 22.1 of MFDA By-law No. 1; and
- c) pursuant to Section 24.2 of MFDA By-law No. 1, costs attributable to conducting the investigation and prosecution of this matter in the amount of \$7,500.

G. FACTORS TO BE CONSIDERED

32. Previous MFDA Hearing Panels have accurately and fulsomely set out the factors to be considered when imposing penalties in cases of this nature. These include:

- a) the primary goal of securities regulation is the protection of the public;
- b) sanctions should seek to prevent likely future harm to the capital markets;
- c) specific and general deterrence;
- d) the protection of the MFDA's membership;
- e) the protection of the integrity of the MFDA's enforcement process;

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

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

Headley, supra at p. 25-26.

In the Matter of Arnold Tonnies [2005], MFDA File No. 200503, Decision dated June 27, 2005 ("*Tonnies*").

H. CONSIDERATIONS IN THE PRESENT CASE

33. The Respondent was in a position of trust as a financial advisor to his clients. He repeatedly, knowingly and deliberately egregiously breached this trust by misappropriating client funds for his own personal use. He then misled his Member by lying about the transactions in question when an investigation was being conducted.

34. The Respondent also failed to co-operate with the MFDA during the course of its investigation and the initial stages of this prosecution. As a result, it is still unknown to Staff the extent that the Respondent personally benefitted from his wrong-doing.

35. On the mitigating side, the Respondent has no disciplinary history. Also, very importantly for both himself and the discipline process, the Respondent appeared in person at the Hearing on the Merits, although it was painfully clear the evident discomfort this caused him.

36. The Respondent made no attempt to justify any of his actions. He expressed extreme remorse for the harm he had caused to his family, friends, clients and associates. He stated that he was an embarrassment to himself, his clients and everyone around him. He acknowledged that the public should be protected from people like himself.

37. The Hearing Panel commends the Respondent for the courage which he displayed in attending the Hearing on the Merits and taking full responsibility for his actions. We hope that this act may be the first step on a path which some day may allow the Respondent to regain a measure of self-respect.

I. DECISIONS

38. The misappropriations by the Respondent were planned and deliberate. He abused his position of trust with his clients. In our view, it is incumbent upon this 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 conduct themselves in this fashion.

39. In our view, there should be a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity and we so order.

J. FINE

40. Failing to co-operate with the MFDA Enforcement Staff in its investigation has always been viewed by Hearing Panels as a serious offence as it frustrates the MFDA in performing its regulatory mandate. Hearing Panels have generally imposed a fine in the amount of \$50,000. These precedent cases include:

- a) Parkinson
- b) Crackower
- c) Tonnies

41. Likewise, misleading the Member during the course of its supervision and investigation of the Respondent's activities by repeatedly making statements which he knew to be false and misleading is serious misconduct. On each occasion when he was questioned by the Member's compliance team, the Respondent provided lengthy, knowingly false explanations as to why the client had redeemed funds.

42. The fact that the Respondent was one of the best performing, most highly regarded salesperson for his Member only exacerbates the misconduct. The Respondent was well-aware of his position in the firm and the fact that, as a consequence, any explanations he proffered were likely to be accepted.

43. In the circumstances of this particular case, we feel that a fine in the amount of \$50,000 would be appropriate for all of the uncontroverted evidence which we received with respect to Allegation #2.

44. We have found that the Respondent misappropriated approximately \$437,000. With the reversal of fees and other charges, the net amount of the misappropriation was approximately \$415,000.

45. At the Hearing on the Merits, the Respondent advised that he had obtained the sum of \$310,000 from a family member which was paid to Investors Group. He also made two further payments of \$25,000 each for a total reimbursement of \$360,000. These figures were confirmed by MFDA Staff. This leaves a shortfall, after reversal of fees and other charges, of \$55,000.

46. MFDA Hearing Panels have generally upheld the principle that fines in the cases of misappropriation should be, at a minimum, approximately equal to the amount of the misappropriation.

47. Where, as here, some monies have been repaid, there should not, in our view, be a dollar for dollar reduction in the fine assessed. There should be an examination of the nature, extent and frequency of the misappropriation. The quantum of the fine must be such as to send a clear

message to the Respondent, the Mutual Fund industry as well as to the general public, that conduct of this nature will not be tolerated.

48. Taking into account all of the evidentiary circumstances in the three Allegations, the quantum of the misappropriations, the monies repaid and the extreme remorse shown by the Respondent at the Hearing on the Merits, we believe that a global fine in the amount of \$250,000 is appropriate and we do order.

K. COSTS

49. Section 24.2 of By-law No 1 provides that:

24.2 Costs

A Hearing Panel may in any case in its discretion require that the Member or Approved Person pay the whole or part of the costs of the proceedings before the Hearing Panel pursuant to Section 20 and Section 24.1 or Section 24.3 and any investigations relating thereto.

50. MFDA Staff requested that an Order for Costs be made against the Respondent in the amount of \$7,500 representing "a portion of the costs attributable to conducting the investigation and prosecution of this matter."

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

L. PENALTIES IMPOSED

- a) a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity;
- b) a fine in the amount of \$250,000; and
- c) costs in the amount of \$7,500.00.

DATED this 3rd day of November, 2014.

“Thomas J. Lockwood”

Thomas J. Lockwood, Q.C.
Chair

“Guenther Kleberg”

Guenther Kleberg
Industry Representative

“Teri L. Ryan”

Teri L. Ryan
Industry Representative

DM 398977 v2