



Now New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA

**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: Nhat Nick Trieu

Heard: August 19, 2022 by electronic hearing in Toronto, Ontario

Decision: August 19, 2022

Reasons for Decision: January 20, 2023

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth
Michael-Murray Coulter
Robert C. White

Chair
Industry Representative
Industry Representative

Appearances:

Brendan Forbes)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
Molly McCarthy)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
Nhat Nick Trieu)	Respondent
)	
)	

BACKGROUND

1. On March 14, 2022, the Mutual Fund Dealers Association (the “MFDA”) issued a Notice of Hearing in respect of this proceeding, commenced against Nhat Nick Trieu (the “Respondent”). As appears from the Affidavit of Service, the Notice of Hearing was served on the Respondent personally on the 23rd day of March, 2022. Thereafter, on the 28th day of April, 2022, both Staff and the Respondent attended the first appearance in this matter. On that date, the Chair of the Hearing Panel issued an Order which stated that the Hearing in this matter, on its merits, was to proceed on August 19, 2022.

2. The Respondent sent a Reply to the Notice of Hearing to Staff on May 18, 2022, which was subsequently filed with the MFDA Corporate Secretary on May 19, 2022. The Reply is marked as Exhibit 3 at the Hearing. Staff personally served the Respondent with a letter informing him of the time and date of the Hearing on the merits, as well as his right to participate in the hearing process, hence the Respondent’s personal attendance at the Hearing.

THE CONTRAVENTIONS

3. In the Notice of Hearing, it is alleged that:

Allegation #1: Commencing in March 2020, the Respondent failed to cooperate with an investigation into his conduct by Staff of the MFDA, contrary to s. 22.1 of MFDA By-law No. 1.

THE FACTS

4. The relevant facts are those set out in the Amended Notice of Hearing, at paragraph 5 to 22. The Notice of Hearing was amended on the 19th day of August, 2022 by Order of the Hearing Panel. The minor amendment was requested by Staff and consented to by the Respondent at the Hearing. The Amended Notice of Hearing is attached as Schedule “A” to these Reasons.

5. At the Hearing, the Respondent admitted that he had knowingly failed to answer Staff’s correspondence requesting information.

6. In addition to the admissions of the Respondent, the Hearing Panel had the benefit of the evidence set out in the Affidavit of Rob Lamshead, sworn August 11, 2022 with attached exhibits (the “Lamshead Affidavit”). The Lamshead Affidavit gave substantial evidence that confirmed the facts set out in the Amended Notice of Hearing attached as Schedule “A”.

7. The evidence established that, commencing in March 2020, the Respondent had failed to cooperate with an investigation into his conduct by Staff of the MFDA, contrary to s. 22.1 of MFDA By-law No. 1.

8. The evidence also established that on November 14, 2019, the Member sent a letter to the Respondent informing him that Staff had discovered account forms containing identical images of electronic signatures. The letter stated that the Member had opened an investigation into the Respondent's conduct and had attempted to contact the Respondent on several occasions, but received no response from the Respondent. On November 15, 2019, the Respondent emailed the Member advising that he was resigning from the Member.

9. In March 2020, Staff sent a letter to the Respondent by registered and regular mail requesting a signed or written statement from him in respect of the account forms and requesting that he provide comments and/or explanations for any of the identified issues. Staff further attempted to contact the Respondent by phone and left a number of voice mail messages. The Respondent failed to reply. The Respondent failed to provide any relevant information and failed to attend an interview requested by Staff.

10. The investigation which Staff commenced did not lead to any alleged infractions by the Respondent other than the present allegation of failing to cooperate with an investigation.

DISCUSSION

11. Between July 2015 and November 2019, the Respondent was registered in the securities industry.

12. Between February 2018 and November 2019 in Ontario, and between February 2018 and December 2018 in British Columbia, the Respondent was registered as a dealing representative with Team Max Investment Corporation (the "Member"), a member of the MFDA. At all material times, the Respondent carried on business in the Markham, Ontario area. On November 15, 2019, the Respondent resigned from the Member, and at the time of the Hearing, was not registered in the securities industry in any capacity.

13. The facts disclosed that as a dealing representative registered in Ontario and British Columbia and an approved person of the Member, the Respondent was bound by and agreed to observe and comply with the MFDA Rules.

