



**Notice of Hearing**

**File No. 200702**

**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: Lorne Henry**

---

**NOTICE OF HEARING**

---

**NOTICE** is hereby given that a first appearance will take place by teleconference before a Hearing Panel (the "Hearing Panel") of the Regional Council of the Central Region of the Mutual Fund Dealers Association of Canada (the "MFDA"), in the hearing room located at 121 King Street West, Suite 1000, Toronto, Ontario on Monday, April 16, 2007, at 10:00 a.m. (Eastern) or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Lorne Henry (the "Respondent").

**DATED** at Toronto this 6th day of March, 2007.

"Gregory J. Ljubic"

Gregory J. Ljubic  
Corporate Secretary

Mutual Fund Dealers Association of Canada  
121 King St. West  
Suite 1000  
Toronto, Ontario  
M5H 3T9  
Telephone: (416) 943-5836  
Fax: (416) 361-9781  
E-mail: corporatesecretary@mfda.ca

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

**Allegation #1:** Between February 2002 and June 2003, the Respondent misappropriated approximately \$317,750 from 12 individuals, including nine mutual fund clients, \$298,300 of which he failed to return or otherwise account for, and thereby failed to deal fairly, honestly and in good faith with those individuals and engaged in business conduct that was unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1.

**Allegation #2:** In June 2003, the Respondent borrowed approximately \$3,500 from two mutual fund clients, thereby placing his personal interests above those of the clients and giving rise to a conflict of interest that he failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rule 2.1.4.

**Allegation #3:** Commencing July 2006, the Respondent failed to provide a report in writing as requested by the MFDA in the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1.

### **PARTICULARS**

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

#### **Registration History**

1. The Respondent was registered in Ontario as a mutual fund salesperson with Investors Group Financial Services Inc. (“Investors Group”) from July 1991 to July 11, 2003.

2. Investors Group became a member of the MFDA on March 7, 2002.
3. On July 11, 2003, Investors Group terminated the Respondent as a result of one of the events described herein. The Respondent is not currently registered in the securities industry in any capacity.

**Allegation #1: Misappropriation**

4. Between February 2002 and June 2003, the Respondent solicited and accepted a total of \$317,750 from 12 individuals, including nine mutual fund clients (“the investors”), purportedly to be invested in non-mutual fund investments outside the accounts and facilities of Investors Group.
5. The Respondent led the investors to believe that their ‘private’ investments would be secure and would yield a higher rate of return than mutual funds or other investments. In the case of NM, the Respondent led the mutual fund client to believe that her money would be placed in an “investment opportunity with a car broker providing a return of 25% per month for 2 months” and assured her that the car broker was “a good client.”
6. The investors provided the Respondent with cash, personal cheques payable to the Respondent, or electronic funds transfers to an account controlled by the Respondent for the purpose of investing in the purported investments.
7. In exchange, the Respondent provided the investors with handwritten notes promising to repay their principal plus as much as 30% interest in as little as 30 days. In addition to setting out the terms of the ‘investment’, the notes contained a statement that investors would have a claim against the Respondent’s estate “if anything should happen” to him. In some cases, the Respondent offered his “personal guarantee” for the return of all monies provided to him.
8. In response to a complaint received in June 2003, Investors Group met with mutual fund client SA on July 4, 2003 to discuss certain dealings with the Respondent.

SA provided Investors Group with a note, handwritten by the Respondent and dated March 25, 2002, in which the Respondent promised to “invest privately [sic] for [SA] \$50,000 for one year at the rate of 20%”. SA also produced two personal cheques he made payable to the Respondent in the amount of \$44,000 and \$6,000, respectively; his Investors Group portfolio statement listing 17 RRSP redemptions between February 25, 2002 and March 26, 2002 totaling approximately \$56,000; and a personal cheque in the amount of \$20,000 from the Respondent made payable to SA which was returned for non-sufficient funds.

9. On July 11, 2003, Investors Group terminated the Respondent.

10. On August 14, 2003, the Respondent admitted to Investors Group that he had a gambling problem and had been soliciting money from mutual fund clients and other individuals, either as personal loans or for the purpose of private investment, in order to fund his gambling habit. The Respondent provided Investors Group with the names of eight individuals and one couple (SA, DB, MB, GG, DM, NM, PP, MP and MM/VM), including eight mutual fund clients, from whom he admitted receiving a total of \$171,000.

11. Investors Group subsequently identified four other individuals or couples (KJ/DC, TK, MO and DP), including two mutual fund clients, who provided monies to the Respondent which he failed to return or otherwise account for.

