



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: Sherry L. McKenzie

Heard: April 21, 2016 in Toronto, Ontario
Decision and Reasons (Misconduct): May 26, 2016

**DECISION AND REASONS
(Misconduct)**

Hearing Panel of the Central Regional Council:

John Lorn McDougall Q.C.	Chair
Brigitte J. Geisler	Industry Representative
Robert Christianson	Industry Representative

Appearances:

Maria L. Abate)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Sherry L. McKenzie)	In Person
)	
)	
)	

I. INTRODUCTION

1. By Notice of Hearing dated June 8, 2015, Staff of the Mutual Fund Dealers Association of Canada (“MFDA”) alleged that Sherry L. McKenzie (“Respondent”) violated the By-laws, Rules or Policies of the MFDA as set out below:

Allegation #1 (The Forms Allegation): Between October 16, 2009 and June 15, 2012, the Respondent altered and re-used 46 original or photocopies of previously-used account forms in order to process transactions in respect of 25 clients, and obtained and maintained 10 blank or partially complete pre-signed account forms in respect of 6 clients, contrary to MFDA Rule 2.1.1.

Allegation #2 (The Co-operation Allegation): Commencing in November 2013, the Respondent failed to produce for inspection copies of bank account statements and has failed to attend for an interview with Staff for the purpose of investigating the Respondent’s conduct, contrary to section 22.1 of MFDA By-law No. 1.

2. The hearing was held on April 21, 2016. Staff called a senior Investigator of the MFDA, Ian R. Smith, as its only witness. During the course of Mr. Smith’s testimony, his affidavit dated April 6, 2016 and supporting exhibits was introduced into evidence as Exhibit 4.

3. The Respondent delivered a Reply to the Notice of Hearing which was dated August 15, 2015. She attended the hearing and made submissions on her own behalf. She was not sworn in as a witness and she was not represented by counsel. The substantive part of her Reply is as follows:

The Respondent Followed Her Clients’ Trading Instructions

4. At all times when she was a registrant of the MFDA, the Respondent obtained trading instructions from her clients before processing trades. She acted on her clients’ instructions.

5. In fact, after the Respondent left IPG, her former employer sent a letter to all of the clients whom the Respondent serviced requesting that they review their

account statements to determine whether the clients had authorized the transactions processed in their accounts. None of the Respondent's clients responded to IPG.

Response to the Allegations

6. The Respondent denies the Forms Allegation and the Cooperation Allegation.

7. The MFDA allegations are limited by the time period October 16, 2009 to June 15, 2012.

8. Twenty-one of the 46 forms that were alleged to have been altered and reused are dated prior to October 16, 2009.

9. Further, IPG regularly updated its trading forms. At least two of the allegedly blank forms were obtained prior to October 16, 2009.

4. During the opening of the case for the MFDA, counsel made an oral motion to amend Allegation #1 as follows:

Between August 22, 2008 and June 15, 2012, the Respondent altered and reused 46 original or photocopies of previously-used account forms in order to process transactions in respect of 25 clients, and obtained and maintained 7 blank or partially complete pre-signed account forms in respect of 3 clients, contrary to MFDA Rule 2.1.1. (proposed amendments underlined)

5. The panel was initially of the view that the amendments should be granted. However, later in the proceedings, Ms. McKenzie voiced her opposition to the amendment, submitting that it was prejudicial to her.

6. The panel, having reserved its decision on the issue, has concluded that the amendments to Allegation #1 should not be granted. It is simply too late in the process. Staff was aware of the Respondent's position from the date of the delivery of her Reply, August 14, 2015. Further, the only effect of the amendment was to include approximately 20 of the 46 instances of alteration of previously used account forms. That alone has no effect on the determination of whether there

was misconduct as there remain 26 instances within the originally alleged time period, October 16, 2009 to June 15, 2012.

II. FACTS

7. The Respondent registered as an Approved Person of the MFDA in August, 2002. Until March 27, 2013, the Respondent was registered in Ontario as a mutual fund sales person (now known as a dealing representative) with the Independent Planning Group Inc. (“IPG”), a member of the MFDA. At all material times, the Respondent conducted business from an IPG branch in the Cambridge, Ontario area.

