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: Viet Ton-That

Heard: April 15, 2021 by electronic hearing in Toronto, Ontario
Decision (Penalty) and Reasons: September 15, 2021

DECISION (PENALTY) AND REASONS

Hearing Panel of the Central Regional Council:

John Lorn McDougall, Q.C.	Chair
Susan Dicks	Industry Representative
Guenther W. K. Kleberg	Industry Representative

Appearances:

Francis Roy	)	Senior Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Viet Ton-That	)	Respondent, not represented by counsel

I. INTRODUCTION

1. By Notice of Hearing dated November 23, 2020, the Mutual Fund Dealers Association of Canada ("MFDA") gave notice of a hearing to be held before a hearing panel of the Central Regional Council ("Hearing Panel") of the MFDA on February 16, 2021 at 10:30 am (Eastern). By subsequent agreement, and with appropriate public notice, this Hearing Panel was convened on April 15, 2021 to hear this matter.

II. THE ALLEGATIONS

2. The Notice of Hearing sets out the following allegations that the Respondent, Viet Ton-That (the "Respondent") violated the By-laws, Rules, or Policies of the MFDA:

> **Allegation #1**: Between February 14, 2018 and October 19, 2018, the Respondent misappropriated, or failed to account for, monies from two clients, thereby failing to deal fairly, honestly and in good faith with the clients, failing to observe high standards of ethics and conduct in the transaction of business, and engaging in business conduct or practice unbecoming or detrimental to the public interest, contrary to MFDA Rule 2.1.1.
>
> **Allegation #2**: Between no later than February 2018 and October 22, 2018, the Respondent engaged in personal financial dealings with a client by borrowing monies from a client, thereby giving rise to a conflict or potential conflict of interest which the Respondent failed to disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 1.1.2, 2.5.1, and 2.1.1.
>
> **Allegation #3**: Commencing December 20, 2019, the Respondent failed to cooperate with an investigation by MFDA Staff into his conduct, contrary to section 22.1 of MFDA By-law No. 1.

3. The parties entered into a document entitled Agreed Statement of Facts dated April 4, 2021 ("ASF"). Strictly speaking, it was not only agreed facts as it also contained more than that. This will become apparent in the following description of the ASF.

4. The ASF provides as follows:

> ### III. ADMISSIONS AND ISSUES TO BE DETERMINED
>
> 3. The Respondent has reviewed this Agreed Statement of Facts and admits the facts set out in Part IV herein. The Respondent admits that the facts in Part IV constitute misconduct for which the Respondent may be penalized on the exercise of the discretion of a Hearing Panel pursuant to section 24.1 of MFDA By-law No. 1.

4. Subject to the determination of the Hearing Panel, Staff submits, and the Respondent does not oppose, that the appropriate penalty to impose on the Respondent include a permanent prohibition on the Respondent's authority to act and be registered as a mutual fund salesperson (now known as a dealing representative), pursuant to section 24.1(e) of MFDA By-law No. 1.

5. Staff and the Respondent however disagree on the quantum of financial penalties, including fines and costs, to be imposed on the Respondent pursuant to sections 24.1.1(b) and 24.2 of MFDA By-law No. 1. Staff seeks an order imposing fine and costs on the Respondent. The Respondent opposes the imposition of any fine and costs to be requested by Staff.

6. Staff and the Respondent therefore request that the Hearing Panel determine the appropriate quantum of fines and costs to be ordered against the Respondent, if any.

5. The ASF, in paragraphs 7, 8 and 9, further provides as follows:

IV. AGREED FACTS

7. Staff and the Respondent agree that submissions made with respect to the appropriate penalty should be based only on the agreed facts in Part IV, and no other information or documents, subject to the content of this paragraph and paragraph 9 below.

