



**Decision and Reasons**

**Case #: 200508**

**MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**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: ROBIN ANDERSEN**

Date of Hearing: November 23, 2005

Hearing Panel: The Honourable Mary M. Hetherington, Chair  
Kathleen Laponsee, Industry Representative  
Richard Sydenham, Industry Representative

Counsel: Shelly Feld  
For the Mutual Fund Dealers Association of Canada

Gwilym J. Davies  
For Robin Andersen

**Decision and Reasons**

**Allegations**

In the Notice of Hearing in this case the Mutual Fund Dealers Association of Canada made the following allegations against Robin Andersen, the Respondent:

**“Allegation #1:** Between July 1998 and November 2003, the Respondent failed to deal fairly, honestly and in good faith with the clients JH, LH, MS, PW, RG, NML and PP by misappropriating from them the total amount of approximately \$362,000 and failing to repay or otherwise account for the funds, contrary to MFDA Rule 2.1.1.

**Allegation #2:** Between July and November 2003, the Respondent processed four redemptions for clients without obtaining instructions or authorization from the clients, contrary to MFDA Rules 2.1.1 and 2.3.4 and the Respondent’s registration as a mutual fund salesperson.”

In his Reply Mr. Andersen admitted these allegations.

## **Facts**

At the opening of the hearing Mr. Feld presented to the panel an agreed statement of facts signed by both Mr. Andersen and a representative of the MFDA. It was marked as an exhibit. A copy of this agreed statement of facts is attached to this decision as Appendix A. It enlarges on the alleged facts, and the panel is satisfied that the conduct described in the allegations has been proven.

## **MFDA Rules**

### **Allegation #1**

In the first allegation set out above the MFDA says that Mr. Andersen contravened MFDA Rule 2.1.1 in the manner described. MFDA Rule 2.1.1 reads 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.”

Clearly the conduct described in this allegation and in the parts of the agreed statement of facts which support it, is contrary to this Rule. In brief Mr. Andersen stole money from his clients.

This conduct took place between July, 1998, and November, 2003. Mr. Feld conceded that Mr. Andersen was not subject to the Rules of the MFDA for this entire period. For the purposes of this case, he took the position that Mr. Andersen became subject to these Rules when the company for whom he sold mutual funds joined the MFDA, that is, on the 7<sup>th</sup> of March, 2002. Mr. Davies did not take issue with this proposition.

Mr. Feld informed the panel that while Mr. Andersen was subject to the MFDA Rules, he misappropriated \$113,526.84. The amounts that Mr. Andersen misappropriated from his wife are not included in this figure. This was not disputed by Mr. Davies.

In relation to the first allegation the panel therefore finds that between the 7<sup>th</sup> of March, 2002, and the 7<sup>th</sup> of January, 2004, Mr. Andersen misappropriated \$113,526.84 in the manner described in the allegation. This is the misconduct with which the panel is concerned in connection with this allegation. The panel will, however, take into consideration in relation to penalty the fact that Mr. Andersen misappropriated \$246,865 from clients before he was subject to the Rules of the MFDA. Again this figure does not take into consideration the amounts that he misappropriated from his wife. And again it was not disputed by Mr. Davies.

## Allegation #2

In the second allegation set out above the MFDA says that Mr. Andersen contravened MFDA Rules 2.1.1 and 2.3.4. Rule 2.3.4 reads as follows:

“No Discretionary Trading. A limited trading authorization shall not in any way confer general discretionary trading authority upon a Member, an Approved Person or any person acting on behalf of the Member.”

The conduct of Mr. Andersen described in the second allegation and in the parts of the agreed statement of facts which support it, is clearly contrary to both Rules 2.1.1 and 2.3.4. It constituted discretionary trading for the purpose of theft from clients.

## Penalty

In his written submissions on behalf of the MFDA Mr. Feld summarized Mr. Andersen’s misconduct as follows:

“The Respondent committed misconduct involving misappropriation, fraud, forgery and unauthorized trading in the investment accounts of clients. The misconduct was deliberate, dishonest and deceitful. The Respondent abused the trust placed in him by unsophisticated, vulnerable clients. He took advantage of his privileged position as a registrant in the industry with access and influence over client assets to steal more than \$362,000. Prior to the discovery of his misconduct, he failed to repay or otherwise account for any of this money.”

The panel agrees with this description of Mr. Andersen’s conduct.

