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: Thomas G. Arseneau

Heard: June 26, 27 and July 31, 2012 in Fredericton, New Brunswick
Reasons for Decision: September 28, 2012

DECISION AND REASONS

Hearing Panel of the Atlantic Regional Council:

The Hon. D. Merlin Nunn, Q.C.	Chair
Jason P. Downey	Industry Representative
David O. Losier	Industry Representative

Appearances:

Charles Toth Rohit Kumar	)))	For the Mutual Fund Dealers Association of Canada
Thomas G. Arseneau	))	Not in attendance or represented by counsel

1. On December 22, 2011, the MFDA issued a Notice of Hearing commencing a disciplinary proceeding against Thomas G. Arseneau (the Respondent) alleging the following:

> **Allegation #1**: In about May 2007, the Respondent failed to observe high standards of ethics and conduct in the transaction of business and be of such character and business repute as is consistent with the standards prescribed by MFDA Rule 2.1.1 when he falsely reported on a loan application, which he submitted to a lender, that client K.A. owned a cottage property which she did not in fact own in order to increase the likelihood that the lender would provide an investment loan to client K.A.
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> **Allegation # 2**: Between 2004 and 2007, the Respondent misrepresented, or failed to fully and adequately explain, the risks and benefits of leveraged investment recommendations that he made to at least 20 clients, thereby failing to ensure that the leveraged investment recommendations were suitable and appropriate for clients and in keeping with the investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.
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> **Allegation # 3**: Between 2004 and 2007, the Respondent failed to ensure that his leveraged investment recommendations were suitable and appropriate for the clients and in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1, when he made leveraged investment recommendations to:
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> a) at least 14 clients which were not suitable and appropriate having regard to the relevant "Know Your Client" factors including, but not limited to, the clients' ability to afford the costs associated with the investment loans; and
> b) at least 12 clients which were not suitable and appropriate having regard to the requirements regarding the use of leveraging set out in Investia's policies and procedures.
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> **Allegation #4**: Between 2004 and 2008, the Respondent relied upon the lender's decision to approve the investment loans for 155 clients as the determination that the leveraging recommendations were suitable for those clients, without performing his own assessment of the suitability of the leveraging recommendations that he made to the clients, contrary

to MFDA Rules 2.2.1, 2.5.1 and 2.1.1.

2. The First Appearance, conducted by teleconference, was held on February 17, 2012. Taking part in this teleconference were the Panel and Charles Toth, MFDA counsel. The Respondent was not in attendance. At this teleconference the Panel was advised by Mr. Toth that despite several attempts to serve the First Appearance Notice on the Respondent, he was not served with the Notice and, in fact, he could not be located. As a result the Panel adjourned the First Appearance to March 9, 2012 to give further opportunities to locate and serve a new Notice on the Respondent.

3. On March 9, 2012 the adjourned First Appearance resumed, again by teleconference. Mr. Toth advised the Panel that an address for the Respondent had been determined and a letter enclosing the Notice of Hearing for March 9 was sent by courier to the Respondent on March 5. The letter also provided other materials describing his rights to participate in the hearing. That letter is attached as Tab H of the Affidavit of Josie Mulder filed as Exhibit 2 of the Hearing Exhibits.

4. On March 6, 2012, three days before the scheduled Appearance teleconference, the Respondent sent a letter, by facsimile, to MFDA staff confirming that he had received the Notice of Hearing and stating, in part:

> "I strongly believe that another meeting with you people is not going to change anything; therefore, I am not interested in discussing this matter any further, as your statements and allegations are incorrect and do not reflect what I told you."

This letter is Tab I of Exhibit 2.

5. The Respondent did not take part in the March teleconference and the Panel, not having heard anything from him, though satisfied he was served with the Notice of Hearing and aware of his indication not to take any further part in the matter, was satisfied that the matter should be set down for hearing on the merits. Hearing dates were confirmed for June 26, 27 and 28, 2012 in Fredericton, New Brunswick.