8. In the event that the Hearing Panel advises one or both of Staff and the Respondent of any additional facts that it considers necessary in order to determine the issues before it, Staff and the Respondent agree that such additional facts may be provided to the Hearing Panel, either: (a) with the consent of both Staff and the Respondent if the additional facts are agreed upon; (b) if the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel; or (c) if the parties are both present at the hearing and are not in agreement about the additional facts requested by the Hearing Panel, the parties will be given a reasonable opportunity to lead evidence concerning the additional facts. In circumstances where a party leads evidence concerning additional facts requested by the Hearing Panel, the opposing party may cross-examine any witness tendered to lead such evidence and shall be given a reasonable opportunity to lead responding evidence if they wish to do so.

9. Nothing in this Part IV is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

6. The ASF, the full version of which is annexed to this Decision (Penalty) and Reasons as Appendix "1", in relevant part continues as follows:

Registration History

10. From April 8, 2014 to October 22, 2018, the Respondent was registered in Ontario as a dealing representative with Investors Group Financial Services Inc., a Member of the MFDA (the "Member").

11. On October 22, 2018, the member terminated the Respondent. The Respondent is no longer registered in the securities industry in any capacity.

12. At all material times, the Respondent conducted business from a branch of the Member located in Brampton, Ontario.

Contravention #1 – The Respondent misappropriated monies from clients

13. In or about May 2014, clients VN and HT, spouses, became clients of the Member. At all material times, the Respondent serviced their mutual fund accounts.

14. In or about February 2018, the Respondent recommended to clients VN and HT that they contribute to, and purchase mutual fund investments in, their spousal registered retirement savings plan ("RRSP") and client VN's tax free savings accounts ("TFSA").

15. Further to the Respondent's instructions, between February 14, 2018 and February 25, 2018, client VN sent a total of approximately $13,412 by six INTERAC electronic transfers to the Respondent's email address for investment in the clients' accounts at the Member, as follows:

Date of Electronic Transfer	Amount	Comments
February 14, 2018	$3,000	For spousal RRSP contribution
February 15, 2018	$3,000	N/A
February 16, 2018	$2,000	Last deposit for spousal RRSP
February 21, 2018	$2,950	TFSA contribution
February 24, 2018	$1,756	TFSA
February 25, 2018	$706	TFSA
Total	**$13,412**	

16. As described in the chart above, client VN provided comments at the time of sending the electronic transfers that informed the Respondent that the electronic transfers dated February 14, 15, and 16, 2018 totaling $8,000 were intended to be spousal RRSP contributions, and the February 21, 24 and 25, 2018 electronic transfers totaling $5, 412 were for investment in client VN's TFSA.

17. The Respondent deposited the entirety of the monies sent to him by clients VN and HT into his personal bank account.

18. None of the monies that client VN and HT provided to the Respondent as described in paragraphs 16 and 17 above were used to purchase any investments in the clients' investment accounts at the Member.

19. Commencing February 27, 2018, client VN repeatedly inquired about the status of the $13,412 that he and client HT provided for investment in their investment accounts at the Member. Clients VN and HT contacted the Respondent as they had not received tax receipts, and had not seen records in their account statements indicating that the monies that they sent to the Respondent in February 2018 had been invested in their investment accounts at the Member.

20. In response to client VN's inquiries, the Respondent falsely informed client VN that the $13,412 had been invested, and that the reason that they had not received tax receipts or that the investments did not appear on the clients' account statements were the result of the Member's slow or malfunctioning "online systems".

21. On October 19, 2018, client VN complained to the Member that, among other things, the Respondent had misappropriated $13,412 intended for his mutual fund accounts, and had further borrowed $500 from him.

22. On or about October 19, 2018, the Respondent sent $18,000 to client VN, following which client VN withdrew his complaint.

Contravention #2 – The Respondent borrowed monies from a client

23. At all material times, the Member's policies and procedures prohibited Approved Persons from borrowing from clients.

24. In or about February 2018, the Respondent solicited and obtained a $500 personal loan from client VN (the "$500 loan").