8. The Respondent resigned from IPG during a telephone call on March 27, 2013 and confirmed her resignation, effective March 29, 2013, in writing by letter dated March 29, 2013. The MFDA was notified of the resignation and the Respondent ceased to be registered as an Approved Person with the MFDA on April 8, 2013 and is not currently a registrant of the MFDA.

Allegation # 1 – The Forms Allegation

9. At all material times, IPG’s policies and procedures prohibited its approved persons from:

- i. Photocopying account forms in order to duplicate a client’s signature; or
- ii. Obtaining or using blank or partially complete pre-signed account forms.

10. IPG’s policies and procedures were recorded in its publication titled “Mutual Fund Associate and Administrator Guide” which was distributed by IPG in December, 2008. They are also set out in Compliance Bulletin No. 34 titled “Blank, Pre-signed or Photocopied Forms” which was published and distributed by IPG in June, 2011.

11. In July, 2009, IPG conducted an audit of the Respondent’s branch office which included a review of client files maintained by the Respondent. During the audit, IPG detected that the

Respondent had photocopied, altered and reused previously submitted account forms in order to process trades in respect of three clients. IPG instructed the Respondent to cease this practice.

12. On October 15, 2009, the Respondent wrote to IPG confirming that she had ceased photocopying, altering and reusing account forms and that this conduct “would never happen again”.

13. On October 19, 2012, IPG conducted another audit of the Respondent’s branch office. During the review of the clients’ files conducted as part of the audit, IPG identified instances where the Respondent had altered and reused originals and photocopies of previously used account forms, and maintained blank or partially completed pre-signed account forms in client files. After its findings, IPG commenced a further investigation into the Respondent’s practices regarding the use of forms.

14. On November 1, 2012, the Respondent signed and submitted an “Associate Compliance Audit Questionnaire” to IPG in which the Respondent stated that she did not maintain any blank, pre-signed or predated account forms and that she had never photocopied paperwork with a client signature in order to process a new trade. These responses were inconsistent with the forms found in the Respondent’s client file.

15. In December 2012, IPG reviewed, as part of its investigation, all the client files maintained by the Respondent. During the course of that investigation, IPG determined that, between October 16, 2009 and June 15, 2012, the Respondent:

- i. Altered and reused 46 original photocopies of previously used account forms in order to process transactions in respect of 25 clients; and
- ii. Obtained and maintained 10 blank or partially complete pre-signed account forms in respect of 6 clients.

16. On December 13, 2012, IPG advised the Respondent by email that IPG had submitted information regarding the discovery of blank, pre-signed or amended trade forms during the audit conducted on the Respondent’s branch to the MFDA.

17. On December 17, 2012, IPG sent letters to all the clients serviced by the Respondent requesting that the clients review their account statements to determine whether the clients had authorized the transactions processed in their accounts. IPG did not receive any responses to this letter.

18. On January 7, 2013, IPG wrote to the Respondent formally advising the Respondent of the results of the audit conducted on October 19, 2012. IPG's letter requested the Respondent respond to it on or before February 1, 2013 and indicate the steps that the Respondent had taken or intended to take with respect to the deficiencies noted in the report.

19. The Respondent replied to the IPG letter of January 17, 2013 and acknowledged the use of whiteout on forms and the use of a "date stamp" instead of properly requesting that clients "sign and date" forms. The Respondent further indicated that she would stop these practices in her branch.

20. Nowhere in the record is there any evidence of a denial by the Respondent that she carried out the practices alleged in the Forms Allegation within the period therein alleged. Indeed, the Respondents own submissions to the Panel are telling in that she excuses such practices as necessary on the basis of business expediency as follows:

Q. How do you do something when you have no option with the compliance bulletin? How can they tell you that this is rule, this is law, but not be able to operate - it wasn't possible to do what they were requesting. How do you solve that issue? I was damned if I do and I was damned if I don't. I can't - there was no middle ground. How do you make an MFDA rule that says 24 hours and then not be able to adhere to it? It was not a choice I had. But it's in all the rules and -

Allegation #2 – Failure to Cooperate

21. Allegation # 2 (Failure to Cooperate) alleges that the Respondent failed to do two things:

- i. First, failure to produce for inspection copies of bank account statements; and

- ii. Second, has failed to attend for interviews with staff for purposes of investigating the Respondent's conduct.