6. The hearing commenced, as scheduled, on June 26 at the Crown Plaza Hotel in

Fredericton, New Brunswick. The MFDA was represented by its counsel, Charles A. Toth and Rohit Kumar. The Respondent was not in attendance nor was he represented by counsel.

7. The first consideration was whether the Panel should continue the Hearing in the absence of the Respondent. In addition to the evidence relating to service of the essential documents on the Respondent and his letter of March 6, 2012, previously referred to, Mr. Toth introduced as Hearing Exhibit 3 his letter of March 13, 2012 to the Respondent again advising of the Hearing dates, the impartiality of the Hearing Panel, the procedures involved and the Respondent's rights. Also enclosed were the MFDA's Rules of Procedure, Guide to Disciplinary Hearing Process and the MFDA Penalty Guidelines. Mr. Toth's letter closed with a request that the Respondent contact him to advise whether the Respondent intended to participate in the hearing.

8. As well, by Hearing Exhibit 4, a MFDA letter of June 4, 2012, addressed to the Respondent, the date, time and place of the Hearing was attached.

9. The Panel was advised that no response was received by MFDA to Mr. Toth's letter nor to the notification of the Hearing location, time and dates.

10. The Panel is satisfied that the Respondent's non-attendance was intentional and deliberate despite having full knowledge of the date, time and place for the Hearing and full information as to his rights in the matter. In that case the Panel's decision to commence the Hearing was quite proper and in line with due process of a disciplinary hearing.

11. The same decision results by application of the By-law and Rules of the MFDA once the Panel is satisfied that the Respondent was served with a Notice of Hearing.

12. Section 20.2 of the MFDA By-law No. 1 requires a Reply to be filed by the Respondent and in this matter no Reply was filed. Section 20.4, entitled "Failure to Reply or Attend" provides:

> 20.4. If a Member or person summoned before a hearing of a Hearing Panel by way of Notice of Hearing fails to:
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> (a) serve a reply in accordance with s. 20.2; or
> (b) attend at the hearing specified in the Notice of Hearing, notwithstanding

> that a reply may have been served;
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> the Hearing Panel may proceed with the hearing of the matter on the date and at the time and place set out in the Notice of Hearing (or any subsequent date, at any time and place), without further notice to and in the absence of the Member or person, and the Hearing Panel may accept the facts alleged by the Corporation in the Notice of Hearing as having been proven by the Corporation and may impose any of the penalties described in Section 24.1.

Rule 7.3 of the Rules of Procedure covers a failure to attend and empowers the Panel to accept the allegation as proven.

13. Rule 8.1 of these Rules also requires a Respondent to file a Reply and Rule 8.4(b) indicates the Panel can accept as proven the facts and conclusions drawn in the Notice of Hearing.

14. The Panel, therefore, had ample authority to determine all facts and conclusions drawn in the Allegations set forth in the Notice of Hearing as proven and assess appropriate penalties, thereby concluding the Hearing.

15. Mr. Toth, counsel for MFDA, pressed the Panel to continue the Hearing as some of the issues involved leveraging strategies and suitability issues, relatively new issues for the securities industry. He indicated that he wished to call four witnesses, and file affidavits each had signed and would testify to. As well, he requested that 16 transcripts of interviews with other complainants involving the Respondent be filed as Exhibits. After citing Rule 1.6(1) which reads in part:

> "... a Panel may admit as evidence any testimony, document or other thing, including hearsay, which it considers to be relevant to the matters before it and is not bound by the technical or legal rules of evidence."

the Panel permitted the introduction of these documents as follows:

> Affidavits: F.S. Ex. 5; S.A. Ex. 6; Mike Ford[1] Ex. 7; and J.K. Ex. 8.
> Transcripts of interviews of complainants: Ex. 9 to Ex. 22 inclusive.

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[1] Mike Ford is an investigator employed by MFDA.

