

# Re Reid

**IN THE MATTER OF:****The Mutual Fund Dealer Rules****and****Ann Marie Reid**

2023 CIRO 41

Canadian Investment Regulatory Organization  
Hearing Panel (Ontario District)Heard: April 26-27, June 26, August 10, 2023, in Toronto, Ontario via videoconference  
Decision and Reasons (Misconduct): December 13, 2023**Hearing Panel:**Thomas J. Lockwood, K.C., Chair  
Brigitte J. Geisler, Industry Representative  
Timothy J. Pryor, Industry Representative**Appearances:**Paul Blasiak, Senior Enforcement Counsel, and Samantha Wu, Enforcement Counsel, Canadian Investment  
Regulatory Organization, Mutual Fund Dealer Division  
Ann Marie Reid, Respondent

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## DECISION AND REASONS (MISCONDUCT)

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**I. INTRODUCTION**

¶ 1 By Notice of Hearing, dated the 22<sup>nd</sup> day of August 2022, the following Allegations were made against Ann Marie Reid (“Respondent”):

**Allegation #1:** Between January 2016 and September 2017, the Respondent accepted a power of attorney for property from client MW, contrary to the Member’s policies and procedures and MFDA Rules 2.3.1, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1).

**Allegation #2:** Between April 2016 and September 2017, the Respondent accepted an appointment to act as executor and trustee of client MW’s estate, and between March 2018 and July 2020 accepted an appointment to act as co-executor and co-trustee of client MW’s estate, contrary to the Member’s policies and procedures and MFDA Rules 2.3.1, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1).

**Allegation #3:** The Respondent failed to disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, conflicts or potential conflicts of interest that arose between her and client MW when she became aware:

- a. between January 2016 and September 2017 that she was or would be appointed as a power of attorney for property of client MW;
- b. between January 2016 and September 2017 that she was or would be appointed as an executor and trustee of client MW’s estate;

- c. between March 2018 and July 2020 that she was or would be appointed as a co-executor and co-trustee of client MW's estate; and
- d. between January 2016 and July 2020 that she was or would be designated as a beneficiary of client MW's estate,

contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1).

**Allegation #4:** Between April 2016 and November 2019, the Respondent provided false or misleading responses to questions on compliance information forms that she submitted to the Member, contrary to MFDA Rule 2.1.1.

**Allegation #5:** Between December 2019 and January 2020, the Respondent borrowed monies from client ME, which gave rise to a conflict or potential conflict of interest which the Respondent failed to disclose to the Member or otherwise ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1).

**Allegation #6:** Between January 2018 and May 2018, the Respondent obtained, possessed, and in some instances used to process transactions, 18 pre-signed account forms in respect of 7 clients, contrary to MFDA Rule 2.1.1.

¶ 2 On September 22, 2022, the Respondent served and filed a Reply to the Notice of Hearing.

¶ 3 The First Appearance in this proceeding took place before the Hearing Panel on October 12, 2022. At the First Appearance, the parties agreed to a scheduling Order with respect to Disclosure, Witness Statements and Witness Lists. The parties agreed that the Hearing on the Merits would take place, by videoconference, commencing on April 26, 2023. An Order was made to this effect.

¶ 4 On January 1, 2023, the Mutual Fund Dealers Association of Canada ("MFDA") and the Investment Industry Regulatory Organization of Canada were consolidated into a single self-regulatory organization recognized under applicable securities legislation called the Canadian Investment Regulatory Organization ("CIRO"). CIRO adopted interim rules that, *inter alia*, incorporate the pre-amalgamation regulatory requirements contained in the by-laws, rules and policies of the MFDA.

¶ 5 When the Respondent did not provide documentary Disclosure to Staff on or before January 31, 2023, as required by the Order of October 12, 2022, a further Interim Appearance took place before the Hearing Panel on February 17, 2023.

¶ 6 Upon hearing the submissions of the parties, the Hearing Panel issued a revised Scheduling Order, which, *inter alia*, confirmed that the Hearing on the Merits would commence on April 26, 2023.

¶ 7 The Hearing on the Merits was conducted before the Hearing Panel on April 26-27, 2023.

¶ 8 At the conclusion of the evidentiary portion of the Hearing on the Merits, the Hearing Panel set a schedule for the parties to serve and file written submissions and make closing arguments with respect to misconduct.

¶ 9 On June 26, 2023, a further Appearance was held in the proceeding by the Hearing Panel to amend the schedule for the completion of written submissions and closing arguments with respect to misconduct as a result of an unanticipated delay in the production of transcripts of the evidentiary portion of the Hearing. Oral Argument was scheduled for August 10, 2023. An Order was made to this effect.

¶ 10 Oral Argument was conducted before the Hearing Panel on August 10, 2023. At the conclusion of Oral Argument, the Hearing Panel reserved its Decision on Misconduct.

## II. THE EVIDENCE

¶ 11 During the Hearing on the Merits, CIRO Staff presented the following evidence to the Hearing Panel:

- (a) the affidavit of Jessie Siu, sworn April 24, 2023;

- (b) the oral testimony of Ms. Siu;
- (c) the affidavit of Darlene Barker, sworn April 24, 2023;
- (d) the oral testimony of Ms. Barker;
- (e) the oral testimony of William Douglas Guy;
- (f) the oral testimony of Jodee Eng;
- (g) the oral testimony of Edison Benoit;
- (h) the affidavit of Colleen Gibson, sworn April 21, 2023;
- (i) the oral testimony of Ms. Gibson;
- (j) the affidavit of Jens Scharge, sworn April 24, 2023; and
- (k) the oral testimony of Mr. Scharge.

¶ 12 All of Staff's witnesses were either cross-examined by the Respondent or were made available for cross-examination by her.

¶ 13 The Respondent testified and was cross-examined by Staff.

¶ 14 The Respondent called Amin Edwards Fernandez, Peter Perri and Jack Jiwana as witnesses. Staff cross-examined each of the Respondent's witnesses.

