

Reasons for Decision (Misconduct)

File No. 201553



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

**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Mervin Evans Visneskie

Heard: October 30, 2017 in Toronto, Ontario
Decision (Misconduct): October 30, 2017
Reasons for Decision (Misconduct): December 7, 2017

**REASONS FOR DECISION
(Misconduct)**

Hearing Panel of the Central Regional Council:

W. A. Derry Millar	Chair
Guenther W. K. Kleberg	Industry Representative
Joseph Yassi	Industry Representative

Appearances:

Lyla Simon)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Mervin Evans Visneskie)	Respondent, not in attendance nor represented
)	by counsel
)	

INTRODUCTION

1. By Notice of Hearing dated January 18, 2016, Staff of the Mutual Fund Dealers Association of Canada (“MFDA”) alleged that Mervin Evans Visneskie (“Respondent”) violated the By-laws, Rules or Policies of the MFDA set out below:

Allegation #1: Commencing in 2002¹, the Respondent engaged in personal financial dealings with eight (8) clients by requesting and accepting a total of approximately \$764,300 from the clients, which he failed to repay in full or otherwise account for, thereby placing his own interests ahead of the clients’ interests and creating a conflict or potential conflict of interest which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and Rule 2.1.1.

Allegation #2: Between 2002 and 2013, the Respondent misled the Members with whom he was registered with respect to his personal financial dealings with eight (8) clients, thereby interfering with the Member’s ability to conduct a reasonable supervisory investigation of the Respondent’s activities and failing to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1.

2. The Respondent appeared by counsel at the First Appearance before the Chair of the Hearing Panel on May 9, 2016, at which time the Notice of Hearing dated January 18, 2016 was marked Exhibit 1, the Affidavit of Service of Terri Spence dated February 12, 2016 deposing to service of the Notice of Hearing on the Respondent was marked Exhibit 2, and the Respondent’s Reply to Notice of Hearing dated March 31, 2016 was marked Exhibit 3 (“Reply”). The Respondent appeared by counsel at further appearances before the Chair of the Hearing Panel held on November 21, 2016, March 6, 2017, July 11, 2017, and October 24, 2017.

¹ The Respondent did not become subject to the jurisdiction of the MFDA until May 15, 2002 when his then-Member, Cartier Partners Financial Services Inc. (“Cartier”) became a Member of the MFDA. As described in this Notice of Hearing, some of the Respondent’s personal financial dealings with clients began prior to May 15, 2002 but it continued thereafter when the MFDA had jurisdiction over his conduct.

3. The Hearing on the Merits of this matter was initially scheduled for five days from March 6 to 10, 2017 arising from the First Appearance on May 9, 2016. The Hearing on the Merits was adjourned at the request of the Respondent on March 6, 2017 to July 17 to 21, 2017. On July 11, 2017, the Hearing on the Merits was again adjourned at the request of the Respondent to October 30 to November 3, 2017. On October 24, 2017, at a Hearing before the Chair of the Hearing Panel, the Staff and the Respondent, represented by counsel, confirmed that the Hearing on the Merits would proceed as scheduled on October 30, 2017.

4. By letter dated October 27, 2017, marked Exhibit 4, from counsel for the Respondent to Staff, counsel for the Respondent advised Staff that the Respondent would not be attending the Hearing on the Merits on October 30, 2017.

5. On October 30, 2017, neither the Respondent nor his counsel attended the Hearing on the Merits.

6. Rule 7.3, Failure to Attend Hearing, provides:

(1) Where a Respondent fails to attend the hearing on the date and at the time and location specified in the Notice of Hearing, the Hearing Panel may:

- (a) proceed with the hearing without further notice to and in the absence of the Respondent; and
- (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.

7. In accordance with Rule 7.3, the Hearing on the Merits proceeded in the Respondent's absence.

8. Staff filed as Exhibit 5 the Affidavit of Rob Lamshead sworn June 27, 2017 and as Exhibit 6 the Affidavit of Rob Lamshead sworn October 27, 2017. Mr. Lamshead is an Investigator in the Enforcement Department of the MFDA who conducted the investigation into the Respondent's conduct along with his colleague Karen Mills.