16. For the whole of the periods indicated in the Allegations underlying this matter the Respondent was an Approved Person as defined in the MFDA By-laws and is thereby subject to all By-laws and Rules of the MFDA.

17. The Ford Affidavit indicates that the Respondent was registered in New Brunswick, Nova Scotia, Ontario and Quebec as a mutual fund salesperson with Investia Financial Services, Inc. (Investia) from 2005 to 2009, at which latter time he was terminated by Investia. He had previously been a mutual fund salesperson with Armstrong Financial Services Inc., which subsequently became Gateway Capital Growth.

18. All complaints in this matter and the resulting allegations relate to the years 2004 to 2008.

19. Ex. 7 of the Ford Affidavit indicates that the Respondent had 240 clients with $12,994,058.09 assets under management. Of this list of clients 18 were not using leverage. The Respondent admitted that 85% of his book business was leveraged. From May 2000 to December 2007, his earned commissions were $740,000.00 while registered with Investia. Applying the 85% to his commissions the total commissions based upon leverage amount to $629,000.00.

20. In the present matter, involving the 20 complainants the total of leverage strategy loans amount to approximately $2,150,000.00, about 1/5 of his book business. Applying the one-fifth to his total earned commissions would indicate he received approximately $150,000.00 related to the 20 complainants involved here.

21. Ex. 7 of Ford's Affidavit is a transcribed interview that Mr. Ford conducted with the Respondent. In that interview the Respondent stated that in 2005, while still engaged with Armstrong Financial, he learned of the leveraging strategy used by one of Investia's salespersons and was so impressed with it that he subsequently left Armstrong Financial and joined Investia. Some leverage was part of his accounts at Armstrong Financial, but they were not investments made pursuant to his new leverage strategy.

22. The Respondent's Leverage Investment Strategy, in essence, was for a client to borrow a

certain amount ($50,000.00) from certain lenders, namely B2B Trust and AGF Trust, and invest the proceeds in Return of Capital (ROC) mutual funds using the monthly distributions from the mutual fund to pay the monthly payment on the loan resulting in the loan paid off in 7 to 12 years and the client left with a significant mutual fund investment.

23. Basically, the Respondent referred to his strategy as 50-50-50, i.e. a couple could borrow $50,000.00 each and $50,000.00 jointly, while a single person would borrow $50,000.00. The reason given by the Respondent for those amounts was that amount was the limit beyond which proof of income and further scrutinizing came into play with the lenders.

24. The foregoing indicates the Respondent's idea of the leveraged strategy and his approach to the borrowing strategy and his recommendations to his clients, to purchase the mutual funds to put the strategy in motion. Primarily the Respondent invested the monies borrowed in two ROC mutual funds, Stone and Company Flagship Growth and Income Fund and IA Clarington Canadian Dividend Fund.

25. At the Hearing, Mr. Toth indicated that the evidence, in the four affidavits, Exhibits 5, 6, 7 and 8, together with those affiants' *viva voce* evidence, was sufficient to prove the allegations made and the transcripts of the interviews of the remaining complainants, Exhibits 9 to 22, in general, indicated the same conduct by the Respondent.

26. Since each of the Allegations in this matter relate to the conduct of the Respondent in his dealings with clients to whom he was advancing his leverage strategy in the sale of mutual funds and further since the approach to the complainants here was essentially similar, the Panel's best approach would be to set out in a general way, what the Respondent did and said in his efforts to persuade a client to invest based upon his leverage strategy. Following that, the Panel will consider what he should have done, i.e. the required behaviour under the Rules and By-laws of the MFDA.

27. At least two of the complainants had made investments through the Respondent while he was at Armstrong Financial Services. The remaining complainants were new clients to the Respondent.

28. To each client he encouraged his system of borrowing to invest, explaining that each person could borrow $50,000.00 (his 50-50-50 strategy) and invest in a ROC mutual fund, which would pay to the client a monthly distribution that would pay all the costs of the loan within a period of time varying from 7 to 10 years to some and 10 to 12 years in others after which they would have a significant investment.