14. Pursuant to s. 24.1.4 of MFDA By-law No. 1, an Approved Person remains subject to the jurisdiction of the MFDA even after the person ceases to be an Approved Person. In *Taub v. Investment Dealers Association of Canada*, the Ontario Court of Appeal held that there is no statutory impediment preventing self-regulatory organizations, like the MFDA, from continuing to exercise jurisdiction over former Approved Persons.

Section 24.1.4 of MFDA By-law No. 1

Taub v. Investment Dealers Association of Canada, 2009 ONCA 628

15. In the present case, the Respondent was an Approved Person of the Member until November 15, 2019. The Respondent was served with the Notice of Hearing in this matter on the 23rd of March, 2022. Accordingly, this proceeding was commenced less than five years after the Respondent ceased to be an Approved Person and the limitation period set out in s. 24.1.4 of MFDA By-law No. 1 was not applicable.

16. The Panel was aware that the standard of proof in this case, as in all MFDA and other regulatory proceedings in the securities industry, was the civil standard of a balance of probabilities. The Supreme Court of Canada stated in *F.H. v. McDougall* that “there is only one civil standard of proof at common law and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.” Evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test but there is no objective standard to measure sufficiency.

Desgroseilliers (Re), [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201790, Reasons for Decision dated August 21, 2018 at para. 15

17. The Panel was also aware that Pursuant to section 21 of MFDA By-law No. 1, the MFDA is empowered to conduct examinations of and investigations into the conduct, business, or affairs of any of its Members or Approved Persons within its jurisdiction as it considers necessary or desirable in connection with any matter relating to compliance with MFDA By-laws, Rules or Policies; any applicable securities legislation; or the by-laws, rules, regulations and policies of any self-regulatory organization.

Sections 21 and 22 of MFDA By-law No. 1

18. In carrying out its s. 21 duty, the MFDA is empowered by s. 22.1 of MFDA By-law No. 1 to request and oblige a Member, Approved Person or any other person under its jurisdiction to:

- a) submit a report in writing with regard to any matter involved in any investigation;
- b) produce for investigation and provide copies of the books, records and accounts of such person relevant to the matters being investigated;
- c) attend and give information respecting such matters; and
- d) 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 MFDA.

19. Correspondingly, Members, Approved Persons or other persons subject to the jurisdiction of the MFDA are obliged to comply with requests for information made pursuant to s. 22.1 of MFDA By-law No. 1, to make the information known to, or in the possession of, that person available to MFDA Staff to facilitate the investigation of matters in accordance with the requirements of s. 21 of MFDA By-law No. 1.

20. An Approved Person's obligation to cooperate with an MFDA investigation is consistent with the duties owed by all members of self-governing professions. In *Artinian v. College of Physicians and Surgeons of Ontario*, the Ontario Divisional Court stated that "fundamentally, every professional has an obligation to cooperate with his self-governing body."

Artinian v. College of Physicians and Surgeons of Ontario (1990), 73 O.R. (2d) 704 (Div. Ct.) at para. 9

21. The Panel was further aware that the requirement to cooperate with an MFDA investigation is paramount, Staff further submitted that the requirement to cooperate with an MFDA investigation were paramount and existed without exception. As stated in *Vitch (Re)*:

"There can be no exception to [the obligation to cooperate with a self-governing body]. The fulfillment of that obligation is particularly important to the MFDA because it has no statutory power to search and seize or to compel the production of documents. Without the cooperation of Members and Approved Persons, the MFDA's ability to investigate and discipline its Members and Approved Persons is gravely fettered..."

Vitch (Re), [2011] Hearing Panel of the Central Regional Council, MFDA File No. 201103, Reasons for Decision dated September 22, 2011 at para. 55

22. In particular, prior MFDA Hearing Panels have determined that even where an individual partially co-operates with Staff's investigation, the failure of an Approved Person to provide full

co-operation is sufficient to support a finding that the Approved Person has contravened s. 22 of MFDA By-law No 1.

Vitch, supra at paras. 54-56.

Dean (Re), [2020] Hearing Panel of the Central Regional Council, MFDA
Hearing No. 2018104, Reasons for Decision dated January 29, 2020 at para. 94.