FACTS

9. The Panel accepts the facts set out in the Notice of Hearing. These facts are supported by the Affidavits of Rob Lamshead marked Exhibits 5 and 6.

10. The Notice of Hearing set out the following:²

REGISTRATION HISTORY

1. From March 1995 to November 20, 2013, the Respondent was registered as a mutual fund salesperson (now known as a dealing representative) with HollisWealth Advisory Services Inc. ("HollisWealth") and predecessor Member firms.³
2. At all material times, the Respondent carried on business from a sub-branch located in Kinburn, Ontario.
3. Effective November 20, 2013, HollisWealth terminated the Respondent. The Respondent is not currently registered in the securities industry in any capacity.

ALLEGATION # 1 – PERSONAL FINANCIAL DEALINGS WITH CLIENTS

4. At all material times, each of the Member's policies and procedures prohibited its Approved Persons, including the Respondent, from borrowing from clients.

Clients WR and DR

5. From the mid-1980s to November 2013, the Respondent serviced the mutual fund accounts of clients WR and DR.

² The Panel recognizes that paragraphs 41 and 55 are not facts and are not reproduced in this paragraph.

³ Beginning March 23, 1995, the Respondent was registered with Balanced Planning Investment Corporation ("Balanced"). In October 2001, Balanced was acquired by Cartier, which (as described above) became a Member of the MFDA on May 15, 2002. On June 1, 2004, Cartier was amalgamated with Dundee Private Investors Inc. ("Dundee"), a Member of the MFDA. On November 1, 2013, Dundee changed its name to HollisWealth.

6. Client WR died on January 1, 2016 at age 85. Client DR is 81 years old.
7. In or about 2002, the Respondent requested a loan in the approximate amount of \$89,800 from clients WR and DR.
8. The Respondent represented to clients WR and DR that he would pay them 10% interest on the loan, and that this would be a better return than they were receiving on their mutual fund investments.
9. Clients WR and DR agreed to the Respondent's request and loaned the Respondent approximately \$89,800 (the "WR/DR-Loan").
10. The Respondent processed redemptions in the mutual fund accounts of client WD and DR in order to fund the loan to him.
11. The terms of the WR/DR-Loan were recorded in an undated promissory note drafted by the Respondent ("WR/DR-Promissory Note"). Among other things, the WR/DR-Promissory Note stated:
 - a) the Respondent agreed to repay clients WR and DR the sum of \$89,800;
 - b) payments of \$800 per month from the Respondent to clients WR and DR were to start July 30, 2002 and finish June 30, 2003;
 - c) the Respondent agreed to repay clients WR and DR the balance of the loan by July 11, 2003;
 - d) the amount of \$89,800 was "completely guaranteed" by a life insurance policy held by the Respondent "when alive and or deceased".
12. In 2002 and 2003, the Respondent made \$800 per month payments to clients WR and DR totaling approximately \$9,600, after which he made no further payments to them. The Respondent has not repaid approximately \$80,000 he still owes to clients WR and DR.

Clients RB and DB

13. From the mid-1970s to 2011, the Respondent serviced the mutual fund accounts of clients R&D B.
14. Clients RB and DB are 77 and 70 years old, respectively.
15. From about 2001 to 2005, the Respondent requested seven loans in the approximate total amount of \$491,900 from clients RB and DB, as follows:

Date	Amount
June 6, 2001	\$180,000
September 7, 2001	\$60,000
February 13, 2002	\$40,000
September 3, 2002	\$70,000
March 17, 2003	\$100,000
February 24, 2004	\$40,000
August 2005	\$1,900
Total	\$491,900

16. Clients RB and DB agreed to each of the Respondent's requests and loaned the Respondent approximately \$491,900 (the "RB/DB-Loans").

17. The Respondent processed multiple redemptions in the mutual fund accounts of clients RB and DB in order to fund their loans to him.

18. The terms of the RB/DB-Loans were not committed to writing and the loans were not secured. The Respondent agreed verbally to pay clients RB and DB 10% interest on the amounts he borrowed from them.