29. The 50-50-50 aspect of his strategy referred to couples with each person borrowing $50,000.00 and then jointly borrowing an additional $50,000.00.

30. In general the Respondent advised the complainants that they would not incur any out-of-pocket expenses with respect to the strategy and that it was a "no-brainer" and assisted them in implementing both the loan and the mutual fund investment, by preparing all the necessary documentation.

31. As indicated earlier, when the loans were approved the Respondent invested the monies received primarily in two ROC mutual funds, Stone and Company Flagship Growth and Income Fund Canada, and IA Clarington Canadian Dividend Fund.

32. With the exception of the basis of Allegation No. 1, the remaining Allegations relate to the Respondent's failure to perform the necessary and very basic requirements when promoting a leverage strategy investment, i.e. what the Respondent did and did not do to the detriment of his clients.

33. While Allegation No. 1 is proven by the application of By-law 20.4 it is important to indicate that the evidence revealed that the Respondent, knowing KA's assets were insufficient to obtain a loan, added a cottage property valued at $63,000.00 to KA's Application for a loan for the express purpose of increasing her net worth so that she could qualify for the loan. No such cottage existed. This was an intentional and deliberate action by the Respondent to deceive a lender so as to enable an investment loan, certainly well below the high standards of ethics and conduct in the transaction of securities business and not an indication of the character and business repute consistent with the standards provided in Rule 2.1.1 of the MFDA Rules, which provides:

"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 repute and have such experience and training as is consistent with the standards described in Rule 2.1.1 or as may be prescribed by the Corporation."

34. Certainly the Respondent's falsification of a loan application by adding a non-existent property to increase a client's worth so as to obtain an investment loan which she would have not otherwise obtained violates each of the Standards of Conduct of Rule 2.1.1(a), (b) and (c).

35. The Panel is satisfied, on the evidence provided at the hearing, that the Respondent's conduct, intentionally dishonest and ultimately for his own gain, proves the basis of Allegation No. 1, namely a violation of MFDA Rule 2.1.1.

36. It is interesting to note that shortly before this falsification, Investia introduced a new requirement when clients were borrowing money to invest. It provided a new form, the Borrowing to Invest - Suitability Analysis Form, that was required to be completed and filed by the agent engaged in a borrowing to invest situation. This form identified certain requirements established by Investia covering the use of leveraging, i.e. borrowing to invest, one of which was that the total amount of any loans do not exceed 60 percent of the client's net worth. The addition of the false asset by the Respondent also was intended to deceive Investia and does reflect improper conduct on the part of the Respondent which violates Rule 2.1.1. as well.

37. Turning now to Allegations 2, 3 and 4, it is important to indicate that the evidence reveals that the Respondent engaged in essentially the same conduct with each of the 20 complainants. That conduct has to be assessed in relation to the MFDA Rules and more particularly to Rule 2.1.1., already set out above, and Rule 2.2.1 which provides:

2.2.1. "**Know-Your-Client**". Each Member and Approved Person shall use due diligence:

(a) to learn the essential facts relative to each client and to each order or account accepted;

(b) to ensure that the acceptance of any order for any account is within the bounds of good business practice;

(c) to ensure that each order accepted or recommendation made for any account of a client is suitable for the client based on the essential facts relative to the client and any investments within the account;

(d) to ensure that, notwithstanding the provisions of paragraph (c), where a transaction proposed by a client is not suitable for the client based on the essential facts relative to the client and the investments in the account, the Member or Approved Person has so advised the client before execution thereof and the Member or Approved Person has maintained evidence of such advice;

(e) to ensure that the suitability of the investments within each client's account is assessed:

   (i) whenever the client transfers assets into an account at the Member;
   (ii) whenever the Member or Approved Person becomes aware of a material change in client information, as defined in Rule 2.2.4; or
   (iii) by the Approved Person where there has been a change in the Approved Person responsible for the client's account at the Member; and

(f) to ensure that, where investments in a client's account are determined to be unsuitable, the Member or Approved Person so advises the client and makes recommendations to address any inconsistencies between investments in the account and the essential facts relative to the client and the Member or Approved Person maintains evidence of such advice and recommendations.