25. On or about October 11, 2018, further to requests made by client VN to the Respondent, the Respondent sent $550 to client VN as reimbursement of the $500 loan principal plus $50 in interest.

26. The solicitation of a loan from client VN constituted personal financial dealings that gave rise to a conflict or potential conflict of interest.

27. At no time did the Respondent disclose to the member that he had borrowed monies from client VN, nor did he obtain approval to do so.

Contravention #3 – The Respondent failed to cooperate with an investigation by the MFDA

28. On December 4, 2019, the Respondent attended an interview with MFDA Staff pursuant to section 22.1 of MFDA By-law No. 1 with respect to, among other matters, his dealings with clients VN and HT (the "Interview").

29. During the Interview, the Respondent undertook to provide MFDA Staff with documents requested by MFDA Staff, including the following (the "Undertaking Documents"):

a) Copies of all communications with client VN regarding personal loans, including the initial communication where the Respondent solicited the client for the Loan; and

b) Copies of all banking records for any bank accounts held or controlled by the Respondent, including any line of credit accounts or chequing or savings accounts, for the period of February 14 to November 3, 2018.

30. On December 5, 2019, MFDA Staff sent a letter to the Respondent requesting that he provide the Undertaking Documents no later than December 20, 2019.

31. The Respondent did not provide the Undertaking Documents by December 20, 2019, or at any time thereafter.

32. On January 7 and 9, 2020, MFDA Staff sent emails to the Respondent, again requesting that he provide the Undertaking Documents. On January 9, 2020, MFDA Staff also left a voice message for the Respondent requesting the Undertaking Documents. The Respondent did not respond to those emails or MFDA Staff's voice message.

33. On January 14, 2020, MFDA Staff sent a letter to the Respondent reminding him of his obligations as a former Approved Person of the MFDA to cooperate with Staff during the course of an investigation, and again requested that he provide the Undertaking Documents. The Respondent was informed that his failure to cooperate with MFDA Staff's requests could result in disciplinary proceedings being commenced against him.

34. On January 22, 2020, the Respondent sent an email to MFDA Staff stating, among other things: "…I will be back on Jan 29 and will contact you shortly". The Respondent never contacted MFDA Staff further to his January 22, 2020 email.

35. On January 30, 2020, Staff sent an email to the Respondent asking, among other things, that he contact Staff to discuss providing the Undertaking Documents.

36. To date, the Respondent has not provided the Undertaking Documents to MFDA Staff. As a result, MFDA Staff has been unable to determine the full nature and extent of the Respondent's

dealings with clients VN and HT, including whether he obtained any further monies from clients VN and HT or any other clients of the Member.

Misconduct Admitted

37. By engaging in the conduct described above, the Respondent admits that:

a) Between February 14, 2018 and October 19, 2018, he misappropriated, or failed to account for, monies from two clients, thereby failing to deal fairly, honestly and in good faith with the clients, failing to observe high standards of ethics and conduct in the transaction of business, and engaging in business conduct or practice unbecoming or detrimental to the public interest, contrary to MFDA Rule 2.1.1;

b) Between no later than February 2018 and October 22, 2018, he engaged in personal financial dealings with a client by borrowing monies from a client, thereby giving rise to a conflict or potential conflict of interest which the Respondent failed to disclose to the member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 1.1.2, 2.5.1, and 2.1.1; and

c) Commencing December 20, 2019, he failed to cooperate with an investigation by MFDA Staff into his conduct, contrary to section 22.1 of MFDA By-law No. 1.

III. ANALYSIS

7. The first question that we needed to address was whether this was a "settlement" within the definition contained in the MFDA's governing by-law, or was it simply a case where, while most facts were agreed and liability was as well, the failure to agree on a penalty rendered it simply a question of fixing the appropriate fine.

8. The answer is quite straight-forward; as there is not a settlement agreement within the definition contained in MFDA By-law No. 1, section 24.4.2 and largely repeated in the MFDA Rules of Procedure, Rule 14, these provisions for settlement agreement acceptance do not apply in this case.