19. From about 2001 to 2011, the Respondent repaid approximately \$285,116 in respect of interest to clients RB and DB, as follows:

Date	Amount
2001	\$12,500
2002	\$31,164
2003	\$42,492
2004	\$33,744
2005	\$29,912
2006	\$50,324
2007	\$39,241
2008	\$30,243
2009	\$15,496
Total	\$285,116

20. In January 2011, the Respondent gave clients RB and DB a cheque in the amount \$100,000; however, he placed a “stop payment” on the cheque such that clients RB and DB were not able to cash the cheque.

21. On or about November 29, 2011, the Respondent gave clients RB and DB a payment in the amount of \$25,000, after which he made no further payments to them.

22. The Respondent has not repaid the approximately \$466,900 principal amount he still owes to clients RB and DB in respect of the \$491,900 he borrowed from them. Additionally, the Respondent has not repaid the approximately \$262,490 interest on the principal borrowed that he still owes to clients RB and DB.⁴

Client RM

23. From 1996 to November 2013, the Respondent serviced the mutual fund accounts of client RM.

24. Client RM is 66 years old.

25. In or about 2005 to 2006, the Respondent requested a loan in the approximate amount of \$45,600 from client RM.

26. Client RM agreed to the Respondent’s request and loaned the Respondent approximately \$45,600 (the “RM-Loan”).

27. The terms of the RM-Loan were recorded in an undated promissory note drafted by the Respondent (“RM-Promissory Note”). Among other things, the RM-Promissory Note stated:

- a) the Respondent agreed to repay client RM the sum of \$45,600 on June 20, 2006;
- b) the Respondent agreed to pay interest to client RM at a rate of 14% per annum;
- c) the amount of \$45,600 was “completely guaranteed” by a life insurance policy held by the Respondent “when alive and or deceased”; and
- d) were client RM to die, the Respondent would pay the sum of \$45,600 to RM’s spouse.

⁴ The Panel notes the total amount for principal and interest set out in this paragraph of the Notice of Hearing is \$729,390, and the amount of the Judgment against the Respondent referred to in paragraph 32 of the Affidavit of Rob Lamshead dated June 27, 2017, Exhibit 5, is \$733,786. The Panel assumes this difference between the two amounts of \$4,396 is a result of the calculation of interest over a different period of time.

28. There is no evidence that the Respondent repaid the loan or paid interest to client RM.

Clients AS and DS

29. From in or about 2001 to April 2009, the Respondent serviced the mutual fund accounts of clients AS and DS.

30. Client DS died May 7, 2008 at age 91. Client AS died November 29, 2008 at the age 84.

31. In March 2001 and March 2002, the Respondent requested two loans in the approximate total amount of \$135,000 from clients AS and DS, as follows:

Date	Amount
March 15, 2001	\$110,000
March 15, 2002	\$25,000
Total	\$135,000

32. Clients AS and DS agreed to the Respondent's requests and loaned the Respondent approximately \$135,000 (the "AS/DS-Loans").

33. The terms of the AS/DS-Loans were not committed to writing and the loans were not secured. The Respondent agreed verbally to pay clients AS/DS-Loans a return on the amounts he borrowed from them. The precise interest rate of the AS/DS-Loans is not known.

34. From about 2001 to 2008, the Respondent repaid approximately \$187,169 to clients AS and DS or their estate, as follows:

Date	Amount
April 24, 2008	\$91,550
December 19, 2008	\$20,000
Various	\$63,837
Various	\$11,869
Total	\$187,169

Client JF

35. From the mid-1980s to November 2013, the Respondent serviced the mutual fund accounts of client JF.

36. Client JF is 73 years old.
37. On or about September 11, 2013, the Respondent came to the home of client JF, and requested that client JF pay him the sum of \$2,000 in respect of “fees” for financial services the Respondent had performed for client JF over the years. The Respondent required that the sum be paid to him in cash.
38. The Respondent accompanied client JF to his bank branch, and client JF withdrew \$2,000 from his chequing account and paid it to the Respondent. The Respondent did not provide client JF with an invoice or any other documentation evidencing the \$2,000 payment.
39. In or about November 2013, client JF learned that he should not have paid the Respondent any monies and requested that the Respondent repay him in full.
40. On December 23, 2013, the Respondent repaid client JF the sum of \$2,000.
41. Not Reproduced.