¶ 15 The admitted evidence before the Hearing Panel established the following Registration history for the Respondent:

- (a) Commencing in May of 1997, the Respondent was registered in the securities industry.
- (b) From November 2, 2009 until November 30, 2012, the Respondent was registered in Ontario as a dealing representative and branch manager with MGI Financial Inc. ("MGI"), a member of the MFDA.
- (c) On November 30, 2012, MGI amalgamated with Desjardins Financial Security Investments Inc. ("Desjardins"). Following the amalgamation, the continuing Member was known as Desjardins.
- (d) From November 30, 2012 until December 21, 2017, the Respondent was registered in Ontario as a dealing representative with Desjardins, and from November 30, 2012 until April 15, 2016, the Respondent was also registered as a branch manager with Desjardins.
- (e) From December 27, 2017 until July 9, 2020, the Respondent was registered in Ontario as a dealing representative with IPC, a Member of the MFDA.
- (f) On July 9, 2020, IPC terminated the Respondent's registration.
- (g) The Respondent is not currently registered in the securities industry in any capacity.

A. The Member's Policies and Procedures

(a) Desjardins' Policies and Procedures

¶ 16 The uncontradicted Affidavit and *viva voce* evidence of Darlene Barker, Manager, Independent Compliance (Outside Quebec), Risk Management at Desjardins Group, established that, at all material times, the policies and procedures of Desjardins:

- (a) required Approved Persons to act at all times in the best interest of the client and avoid placing themselves in a situation that would encourage, or give the impression of encouraging, them to place their own interests before those of the client;
- (b) required Approved Persons to ensure that any conflict or potential conflict of interest was addressed by the exercise of responsible business judgement influenced only by the best

interests of the client and in compliance with MFDA's rules, and to immediately disclose in writing any conflict of interest that can reasonably be expected to arise, to Desjardins;

- (c) included accepting a beneficiary designation from a client as an example of a conflict of interest; and
- (d) prohibited Approved Persons from accepting or acting on a general Power of Attorney or similar authorization on an account held with Desjardins.

(b) IPC's Policies and Procedures

¶ 17 The uncontradicted Affidavit and *viva voce* evidence of Jens Scharge, a Senior Complaints and Investigations Officer at IPC, established that, at all material times, the policies and procedures of IPC:

- (a) required Approved Persons to immediately disclose to IPC any conflict of interest, or any conflict of interest that could reasonably be perceived;
- (b) prohibited Approved Persons from accepting gifts unless nominal in amount and offered as part of a normal business courtesy;
- (c) prohibited Approved Persons from borrowing from clients, thereby engaging in personal financial dealings with clients;
- (d) prohibited Approved Persons from accepting appointments as a power of attorney or executor or any other form of authority granting an Approved Person control over clients' financial affairs; and
- (e) prohibited Approved Persons from obtaining or using pre-signed forms.

B. Jurisdiction

¶ 18 Although the issue of jurisdiction has never been raised by the Respondent in these proceedings, we agree with the submission of Staff that, pursuant to s. 24.1.4 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.4), an Approved Person remains subject to the jurisdiction of CIRO notwithstanding the fact that such individual has ceased to be an Approved Person. A disciplinary proceeding can be commenced against an Approved Person up to five years after the date when the individual ceased to be an Approved Person.

¶ 19 It is clear that the Respondent was an Approved Person registered with the IPC until July of 2020. Consequently, this proceeding was commenced within the relevant limitation period.

C. Standard of Proof

¶ 20 In our view, it is also clear that the standard of proof in this case, as in all CIRO and other regulatory proceedings in the securities industry, is the civil standard of a balance of probabilities. As stated by the Supreme Court of Canada in *F.H. v. McDougall*, and as adopted by subsequent MFDA Hearing Panels, we "must scrutinize relevant evidence with care to determine whether it is more likely than not that an alleged event occurred." Evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. However, there is no objective standard to measure sufficiency.

*F.H. McDougall*, 2008 SCC 53, at paras. 40, 46 and 49.

*DeVuono (Re)*, [2012] Hearing Panel of the Pacific Regional Council, MFDA File No. 201102, Panel Decision (Misconduct) dated November 22, 2012, at paras. 11-13.

*Desgroseillers (Re)*, [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201790, Panel Decision dated August 21, 2018, at para. 15.

D. Allegations #1 and #2 (April 2016 to September 2017)

¶ 21 As indicated in paragraphs 16 and 17 above, at the relevant period of time, the policies and procedures of both Desjardins and IPC prohibited, at a minimum, Approved Persons from "accepting appointments as a power of attorney."

¶ 22 At the indicated period of time, MFDA Rule 2.3.1 (now Mutual Fund Dealer Rule 2.3.1) stated as follows:  
Between December 11, 2008 and January 19, 2017:

“(a) **Prohibition.** No Member or Approved Person shall accept or act upon a general power of attorney or other similar authorization from a client in favour of the Member or Approved Person or engage in any discretionary trading. [...]”

Since January 19, 2017:

“(a) **Control or Authority**

No Member or Approved Person shall have full or partial control or authority over the financial affairs of a client, including:

- i. accepting or acting upon a power of attorney from a client;
- ii. accepting an appointment to act as a trustee or executor of a client; or
- iii. acting as a trustee or executor in respect of the estate of a client. [...]”

¶ 23 While prior to January 19, 2017, Rule 2.3.1 did not specifically refer to “executor” or “trustee”, the term “similar authorization” in the Rule has been interpreted by MFDA Hearing Panels to include executor or trustee positions.

*Brauns (Re)*, [2013] Hearing Panel of the Central Regional Council, MFDA File No. 201203, Panel Decision (Misconduct) dated October 15, 2013, at para. 73.

*Taylor (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 2017118, Panel Decision dated August 1, 2019, at para. 11.

¶ 24 Previous Hearing Panels have held that the acceptance by an Approved Person of an appointment to act as a client’s Power of Attorney for property, executor or trustee is contrary to Rule 2.3.1.

*Brauns (Re)*, *supra*.

*Taylor (Re)*, *supra*.

*Ryan (Re)*, [2011] Hearing Panel of the Central Regional Council, MFDA File No. 201014, Panel Decision dated April 6, 2011.

*Karasick (Re)*, [2015] Hearing Panel of the Pacific Regional Council, MFDA File No. 201427, Panel Decision dated June 18, 2015.

*Sukman (Re)*, [2016] Hearing Panel of the Central Regional Council, MFDA File No. 201519, Panel Decision dated May 9, 2016.