22. During the course of the hearing on April 21, counsel for the MFDA conceded that bank statements had been supplied by previous counsel for the Respondent and that she was unable to say whether they complied with the request as they had apparently not been examined. In the circumstances, and given that the Respondent advised this Panel that she had complied with the requirement to deliver bank statements, there is no evidence before us upon which to found an adverse finding against the Respondent with respect to this allegation.

23. That leaves the issue of whether there was a failure to attend for interviews with Staff for the purpose of investigating the Respondent's conduct. Part of that allegation is that the Respondent failed to provide a doctor's note excusing her from attending a meeting because of surgery. Again, the evidence on this subject was unsatisfactory as it appears that a note may have been given to Staff by the Respondent's previous lawyer.

24. While the matter of a doctor's note remains uncertain, the fact that is not in doubt is that the Respondent failed to attend any of the interviews requested by Staff.

25. On November 7, 2013, Staff sent a letter to the Respondent requesting that she attend an interview with Staff. The letter requested that the Respondent contact Staff by November 21, 2013 in order to confirm an interview date of January-February 2014. Staff did not receive a response from the Respondent.

26. On November 25, 2013, Staff sent a letter to the Respondent by email, requesting that the Respondent contact Staff by November 26 and provide dates for an interview with Staff in January or February 2014.

27. On November 29, 2013 the Respondent replied by email confirming her availability for an interview with Staff on any date in January or February 2014. Later that day, Staff replied to the Respondent's email advising her that the interview would be held on January 27, 2014.

28. On December 31, 2013, Staff sent an email to the Respondent requesting information and documentation with respect to certain alleged business activities which are not the subject of the allegations in this proceeding. As well a request was made for copies of the Respondent's bank account statements for the period of January 1, 2013 to April 30, 2013. Staff requested that these materials be delivered by January 14, 2014.

29. On January 13, 2014, the Respondent responded to Staff's request by email advising that she had not participated in any improper activities and would not be attending the interview scheduled for January 27, 2014.

30. On January 20, 2014, Staff replied to the Respondent by email advising the Respondent of her obligation to cooperate with Staff's investigation and requesting that she provide the information requested by Staff and contact Staff to schedule an alternate interview by January 27, 2014. Staff did not receive a response from the Respondent.

31. On February 10, 2014, Staff sent a letter, by registered and regular mail, to the Respondent advising her that a new interview date was scheduled for April 29, 2014 and requesting that she provide, among other things, the bank account statements requested by Staff by February 28, 2014.

32. On February 28, 2014, the Respondent replied to Staff's letter by email requesting clarification of the materials requested by Staff. Later that day, Staff received an email from the Respondent's assistant providing some of the information and documents requested by Staff, but not copies of the Respondent's bank account statements.

33. On March 5, 2014, Staff contacted the Respondent by telephone and left a message for her requesting that she contact Staff. Staff did not receive a response from the Respondent.

34. On April 16, 2014, Staff sent an email to the Respondent reminding her that an interview with Staff was scheduled for April 29, 2014 and reiterating Staff's request for copies of the Respondent's bank account statements. Staff did not receive a response from the Respondent.

35. On April 25, 2014, Staff sent an email to the Respondent requesting that she confirm her attendance at the interview scheduled for April 29, 2014, and again requested copies of the outstanding bank account statements.

36. On April 28, 2014, the Respondent emailed Staff to advise that she would not be attending the interview on April 29, 2014 because it was "tax season".

37. On June 19, 2014, Staff contacted the Respondent by registered mail, regular mail, and email, advising the Respondent that an interview would be held on July 18, 2014 and she was required to provide the outstanding bank account statements by July 3, 2014.

38. On June 20, 2014, Staff received an email from the Respondent advising Staff that the Respondent was scheduled for surgery on June 23, 2014 and would not be returning to her office until August 2014. Later that day, Staff replied to the Respondent by email requesting that the Respondent provide Staff with a medical note confirming her surgery and expected period of recovery. Staff did not receive a response from the Respondent.

