



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: Stephen Scott Smockum

AGREED STATEMENT OF FACTS

I. INTRODUCTION

1. By Notice of Hearing dated September 20, 2021, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a disciplinary proceeding against Stephen Scott Smockum (the “Respondent”) pursuant to ss. 20 and 24 of MFDA By-law No. 1.

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

Allegation #1: Between August 2016 and July 2019, the Respondent borrowed monies from clients, thereby engaging in personal financial dealings with clients which gave rise to conflicts or potential conflicts of interest that he failed to disclose to the Member or otherwise ensure were addressed by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to the Member’s policies and procedures and MFDA Rules 2.1.4, 2.1.1, 2.5.1, and 1.1.2.

Allegation #2: Between in or about August 2016 and February 2019, the Respondent engaged in an outside activity without prior written approval from the Member, contrary to the Member’s policies and procedures and MFDA Rules 1.3, 2.1.1, 2.5.1, and 1.1.2.

Allegation #3: Between on or about April 18, 2017 and January 3, 2018, the Respondent recorded false notes in the Member's system regarding the reason for redemptions of mutual funds in the accounts of two clients, contrary to MFDA Rule 2.1.1.

Allegation #4: Between August 2016 and July 2019, the Respondent provided false or misleading statements to a Member on annual update checklists, and during the course of a Member's investigation into his conduct, contrary to MFDA Rule 2.1.1.

II. IN PUBLIC / IN CAMERA

3. 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

4. The Respondent has reviewed this Agreed Statement of Facts (the "ASF") 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.

5. Staff and the Respondent jointly request that the Hearing Panel determine, on the basis of this ASF, the appropriate penalty and costs to be imposed on the Respondent.

IV. AGREED FACTS

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

7. 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.

8. 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.

Registration History

9. Between April 2006 and September 2019, the Respondent was registered in the securities industry.

10. From July 2014 until February 2019, the Respondent was registered in Ontario as a dealing representative with Desjardins Financial Securities Investments Inc. (“Desjardins”), a Member of the MFDA. The Respondent was also registered as a branch manager with Desjardins from July 2014 until April 2016.

11. From February 2019 until September 2019, the Respondent was registered in Ontario as a dealing representative with GP Wealth Management Corporation (“GP Wealth”), a Member of the MFDA.

12. On September 24, 2019, GP Wealth terminated the Respondent upon its discovery of the conduct described below. The Respondent is not currently registered in the securities industry in any capacity.

13. At all material times, the Respondent carried on business in the Norwood, Ontario area.

Facts

Allegation #1 – Personal Financial Dealings with Clients

14. At all material times, the policies and procedures of Desjardins required its Approved Persons to: be aware of the possibility of conflicts of interest arising in connection with business conducted for clients; to disclose the conflict to the Member, in a timely manner; to ensure that any conflict of interest or potential conflict of interest is addressed by the exercise of responsible business judgment influenced only by the best interests of the client; and to immediately provide written disclosure of the conflict to the client.

15. At all material times, the policies and procedures of GP Wealth also required its Approved Persons to: immediately disclose conflicts or potential conflicts of interest to GP Wealth; immediately disclose such conflicts to clients in writing prior to proceeding with the action which may lead to the conflict of interest; and ensure that any conflicts of interest were addressed by the exercise of responsible business judgment influenced only by the best interests of the client.

16. The Respondent borrowed monies from clients KT, BM and SM, MB, SO, and DC and LD (collectively, the “Clients”) while he was registered with Desjardins as set out in further detail below.

17. Borrowing monies from the Clients gave rise to conflicts or potential conflicts of interest between the Respondent and the Clients. The Respondent did not inform Desjardins that he had borrowed money from the Clients and did not take steps to address the resulting conflicts by the exercise of responsible business judgment influenced only by the best interests of the Clients.

18. In February 2019, when the Respondent became registered with GP Wealth, the Respondent continued to owe monies to some of the Clients and his indebtedness continued to give rise to a conflict or potential conflict of interest with such Clients. The Respondent did not disclose to GP wealth that he was indebted to any of the Clients and did not take steps to address the conflicts by the exercise of responsible business judgment influenced only by the best interests of the Clients.

19. While registered at GP Wealth, the Respondent also borrowed monies from client LM, as well as additional monies from clients DC and LD, as described in the chart below. The Respondent did not disclose to GP Wealth that he had borrowed additional amounts from clients of GP Wealth.