MFDA By-law No. 1, section 24.4.2 is as follows:

24.4.2 *Contents of Settlement Agreement*

A settlement agreement shall be in writing and be signed by or on behalf of the Member or person and shall contain:

a) A statement of facts sufficient to identify the matter to which the settlement agreement relates;
b) A reference to any statutes or regulations thereto, By-law, Rules or Policies of the Corporation with which the Member or person has not complied and a statement as to future compliance therewith;
c) The consent and agreement of the Member or person to the terms of the settlement agreement;
d) The acceptance of the penalty to which the Member or person could be subject pursuant to Section 24.1; (emphasis added)
e) The waiver of the rights of the Member or person to a hearing pursuant to the By-law and all rights of review thereunder; and
f) Such other matters not inconsistent with Section 24.4.2(a) to (e), inclusive, which may be agreed upon including, without limitation, the agreement by the Member or person to pay the whole or part of the costs of the investigation and any proceedings relating to the matters which are the subject of the settlement agreement.

MFDA By-law No. 1, section 24.4.2, amended and consolidated to May 7, 2020

MFDA Rules of Procedure, Rule 14.1 July 16, 2010

9. As we have seen, in this case, while an ASF was reached by the parties and was filed, that ASF expressly provided as follows:

5. Staff and the Respondent however disagree on the quantum of financial penalties, including fines and costs, to be imposed on the Respondent pursuant to ss. 24.1.1(b) and 24.2 of MFDA By-law No. 1. Staff seeks an order imposing fine and costs on the Respondent. The Respondent opposes the imposition of any fine and costs to be requested by Staff.

10. The fine and costs of $5,000 requested by Staff of the MFDA ("Staff") were also set out in the Submissions of Staff of the MFDA ("Submissions"):

5. Subject to the determination of the Hearing Panel, Staff submits, and the Respondent does not oppose, that the appropriate penalty to impose on the Respondent include a permanent prohibition on the Respondent's authority to act and be registered as a mutual fund salesperson (now known as a dealing representative), pursuant to section 24.1(e) of the By-law.

6. Staff and the Respondent however disagree on the quantum of financial penalties, including fines and costs, to be imposed on the Respondent pursuant to ss. 24.1.1(b) and 24.2 of the By-law. Staff seeks an order imposing on the Respondent a fine in the amount of at least $50,000 pursuant to s. 24.1.1(b) of the By-law and costs in the amount of $5,000 pursuant to s. 24.2 of the By-law.

Submissions of Staff, paragraphs 5 and 6.

11. The following excerpt from MFDA re Andersen (*Andersen (Re),* 2019 File No 2018115 paras 7 to 9) is relevant to the present case:

7. It is now well established that the test to be applied by a hearing panel in deciding whether to accept or reject an agreed settlement is quite different than that which is utilized when hearing a contested case. In the latter case, the hearing panel is charged with making a determination whether there has been a breach of the applicable rules, by-laws or statutes. Instead of such a determination on the merits, a hearing panel sitting on a settlement application is directed to decide whether a settlement agreement which contains the terms of the settlement and statement of facts, is "acceptable".

8. Section 24.4.3 of MFDA By-Law No. 1 provides that hearing panels may only accept or reject a settlement in its entirety. A hearing panel's role is not to determine if the sanction or sanctions agreed to are correct, but instead to ascertain whether what has been agreed to falls within "a reasonable range of appropriateness".

9. In *Professional Investment (Kingston) Inc. (Re)*, the Hearing Panel aptly described its role as follows:

> In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. **In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty**

> **as clearly falling outside a reasonable range of appropriateness.** As has been said: "The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a Hearing where similar findings are made. [Emphasis added]
>
> MFDA By-law No. 1
>
> *Professional Investments (Kingston) Inc. (Re),* 2009 LNCMFDA 9 at para. 13.
>
> *Ho (Re),* 2018 LNCMFDA 21 at paras. 24-26.