*Sakkejha (Re)*, [2012] Hearing Panel of the Central Regional Council, MFDA File No. 201140, Panel Decision dated February 9, 2012.

¶ 25 The prohibition in Rule 2.3.1 applies equally to all forms of executorships or trustee appointments, including co-executor and co-trustee appointments or appointments to act as an alternate or “back-up” executor or trustee.

*Marrone (Re)*, 2022 ONCMT 13, at para. 132.

*Brauns (Re)*, *supra*.

*Taylor (Re)*, *supra*.

*Sakkejha (Re)*, *supra*.

¶ 26 The fact that an Approved Person does not exercise the Power of Attorney or does not act as a client’s executor or trustee is not relevant to establishing a contravention of Rule 2.3.1. The Rule prohibits the acceptance of these appointments from a client, regardless of whether the Approved Person acts on them.

*Marrone (Re)*, *supra*, at paras. 122 and 131.

*Sukman (Re)*, *supra*.

*Sakkejha (Re)*, *supra*.

¶ 27 Recently in *Marrone (Re)*, the Ontario Capital Markets Tribunal held that an MFDA Approved Person contravened MFDA Rule 2.3.1 when he accepted appointments to act as a client’s Power of Attorney for property and alternative executor, notwithstanding that he did not act on the appointments.

*Marrone (Re)*, *supra*.

¶ 28 As stated by the Tribunal regarding Marrone’s acceptance of the Power of Attorney:

“The fact that Marrone did not exercise the Power of Attorney for property to conduct trades on MU’s behalf is not relevant. The prohibition in both the MFDA Rules and IPC policies and procedures applies to the acceptance of a Power of Attorney from a client. [Emphasis added]

Marrone submits that as MU signed her powers of attorney for property and health on May 9, 2017, and a power of attorney for property expires on the date the grantor dies, that Marrone had only had the theoretical ability to act as MU’s power of attorney for the 10 days between May 9 and her death on May 19, 2017, which he characterizes as a “minor technical breach.”

He also submits that he did not report to IPC that he had been named as power of attorney for MU during the 10 days because he did not believe he would ever act on it. He further testified that he would have complied with IPC protocols in the event that a trade would have been required, while affirming his belief that the prospect of ever having to act on the power of attorney was “incredibly remote”.

We find that Marrone was aware of the prohibition on accepting Powers of Attorney for property on behalf of a client. . . .

. . .

Marrone’s submissions that his conduct amounted to a technical non-compliance with MFDA Rules for a period of 10 days and did not cause any harm is not relevant to the issue before us, which is whether or not he complied with Rule 2.3.1(a), and therefore is a submission more properly reserved for a sanctions and costs hearing panel.

We conclude that Marrone knew about and accepted the Power of Attorney for Property bestowed upon him by his client MU, and therefore breached MFDA Rule 2.3.1(a)(i).”

*Marrone (Re)*, *supra*, at paras. 124–130.

¶ 29 As further stated by the Tribunal regarding Marrone’s acceptance of the alternate executorship:

“Marrone submits that as he did not “accept” or “act” as an alternate executor of MU’s estate, he cannot be in breach of MFDA Rule 2.3.1(a).

He submits that as he was not consulted about being named as alternative executor, he cannot be found to be in breach of the rule. In any event, all a registrant could do if named as an alternate executor is renounce the appointment. As the executor took up the role, Marrone never even had the opportunity to do so as the alternate executor role was never activated.

We reject these submissions. As we found above, Marrone knew of his appointment as alternative executor May 3, 2017, but in any event by no later than May 19, 2017, when MU passed away and he admitted to reviewing the will. Yet he failed to report the appointment to IPC and took no steps to renounce the appointment.

For our analysis of this breach, it does not matter that Marrone did not become the executor and act on the appointment. [Emphasis added]

We conclude that Marrone knew of his appointment as alternate executor in his client's will by no later than May 19, 2017, and by failing to renounce the appointment, he was in breach of MFDA Rule 2.3.1(a)(ii)."

*Marrone (Re)*, *supra*, at paras. 134-138.

¶ 30 The following facts were established before the Hearing Panel:

- (a) Marilyn Westlake ("MW") was born on March 6, 1940.
- (b) The Respondent became the Approved Person at MGI responsible for servicing MW's accounts in November of 2009.
- (c) The Respondent is not related to MW.
- (d) On February 23, 2011, MW executed her will appointing the Respondent as the executor and trustee of her estate. She also named the Respondent as a beneficiary, entitled to receive 10% from a 60% share of the residue of her estate. On the same day, MW executed a Continuing Power of Attorney for Personal Care, in which she appointed the Respondent as her Power of Attorney for Personal Care.
- (e) On February 28, 2012, MW executed a new will in which she, again, appointed the Respondent as the executor and trustee of her estate as well as her beneficiary. In this will, MW increased the amount that the Respondent was entitled to receive as a beneficiary to 20% from a 60% share of the residue of the estate.
- (f) On April 15, 2016, MW executed a further new will in which the Respondent was again appointed as the executor and trustee, as well as a beneficiary. In this will, MW increased the amount that the Respondent was entitled to receive as a beneficiary to 32% of a 60% share of the residue of the estate.

#### Position of the Respondent

¶ 31 In her Reply pleadings, the Respondent admitted "the facts alleged and the conclusions drawn by Staff" in, *inter alia*, paragraphs 10 and 13 of the Notice of Hearing. These provide as follows:

"10. In January 2016, client MW informed the Respondent that she had drafted a will with her lawyer and had appointed the Respondent as:

- (a) the executor and trustee of her estate; and
- (b) her power of attorney ("POA") for property and for personal care."

"13. Client MW advised the Respondent that she had been designated as a beneficiary of client MW's estate during the period while the Respondent was an Approved Person of Desjardins."

¶ 32 Paragraphs 11 and 14 of the Notice of Hearing provide as follows:

"11. When client MW informed the Respondent that she was or would be appointed as client MW's POA for property and executor and trustee of client MW's estate, the circumstances gave rise to a conflict or potential conflict of interest that the Respondent was required to disclose to Desjardins so that the conflict or potential conflict of interest could be addressed in compliance with MFDA Rule 2.1.4. The Respondent failed to disclose to Desjardins that she was or would be appointed as client MW's POA and executor and trustee."