20. The Respondent did not provide written disclosure to the Clients to inform them of the conflicts of interest that arose as a result of the loans that he had obtained from them.

21. The Respondent did not provide collateral in respect of any of the loans that he obtained from clients of Desjardins or GP Wealth.

22. Between August 2016 and July 2019, the Respondent borrowed monies from 8 clients which gave rise to conflicts or potential conflicts of interest as set out below:

Client	Date of Loan	Amount Borrowed	Purpose of Loan Represented to Client	Loan Document	Terms of Loan	Source of Client Monies for Loan	Repayment
KT	August 2016	\$73,315.79 funded by a \$70,000 withdrawal from client KT's investment account on August 12, 2016 + \$3,315.79 in DSC fees	To finance the start up of a medical marijuana company	Aug 16, 2016 Loan Agreement	Monthly payments of \$968.87 over 120 months plus 10% interest on the loan. Dividend of 5% of the net profit for the first 3 years of production at the medical marijuana company	Redemptions from KT's investment accounts at Desjardins	Respondent repaid \$31,972 In Jan 2020, Desjardins repaid client KT the outstanding amount of \$41,343.08
BM and SM	November 2016	\$36,000	To renovate the Respondent's house	Nov 20, 2016 Loan Agreement	Monthly payments of \$525.91 over 7 years plus 6% interest on the loan commencing Dec 20, 2016	Unknown	Unknown
DC and LD	May and July 2017	\$475,000 comprised of: A \$278,583 withdrawal from client DC's investment account, a \$168,268 withdrawal from client LD's investment account \$28,149 in in DSC fees and withholding tax.	To build and re-sell the Respondent's house	Oct 5, 2017 e-mail	10% interest on the loan Loan was to be callable on demand	Redemptions from investment accounts of clients DC and LD at Desjardins	Respondent fully repaid clients DC and LD
	July 2019	\$20,000	To build and re-sell the Respondent's house	July 24, 2019 Loan Agreement	12.5% interest on the loan	Client DC and LD's savings account	
SO	November and January 2018	\$175,000 comprised of: A \$95,000 redemption from client SO's non-	To build the Respondent's house	No documented agreement.	Respondent represented that he would pay 10%	Redemptions from client SO's investment	Respondent repaid approximately \$30,000

Client	Date of Loan	Amount Borrowed	Purpose of Loan Represented to Client	Loan Document	Terms of Loan	Source of Client Monies for Loan	Repayment
		registered account and an \$80,000 withdrawal from client SO's RRIF account			interest on the loan.	accounts at Desjardins. SO paid a total of \$44,499.59 in DSC fees and withholding taxes.	In or about Jan 2020, Desjardins repaid client SO \$167,163.86
MB	August and September 2018	\$50,000 comprised of: Two withdrawals of \$25,000 each sourced from client MB's investment account No fees were incurred by MB	To renovate the Respondent's house	Loan Agreement	Respondent promised to pay MB \$55,000 after selling his house	Redemption from client MB's investment account at Desjardins	Respondent has fully repaid client MB
LM	July 2019	\$90,000	To pay off outstanding debts including a tax debt to the Canada Revenue Agency	Loan registered as a second mortgage on the Respondent's house in favour of client LM	Respondent agreed to pay 13% interest on the loan and payments were to be semi-annual amortized over 10 years	Unknown – not from proceeds of redemptions from investments held in LM's accounts at Desjardins	Respondent has fully repaid client LM
Total: \$919,315							

23. The Respondent and Staff agree that the following facts are relevant to the borrowing arrangements that the Respondent was engaged in as referenced in the chart above.

Client KT

24. At all material times, client KT relied on her investments as a source of income.

25. As reflected in the chart above, the total amount borrowed from client KT was \$73,315.79. The money borrowed from client KT was recorded in a loan agreement (the "KT Loan Agreement") between client KT and 2531410 Ontario Inc. (the "Numbered Company"), a numbered company incorporated in Ontario on August 10, 2016.

26. The Respondent and his brother were the sole owners, directors and shareholders of the Numbered Company. The Respondent and his brother intended to obtain a license for the Numbered Company to operate a medical marijuana production facility.

27. The Respondent states that he informed client KT that the loan was to be used to finance the startup costs of the Numbered Company.

28. The KT Loan Agreement was signed by the Respondent and his brother.

29. The Respondent states that the Numbered Company was not able to obtain a license to produce medical marijuana and never carried on business as a going concern.

Clients BM and SM

30. Client BM was born in 1941 and client SM was born in 1946. Client BM and SM are spouses and both are vulnerable clients by virtue of their age.