23. In the present case, the evidence established that the Respondent had failed to comply with reasonable requests to provide information and documents to Staff during the course of Staff's investigation. It was clear that in doing so, the Respondent had contravened s. 22.1 of MFDA By-law No. 1.

PENALTY

24. In considering the penalty in this matter, the Panel reviewed the evidence, the submissions of Staff and the Respondent, and the substantial case law to which it was referred. The Panel was also aware that if, in the opinion of a Hearing Panel, an Approved Person has failed to comply with the provisions of any by-law, rule or policy of the MFDA, the Hearing Panel has the power to impose one or more penalties set out in s. 24.1.1(a) to (f) of MFDA By-law No. 1. In addition, s. 24.2 of MFDA By-law No. 1 grants a Hearing Panel the discretion to require an Approved Person to pay full or part of the costs of proceedings before the Hearing Panel, and any investigation relating to that proceeding. In this particular case, and marked as Exhibit 5, was Staff's Bill of Costs for a total amount of \$12,187.50. This amount was not disputed by the Respondent.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557 at
paras. 59, 60

25. In exercising its discretion to impose a penalty, MFDA Hearing Panels have held that the following factors should be taken into consideration:

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

26. Other factors that Hearing Panels have also previously considered when determining whether a sanction is appropriate include:

- a) The seriousness of the allegations proved against the Respondent;
- b) The Respondent's past conduct, including prior sanctions;
- c) The Respondent's experience and level of activity in the capital markets;
- d) Whether the Respondent recognizes the seriousness of the improper activity;
- e) The harm suffered by investors as a result of the Respondent's activities;
- f) The benefits received by the Respondent as a result of the improper activity;
- g) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- i) 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;
- j) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- k) Previous decisions made in similar circumstances.

Tonnies (Re), *supra* at para. 48

Breckenridge (Re), *supra* at para. 77

27. The Hearing Panel also referred to the MFDA's Sanction Guidelines. The Guidelines are not mandatory or binding on the Hearing Panel, but provide a summary of the factors upon which discretion can be exercised consistently and fairly. Many of the same factors that are listed above, which have been considered in previous decisions of MFDA Hearing Panels are also reflected and described in the Guidelines.

Mutual Fund Dealers Association of Canada Sanction Guidelines

28. The Panel accepted the submissions of Staff that the Respondent has engaged in serious misconduct. The failure to cooperate with a self-governing body constitutes a fundamental breach of an Approved Person's regulatory obligations.

29. The Respondent has deprived Staff of the opportunity to further investigate his conduct to determine the full nature and extent of any contraventions of his regulatory obligations. His actions thereby hindered the MFDA's ability to regulate the mutual fund industry. Accordingly, a permanent prohibition and a significant fine was warranted.

30. The Panel further accepted Staff's submissions that the financial penalties imposed upon Respondents who fail to cooperate with an investigation should be substantial, in order to deter this conduct and to try to ensure that an Approved Person obtains no advantage (i.e. a less serious financial penalty) than the person likely would have received if the full extent of the conduct under investigation had come to light.

31. The Respondent attended the Hearing. It was clear to the Panel that at the time of failing to cooperate with Staff's investigation, the Respondent did not appreciate the seriousness of that failure to cooperate. It was also obvious that by the time of the Hearing itself, the seriousness of that conduct (i.e. the failure to communicate with Staff) had come home to him. The Panel felt that at the hearing, the Respondent was contrite and demonstrated remorse for his failure to cooperate.

Although the Respondent has no past disciplinary history with the MFDA, it was submitted that this factor should be given little weight, given the Respondent's present failure to cooperate.

32. The Panel concluded that the Respondent failed to uphold his obligations to the mutual fund industry and the MFDA when he failed to respond to requests from Staff for information during Staff's investigation. Such conduct can undermine the confidence that investors have in the regulatory system and defy the authority of the regulator.

33. The Panel was further satisfied that the penalty that it imposed for the Respondent satisfied both the requirement for, general deterrence and specific deterrence and considered the primary goal of securities regulation, which is the protection of the investor. In addition, the sanctions should also be preventative, protective and prospective in nature.