12. The case opened with an unusual statement by Mr. Roy, one which he had been instructed by MFDA management to make. If not unique, it clearly distinguishes this case from most others. In relevant part, it was as follows:

> Mr. Roy: Now, in my submission, I asked for a fine in the amount of $50,000 and costs of $5,000. Now, I was instructed by MFDA management late last night to revise the quantum of fine. Those – I just want to be clear. Those were my prior instructions. But last night, after some thought, MFDA management asked me to request, instead of a $50,000 fine, a $40,000 fine. So the amount quoted in my written submissions is no longer accurate.
>
> Although the Panel knows – as the Panel knows, Staff would ordinarily seek a fine of at least $50,000 in – in – in instances of failure to cooperate alone. In this case, Mr. Ton-That did attend at an interview with Staff as is reflected in the Agreed Statement of Fact. So it was only a partial failure to cooperate. He did admit to the misconduct both in the interview and in the Agreed Statement of Fact.
>
> And he did reimburse – and we'll get into this in a minute – but the known victims of his misconduct with a premium of approximately 30 percent. He obtained – misappropriated $13,000 thereabouts in February of 2018. And if you count the money that he borrowed, it was – add an extra $500—about just under $14,000. And then he repaid in total $18,500 in October of 2018, albeit only after the clients had complained to the dealer, Investors Group, and eight months after the misconduct originally occurred.
>
> Transcript of Hearing April 15, 2021, Page 7 line 25 to Page 9 line 3.

13. The Hearing Panel concluded that MFDA management obviously had given the foregoing instructions to Staff because it was felt that the original request was excessive in all the mitigating circumstances which Mr. Roy outlined in his written submissions. We therefore concluded that we should not pay over much heed to his subsequent arguments addressed at establishing the enormity of Mr. Ton-That's misconduct. It is enough that the MFDA instructed him that the fine originally sought be reduced, thus indicating its view of the appropriate upper limit of an appropriate fine. It is also notable that no instruction was given to Mr. Roy that the $40,000 was to be a minimum.

14. It also should be noted that Mr. Roy's instructions were to seek a fine of $40,000 instead of the original $50,000, and not, as he subsequently argued, "at least $40,000". That figure became the floor or minimum sought by the MFDA and thus relevant for the Hearing Panel in their assessment of what a "correct" fine should be, which is the test it had to apply. It did not have the more liberal test of "zone of reasonable appropriateness" available to it as it was not engaged in "accepting" the terms of a complete settlement agreement.

15. The problem that confronted the Hearing Panel when we retired to deliberate was that we really had few facts to work with to reach agreement on a figure. In fact several of us were prepared, in the absence of any explanation from the Respondent, to presume the worst.

16. The Hearing Panel concluded that any agreement between Staff and a Respondent to limit a hearing panel's access to facts it felt it needed is probably not enforceable. It is sufficient to point out that the right to do so is only available where there is a settlement agreement which is not the case in this instance.

17. However, as it transpired the Hearing Panel concluded, albeit for slightly different reasons, that in the unique circumstances of this case, there were sufficient facts available to form the basis of an order that is both fair and just and which serves the interests of the regulatory regime.

18. There is an obvious purpose in having the majority of a hearing panel being senior members of the securities industry who are knowledgeable about what is required to enforce compliant behaviour in a self-regulated industry. That is the central point; without discipline that works, the investors who rely on the protection will be in jeopardy and self-regulation will have failed. Thus the views of the industry representatives weigh heavily in the decision of what all industry participants, members, dealers and investors alike, would regard as being an appropriate penalty, which in this instance is simply the quantum of the fine.