39. On July 2, 2014, Staff sent a letter to the Respondent again requesting a medical note confirming the Respondent's surgery date and expected period of recovery. Staff further advised the Respondent that, should she fail to provide such a medical note, Staff expected her attendance at the interview scheduled for July 18, 2014 and to receive the outstanding bank account statements. Staff did not receive a response from the Respondent.

40. The Respondent did not attend the interview with Staff on July 18, 2014.

41. On July 29, 2014, a process server retained by Staff served the Respondent's office with a letter outlining Staff's attempts to schedule an interview with her and advising her that the requests for bank accounts statements remained outstanding. The letter also advised the Respondent that Staff would be commencing enforcement action against the Respondent for her failure to cooperate with Staff's investigation.

III. MFDA RULES

42. 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.

43. The relevant provisions of MFDA By-law No. 1 as it applies to this matter are as follows:

21. POWER TO CONDUCT EXAMINATIONS AND INVESTIGATIONS

The Corporation shall make such examinations of and investigations into the conduct, business or affairs of any Member, Approved Person of a Member or any other person under the jurisdiction of the Corporation pursuant to the By-laws and/or the Rules as it considers necessary or desirable in connection with any matter relating to compliance by such person with:

21.1 the By-laws, Rules or Policies of the Corporation;

21.2 any securities legislation applicable to such person including any rulings, policies, regulations or directives of any securities commission; or

21.3 the by-laws, rules, regulations and policies of any self-regulatory organization.

22. INVESTIGATORY POWERS

22.1 for the purpose of any examination or investigation pursuant to this By-law, a Member, Approved Person of a Member or other person under the jurisdiction of the Corporation pursuant to the By-laws or the Rules may be required by the Corporation:

- (a) to submit a report in writing with regard to any matter involved in any such investigation;

(b) to produce for inspection and provide copies of the books, records and accounts of such person relevant to the matters being investigated; and to attend and give information respecting any such matters;

(c) to 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 Corporation;

and the Member or person shall be obliged to submit such report, to permit such inspection, provide such copies and to attend, accordingly. Any member or person subject to an investigation conducted pursuant to this By-law may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the persons conducting the investigation. The person conducting the investigation may, in his or her discretion, require that any statement given by any Member or person in the course of an investigation be recorded by means of an electronic recording device or otherwise and may require that any statement be given under oath.

IV. SUBMISSIONS

A. MFDA Staff

Pre-signed Account Forms Are Not Permissible

44. Staff alleges that the Respondent obtained, possessed and in some instances, used to process trades, 10 pre-signed account forms in respect of 6 clients. “Pre-signed account forms” is a generic term which applies to a variety of situations where a dealing representative seeks to rely on a client’s signature on a document where the signature was not provided by the client at the time the document was completed. Most commonly, a dealing representative obtains a client’s signature on a partially or completely blank account form, completes the form, then uses the form to process transactions in the client’s account.

45. The MFDA has been warning dealing representatives against the use of pre-signed account forms for a number of years¹.

¹ *MFDA Staff Notice #MSN-0035 dated December 20, 2004; MFDA Staff Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013); MFDA Bulletin #0661-E dated October 2, 2015.*

46. Hearing Panels have held that obtaining or using pre-signed account forms is a contravention of the standard of conduct under MFDA Rule 2.1.1².

47. Staff submits that the use of pre-signed account forms adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling and has the potential of misuse in the form of unauthorized trading, fraud and misappropriation. That submission is supported by the finding in *Price (Re)*³ as follows:

Pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading....At its worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other forms of harmful conduct towards a client...Pre-signed forms also subvert the ability of a Member to properly supervise trading activity. They destroy the audit trail. The presence of the client's signature on a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the Member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account.

Altering Forms is Not Permissible

48. The original Allegation #1 alleged that the Respondent had altered and reused 46 original photocopies of previously used account forms in order to process transactions in respect of 25 clients. However, the period during which those 46 forms were alleged to have been used extends between August 22, 2008 and June 15, 2012. As the Hearing Panel has declined to amend Allegation #1, the result is that the period between August 22, 2008 and October 16, 2009, which is the beginning of the period alleged, must be reduced by the number of transactions that took place in that first period. We were advised and have accepted that there is a reduction of 20 to account for transactions that occurred outside this time period in the allegation. The total of 46 is therefore reduced to 26.