38. To each of the 20 complainants here, including the two who were earlier clients, the Respondent advanced his leveraged investment strategy with enthusiasm as a "no-brainer" and claimed that "it will not cost a cent out of your pocket": borrow $50,000.00 and invest that amount in an ROC mutual fund and the monthly distributions from the fund would pay the monthly loan obligations and any amount over the loan obligations would go to reduce the principal of the loan. To some he said the loan would be paid off in 7 to 10 years and to others in 10 to 12 years, at which time each would have an investment equal to or better than the $50,000.00 original amount invested. To further strengthen his enthusiasm for, and confidence in his strategy, he indicated to most, if not all, of the complainants that he, his wife and daughters had all invested in the strategy. He indicated that obtaining the loan would be simple and he would prepare all the necessary documentation both for the loan and for the investment, which he did. However, again in almost every case, he met the clients, produced the documents he had

prepared for signature, with no significant explanation and permitted his clients to sign the documents with only cursory attention to these contents, without any explanations, knowing the clients were relying solely on the Respondent that all was in order. The Respondent, in turn, indicated that he relied on the lender's decision to approve the loan as determinative that the leverage recommendations were suitable investments for the complainants and, indeed, for many others he induced into the strategy and he did not consider any need for him to do any individual assessments of each individual client as to his or her suitability for the leverage strategy investments.

39. Next, the evidence is equally clear as to what the Respondent did not do with these complainants. He did not clarify that a ROC mutual fund was a Return of Capital Fund and some complainants indicated they would not have invested in such a fund had they known that this was their investment.

40. He did not indicate that the investment loan was amortized over 20 years and would not be repaid in the periods he was suggesting, particularly, in the event of a reduction or suspension of proceeds of the funds. Nor did he indicate that there were risks in these investments, that the market value of the investment was dependent upon the market and could reduce. As well, he did not advise the reductions in distributions could result in the clients being called upon to pay the investment loans from their own pockets (which he had maintained would never happen).

41. His advice to the complainants was largely that there was no risk in this leveraged investment strategy (though to several he indicated low risk). He may very well have believed that his leverage strategy could not fail and was, indeed a "no-brainer". However, as an Approved Person in a securities related business, he was obligated to abide scrupulously within the MFDA Rules in his dealings with clients. What were his obligations?

42. First, Rule 2.2.1(a) of MFDA Rules, under a heading "Know-Your-Client" requires an Approved Person (the Respondent) to "use due diligence" to learn the essential facts relative to each client and to each order or account accepted.

43. In this case "due diligence" includes at least the obligation to know the client's financial situation, current and continuing financial obligations, net worth, income, liquid assets,

understanding of the market, age relative to retirement, financial situation after retirement if retirement would occur during the term of the investment, purpose of the investment, together with knowledge and understanding of borrowing to invest and of Return of Capital mutual funds and the ability to repay the borrowed amount in the event of market changes to the value of the mutual fund and/or its distributions.

44. While the Respondent did acquire knowledge of some of the foregoing, basically the necessary things required for the loan application, he failed to meet the "due diligence" requirement of assuring that the client knew the investment, (a ROC mutual fund), understood how such a fund works, understood the risks involved and could afford to make regular monthly payments on the loan if the distributions reduced which they did in the fall of 2008 and in the spring of 2009. Twelve of the complainants, including the three affiants who testified at the Hearing, F.S., S.A. and J.K. indicated they could not afford to pay the costs of the loans if the distributions were not sufficient and would not have invested in the strategy had they been told of the risk.

45. In fact, the Respondent relied solely on the approval of the loan by the lender as his assessment of the suitability of the client to engage in the borrow-to-invest leverage strategy. The obligation of due diligence in Rule 2.2.1 rests on the Respondent solely and is not transferable and by acting as he did the Respondent utterly failed his "Know-Your-Client" obligations.