RESULT

34. For all the above reasons, the Hearing Panel concluded that the contravention for which the Respondent had been found guilty required the imposition of the following penalty:

- a) The Respondent is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) The Respondent shall pay a fine in the amount of \$40,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- c) The Respondent shall pay costs in the amount of \$7,500, pursuant to s. 24.2 of MFDA By-law No. 1;
- d) The payment by the Respondent of the fine and costs shall be made to and received by the MFDA in certified funds as follows:
 - i. \$1,666.82 (fine) on or before September 1, 2022;
 - ii. Monthly payments of \$1,666.66 (fine) to commence on or before October 1, 2022 and to be paid for twenty-three consecutive months, on or before the first day of every month;
 - iii. Monthly payments of \$312.50 (costs) to commence on or before September 1, 2022 and to be paid for twenty-four consecutive months, on or before the first day of every month;
 - iv. If the Respondent fails to make any of the payments described above in paragraphs 34d)i. to 34d)iii. when the payments become due, then the unpaid balance of the fine and costs owed by the Respondent shall immediately become due and payable to the MFDA, unless an MFDA Hearing Panel provides otherwise;
- e) Leave is granted to Staff to amend the Notice of Hearing in this proceeding in the manner consented to by the Respondent; and
- f) If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

DATED this 20th day of January, 2023.

“Frederick Chenoweth”

Frederick W. Chenoweth
Chair

“Michael-Murray Coulter”

Michael-Murray Coulter
Industry Representative

“Robert White”

Robert C. White
Industry Representative

Schedule “A”

Amended Notice of Hearing

File No. 202208



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: Nhat Nick Trieu

AMENDED¹ NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council (the “Hearing Panel”) of the Mutual Fund Dealers Association of Canada (the “MFDA”) on April 28, 2022 at 11:00 a.m. (Eastern) or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Nhat Nick Trieu (the “Respondent”). Members of the public who would like to listen to the teleconference should contact hearings@mfd.ca to obtain particulars.

DATED this 14th day of March, 2022. Amended on the 19th day of August, 2022.

“Michelle Pong”

Michelle Pong
Director, Regional Councils

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Telephone: 416-945-5134
Email: corporatesecretary@mfd.ca

¹ Notice of Hearing amended by Order of the Hearing Panel dated August 19, 2022.

NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Commencing in March 2020, the Respondent failed to cooperate with an investigation into his conduct by Staff of the MFDA, contrary to section 22.1 of MFDA By-law No. 1.

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by the MFDA at the hearing:

Registration History

1. Between July 2015 and November 2019, the Respondent was registered in the securities industry.
2. Between February 2018 and November 2019 in Ontario, and between February 2018 and December 2018 in British Columbia, the Respondent was registered as a dealing representative with TeamMax Investment Corp. (the “Member”), a Member of the MFDA.
3. On November 15, 2019, the Respondent resigned from the Member and he is not currently registered in the securities industry in any capacity.
4. At all material times, the Respondent carried on business in the Markham, Ontario area.

Allegation #1 - Failure to Cooperate

5. Between September 30, 2019 and November 14, 2019, as part of a compliance review, Staff of the MFDA (“Staff”) conducted a review of a sample of the client files maintained by the Respondent and discovered that multiple account forms maintained in files for various clients appeared to contain identical images of electronic signatures placed on forms. The presence of multiple account forms in client files that appeared to contain identical images of electronic signatures raised concerns that the Respondent could be directly applying the electronic image of each client’s signature to complete account forms without the knowledge or authorization of the client.