² *Byce (Re)*, [2013] Hearing Panel of the Ontario Regional Council, MFDA File No. 201311, Panel Decision dated September 4, 2013, ("Byce"); *Price (Re)*, [2011] Hearing Panel of the Ontario Regional Council, MFDA File No. 200814, Panel Decision (Misconduct) dated April 18, 2011.

³ *Price (Re)*, *supra*.

49. Like pre-signed account forms, the prohibition against altering forms exists regardless of the existence of client authorization or the motive behind the use of the form; and, like pre-signed account forms, the MFDA has been warning against altering forms for a number of years⁴.

50. Hearing Panels have held that altering forms is a contravention of the standard of conduct as set out in MFDA Rule 2.1.1⁵.

51. Staff submits that, like pre-signed account forms, the creation, possession or use of an altered form should be considered serious misconduct. The reasoning in *Price, supra* at paragraph 48 as to why pre-signed account forms affect the integrity and reliability of account documents also applies to altered forms.

52. Staff further submits that unlike pre-signed account forms, where the client knows he or she is signing an incomplete form to be used in some way, in the case of a form altered by the dealing representative, the possibility exists that the client is unaware of the dealing representative's actions.

Failure to Cooperate: Section 22.1 of MFDA By-law No. 1

53. Staff alleges that the Respondent contravenes s. 22.1 of MFDA By-law No. 1 by failing to cooperate with Staff's investigation of her conduct.

54. Staff submits that, pursuant to s. 21 of MFDA By-law No. 1, the MFDA has a duty to conduct examinations and investigations of a Member, an Approved Person, and any other person under its jurisdiction as it considers necessary or desirable in connection with any matter related to that Member's or Person's compliance with, among other things, the By-laws, rules and policies of the MFDA.

⁴ MFDA Member Regulation Notice #MR-0035 dated December 20, 2004, *supra*; MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013), *supra*; MFDA Bulletin #00661-E dated October 2, 2015, *supra*.

⁵ *Byce (Re)*, *supra*; *Ewart (Re)*, [2015] Hearing Panel of the Central Regional Council, MFDA File No. 201528, Panel Decision dated September 11, 2015.

55. In carrying out its s. 21 duty, the MFDA is authorized 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.

56. Staff submits that MFDA Hearing Panels have consistently held that a failure to provide information, document or a report requested in the course of an MFDA investigation constitutes a failure to cooperate, contrary to s. 22 of MFDA By-law No. 1⁶.

57. Staff submits that an Approved Person must provide Staff with information, documentation and attend an interview with Staff when requested to do so. To hold otherwise would hinder the MFDA's ability to investigate the conduct of registrants in the mutual fund industry and prevent the MFDA from fulfilling its regulatory mandate to protect the public.

58. Staff submits that the evidence established is that the Respondent has refused to submit information and documents requested by Staff and has disregarded requests that she attend an interview with Staff and has failed to permit Staff to interview her at all.

B. Respondent

59. The Respondent did not file a written submission in response to the Staff submissions. The Respondent made oral submissions following her cross-examination of the witness Mr. Smith. These submissions, as previously stated, constituted an admission that Allegation #1 is

⁶ *Re: Sergio Peter Gizzo* [2011] Hearing panel of the Central Regional Council, MFDA File No. 201024, Decision dated March 16, 2011 (“Gizzo”); *Re: Conrad Arthur Nunweiler* [2012] Hearing Panel of the Pacific Regional Council, MFDA File No. 201030, Decision dated May 28, 2012 (“Nunweiler”).

well founded in that she altered and reused originals or photocopies of previously used account forms and maintained blank or partially complete pre-signed account forms.

60. She also acknowledged that she did not attend for an interview as had been demanded but she maintained that the bank records and the medical note were supplied to Staff prior to the hearing.