There are a number of aggravating factors in this case. They are the following:

- (1) Mr. Andersen misappropriated funds from seven clients (not including his wife, but including his mother-in-law and father-in-law) over a period of 5 years, both before and after he became subject to MFDA Rules.
- (2) His conduct was planned and deliberate. Some of his schemes to get money from the clients were quite complicated.
- (3) The clients were to his knowledge vulnerable and unsophisticated. When he misappropriated funds from them, he took advantage of the trust that they placed in him.
- (4) Mr. Andersen stole approximately \$362,000 from these clients. He did not repay them in any way.
- (5) Investors Group paid more than \$400,000 to the clients in compensation for losses attributable to Mr. Andersen’s conduct.

There are also mitigating factors. They are the following:

- (1) Once it was discovered that Mr. Andersen had contravened the rules of the MFDA, he cooperated with Investors Group and the MFDA. He identified all of the clients from whom he had taken money.

- (2) Investors Group commenced action against Mr. Andersen. Mr. Andersen then arranged to pay to Investors Group part of the amount that it had paid out to the clients.
- (3) Mr. Andersen has admitted the allegations made against him by the MFDA, and cooperated with the MFDA by agreeing to the statement of facts which is marked as an exhibit in these proceedings. This meant that MFDA did not have to call evidence to substantiate the allegations.

The panel must be concerned to impose a penalty in this case which will deter Mr. Andersen and others from conduct of the kind described in the allegations. Mr. Andersen stole a great deal of money from vulnerable clients over a considerable period of time. The panel must attempt to deter Mr. Andersen and other mutual fund salespersons from victimizing clients in this fashion.

Beyond that, however, misconduct of the kind described in the allegations undermines public confidence in the mutual fund industry and mutual fund salespersons. A penalty which addresses the need for specific and general deterrence is necessary so that public confidence in the industry will be restored.

In this case Mr. Feld has asked the panel to impose a fine of at least \$200,000, which is approximately the difference between the amount that Mr. Andersen misappropriated from clients other than his wife, and the amount that he has paid to or set aside for Investors Group. He has also asked the panel to prohibit Mr. Andersen from conducting securities related business in the future. The panel is of the view that this request is reasonable in the circumstances.

The panel therefore directs that Mr. Andersen is to pay a fine of \$200,000. It directs further that Mr. Andersen is prohibited from conducting securities related business at any time in the future.

Mr. Feld did not ask that the panel order Mr. Andersen to pay the costs of the investigation and hearing, in view of the fact that he cooperated with the MFDA as described above. There will therefore be no order as to costs.

“The Honourable Mary M. Hetherington”  
The Honourable Mary M. Hetherington, Chair

“Kathleen Laponsee”  
Kathleen Laponsee, Industry Representative

“Richard Sydenham”  
Richard Sydenham, Industry Representative

Dated at the City of Calgary, in the  
Province of Alberta, this 30th day of  
January, 2006.

*Doc #76017*

Appendix "A"



Agreed Statement of Facts

File no: 200508

**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: ROBIN ANDERSEN**

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**AGREED STATEMENT OF FACTS**

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**I. INTRODUCTION**

1. By Notice of Hearing issued on June 21, 2005, the Mutual Fund Dealers Association of Canada (the "MFDA") commenced a disciplinary proceeding against Robin Andersen (the "Respondent") pursuant to ss. 20 and 24 of MFDA By-law No. 1.

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

**Allegation #1:** Between July 1998 and November 2003, the Respondent failed to deal fairly, honestly and in good faith with his clients JH, LH, MS, PW, RG, NML and PP by misappropriating from them the total amount of approximately \$362,000 and failing to repay or otherwise account for the funds, contrary to MFDA Rule 2.1.1.

**Allegation #2:** Between July and November 2003, the Respondent processed four redemptions for clients without obtaining instructions or authorization from the clients, contrary to MFDA Rules 2.1.1 and 2.3.4 and the Respondent's registration as a mutual fund salesperson.

## **II. IN PUBLIC / IN CAMERA**

3. The Respondent and Staff of the MFDA ("Staff") agree that this matter should be heard in public in accordance with Rule 1.8(1) of the MFDA Rules of Procedure.