19. The Chair of the Hearing Panel initially had reservations as to whether there were sufficient facts to support even the reduced amount of the fine. However, he was persuaded to agree to a fine of $40,000, both because his colleagues were satisfied they had sufficient facts to form an appropriate award and by the fact that they concluded that the result would serve the objective of protecting industries by providing a rigorous disciplinary process.

20. It also should be said that the fact that the MFDA reduced the amount of the fine sought is, in itself, a fact that both renders this case at least somewhat unique and supports the appropriateness of the fine.

21. The amount of costs sought, $5,000, is very modest and, given the extent of the investigation and other proceedings, cannot be more than a small fraction of the actual costs.

IV. DECISION

22. In summary, having found that the three allegations made in the Notice of Hearing have been established, the Hearing Panel orders:

a) a permanent prohibition on the Respondent's authority to act and be registered as a mutual fund dealing representative;
b) a fine in the amount of $40,000; and
c) costs in the amount of $5,000.

DATED this 15th day of September, 2021.

"John Lorn McDougall"
John Lorn McDougall, Q.C.
Chair

"Susan Dicks"
Susan Dicks
Industry Representative

"Guenther W. K. Kleberg"
Guenther W. K. Kleberg
Industry Representative

DM 833103

Mutual Fund Dealers Association of Canada
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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: Viet Ton-That

AGREED STATEMENT OF FACTS

I. INTRODUCTION

1. By Notice of Hearing issued November 23, 2020, the Mutual Fund Dealers Association of Canada (the "MFDA") commenced a disciplinary proceeding against Viet Ton-That (the "Respondent") pursuant to ss. 20 and 24 of MFDA By-law No. 1, alleging as follows:

> **Allegation #1:** Between February 14, 2018 and October 19, 2018, the Respondent misappropriated, or failed to account for, monies from two clients, thereby failing to deal fairly, honestly and in good faith with the clients, failing to observe high standards of ethics and conduct in the transaction of business, and engaging in business conduct or practice unbecoming or detrimental to the public interest, contrary to MFDA Rule 2.1.1.
>
> **Allegation #2:** Between no later than February 2018 and October 22, 2018, the Respondent engaged in personal financial dealings with a client by borrowing monies from a client, thereby giving rise to a conflict or potential conflict of interest which the Respondent failed to disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 1.1.2, 2.5.1, and 2.1.1.

Allegation #3: Commencing December 20, 2019, the Respondent failed to cooperate with an investigation by MFDA Staff into his conduct, contrary to section 22.1 of MFDA By-law No. 1.

II. IN PUBLIC /IN CAMERA

2. The Respondent and Staff of the MFDA ("Staff") agree that this matter should be heard in public pursuant to Rule 1.8 of the MFDA Rules of Procedure.

III. ADMISSIONS AND ISSUES TO BE DETERMINED

3. The Respondent has reviewed this Agreed Statement of Facts and admits the facts set out in Part IV herein. The Respondent admits that the facts in Part IV constitute misconduct for which the Respondent may be penalized on the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

4. Subject to the determination of the Hearing Panel, Staff submits, and the Respondent does not oppose, that the appropriate penalty to impose on the Respondent include a permanent prohibition on the Respondent's authority to act and be registered as a mutual fund salesperson (now known as a dealing representative), pursuant to section 24.1(e) of By-law No. 1.

5. Staff and the Respondent however disagree on the quantum of financial penalties, including fines and costs, to be imposed on the Respondent pursuant to ss. 24.1.1(b) and 24.2 of MFDA By-law No. 1. Staff seeks an order imposing fine and costs on the Respondent. The Respondent opposes the imposition of any fine and costs to be requested by Staff.

6. Staff and the Respondent therefore request that the Hearing Panel determine the appropriate of quantum of fines and costs to be ordered against the Respondent, if any.

IV. AGREED FACTS

7. Staff and the Respondent agree that submissions made with respect to the appropriate penalty should be based only on the agreed facts in Part IV, and no other information or documents, subject to the content of this paragraph and paragraph 9 below.