V. ANALYSIS AND DECISION

A. Introduction

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

B. Allegation #1 (The Forms Allegation)

62. Allegation #1 is:

Between October 16, 2009 and June 15, 2012, the Respondent altered and re-used 46 original or photocopies of previously-used account forms in order to process transactions in respect of 25 clients, and obtained and maintained 10 blank or partially complete pre-signed account forms in respect of 6 clients, contrary to MFDA Rule 2.1.1.

63. We have set out above the text of MFDA Rule 2.1.1, Standard of Conduct. We agree with Staff that altering and reusing previously used account forms in order to process transactions for clients and using blank or partially complete pre-signed account forms would be a violation of this Rule. To find a violation of this Rule, we need to be satisfied that the evidence, on the balance of probabilities, supports a finding that the Respondent did so.

64. The only evidence given at the hearing was that of Mr. Smith. In respect of the alteration and reusing of forms, it was overwhelming. The material found at the Respondent's office

included 46 original or photocopies of previously used account forms of which 26 were dated within the time period of the allegation, i.e. October 16, 2009 to June 15, 2012.

65. The Respondent, during the course of the evidence of Mr. Smith, was able to review each of the original altered and reused documents and accepted them as genuine and made no suggestion that they did not in fact originate in her office, nor did she suggest that she was not responsible for them.

66. To the contrary, as set out above, the Respondent acknowledged the alteration and reuse of previously used account forms and the maintenance of blank or partially complete pre-signed account forms and attempted to justify it on the basis that she could not conduct a business if she was required to comply with the MFDA Rules and time limits.

67. The Hearing Panel is in no doubt that the Respondent contravened MFDA Rule 2.1.1 by altering and reusing 26 original or photocopies of previously used account forms and that she obtained and maintained 7 blank or partially complete pre-signed account forms during the period October 16, 2009 and June 15, 2012.

68. The Panel finds that Allegation #1 has been established.

C. Allegation #2 (Failure to Cooperate)

69. Allegation #2 is:

Commencing in November 2013, the Respondent failed to produce for inspection copies of bank account statements and has failed to attend for an interview with Staff for the purpose of investigating the Respondent's conduct, contrary to section 22.1 of MFDA By-law No. 1.

70. The two failures alleged in Allegation #2 are:

- a. failure to produce for inspection copies of bank account statements; and
- b. failure to attend for an interview with Staff,

both contrary to s. 22.1 of MFDA By-law No. 1.

71. With respect to the production of the bank accounts, it is clear that bank account statements were produced to the MFDA Staff by the Respondent's previous counsel. Unfortunately, they appear not to have been reviewed and we are left uncertain whether or not these statements are the ones that were sought by Staff when they made the demands. The result for the Hearing Panel is that we are unable to say, on a balance of probabilities, that Staff has established a failure in this regard on the part of the Respondent and it has therefore failed to establish the first element of Allegation #2.

72. However, there is no such doubt with respect to the failure to attend for an interview. As set out above, despite the many requests made by Staff in their exercise of their powers pursuant to s. 22.1 of MFDA By-law No. 1, the Respondent utterly failed to give the required cooperation to Staff and submit to an interview.

73. We agree with Staff that the failure to cooperate hinders the MFDA's ability to investigate the conduct of registrants and the mutual fund industry and prevents the MFDA from fulfilling its regulatory mandate to protect the public.

74. The Panel finds Allegation #2 has been established.

VI. CONCLUSION

75. We find that the Staff of the MFDA have established on the evidence before us that the Respondent has committed violations of the MFDA Rules as set out in the Allegations # 1 and #2 made against the Respondent.

76. As a result of these findings of misconduct, we need to address the issue of penalty. We direct that the Manager of Hearings proceed to set a date for hearing of submissions with respect to the appropriate penalty.

77. A number of the submissions made by the Respondent were submissions that go to penalty as opposed to liability. The Respondent may make those submissions at the penalty hearing.

DATED this 26th day of May, 2016.

“John Lorn McDougall”

John Lorn McDougall, Q.C.
Chair

“Brigitte J. Geisler”

Brigitte J. Geisler
Industry Representative

“Robert Christianson”

Robert Christianson
Industry Representative

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