ALLEGATION # 2 – MISLEADING THE MEMBER

42. At no time did the Respondent disclose to the various Members with whom he was registered that he was engaging in personal financial dealings with clients of the Member.
43. On or about November 4, 2009, in response to a Member compliance pre-audit questionnaire, the Respondent misled Dundee by providing written confirmation to Dundee that he had not engaged in any personal financial dealings with clients.
44. On or about December 2, 2009, during a Member compliance audit of his sub-branch, the Respondent misled Dundee by providing verbal confirmation to Dundee that he had not engaged in any personal financial dealings with clients.
45. In or about August 2012, in response to a Member compliance pre-audit questionnaire, the Respondent misled Dundee by providing written confirmation to Dundee that he had not engaged in any personal financial dealings with clients.
46. On or about August 24, 2012, during a Member compliance audit of his sub-branch, the Respondent misled Dundee by providing verbal confirmation to Dundee that he had not engaged in any personal financial dealings with clients.
47. On or about October 29, 2013, client DR advised the Respondent’s Branch Manager that in 2002 (as set out in more detail at paragraphs 5 to 12 above), the

Respondent had borrowed approximately \$89,800 from them and they had not been repaid in full by the Respondent.

48. Prior to receiving a complaint from client DR, HollisWealth (and its predecessors) had not been aware of any personal financial dealings between the Respondent and his clients.

49. On or about November 4, 2013, the Member questioned the Respondent regarding the monies he had borrowed from clients W&D R or other clients.

50. The Respondent misled HollisWealth by:

- a) denying that he had borrowed \$89,800 from clients WR and DR and stating that the amount he had borrowed was 80,000;
- b) stating he would “take care of” the outstanding balance he owed to clients WR and DR;
- c) denying that he had any other loan arrangements with any other clients.

51. On or about November 12, 2013, the Member questioned the Respondent regarding the monies he had borrowed from clients WR and DR and other clients.

52. The Respondent misled the Member by:

- a) stating that he had repaid \$1,700 every two months (totaling \$56,000) to clients WR and DR since borrowing money from them in 2002;
- b) stating that he had spoken to client DR that day and would be resolving the balance he owed to clients WR and DR within six months;
- c) denying that he had borrowed \$491,900 from clients RB and DB and stating that the amount he had borrowed was \$125,000;
- d) stating that he had repaid clients RB and DB in full;
- e) denying that he had borrowed \$135,000 from clients AS and DS and stating that the amount he had borrowed was \$110,000; and
- f) denying that he had any other loan arrangements with any other clients.

53. After terminating the Respondent on November 20, 2013, HollisWealth sent letters to all of the Respondent’s clients requesting that the clients contact HollisWealth if the clients had made any personal loans involving the Respondent.

54. As detailed in paragraphs 13 to 22 above, clients RB and DB responded to HollisWealth confirming that the Respondent had borrowed monies from them. Client JF also responded to HollisWealth, as detailed in paragraphs 35 to 40 above.

55. Not Reproduced.

DECISION AND REASONS

11. The Panel accepted at the Hearing on the Merits that Staff had established the allegations of misconduct with respect to both Allegations No. 1 and 2 and made a finding of misconduct against the Respondent with respect to both Allegations. These are our reasons for our finding that the Allegations had been established and our findings of misconduct.

12. The By-laws, Rules and Policies of the MFDA support its mandate to regulate the Canadian mutual fund industry in order to protect the investor public and strengthen public confidence in the Canadian mutual fund industry.

MFDA Rules

13. MFDA Rule 2.1.1 sets out the standard of conduct to be met by Members and Approved Persons. It states:

2.1.1 Standard of Conduct. Each Member and each Approved Person of a Member shall:

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

14. MFDA Rule 2.1.4, Conflicts of Interest, states:

- (a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the

Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.

(b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d).

(c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.