8. In the event that the Hearing Panel advises one or both of Staff and the Respondent of any additional facts that it considers necessary in order to determine the issues before it, Staff and the Respondent agree that such additional facts may be provided to the Hearing Panel, either: (a) with the consent of both Staff and the Respondent if the additional facts are agreed upon; (b) if the

Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel; or (c) if the parties are both present at the hearing and are not in agreement about the additional facts requested by the Hearing Panel, the parties will be given a reasonable opportunity to lead evidence concerning the additional facts. In circumstances where a party leads evidence concerning additional facts requested by the Hearing Panel, the opposing party may cross-examine any witness tendered to lead such evidence and shall be given a reasonable opportunity to lead responding evidence if they wish to do so.

9. Nothing in this Part IV is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

(i) Registration History

10. From April 8, 2014 to October 22, 2018, the Respondent was registered in Ontario as a dealing representative with Investors Group Financial Services Inc., a Member of the MFDA (the "Member").

11. On October 22, 2018, the Member terminated the Respondent. The Respondent is no longer registered in the securities industry in any capacity.

12. At all material times, the Respondent conducted business from a branch of the Member located in Brampton, Ontario.

(ii) Contravention #1 – The Respondent misappropriated monies from clients

13. In or about May 2014, clients VN and HT, spouses, became clients of the Member. At all material times, the Respondent serviced their mutual fund accounts.

14. In or about February 2018, the Respondent recommended to clients VN and HT that they contribute to, and purchase mutual fund investments in, their spousal registered retirement savings plan ("RRSP") and client VN's tax free savings accounts ("TFSA").

15. Further to the Respondent's instructions, between February 14, 2018 and February 25, 2018, client VN sent a total of approximately $13,412 by six INTERAC electronic transfers to the Respondent's email address for investment in the clients' accounts at the Member, as follows:

Date of Electronic Transfer	Amount	Comments
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February 25, 2018	$ 706	TFSA
	Total: $13,412	

16. As described in the chart above, client VN provided comments at the time of sending the electronic transfers that informed the Respondent that the electronic transfers dated February 14, 15, and 16, 2018 totaling $8,000 were intended to be spousal RRSP contributions, and the February 21, 24 and 25, 2018 electronic transfers totaling $5,412 were for investment in client VN's TFSA.

17. The Respondent deposited the entirety of the monies sent to him by clients VN and HT into his personal bank account.

18. None of the monies that client VN and HT provided to the Respondent as described in paragraphs 16 and 17 above were used to purchase any investments in the clients' investment accounts at the Member.

19. Commencing February 27, 2018, client VN repeatedly inquired about the status of the $13,412 that he and client HT provided for investment in their investment accounts at the Member. Clients VN and HT contacted the Respondent as they had not received tax receipts, and had not seen records in their account statements indicating that the monies that they sent to the Respondent in February 2018 had been invested in their investment accounts at the Member.

20. In response to client VN's inquiries, the Respondent falsely informed client VN that the $13,412 had been invested, and that the reason that they had not received tax receipts or that the investments did not appear on the clients' account statements were the result of the Member's slow or malfunctioning "online systems".

21. On October 19, 2018, client VN complained to the Member that, among other things, the Respondent had misappropriated $13,412 intended for his mutual fund accounts, and had further borrowed $500 from him.

22. On or about October 19, 2018, the Respondent sent $18,000 to client VN, following which client VN withdrew his complaint.

(iii) Contravention #2 – The Respondent borrowed monies from a client

23. At all material times, the Member's policies and procedures prohibited Approved Persons from borrowing from clients.

24. In or about February 2018, the Respondent solicited and obtained a $500 personal loan from client VN (the "$500 loan").

25. On or about October 11, 2018, further to requests made by client VN to the Respondent, the Respondent sent $550 to client VN as reimbursement of the $500 loan principal plus $50 in interest.