"14. When the Respondent was informed that client MW designated, or would designate, the Respondent as a beneficiary of her estate, the circumstances gave rise to a conflict or potential conflict of interest that the Respondent was required to disclose to Desjardins so that the conflict or potential conflict of interest could be addressed in accordance with MFDA Rule 2.1.4. The Respondent failed to disclose to Desjardins that client MW designated, or would designate, the Respondent as a beneficiary of client MW's estate."

¶ 33 The position of the Respondent in her Reply was that she had disclosed these “conflicts” to Desjardins.

¶ 34 In her Written Submissions to the Hearing Panel, the Respondent stated that:

“At no time was I made aware, nor did I ever accept the responsibility of being Power of Attorney, Co-Executor, Co-Trustee or Beneficiary of MW’s estate. Therefore, I had no cause to disclose or discuss conflicts or potential conflicts of interest.”

¶ 35 The issue of disclosure or non-disclosure of the “conflicts” is more fully discussed in the analysis of Allegation 3, *infra* – paragraph 70 and following.

¶ 36 Despite the admissions in her Reply, in her Written Submissions the Respondent stated, *inter alia*, as follows:

- (a) “To be clear at no time did I accept Power of Attorney for my client MW.”
- (b) “At no time was I ever informed by my client MW or her lawyer, Mr. Finder, that I had been named to act as executor and trustee of MW’s estate, nor was I ever informed nor did I accept the responsibility to act as Co-Executor or Co-Trustee of MW’s estate.”

### Analysis

¶ 37 The positions taken by the Respondent in her Reply and Written Submissions are contradictory and logically inconsistent.

¶ 38 At the Hearing on the Merits, there was clear, convincing and cogent evidence before the Hearing Panel, which established the following:

- (a) MW and the Respondent were “long-time” friends. The Respondent talked to her “almost everyday.”  
Hearing Transcript, Day 2, page 100 – lines 23-24; page 104 – lines 9-10
- (b) She went with MW to the lawyer’s office, on at least two occasions, for the purpose of updating MW’s will.  
Hearing on the Merits – Exhibit 4 - Siu Affidavit – Exhibit 2 – page 35.
- (c) She has one of the original wills still in her possession.  
Hearing on the Merits – Exhibit 4 - Siu Affidavit – Exhibit 2 – page 36.
- (d) At the Hearing on the Merits, she admitted that she saw a will in 2010 or 2011.  
Hearing Transcript, Day 2 – page 99, lines 2-3.
- (e) The Respondent knew that it was MW’s practice to designate percentages to beneficiaries.  
Hearing Transcript, Day 2 – page 99, lines 4-7.
- (f) The Respondent admitted, in a written Statement to Staff, that, in or about late January 2016, while she was working at Desjardins, MW advised her that she had drafted a new will and had listed the Respondent as Power of Attorney for Property and for Personal Care and Executor and Trustee of her will.  
Hearing on the Merits – Exhibit 11.
- (g) On November 7, 2016, the Respondent recorded a note on Desjardins’ internal system with respect to a mutual fund purchase she had made that day on MW’s behalf. The note read as follows:  
“Met with Marilyn over the weekend. She is back from Mexico and wants the proceeds of her house sale in Mexico into her investment acct. I had switched her acct. to colleague Edison Benoit several months ago as it appeared Marilyn was perhaps losing her memory and seemed confused. With the knowledge of that I thought it best practice

to have Edison as her advisor of record. Also her Family (close family to her over 50 yrs) is aware of all this. She was diagnosed with anxiety/depression and it was affecting her memory. All seems well at the moment after medication. As I will be her POA if things like that occur in the future I did what I thought best. I am putting her money in at low load as it was agreed I do more for here (sic) than for any other client ongoingly (sic). I should be compensated.”

Hearing on the Merits – Exhibit 4 – Siu Affidavit – Exhibit 26.

- (h) At the Hearing on the Merits, the Respondent agreed that being named in a will or power of attorney for someone who has severe memory issues, is a very significant conflict.

Hearing Transcript, Day 2 – page 114 – lines 20-25.

- (i) On August 22, 2017, when the Respondent began the process of transferring her registration to IPC, she completed an IPC “Profile and Due Diligence Form” on which she disclosed that she had a conflict of interest with client MW. When questioned about the conflict she admitted that “If it is required I act as either POA (Power of Attorney) or executrix (for client MW). I will transfer portfolio to Peter Perri at that time.”

Hearing on the Merits – Exhibit 4 – Siu Affidavit – para. 43, Exhibit 29: Hearing on the Merits – Exhibit 7 – Gibson Affidavit – para. 9(b).

¶ 39 The Respondent admitted that she was aware, in January of 2016, that MW had appointed her as her Power of Attorney for property, executor and trustee. In November of 2016 and August of 2017, she was aware of the continuing potential necessity for her to act as a Power of Attorney for her client MW. She states that she instructed MW’s lawyer, Romeo Finder, to “Take her off everything”.

Hearing Transcript, Day 2, page 69 – lines 4-17 and page 86 – lines 21-24.

¶ 40 She believed that she called him “in the first half of 2016, around the time that I found out that I even was in her will.”

Hearing Transcript, Day 2, page 69 – lines 4-17.

¶ 41 She knew Mr. Finder, as he had prepared her will as well. “So I called him and said, I cannot be on Marilyn Westlake’s will. I just found out that I’m there.”

Hearing Transcript, Day 2, page 69 – lines 9-13.

¶ 42 What is clear from this testimony of the Respondent is that, at least in the early part of 2016, she knew that she was in MW’s will and that she should not be there.

¶ 43 The only evidence of the timing of her request to be removed comes from the Respondent. Mr. Finder was not called as a witness. The evidence which we have from Mr. Finder is in the form of a letter, dated September 29, 2017, to IPC which stated that MW had removed the Respondent as her Power of Attorney for Property and Personal Care, as well as her Executor and Trustee of her will.

Hearing on the Merits – Exhibit 4, Siu Affidavit, Exhibit 30.

¶ 44 The September 29, 2017 letter did not provide the date that that action was taken. However, in a written Statement to Staff, the Respondent indicated that it was “on or about September 29, 2017.”