(d) Each Member shall develop and maintain written policies and procedures to ensure compliance with Rules 2.1.4(a), (b) and (c).

Allegation No. 1 - Personal Financial Dealings

15. As stated in *Puri (Re)*⁵ at paragraph 33:

MFDA Hearing Panels have consistently held that where an approved person solicits and accepts money, and fails to pay it back or otherwise account for it, the approved person engages in conduct which is inconsistent with the standard of conduct set out in Rule 2.1.1.

16. In his Reply, the Respondent stated that he “does not deny that he engaged in personal financial dealings with the eight individuals described in the Notice of Hearing. However, Mr. Visneskie denies the specifics of the personal financial dealings as alleged.”⁶

17. The Respondent alleged in his Reply:

⁵ 2007 LNCMFDA 34, Decision of the Pacific Regional Council dated November 1, 2007. See also: *Parkinson (Re)*, 2005 LNCMFDA 1, Decision of the Central Regional Council dated April 29, 2005 at paras. 70-72 and *Brown-John (Re)*, 2005 LNCMFDA 6, Decision of the Pacific Regional Council dated June 27, 2005 at para. 12.

⁶ Reply at paragraph 4.

- a) that the Member firms with whom he was registered were aware of his personal financial dealings and that “he received either explicit or tacit approval of his branch supervisors and/or compliance prior to entering or continuing, as appropriate, into any personal financial dealings;”⁷ and
- b) that “to the extent the Member’s policies and procedures required disclosure and consent of its Approved Persons from borrowing from individuals, his branch supervisors and/or compliance were at all times fully aware of his personal financial dealings and provided either explicit or tacit approval to enter these transactions.”⁸

18. The evidence before us does not support the allegations referred to in the last sentence of the quote in paragraph 16 of these Reasons and in paragraph 17.

19. The Respondent in this case engaged in personal financial dealings with eight of his clients. He borrowed money from his clients and failed to repay the clients in full or otherwise account for the money he borrowed from them. The Respondent placed his interests before that of his clients. As a result, on the evidence before us, he created a conflict of interest or potential conflict of interest which he failed to disclose to the Member and which he did not ensure was addressed by either himself or the Member “by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d).”

20. The Respondent has acted in a manner completely contrary to the standards of conduct required of an Approved Person. The Respondent betrayed his clients by borrowing money from them and failing to repay them in full. He placed himself in a conflict of interest or a potential conflict of interest and put his interests ahead of the interests of his clients. The Respondent’s conduct breached Rules 2.1.1 and 2.1.4. We found at the Hearing on the Merits that the Respondent is guilty of misconduct with respect to Allegation No. 1.

⁷ Reply at paragraph 6.

⁸ Reply at paragraph 7.

Allegation No. 2 - Misleading the Member

21. On the evidence before us, the Respondent failed to disclose to, or seek approval of, the Member, for his personal financial dealings, and misled the Member with respect to his personal financial dealings with his clients. He failed to disclose his personal financial dealings with his clients on the annual questionnaires he submitted to the Member. He misled the Member during its investigation of his conduct by:

- a) denying that he had borrowed \$89,800 from clients WR and DR and stating that the amount he had borrowed was 80,000;
- b) stating he would “take care of” the outstanding balance he owed to clients WR and DR; and
- c) denying that he had any other loan arrangements with any other clients.

22. He further misled the Member by:

- a) stating that he had repaid \$1,700 every two months (totaling \$56,000) to clients WR and DR since borrowing money from them in 2002;
- b) stating that he had spoken to client DR that day and would be resolving the balance he owed to clients WR and DR within six months;
- c) denying that he had borrowed \$491,900 from clients RB and DB and stating that the amount he had borrowed was \$125,000;
- d) stating that he had repaid clients RB and DB in full;
- e) denying that he had borrowed \$135,000 from clients AS and DS and stating that the amount he had borrowed was \$110,000; and
- f) denying that he had any other loan arrangements with any other clients.