31. As set out in the chart above, the Respondent borrowed \$36,000 from clients BM and SM in order to renovate his house.

32. The Respondent states that he has been making payments to clients BM and SM to repay the amounts borrowed but he acknowledges that he has not repaid the full principal amount of the loan that he obtained from clients BM and SM and he has not maintained adequate records to demonstrate how much of the loan has been repaid.

Clients DC and LD

33. By November 23, 2018, the Respondent had repaid clients DC and LD \$541,567 which constituted the full amount that he had borrowed from them plus interest and reimbursement for fees on the redemptions that were processed to facilitate the loan as particularized in the chart.

34. On July 24, 2019, the Respondent entered into a second loan agreement with clients DC and LD pursuant to which clients DC and LD loaned the Respondent \$20,000.

35. On July 25, 2019, clients DC and LD learned that the Respondent had borrowed money from client LD's sister, client SO (detailed below). After being informed that the Respondent was borrowing money from client SO, clients DC and LD immediately requested that the Respondent repay the \$20,000 that he had borrowed from them. The Respondent immediately repaid the \$20,000 that he had borrowed clients DC and LD on July 24, 2019 as they requested.

Client SO

36. As reflected in the chart above, the Respondent borrowed \$175,000 from client SO.

37. Clients SO states that she incurred a tax liability in the amount of \$12,000 as a result of the redemptions processed from her RRIF account.

Client LM

38. As set out in the chart above, the Respondent borrowed \$90,000 from Client LM. The Respondent used the monies loaned to him to pay outstanding debts including a debt for unpaid taxes owed to the Canada Revenue Agency and to repay the money which he had previously borrowed from client MB.

Allegation #2 – Outside Activity

39. At all material times, the policies and procedures of Desjardins required its Approved Persons to:

- a) obtain the approval of the Member prior to engaging in any proposed outside business activities; and
- b) report to Desjardins if any changes arose with respect to any previously approved outside business activities.

40. As detailed in paragraphs 25 to 29 of this ASF, on August 10, 2016, while registered with Desjardins, the Respondent and his brother incorporated the Numbered Company in furtherance of plans to begin operating a medical marijuana company. The Respondent was a director and shareholder of the Numbered Company.

41. Among other steps taken by the Respondent, he submitted an application to obtain a license from the government authorizing the company to engage in the production and sale of medical marijuana. The Numbered Company was unsuccessful in obtaining the requested license. In the end, the Numbered Company did not carry on business producing or selling marijuana products.

42. The Respondent did not disclose to Desjardins or to GP Wealth, nor did he request or obtain approval from the Member to incorporate a company or operate a business through that company. Accordingly, the Respondent failed to obtain approval from the Member to engage in the outside activities that he pursued.

Allegation #3 – Recording False Notes

43. As reflected in the chart set out at paragraph 22 of this ASF, the Respondent processed redemptions in the investment accounts of clients DC and LD that generated proceeds totaling \$475,000. When processing these redemptions, the Respondent made the following notes in the Desjardins' back office system:

Client	False Note
DC & LD	<p>April 18, 2017 - <i>Client is building a new house and will do a series of redemptions over the next 6 months that will have a small amount of fees, these fees are way less than borrowing the money.</i></p> <p>May 19, 2017 - <i>Client is aware and signed the LOD for the DSC fees of \$6422.49. He is building a house and is selling theirs once built. This is a short term change that will be re invested and is the best financially for him.</i></p>

44. Clients DC and LD state that they started planning to build their own house in late 2017 or early 2018, however, due to the fact that they loaned monies to the Respondent, they were unable to proceed with their plans.

45. The true reason why clients DC and LD agreed to process redemptions from their investment accounts was so that they could advance the proceeds as a loan to the Respondent.

46. As reflected in the chart at paragraph 22 of this ASF, the Respondent processed redemptions in the investment accounts of client SO totaling \$175,000. When processing these redemptions, the Respondent made the following notes in the back office system of Desjardins:

Client	False Note
SO	<p>November 3, 2017 – <i>Client is aware of TFSA Redemption and DSC Fees of 500.03 as per email attached. Client is buying property to build and once started with house and mortgage money will return later.</i></p> <p>January 3, 2018 - <i>Client is aware of the with holding [sic] tax of 34285.71 and DSC Fee of 5163.83 as she is paying for property bought to build in spring. she understands the taxes and fees and will return all month to RRSPs as soon as possible.</i></p>

47. Clients SO and DC were not purchasing property to build a house. The true reason why clients SO and DC agreed to process redemptions from their investment accounts was so that they could advance the proceeds of those redemptions as a loan to the Respondent.