Hearing on the Merits – Exhibit 11.

¶ 45 The Respondent admitted at the Hearing on the Merits that she was not taken off as “beneficiary”.

Hearing Transcript, Day 2, page 86, line 25 to page 87, line 23.

¶ 46 It is clear from her note to the Desjardins file in November of 2016 (see paragraph 38(g), *supra*) and her response to IPC in August of 2017 (see *infra*, paragraph 83), that the Respondent knew that she was still named in MW’s will and that she should not be.

¶ 47 There was no evidence presented to the Hearing Panel by the Respondent as to any follow-up communication to Mr. Finder between early 2016 and September of 2017, after IPC advised her that it would not approve her Application for transfer until she had provided proof of the rescission of her appointment as Power of Attorney and executor of MW's estate.

¶ 48 The better view of the evidence, and the one which this Hearing Panel accepts, is that by, at least, January of 2016, the Respondent was aware that she had been appointed the executor and trustee of MW's estate, as well as her Power of Attorney for Property and Personal Care. She was also advised, while she was an Approved Person of Desjardins, that she had been designated as a beneficiary of her client MW's estate. She took no meaningful steps to rescind any of these appointments until September of 2017 when she was required to do so in order for her Application for transfer to IPC to be approved.

¶ 49 Throughout the relevant period of time, the Respondent remained a beneficiary of MW's estate, through a series of wills which increased her percentage interest in the estate.

¶ 50 One of the arguments raised by the Respondent is that she did not "accept" the Power of Attorney for her client MW. In her Written Submissions, she stated:

"I would expect that if I was indeed Power of Attorney for MW, I would have had to complete paperwork and sign some form of acceptance for this role. If a signed acceptance is not a requirement for the position, then how would I have known that I hold that position?"

¶ 51 The question is answered, in this case, by the facts. She was told of her appointment and acknowledged same in her Reply.

¶ 52 As was stated by the Ontario Capital Markets Tribunal in *Marrone (Re)*, the fact that the Respondent did not exercise the Power of Attorney "is not relevant". (See paragraph 28, *supra*.) The prohibition in the Rules and the policies applies to the "acceptance" not the exercise of the Power of Attorney.

¶ 53 As soon as an Approved Person becomes aware that a client has named him or her as Power of Attorney, an Executor, Trustee and/or beneficiary, there is a positive obligation imposed on them to take immediate effective steps to rescind the appointments. Failure to do so, as in the case before us, means that the Approved Person has "accepted" the appointment in contravention of Rules 2.3.1, 2.1.1 and 1.1.2 (as it relates to MFDA Rule 2.5.1). In this case, it also meant that the Respondent acted contrary to the Member's (Desjardins') policies and procedures.

¶ 54 We are, unanimously, of the view that Allegation No. 1 has been established.

¶ 55 We are, also, unanimously of the view that Allegation No. 2, insofar as it relates to the time period between April 2016 and September 2017, has been established.

E. Allegation No. 2 – March 2018 to July 2020

¶ 56 On March 23, 2018, MW executed a Codicil to her April 15, 2016 will and appointed the Respondent and Heather Shaw as co-executors and co-trustees of her estate.

Hearing on the Merits – Exhibit 4, Siu Affidavit – para. 48 and Exhibit 32.

¶ 57 At this time, the Respondent's registration had been transferred to IPC and client MW had become a client of IPC whose accounts were serviced by the Respondent.

¶ 58 In her Reply, the Respondent asserted that she had "no knowledge of the codicil to client MW's will dated March 23, 2018."

¶ 59 A significant portion of the evidence before us with respect to the Respondent's knowledge, or lack thereof, of this Codicil, was given by Jessie Sui, a Senior Investigator in the MFDA Enforcement Department, who testified on the first day of the Hearing on the Merits. At that time, she filed a lengthy 69 paragraph Affidavit, containing 41 exhibits. The Respondent consented to the filing of the Affidavit.

¶ 60 Ms. Sui testified extensively about the circumstances surrounding the execution of the Codicil and the Respondent's knowledge or lack thereof of same. While the Respondent exercised her right to cross-examine

Ms. Siu, she asked no questions with respect to the Codicil or the extent of her knowledge of same.

Hearing on the Merits, Day 1 – page 62, line 25 to page 64, line 16.

¶ 61 On March 17, 2018, MW sent out an email to, *inter alia*, the Respondent saying:

“Re my will. To make things hopefully easier I spoke to my lawyer, Romeo Finder this week. He suggested that Heather should have the Power of Attorney (POA) and that Annie (i.e. the Respondent) and Heather be co-executors.”

¶ 62 The Respondent, in cross-examination at the Hearing on the Merits, admitted receiving this email.

Hearing Transcript, Day 2, page 130 – line 24 to page 132 – line 1.

¶ 63 In her testimony before us, Ms. Siu was referred to paragraph 49 of her Affidavit, where she described an interview which Staff had with Heather Shaw. She stated:

“Ms. Shaw told Staff at the interview that the Respondent asked Ms. Westlake and Ms. Shaw to appoint the Respondent as the client Ms. Westlake’s co-executor and co-trustee.”

Hearing Transcript, Day 1, page 51, lines 3-6.

¶ 64 She quoted from the interview as follows:

“She (the Respondent) asked Marilyn and I to go do it.”

Hearing Transcript, Day 1, page 51 – lines 11-15.

¶ 65 During the Hearing on the Merits, when the Respondent was shown the New Account Application Form that she completed with MW on March 23, 2018, the Respondent admitted that she “must have met with” MW on the same day that MW executed the Codicil.

Hearing Transcript, Day 2, page 134, lines 12-24.

¶ 66 Given all of the circumstances, it is extremely likely that the Respondent discussed the issue of the Codicil with MW on March 23, 2018.

¶ 67 Ms. Siu also testified that Ms. Shaw advised her that the April 2016 Will and the March 2018 Codicil to same, represents MW’s current Will status up to at least July of 2020.

¶ 68 There was no evidence presented to this Hearing Panel that the Respondent renounced her March 2018 appointment as MW’s co-executor and co-trustee at any time before her termination on July 9, 2020, or, indeed, to the date hereof.