23. Where an Approved Person misleads a Member, the Approved Person is in breach of Rule 2.1.1.⁹

24. We agree with the submission of Staff as set out below:

The Respondent's misconduct in the present case violated the standard of conduct required of industry participants. The Respondent's conduct was, corresponding to the four-part 'list' in Rule 2.1.1,

- a) unfair, dishonest, and not in good faith;
- b) a marked departure from the standards of ethics and conduct expected in the transaction of business;
- c) business conduct and practice which was both unbecoming and detrimental to the public interest; and
- d) in explicit conflict with the experience and training consistent with the standards described in this Rule.

25. We found at the Hearing on the Merits that the Respondent misled the Member and breached the standards of conduct set out in Rule 2.1.1. Allegation No. 2 was established by Staff and accordingly, we found that the Respondent was guilty of misconduct.

CONCLUSION

26. As a result of our finding at the Hearing on the Merits that Allegations No. 1 and 2 had been established by Staff and our finding of misconduct with respect to both Allegations No. 1 and 2, we signed the Order provided by Staff, a copy of which is attached as Schedule "1".

⁹ See: *Lee (Re)*, Case No. 201542, Decision of the MFDA Pacific Regional Council dated July 21, 2016; *McIntosh (Re)*, 2013 LNCMFDA 58, Decision of the Prairie Regional Council dated September 24, 2013; and *McAuley (Re)*, 2011 LNCMFDA 9, Decision of the Central Regional Council dated April 11, 2011.

27. As set out in the Order dated October 30, 2017, a penalty hearing will be scheduled now that these Reasons for Decision have been issued.

DATED this 7th day of December, 2017.

“W. A. Derry Millar”

W. A. Derry Millar
Chair

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative

“Joseph Yassi”

Joseph Yassi
Industry Representative

DM 586848

Schedule “1”

Order

File No. 201553



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: Mervin Evans Visneskie

ORDER

(ARISING FROM HEARING ON THE MERITS ON OCTOBER 30, 2017)

WHEREAS on January 18, 2016, the Mutual Fund Dealers Association of Canada (“MFDA”) issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 in respect of a disciplinary proceeding commenced against Mervin Evans Visneskie (“Respondent”);

AND WHEREAS the Respondent filed a Reply on March 31, 2016;

AND WHEREAS appearances in this matter proceeded before a Hearing Panel of the Central Regional Council of the MFDA (“Hearing Panel”) on May 9, 2016, November 21, 2016, March 6, 2017, July 11, 2017, and October 24, 2017;

AND WHEREAS the Hearing on the Merits (“Hearing”) proceeded before the Hearing Panel in Toronto, Ontario on October 30, 2017;

AND WHEREAS the Respondent did not attend at the Hearing, either in person or represented by counsel;

AND WHEREAS at the Hearing, the Hearing Panel considered the evidence and submissions presented by counsel for MFDA Staff with respect to the alleged misconduct including:

- the affidavits and materials filed and marked as exhibits at the Hearing; and
- the oral submissions of Staff of the MFDA at the Hearing;

AND WHEREAS on the basis of the evidence and submissions presented during the Hearing on the Merits, the Hearing Panel found that the Respondent:

1. commencing in 2002, engaged in personal financial dealings with eight clients by requesting and accepting a total of approximately \$764,300 from the clients, which he failed to repay in full or otherwise account for, thereby placing his own interests ahead of the clients' interests and creating a conflict or potential conflict of interest which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and Rule 2.1.1; and
2. between 2002 and 2013, misled the Members with whom he was registered with respect to his personal financial dealings with eight clients, thereby interfering with the Member's ability to conduct a reasonable supervisory investigation of the Respondent's activities and failing to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1.

AND WHEREAS evidence filed during the Hearing on the Merits (which comprises part of the record) includes intimate financial and personal information of individuals;

AND WHEREAS the Hearing Panel will issue its Reasons for Decision regarding misconduct;

AND WHEREAS a penalty hearing will be scheduled to proceed once the Hearing Panel has issued its Reasons for Decision regarding misconduct;

IT IS HEREBY ORDERED THAT:

1. 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, 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 30th day of October, 2017.

“W. A. Derry Millar”

W. A. Derry Millar
Chair

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative

“Joseph A. Yassi”

Joseph A. Yassi
Industry Representative