## **III. ADMISSIONS**

4. The Respondent has reviewed this Agreed Statement of Facts and admits the facts set out and the documents referred to in Part IV herein. The Respondent admits that the facts contained herein constitute misconduct as alleged in Allegations #1 and #2 for which the Respondent may be penalized on the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

## **IV. AGREED FACTS**

5. Staff and the Respondent agree to make submissions on the penalty to be imposed on the Respondent based only on the agreed facts set out below and no other facts.

## **Registration History**

6. From December 8, 1992 to January 7, 2004, the Respondent was registered in Alberta as a mutual fund salesperson for Investors Group Financial Services Inc. ("IG"). The Respondent was referred to by IG as a Sales Representative, a Division Manager, a Representative, an Approved Person and a Consultant.

7. The Respondent worked at the Edmonton Metro Region Office of IG except from mid-1997 to April 2001 when he worked at the St. Albert's sub-branch of IG.

8. On January 7, 2004, the Respondent was terminated for cause when IG learned that he had engaged in the conduct that subsequently gave rise to this proceeding.

9. Since January 7, 2004, the Respondent has not been registered in the securities industry in any capacity.

10. On May 14, 2001, the Respondent signed an Agreement of Approved Person, Schedule “G” to IG’s application for membership in the MFDA in which he agreed, among other things, “to be bound by, observe and comply with the MFDA Rules as they are from time to time amended or supplemented.”

11. IG has been a Member of the MFDA since March 7, 2002.

### **Contractual Obligations**

12. In addition to the Respondent’s regulatory obligation to comply with MFDA By-laws, Rules and Policies, the Respondent was contractually bound to fulfill those obligations. The Respondent signed multiple agreements while employed by IG including a Consultant’s Agreement dated August 21, 2002 which included a provision that listed his responsibilities as an Approved Person with IG, including the following:

#### **Consultant’s Responsibilities**

The Consultant agrees to carry out certain responsibilities in connection with arranging for the distribution of financial products and services offered or sponsored by [IG] and/or its affiliated corporation, including but not limited to:

(i) Rules, Regulations and Laws – to comply with all rules, regulations and policies that [IG] may prescribe from time to time regarding the conduct of the Consultant when he/she is carrying on business as an agent of [IG] which are necessary to protect the interests of [IG] or its clients, or to comply with any applicable law, rule, policy, ordinance or regulation, and any amendments thereto, issued by any applicable regulatory authority, including, without limitation, the Mutual Fund Dealers Association of Canada, the Investment Funds Institute of Canada, any other self-regulatory authority and any securities commission or any successor thereto . . .

13. The contracts between the Respondent and IG also stipulated that the Respondent:

- (a) was only permitted to accept cash or cheques made payable to IG as payment for investment products;
- (b) was required to remit promptly to IG all payments received in connection with investment product sales without commingling the payments with his own funds;

- (c) was only authorized to sell investment products issued or distributed by IG and was not permitted to sell investment products issued or distributed by a competitor of IG or IG investment products that were not specifically authorized by his license.

### **The Respondent's Conduct**

14. As described in greater detail below, between July 1998 and November 2003, the Respondent misappropriated more than \$362,000 from clients by means of the following methods:

- (a) he redeemed mutual fund investments without authorization from the clients and directed that the redemption cheques be delivered to his branch office. The Respondent forged the signature of the clients on the redemption cheques and deposited the redemption cheques into the bank account of his corporation, 765398 Alberta Ltd. (the "Corporate Account");
- (b) he persuaded a client to provide him with investment funds totaling \$125,000, purportedly for the purpose of purchasing investment products that were not approved for sale by IG ("Non-IG Investments") and upon receipt, the Respondent deposited the money into the Corporate Account and did not use it to purchase of any investments for the client; and
- (c) he redeemed mutual fund investments without authorization from the clients and then informed the clients that the redemptions had been processed in error. He later directed the clients to send cheques to him to enable him to purchase mutual fund investments to replace the investments that had been redeemed in error. The Respondent deposited the cheques sent by clients into the Corporate Account and did not use the funds to purchase mutual fund investments for the clients.

15. The Respondent misappropriated funds from clients who were vulnerable by virtue of their lack of sophistication with respect to investments and the high level of reliance that they placed on the Respondent to manage their investments. Some of the clients were elderly and others worked overseas or traveled extensively and were frequently unable to closely monitor their investment accounts with the Respondent.