¶ 69 We are, unanimously, of the view that the Respondent between March of 2018 and July of 2020 accepted an appointment to act as co-executor and co-trustee of client MW’s estate, contrary to the Member’s policies and procedures and MFDA Rules 2.3.1, 2.1.1 and 1.1.2 (as it relates to MFDA Rule 2.5.1), as alleged in Allegation #2 of the Notice of Hearing.

F. Allegation #3

¶ 70 Allegation #3 states, in part, as follows:

“The Respondent failed to disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, conflicts or potential conflicts of interest that arose between her and client MW when she became aware . . .”

There then followed a list of four particular circumstances, all of which have been established, heretofore, and discussed. These circumstances were:

- (a) between January 2016 and September 2017 that she was or would be appointed as a power of attorney for property of client MW;
- (b) between January 2016 and September 2017 that she was or would be appointed as an executor

and trustee of client MW's estate;

- (c) between March 2018 and July 2020 that she was or would be appointed as a co-executor and co-trustee of client MW's estate; and
- (d) between January 2016 and July 2020 that she was or would be designated as a beneficiary of client MW's estate,

¶ 71 The Allegation is that the stipulated actions of the Respondent were contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1 and 1.1.2 (as it relates to MFDA Rule 2.5.1)

¶ 72 The position of the Respondent with respect to the particulars is either that she did disclose the conflict to Desjardins, or did not "accept" or was not aware of the appointment.

¶ 73 We have determined that the Respondent was aware of each and every one of the particulars at the designated period of time. The remaining question is whether she did disclose any or all of the conflicts to the Member.

¶ 74 In her interview with Staff, the Respondent admitted that she failed to disclose her beneficiary designation to Desjardins.

Hearing on the Merits – Exhibit 4, Siu Affidavit, Exhibit 2, page 52 – lines 13-15.

¶ 75 When asked why she didn't disclose, the Respondent said:

"Because it didn't seem like it was a big deal at the time. I guess I didn't realize what the implications were."

Hearing on the Merits – Exhibit 4, Siu Affidavit, Exhibit 3, page 8 – lines 6-9.

¶ 76 Darlene Barker testified that she had reviewed Desjardins' records, as they relate to the Respondent and client MW, and there is no evidence of the Respondent disclosing to anyone at Desjardins that she had been named as client MW's Power of Attorney, executor, trustee, or beneficiary.

Hearing Transcript, Day 1, page 81 – lines 2-11.

¶ 77 The Respondent did not cross-examine Ms. Barker.

Hearing Transcript, Day 1, page 103 – lines 12-14.

¶ 78 Ms. Barker also gave evidence that had the Respondent disclosed the appointments to a Desjardins compliance officer or branch manager, the compliance officer or branch manager would not have had the authority to approve of any of the appointments (even if the client's accounts were transferred to another Approved Person of Desjardins).

Hearing on the Merits – Exhibit 5, Barker Affidavit, para. 18.

¶ 79 William Douglas Guy, who was the Respondent's branch manager at Desjardins, from January 2015 until the Respondent's resignation in December 2017, testified that the Respondent did not inform him and he was not aware that she was named as client MW's POA, executor, trustee, or beneficiary.

Hearing Transcript, Day 1, page 112, line 16 to page 118, line 4.

¶ 80 The Respondent did not cross-examine Mr. Guy.

Hearing Transcript, Day 1, page 118, lines 19-22.

¶ 81 Jodee Eng, who (together with Mr. Guy) was the Respondent's branch manager at Desjardins from July 2017 until December 2017, testified that the Respondent never disclosed to her that she was named as client MW's Power of Attorney, executor, trustee, or beneficiary, and she was not aware of the Respondent's appointments.

Hearing Transcript, Day 1, page 125, line 16 to page 130, line 16.

¶ 82 The Respondent did not cross-examine Ms. Eng.

Hearing Transcript, Day 1, page 130, lines 20-23.

¶ 83 In her testimony before the Hearing Panel, the Respondent did not proffer any evidence which would indicate that she disclosed the conflicts to Desjardins.

¶ 84 In August 2017, the Respondent began the process of transferring her registration from Desjardins to IPC. As part of the process, on August 22, 2017, as indicated, *supra*, in paragraph 38(i), she completed an IPC “Profile and Due Diligence Form” on which she disclosed that she had a conflict of interest with client MW. When questioned by IPC about the conflict, the Respondent advised IPC, on August 28, 2017, that:

“If it is required I act as either POA or executrix (for MW) I will transfer portfolio to Peter Perri at that time.”

Hearing on the Merits, Exhibit 4, Siu Affidavit, para. 43.

¶ 85 The Respondent failed to disclose to IPC that she was also client MW’s beneficiary, despite IPC specifically asking her on the “Profile and Due Diligence Form” whether she was named as a beneficiary for any clients.

¶ 86 On August 28 and September 5, 2017, IPC staff emailed the Respondent informing her that MFDA Rules prohibited her from being a client’s Power of Attorney or executor even if she was not named as the client’s advisor of record, and that IPC would not approve her registration until her appointment as client MW’s Power of Attorney and executor was “rescinded” and she provided proof of such to IPC.

Hearing on the Merits, Exhibit 4, Siu Affidavit, para. 43 and Exhibit 29.

¶ 87 IPC, subsequently, received a letter, dated September 29, 2017, from MW’s lawyer, indicating that the Respondent was no longer client MW’s Power of Attorney for Property and Personal Care and had been removed as MW’s executor and trustee. It made no reference to the Respondent’s designation as MW’s beneficiary.

Hearing on the Merits, Exhibit 4, Siu Affidavit, para. 45 and Exhibit 30.

¶ 88 After IPC received the letter, the Respondent became registered with it and began again to service MW’s account.

Hearing on the Merits, Exhibit 4, Siu Affidavit, para. 46.

¶ 89 As indicated above, (see paragraph 56), on March 23, 2018, MW executed a Codicil to her April 15, 2016 will and, *inter alia*, appointed the Respondent as a co-executor and co-trustee.

¶ 90 At the Hearing on the Merits, Staff elicited evidence from both Colleen Gibson, Senior Director, Compliance and Jens Scharge, Senior Complaints and Investigation Officer at IPC. Both testified that, prior to her termination from IPC on July 9, 2020, IPC was unaware of the Respondent’s appointment as co-executor and co-trustee of MW’s estate or being named as a beneficiary in MW’s will. The Respondent cross-examined neither of these witnesses on these assertions.