6. Upon discovering the account forms containing the electronic signatures, Staff conducted a full review of the client files maintained by the Respondent, and discovered a total of 103 account forms relating to accounts of 15 clients (the "Account Forms") which contained identical images of electronic signatures. Staff then commenced an investigation into whether the Respondent was directly completing account forms for his clients by re-using images of the electronic signatures of his clients on the Account Forms.
7. On November 14, 2019, the Member sent a letter to the Respondent informing him that Staff had discovered the Account Forms. The letter stated that the Member had opened an investigation into the Respondent's conduct, and had attempted to contact the Respondent on several occasions but received no response from the Respondent to its requests.
8. On November 15, 2019, the Respondent emailed the Member advising that he was resigning from the Member.
9. The Respondent did not provide any response to the Member's previous attempts to contact him. Furthermore, he did not provide an explanation as to why the duplicated images of clients' signatures appeared on multiple account forms of clients whose accounts he serviced.
10. On March 6, 2020, Staff sent a letter to the Respondent by registered and regular mail requesting a signed or written statement from him in respect of the Account Forms. The March 6, 2020 letter also attached a chart listing the Account Forms and the issue(s) identified with each of the Account Forms listed which requested that the Respondent acknowledge the issue(s) identified with each Account Form and provide comments if the Respondent had an explanation for any of the issue(s) identified.
11. Between April 2, 2020 and April 6, 2020, Staff attempted to contact the Respondent on a number of occasions by telephone and left a voicemail message for the Respondent on April 2, 2020.
12. The Respondent did not respond to any of Staff's attempts to contact him by telephone.
13. On November 9, 2020, Staff sent a letter to the Respondent reiterating its request for delivery of the information it sought in its March 6, 2020 letter. Staff informed the Respondent that, should the Respondent fail to respond to Staff's request, Staff may seek authorization to

commence enforcement proceedings against the Respondent for failing to cooperate with its investigation.

14. On November 19, 2020, the Respondent emailed Staff, but did not provide any of the information requested by Staff.

15. On November 20, 2020, Staff replied to the Respondent's email and requested that he deliver by December 4, 2020, the information that Staff had previously requested in its March 6, 2020 letter.

16. On December 4, 2020, the Respondent emailed Staff requesting an extension of the deadline to provide the requested information.

17. On December 7, 2020, Staff granted the Respondent an extension of time to December 10, 2020 to provide responses to the requests for information that had previously been sent to the Respondent in Staff's March 6, 2020 letter.

18. The Respondent did not provide the requested information by December 10, 2020.

19. On December 14, 2020, Staff emailed the Respondent to inform him that he had failed to provide the information requested by Staff by the December 10, 2020 deadline, and requested that he contact Staff immediately.

20. On December 15, 2020, the Respondent was personally served with a letter reiterating Staff's request for the information that Staff had been seeking since March 2020, and informing him that Staff had scheduled an interview with him that would take place on February 16, 2021~~February 2, 2021~~ relating to the matters under investigation. The Respondent was required to contact Staff by February 2, 2021 to confirm his attendance at the interview. Staff further advised the Respondent that, should he fail to provide the information requested in Staff's correspondence or attend the interview, Staff would seek authorization to commence enforcement proceedings against the Respondent for failing to cooperate with its investigation.

21. The Respondent did not respond to Staff's December 15, 2020 letter, did not contact Staff by February 2, 2021, and failed to attend the interview scheduled to take place on February 16, 2021~~February 2, 2021~~.

22. Due to the Respondent's failure to cooperate with Staff's investigation, Staff has not been able to determine the full nature and extent of the Respondent's conduct under investigation.

23. By virtue of the foregoing, the Respondent has failed to cooperate with Staff's investigation into his conduct, contrary to section 22.1 of MFDA By-law No. 1.

NOTICE is further given that the Respondent shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

NOTICE is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, the Respondent:

- has failed to carry out any agreement with the MFDA;
- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;
- has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;
- has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- is otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose any one or more of the following penalties:

- a) a reprimand;
- b) a fine not exceeding the greater of:
 - (i) \$5,000,000.00 per offence; and
 - (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;
- c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- d) revocation of the authority of such person to conduct securities related business;

- e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;
- f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel;

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondent pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondent must **serve a Reply** on Enforcement Counsel and **file a Reply** with the Office of the Corporate Secretary within twenty (20) days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: Brendan Forbes
E-mail: bforbes@mfd.ca

A **Reply** shall be **filed** by:

- a) providing four copies of the **Reply** to the Office of the Corporate Secretary by personal delivery, mail or courier to:

The Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: Office of the Corporate Secretary; or

- b) transmitting one electronic copy of the **Reply** to the Office of the Corporate Secretary by e-mail at corporatesecretary@mfd.ca.

A **Reply** may either:

- (i) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondent, and the conclusions drawn by the Respondent based on the alleged facts) any or all of the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing; or

- (ii) admit the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the MFDA in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondent fails:

- a) to **serve** and **file** a **Reply**; or
- b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven and may impose any of the penalties described in the By-laws.

END.

DM 899958