46. His failure to use due diligence also arises in relation to Rule 2.2.1(c) which places the onus on the Respondent to ensure that his recommendations for these leveraged accounts and the orders accepted for them were suitable for the client (complainants) based upon the essential facts relative to the client and any investments within the account.

47. In the present matter, clearly the borrow to invest strategy was not suitable to the complainants who would not have bought into the leveraged strategy if they were made aware of any risks, particularly if they were alerted that the value of the investment could fluctuate downward and the distributions could similarly fluctuate downward so as to fall below, in even a minor way, the amounts required to apply on the investment loan.

48. At least 12 of the complainants have made it clear that they could not meet the required loan repayments from their own finances and, in the events here of a continued reduction in the value of their mutual fund investment and a substantial reduction in distributions, they face a heavy burden in trying to cope with repayment of the loans. Again, it is not much of a leap to find that the Respondent failed the due diligence requirement to ensure these investment strategies were suitable for these clients. He made no independent inquiries in this regard and relied solely on the lender's approval of a loan as the indication that the leveraged strategy was suitable. That is far from sufficient to satisfy the obligation of Rule 2.2.1(c) of the MFDA Rules. Indeed by structuring the loans as he did at $50,000.00, he was clearly avoiding or limiting the scope even of the lender's review of the client's circumstances, as he knew the applications in this amount were subject to abbreviated review by the lenders.

49. In his enthusiasm for his leverage strategy he failed in all his duties to his clients required by the Rules governing his conduct in this regard. As a result, each complainant's $50,000.00 investment has fallen between 30% and 40% in value, at the time of the Hearing, the outstanding balances greatly exceed the investment values, and the complainants face great hardship trying to cope with their situation.

50. The Panel is quite satisfied and so finds that each of the four Allegations have been proved and the Respondent has failed to properly perform all that the Allegations allege.

51. Because of the circumstances of the number of complainants (20) with similar evidence in key respects and a Hearing without the Approved Person facing the Allegations in attendance either personally or by a representative, the Panel concluded that the best approach was to relate what the Respondent did, what he failed to do and what he was required to do. While all this was done without reference to decisions on these matters by Securities Commissions and other Panels, it is important to indicate the Panel's acceptance of and adherence to the key principles relating to the MFDA Rules involved here.

52. The two key principles in Rule 2.2.1 are Know-Your-Client and suitability. As was said in *Re Daubney*, a 2008 decision of the Ontario Securities Commission, para. 15, 16 and 17:

> 15. The Commission has recognized that the know-your-client and suitability requirements "are an essential component of the consumer protection scheme of the Act

> and a basic obligation of a registrant, and a course of conduct by a registrant involving a failure to comply with them is an extremely serious matter." (*Re E. A. Manning Ltd. et al.* (1995), 18 O.S.C.B. 5317 at 5339)
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> 16. The Alberta Securities Commission (the "ASC") described these two obligations as follows:
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> > The "know-your-client" and "suitability" obligations are conceptually distinct but, in practice, they are so closely connected and interwoven that the terms are sometimes used interchangeably.
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> > The "know-your-client" obligation is the obligation to learn about the client, their personal financial situation, financial sophistication and investment experience, investment objectives and risk tolerance.
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> > The "suitability" obligation is the obligation of a registrant to determine whether an investment is appropriate for a particular client. Assessment of suitability requires both that the registrant understands the investment product and knows enough about the client to assess whether the product and client are a match. (*Re Marc Lamoureux* (2001), ABSECCOM 813127 (*"Re Lamoureux"*) at 10.)
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> 17. Canadian securities authorities have adopted a three-stage analysis of suitability, according to which a registrant is obliged to:
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> > a) use due diligence to know the product and know the client;
> > b) apply sound professional judgement in establishing the suitability of the product for the client; and
> > c) disclose the negative as well as the positive aspects of the proposed investment.