¶ 91 We are, unanimously, of the view that Allegation #3 has been established.

#### G. Allegation #4

¶ 92 MFDA Rule 2.1.1 (now Mutual Fund Dealer Rule 2.1.1) prescribes the standard of conduct applicable to registrants in the mutual fund industry. It states as follows:

“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.”

¶ 93 Previous Hearing Panels have held that an Approved Person who provides false or misleading responses on a Member’s compliance certification engages in conduct that is contrary to Rule 2.1.1.

*Smockum (Re)*, [2023] Hearing Panel of the Central Regional Council, MFDA File No. 202157, Panel Decision dated February 8, 2023.

*Sarang (Re)*, [2016] Hearing Panel of the Pacific Regional Council, MFDA File No. 201535, Panel Decision dated March 21, 2016.

*Nunweiler (Re)*, [2012] Hearing Panel of the Pacific Regional Council, MFDA File No. 201030, Panel Decision dated May 28, 2012.

*Davidson (Re)*, [2021] Hearing Panel of the Central Regional Council, MFDA File No. 202018, Panel Decision dated June 29, 2021.

¶ 94 When an Approved Person misleads the Member, he or she undermines the ability of the Member to fulfill its regulatory obligation to supervise the Approved Person in accordance with its own regulatory obligations.

¶ 95 The evidence before us shows that the Respondent, while an Approved Person at Desjardins, completed Annual Compliance Update Checklists, dated April 6, 2016 and April 5, 2017, in which she confirmed that she understood the requirement to report any potential or actual conflict of interest to Compliance, and that she had reported any conflicts of or potential conflicts of interest to Compliance.

Hearing on the Merits, Exhibit 5, Barker Affidavit, para. 21 and Exhibits 6 and 7.

¶ 96 The information that the Respondent provided to Desjardins was false or misleading because, as described above, the Respondent failed to report to Desjardins conflicts or potential conflicts of interest that arose between her and client MW when she became aware in no later than January 2016 that:

- (a) she was appointed as client MW’s Power of Attorney;
- (b) she was appointed executor and trustee of client MW’s estate; and
- (c) she was designated as a beneficiary in client MW’s will.

¶ 97 While the Respondent was an Approved Person at IPC, she completed Annual Affirmations dated August 9, 2018 and November 25, 2019. On the August 9, 2018 Affirmation, the Respondent answered “No” to the question: “Have you been appointed as either an Executor, POA and Trustee?” On the November 25, 2019 Affirmation, the Respondent answered “No” to the question: “Have you been appointed as an Executor, alternate Executor, POA or Trustee for any accounts or individuals that have NOT already been previously disclosed and approved by IPC?”

Hearing on the Merits, Exhibit 9, Scharge Affidavit, para. 24, Exhibits 12 and 13.

¶ 98 The Respondent’s responses were false or misleading because, as described above, on March 23, 2018, the Respondent had been appointed as the co-executor and co-trustee of client MW’s estate and she was also previously appointed as client MW’s Power of Attorney, executor and trustee.

¶ 99 In light of the above, we are, unanimously, of the view that Allegation #4 has been established.

#### H. Allegation #5

¶ 100 The factual particulars with respect to Allegation #5 are set out in paragraphs 30 to 35 of the Notice of Hearing. We note that in paragraph 34 the repayment date should read “January 6, 2020” and not “2021”.

¶ 101 In her Reply, the Respondent admits each of these factual statements.

¶ 102 Paragraphs 36 and 37 of the Notice of Hearing provide as follows:

“36. The acceptance of a \$30,000 loan from client ME constituted personal financial dealings with a client that gave rise to a conflict or potential conflict of interest between the Respondent and client ME that the Respondent failed to disclose to IPC and otherwise ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of client ME as required by MFDA Rule 2.1.4.”

“37. By virtue of the foregoing, the Respondent’s conduct contravened the Member’s policies and procedures and MFDA Rules 2.1.4, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1).”

¶ 103 In her Reply, the Respondent admits both of these conclusatory statements. The Respondent’s Reply, stated that “there are several factors that the Respondent intends to rely on in mitigation.”

¶ 104 In her Written Submissions, the Respondent seeks to show that ME lent her inherited money instead of from a line of credit and that the loan was made at the suggestion of ME and not in response to a request from the Respondent.

¶ 105 In our view, the source of the funds from the client making the loan is irrelevant. The breach of Rules 2.1.1 and 2.1.4 occurs with the act of borrowing not with either the source of the borrowed funds or which party, initially, suggested the borrowing.

¶ 106 Rule 2.1.4(a) provides as follows:

**“2.1.4 Conflicts of Interest**

Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.”

¶ 107 Numerous MFDA Hearing Panels have held that where an Approved Person borrows money from a client, the Approved Person has breached the standard of conduct set out in Rule 2.1.1, and has entered into a conflict of interest with the client within the meaning of Rule 2.1.4.

*Yalkezian (Re)*, [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202164, Panel Decision dated March 3, 2022.

*Phillips (Re)*, [2020] Hearing Panel of the Atlantic Regional Council, MFDA File No. 2018117, Panel Decision dated March 16, 2020.

*Smockum (Re)*, *supra*.

*Sarang (Re)*, *supra*.

*Nunweiler (Re)*, *supra*.

*Davidson (Re)*, *supra*.

¶ 108 MFDA Staff Notice #MSN-0047, dated October 3, 2005, with regard to borrowing from clients stated, in part, as follows:

“Borrowing from a client by either the Member or Approved Person raises a significant and direct conflict that in almost all cases will be impossible to resolve in favour of the client [...] MFDA staff are unaware of any circumstances where Members or Approved Persons proposing to enter into any such arrangements would be able to demonstrate that the conflict has been properly dealt with.”

MFDA Staff Notice #MSN-0047.

¶ 109 MFDA Hearing Panels have also been clear that a conflict of interest exists regardless of whether the monies are subsequently repaid to the client.

*Sarang (Re)*, *supra*, at para. 11.

*Tuitakalai (Re)*, [2021] Hearing Panel of the Central Regional Council, MFDA File No. 202022, Panel Decision dated February 23, 2021, at para. 49.