48. The notes set out above in paragraphs 43 and 46 of this ASF, which were recorded by the Respondent on the back office system of Desjardins, are false.

Allegation #4 – Misleading the Member

49. On or about April 5, 2017, the Respondent completed an Annual Compliance Update Checklist with Desjardins wherein he confirmed that he had not engaged in any conflict of interest by borrowing money from clients.

50. As set out in detail in paragraphs 16 to 22 of this ASF, the Respondent borrowed monies from 8 clients. As of April 5, 2017, the Respondent had already borrowed monies from clients KT, BM and SM. Therefore, the Respondent's statement on the April 5, 2017 Annual Compliance Update Checklist was false.

51. On or about May 22, 2018, the Respondent completed an Annual Permanent Record and Compliance Update Checklist with Desjardins wherein he confirmed that he had not engaged in any conflict of interest by borrowing money from clients.

52. As of May 22, 2018, the Respondent had borrowed monies from clients KT, BM and SM, DC and LD, and SO. Therefore, the Respondent's statement on the May 22, 2018 Annual Permanent Record and Compliance Update Checklist was false.

53. In or about September 2019, clients DC and LD contacted another Approved Person registered with GP Wealth and informed the Approved Person that the Respondent had borrowed monies from them. The Approved Person reported this information to GP Wealth. As a result of this information, GP Wealth commenced an investigation into the Respondent's conduct and thereafter, the conduct described in this ASF came to light.

54. On September 11, 2019, GP Wealth interviewed the Respondent, during which time, the Respondent stated that he had only borrowed monies from 1 client. The Respondent further stated to GP Wealth that all borrowed monies had been repaid. The Respondent's assertion that he had only borrowed money from 1 client who had been repaid was false.

55. After GP Wealth informed the Respondent that it had received information that the Respondent had borrowed monies from additional clients, the Respondent admitted to borrowing monies from the 8 clients described above at paragraphs 16, 19 and 22 of this ASF.

Additional Facts:

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

57. As of the date of this ASF, the Respondent owns and lives in a house which he built. The construction of the house was financed using monies borrowed from some of the clients as described above.

58. On September 16, 2019, Desjardins sent a letter to all clients whose accounts were serviced by the Respondent. The letter indicated that Approved Persons were prohibited by industry regulations and Desjardins policies from borrowing money from or lending money to clients. The letter further advised clients to contact Desjardins if they had any questions or concerns.

59. No clients beyond the Clients listed in this ASF responded to the September 16, 2019 letter from Desjardins with any questions or concerns.

60. On September 23, 2019, GP Wealth sent a letter to all clients whose accounts were serviced by the Respondent. The letter indicated that personal financial dealings with clients were prohibited and that the Respondent was no longer registered with GP Wealth. The letter further advised clients to contact GP Wealth if the clients had any dealings with the Respondent that include lending or investments that did not appear on the clients' GP Wealth statement.

61. No clients responded to the September 23, 2019 letter from GP Wealth with any questions or concerns.

62. By entering into this ASF, the Respondent has saved the MFDA the time, resources and expenses that would have been necessary to conduct a fully contested hearing of the allegations.

Misconduct Admitted

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

- a) between August, 2016 and July, 2019, he borrowed monies from clients, thereby engaging in personal financial dealings with clients which gave rise to conflicts or potential conflicts of interest that he failed to disclose to the Member or otherwise ensure were addressed by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 2.5.1, and 1.1.2;
- b) between August, 2016 and February, 2019, he engaged in an outside activity without prior written approval from the Member, contrary to the Member's policies and procedures and MFDA Rules 1.3, 2.1.1, 2.5.1, and 1.1.2;

- c) between April 18, 2017 and January 3, 2018, he recorded false notes in the Member's system regarding the reason for redemptions of mutual funds in the accounts of two clients, contrary to MFDA Rule 2.1.1; and
- d) between August, 2016 and July, 2019, he provided false or misleading statements to a Member on annual update checklists, and during the course of the Member's investigation into his conduct, contrary to MFDA Rule 2.1.1.

Execution of Agreed Statement of Facts

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

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

DATED this 22nd day of March, 2022.

“Stephen Scott Smockum”

Stephen Scott Smockum

“Charles Toth”

Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement

DM 901833