26. The solicitation of a loan from client VN constituted personal financial dealings that gave rise to a conflict or potential conflict of interest.

27. At no time did the Respondent disclose to the Member that he had borrowed monies from client VN, nor did he obtain approval to do so.

(iv) Contravention #3 – The Respondent failed to cooperate with an investigation by the MFDA

28. On December 4, 2019, the Respondent attended an interview with MFDA Staff pursuant to section 22.1 of MFDA By-law No. 1 with respect to, among other matters, his dealings with clients VN and HT (the "Interview").

29. During the Interview, the Respondent undertook to provide MFDA Staff with documents requested by MFDA Staff, including, the following (the "Undertaking Documents"):

a) copies of all communications with client VN regarding personal loans, including the initial communication where the Respondent solicited the client for the Loan; and

b) copies of all banking records for any bank accounts held or controlled by the Respondent, including any line of credit accounts or chequing or savings accounts, for the period of February 14 to November 3, 2018.

30. On December 5, 2019, MFDA Staff sent a letter to the Respondent requesting that he provide the Undertaking Documents no later than December 20, 2019.

31. The Respondent did not provide the Undertaking Documents by December 20, 2019, or at any time thereafter.

32. On January 7 and 9, 2020, MFDA Staff sent emails to the Respondent, again requesting that he provide the Undertaking Documents. On January 9, 2020, MFDA Staff also left a voice message for the Respondent requesting the Undertaking Documents. The Respondent did not respond to those emails or MFDA Staff's voice message.

33. On January 14, 2020, MFDA Staff sent a letter to the Respondent reminding him of his obligations as a former Approved Person of the MFDA to cooperate with Staff during the course of an investigation, and again requested that he provide the Undertaking Documents. The Respondent was informed that his failure to cooperate with MFDA Staff's requests could result in disciplinary proceedings being commenced against him.

34. On January 22, 2020, the Respondent sent an email to MFDA Staff stating, among other things: "…I will be back on Jan 29 and will contact you shortly". The Respondent never contacted MFDA Staff further to his January 22, 2020 email.

35. On January 30, 2020, Staff sent an email to the Respondent asking, among other things, that he contact Staff to discuss providing the Undertaking Documents.

36. To date, the Respondent has not provided the Undertaking Documents to MFDA Staff. As a result, MFDA Staff has been unable to determine the full nature and extent of the Respondent's dealings with clients VN and HT, including whether he obtained any further monies from clients VN and HT or any other clients of the Member.

(v) Misconduct Admitted

37. By engaging in the conduct described above, the Respondent admits that:

a) between February 14, 2018 and October 19, 2018, he misappropriated, or failed to account for, monies from two clients, thereby failing to deal fairly, honestly and in good faith with the clients, failing to observe high standards of ethics and conduct in the transaction of business, and engaging in business conduct or practice unbecoming or detrimental to the public interest, contrary to MFDA Rule 2.1.1;

b) between no later than February 2018 and October 22, 2018, he engaged in personal financial dealings with a client by borrowing monies from a client, thereby giving

rise to a conflict or potential conflict of interest which the Respondent failed to disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 1.1.2, 2.5.1, and 2.1.1; and

c) commencing December 20, 2019, he failed to cooperate with an investigation by MFDA Staff into his conduct, contrary to section 22.1 of MFDA By-law No. 1.

(vi) Additional Factors

38. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

39. By admitting the above facts and contraventions the Respondent has expressed remorse for his actions and saved the MFDA significant time and resources associated with conducting a fully contested hearing on the merits.

(vii) Execution of Agreed Statement of Facts

40. This Agreed Statement of Facts may be signed in one or more counterparts, which together, shall constitute a binding agreement.

41. A facsimile copy of any signature shall be effective as an original signature.

DATED this 4th day of April, 2021.

"Viet Ton-That"
Viet Ton-That

"Charles Toth"
Staff of the MFDA
Per: Charles Toth
Vice-President, Enforcement