12. In summary, as set out in the table below, the Respondent received a total of \$317,750 from 12 individuals or couples, including nine mutual fund clients, of which amount he misappropriated \$298,300:

	<b>Investor Name(s)</b>	<b>Mutual Fund Client?</b>	<b>Amount(s) Received</b>	<b>Date(s) Received</b>	<b>Amount(s) Repaid by Respondent</b>
1.	SA	Yes	\$50,000	March 25, 2002	\$0
2.	DB	Yes	\$32,000	Unknown	\$0
3.	MB	Yes	\$50,000	February 15, 2002	\$0

			\$10,000	May 29, 2003	
4.	GG	Yes	\$3,000	January 16, 2003	\$0
5.	KJ/DC	No	\$45,000	June 11, 2003	\$0
6.	TK	Yes	\$5,000	Unknown	\$0
7.	DM	Yes	\$5,000	July 16, 2002	\$5,000
			\$2,000	August 21, 2002	\$2,000
			\$6,750	November 11, 2002	\$6,750
			\$6,000	March 14, 2003	\$0
			\$9,000	March 21, 2003	\$0
			\$15,000	June 9, 2003	\$4,500
8.	NM	Yes	\$20,000	February 11, 2003	\$0
9.	MO	Yes	\$6,000	July 25, 2002	\$1,200
			\$2,000	November 18, 2002	
10.	PP	No	\$15,000	Unknown	\$0
11.	DP	No	\$6,000	July 16, 2002	\$0
12.	MP	Yes	\$10,000	February 4, 2003	\$0
			\$10,000	February 8, 2003	
			\$8,000	April 29, 2003	
			\$2,000	May 24, 2003	
			<b>\$317,750</b>		<b>\$19,450</b>

13. The Respondent did not disclose to Investors Group that he was placing mutual fund clients in purported private investments. None of the monies advanced to the Respondent were ever paid to, received by, or otherwise reflected in the books and records of Investors Group.

14. Investors Group has taken steps to compensate some of the individuals affected by the Respondent's misconduct.

15. By soliciting and accepting monies from the investors, and failing to return or otherwise account for the monies, the Respondent failed to deal fairly, honestly and in good faith with the investors and engaged in business conduct that was unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1(a) and (c).

## **Allegation #2: Conflict of Interest – Personal Financial Dealings**

16. During the period in which the Respondent was soliciting and accepting monies for private investment purposes as outlined above, the Respondent personally borrowed a total of \$3,500 from mutual fund clients MM and VM on June 24, 2003 and June 25, 2003. The Respondent promised to repay these personal loans within five days, which he failed to do. The Respondent has not repaid or otherwise accounted for any of the monies he received from MM and VM.

17. The Respondent did not disclose to Investors Group that he had entered into personal financial dealings with these mutual fund clients.

18. By soliciting and receiving personal loans from mutual fund clients MM and VM, the Respondent entered into personal financial dealings with clients which placed his personal interests above those of the clients, thus giving rise to a conflict of interest that he failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rule 2.1.4.

## **Allegation #3: Failure to Cooperate**

19. In May 2006, the MFDA was provided with a copy of a Statement of Claim in respect of an action commenced by one of the investors against the Respondent and Investors Group.

20. By letter dated July 4, 2006, the MFDA asked the Respondent to submit a report in writing concerning the circumstances giving rise to his termination by Investors Group. The Respondent was asked to provide a written response by no later than July 25, 2006, however the Respondent failed to do so.

21. By letter dated July 26, 2006, the MFDA made a second request that the Respondent submit a written report concerning his July 2003 termination by no later than

August 12, 2006. The Respondent was reminded of his obligation to provide such a report as set out in section 22.1 of MFDA By-law No. 1. Once again, the Respondent failed to respond to this request.

22. By letter dated August 21, 2006, the MFDA confirmed that the Respondent had failed to reply to previous requests and reminded the Respondent of his obligation to provide a written report pursuant to section 22.1 of MFDA By-law No. 1. The Respondent was permitted a further extension until September 5, 2006 to submit his report and was advised that failure to do so may result in the commencement of disciplinary proceedings against him for failure to cooperate with the MFDA in the course of an investigation.

23. By letter dated November 3, 2006 and an email message of the same date, the MFDA notified the Respondent that he had failed to provide a written report regarding his termination, contrary to section 22.1 of MFDA By-law No. 1. The Respondent was granted until November 15, 2006 to comply with section 22.1 and was cautioned that should he fail to respond by that date, the MFDA would consider initiating disciplinary proceedings against him for failure to cooperate.

24. On November 4, 2006, the Respondent contacted the MFDA by telephone and agreed to provide the MFDA with a written response together with certain documents by November 15, 2006. However, the Respondent failed to provide his written response or any documentation as agreed.

25. To date, the Respondent has failed to submit a report in writing concerning the circumstances giving rise to his termination by Investors Group in July 2003 and, as such, has failed to cooperate in an MFDA investigation, contrary to section 22.1 of MFDA By-law No. 1.

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

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

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

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

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



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

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

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

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

Mutual Fund Dealers Association of Canada  
121 King Street West  
Suite 1000  
Toronto, ON M5H 3T9  
Attention: Jason D. Bennett  
Fax: 416-943-7431  
Email: [jbennett@mfd.ca](mailto:jbennett@mfd.ca)

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

- (a) providing 4 copies of the **Reply** to the Corporate Secretary by personal delivery, mail or courier to:

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

- (b) transmitting 1 copy of the **Reply** to the Corporate Secretary by fax to fax number (416) 361-9781, provided that the Reply does not exceed 16 pages, inclusive of the covering page, unless the Corporate Secretary permits otherwise; or
- (c) transmitting 1 electronic copy of the **Reply** to the Corporate Secretary by e-mail at CorporateSecretary@mfd.ca.

A **Reply** may either:

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

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

**NOTICE** is further given that if the Respondent fails:

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

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the facts alleged or the conclusions drawn by the MFDA in the

Notice of Hearing as having been proven and may impose any of the penalties described in the By-Laws.

**End.**

Doc #103974