*Alam (Re)*, [2020] Hearing Panel of the Central Regional Council MFDA File No. 202016, Panel Decision dated July 24, 2020.

¶ 110 In addition, it does not matter whether the client from whom the Approved Person borrowed was the Approved Person's "friend". The fact that the borrowing was from a friend in no way avoids the conflict of interest.

*Davidson (Re)*, *supra*, at para. 14.

¶ 111 As indicated above (paragraph 17), IPC's policies and procedures prohibited its Approved Persons from borrowing from clients.

¶ 112 In the case before us, the Respondent borrowed \$30,000.00 from a client to make an RRSP contribution.

¶ 113 At the Hearing on the Merits, the Respondent admitted that she has always known that borrowing from a client is prohibited.

Hearing Transcript, Day 2, page 90 – lines 2-25.

¶ 114 The Respondent failed to disclose this loan to IPC. In her Written Submissions, she stated, in part: "I did not disclose this loan from ME to IPC because by this time I had long since lost confidence in IPC's compliance...". Needless to say, this is not a valid reason for non-disclosure.

¶ 115 We are, unanimously, of the view that Allegation #5 has been established.

I. Allegation #6

¶ 116 In her Reply, the Respondent admitted "the facts alleged and the conclusions drawn by Staff" in paragraph 38 of the Notice of Hearing, which stated as follows:

"At all material times, IPC's policies and procedures prohibited Approved Persons from obtaining or using pre-signed account forms."

¶ 117 Both Jens Scharge and Jessie Siu provided *viva voce* and Affidavit evidence to the Hearing Panel, relating to this Allegation.

¶ 118 The pre-signed forms in question were summarized in paragraph 36 of Mr. Scharge's Affidavit. Copies of the forms were attached as Exhibits 17 to 34 of his Affidavit. The forms were also summarized in paragraph 67 of Ms. Siu's Affidavit, with copies attached as Exhibits 39A to 39R of her Affidavit.

Hearing on the Merits, Exhibits 4 and 9.

¶ 119 Mr. Scharge stated that he attended at the Respondent's branch and secured her physical client files on June 17, 2020.

Hearing on the Merits, Exhibit 9, Scharge Affidavit, para. 34.

¶ 120 He reviewed the Respondent's files and discovered that the Respondent had obtained, possessed, and, in some instances, used to process transactions, 18 pre-signed account forms in respect of seven clients whose accounts were serviced by the Respondent at IPC.

Hearing on the Merits, Exhibit 9, Scharge Affidavit, para. 35.

¶ 121 The evidence of Ms. Siu was that all of the pre-signed forms, except for the one relating to DK (form #14), were signed by the Respondent and/or identified the Respondent as the Approved Person responsible for servicing the relevant client's account. With regard to form #14, the Respondent admitted, during her first interview with Staff, that she also serviced this client's accounts.

Hearing on the Merits, Exhibit 4, Siu Affidavit, para. 68 and Exhibit 2, page 106 – lines 18-20.

¶ 122 At the Hearing on the Merits, the Respondent admitted that all of the 18 forms were pre-signed.

Hearing Transcript, Day 2, page 145 – line 9 to page 146, line 12 and page 218, line 12 to page 219 – line 3.

¶ 123 The Respondent also admitted that, as the advisor of record, she was responsible for ensuring that the forms were properly executed.

Hearing Transcript, Day 2, page 147 – lines 17-23.

¶ 124 The evidence before us was that between January and May 2018, when the pre-signed forms were dated, the Respondent did not hold a joint representative key with anyone else at IPC.

Hearing Transcript, Day 2, page 38 – lines 11-15.

¶ 125 During the Hearing on the Merits, the Respondent called a Mr. Peter Perri, an IPC Approved Person, as her witness. She tried to insinuate that Mr. Perri was, somehow, involved with the blank signed forms which had been found in her files.

¶ 126 Mr. Perri categorically rejected this suggestion. He testified that he and the Respondent were each responsible for maintaining their own client files. He testified that he did not have access to her client files. They were locked.

Hearing Transcript, Day 2, page 204 – lines 16-24; page 205 – lines 3-24; and page 206 – lines 14-17.

¶ 127 MFDA Hearing Panels have consistently held that obtaining, possessing, or using pre-signed forms is a contravention of the standard of conduct prescribed under MFDA Rule 2.1.1.

*Smith (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201960, Panel Decision dated December 17, 2019, at para. 14.

*Kennedy (Re)*, [2021] Hearing Panel of the Central Regional Council, MFDA File No. 202052, Panel Decision dated February 5, 2021, at para. 8.

¶ 128 The MFDA has warned Approved Persons against the creation, possession or use of pre-signed forms. Members and Approved Persons are only permitted to obtain, use and rely upon forms that are executed by clients after all information on the forms has been properly completed. The use of pre-signed forms adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member supervision of trading activity and complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud, and misappropriation.

MFDA Notice #MSN-0066 dated October 31, 2007 (updated March 4, 2013 and January 26, 2017).

MFDA Bulletin #0661-E dated October 2, 2015.

*Price (Re)*, [2011] Hearing Panel of the Central Regional Council, MFDA File No. 200814, Panel Decision (Misconduct) dated April 18, 2011, at paras. 122-124.

¶ 129 We are, unanimously, of the view that Allegation #6 has been established.

#### DECISION

¶ 130 After a careful and thorough review of all of the evidence presented to us, we are, unanimously, of the view, that each of the Allegations made against the Respondent has been established by clear, convincing and cogent evidence on a balance of probabilities.

#### PENALTY

¶ 131 We have not, at this time, formed any conclusion and to what, if any, penalty should be imposed on the Respondent as a result of our Decision.

¶ 132 We would request that the National Hearing Officer contact the parties, as well as the Hearing Panel, to establish a date for a virtual Appearance before the Hearing Panel when submissions can be made and an Order issued for the timing of the Penalty portion of this Hearing.

Dated this 13 day of December, 2023.

“Thomas J. Lockwood”

Thomas J. Lockwood, K.C.

Chair

“Brigitte J. Geisler”

Brigitte J. Geisler

Industry Representative

“Timothy J. Pryor”

Timothy J. Pryor

Industry Representative

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