53. In the present matter the Respondent did little to learn about these clients. His main focus was to convince the client to borrow $50,000.00 and invest it in a ROC mutual fund. He did not consider the client's financial sophistication, investment experience or risk tolerance. Risk was not a concern as he advised each of the complainants there was no risk. His "no-brainer" concept blinded him to his obligations under know-your-client.

54. The Respondent failed completely in the suitability obligations he was bound by. He admitted in his interview with Mike Ford, Tab 7 of the Ford Affidavit, that he made no inquiries as to suitability and relied solely on the lender. If the lender approved the loan, then he was satisfied as to the suitability of the leveraged investment.

55. It was well established that ensuring the recommendations are suitable or appropriate for the client rests solely with the sales agent. It cannot be transferred to another entity, such as in

this matter, the lender.

56. Not having taken any steps to determine suitability, the Respondent failed to even start the suitability determinations required of him in Rule 2.2.1 which are fundamental to the obligation of every investment dealer and Approved Person who deals with the public.

57. The Panel is satisfied on the evidence presented that the facts alleged in Allegations 1 to 4 inclusive have been proven and the breaches of the MFDA Rules did occur as alleged.

58. With regard to penalty, the Panel agrees that the Know-Your-Client and suitability obligations are "essential" to the protection of the public and any failure to comply with these obligations is "an extremely serious matter".

59. The Panel is aware that in the short period involved here the Respondent was involved in approximately $10.5 million in investment loans by 120 clients. The 20 clients who complained here account for approximately $2,150,000.00 of the larger amount and he received $740,000.00 in commissions during his time at Investia of which approximately $629,000.00 are attributable to his leveraging activities.

60. His conduct has caused significant loss and long term financial difficulties to the 20 claimants, whose losses are estimated to be $358,000.00. The Panel is satisfied that by his conduct he has demonstrated that he ignored or had a total lack of understanding of his obligations as a registrant in the securities industry, or both. Regardless of which, the Panel is satisfied that the Respondent would pose a risk to investors and the capital markets were he to continue to operate in the capital markets. He certainly has demonstrated an unwillingness to permit himself to be regulated by MFDA by his pre-hearing conduct and his failure to attend the Hearing.

61. Since this proceeding is amongst the first generation of MFDA cases addressing the suitability of leveraging and leveraging strategies, MFDA staff suggest that the penalties be sufficient to restore confidence in the public, in the capital markets, to show strong disapproval of the Respondent's conduct and to deter others from engaging in similar improper activity. MFDA staff suggest that the Panel impose a fine between $400,000 and $600,000.

62. The Panel agrees that the Respondent's activities with respect to the 20 complainants is a most egregious departure from the proper conduct expected and required in his relationship with his clients and merits the most severe penalty.

63. The Panel, therefore, imposes a permanent prohibition on the Respondent to conduct securities related business with a MFDA Member.

64. In addition, a significant fine is in order and the Panel imposes a fine of $500,000.00. This is based upon the number of claimants, the amounts borrowed, the amount of their losses and the amount of commissions received as a result of the Respondent's misconduct with these complainants, and the need to deter others from this type of conduct, so outrageously outside the bounds of the conduct required when promoting borrowing for leveraged investments and the very basic requirements to Know-Your-Client and determinations of suitability.

65. Finally, the Panel assesses and awards costs to the MFDA in the amount of $20,000.00.

66. As a final addendum, the Panel is quite aware that leveraging is a tool used in the capital markets and this decision is not intended to criticize or find fault with the use of leveraging in appropriate circumstances. Rather, this decision relates only to the obligations of Approved Persons when dealing with clients and establishing leveraging accounts.

DATED this 28th day of September, 2012.

"D. Merlin Nunn"
The Hon. D. Merlin Nunn, Q.C.,
Chair

"Jason P. Downey"
Jason P. Downey,
Industry Representative

"David O. Losier"
David O. Losier,
Industry Representative

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