16. The Respondent has failed to repay or otherwise account to his clients for any of the misappropriated funds prior to the discovery of his conduct, although most of the clients were subsequently compensated by IG as set out in more detail below. The Respondent has not repaid or otherwise accounted for the misappropriated funds to IG except as described in paragraphs 70, 71 and 76 below.

**Clients JH and LH**

17. JH and LH became clients of the Respondent in 1993. JH is the Respondent’s father-in-law and LH was his mother-in-law. JH is now 82 years old. LH was born on February 18, 1924 and is now deceased.

18. Between July 23, 1998 and September 30, 1999, the Respondent processed four redemptions from mutual fund accounts of JH and LH on the dates and in the amounts set out below, without the knowledge, authorization or approval from JH or LH:

<b>Date</b>	<b>Client and Account</b>	<b>Redemption Amount</b>	<b>Transaction Fees Deducted</b>	<b>Tax Deducted</b>	<b>Net Redemption Proceeds</b>
July 23, 1998	JH & LH Dividend Fund Acct	\$5,063.06	\$63.06	0	\$5,000
November 24, 1998	JH Mortgage Fund Acct	\$5,000	\$150.00	\$485.00	\$4,365
September 3, 1999	JH Mortgage Fund Acct	\$5,000	0	\$500.00	\$4,500
September 29, 1999	LH - Asset Allocation Acct	\$5,000	0	\$500.00	\$4,500
	<b>Total</b>	\$20,063.06	\$213.06	\$1,485.00	\$18,365

19. In each case, the Respondent prepared the IG investment instruction form and included a direction to have the redemption cheque delivered to him at the Regional office. He signed the investment instruction form in his capacity as the clients’ representative. JH and LH did not sign any of the investment instruction forms.

20. Without the knowledge, authorization or approval of JH or LH, the Respondent forged the signatures of JH and LH on each of the four redemption cheques that were delivered to his branch office. He then deposited the cheques into the Corporate Account on the dates specified below, thereby misappropriating the funds.

<b>Date of Deposit</b>	<b>Amount of Deposit</b>
August 31, 1998	\$5,000
November 26, 1998	\$4,365
September 3, 1999	\$4,500
October 1, 1999	\$4,500
<b>Total Deposits</b>	<b>\$18,365</b>

21. By processing the redemptions without obtaining instructions, authorization or approval from JH and LH, the Respondent engaged in discretionary trading contrary to his registration as a mutual fund salesperson.

*The October 19, 1999 Cheque From JH*

22. On or about October 19, 1999, JH provided the Respondent with a cheque in the amount of \$8,500.00 that was payable to the Respondent and drawn on JH's personal account at the Sherwood Credit Union. The funds were supposed to be applied towards the purchase of mutual fund investments for the benefit of JH. Without the knowledge, authorization or approval of JH, the Respondent cashed the cheque. He deposited \$8,000.00 into the Corporate Account and withdrew \$500.00 in cash.

23. The Respondent did not apply the \$8,500.00 or any portion of that amount towards the purchase of any mutual fund investments for the benefit of JH and has not repaid the \$8,500.00 or otherwise accounted for it.

### *Compensation Paid By IG To JH*

24. In April 2004, IG paid JH \$40,000 as compensation for losses attributable to the Respondent's conduct.

### **Client MS**

25. MS became a client of the Respondent in 1997 shortly after he received a substantial inheritance following the death of his father. He is now 35 years old. He is dyslexic and has difficulty reading and understanding account statements. He had limited investment knowledge and experience when he began dealing with the Respondent.

26. MS is a mechanic. He frequently works and travels overseas. For the past four years, MS has been working on oil rigs in Kyrgyzstan. He returns to Canada for only a few weeks each year.

27. Between August 1, 2000 and April 6, 2001, the Respondent processed four redemptions from mutual fund accounts of MS without the knowledge, authorization or approval of MS. In each case, the Respondent prepared the IG investment instruction form and included a direction to have the redemption cheque delivered to him at the Regional office. Upon receipt of the cheques, the Respondent deposited the funds into the Corporate Account, thereby misappropriating the funds. The Respondent misappropriated net redemption proceeds totaling \$95,000 in this manner. He has not repaid MS or otherwise accounted for the misappropriated funds. The unauthorized redemptions occurred on the dates and in the amounts set out below:

<b>Date</b>	<b>Account</b>	<b>Redemption Amount</b>	<b>Transaction Fees Deducted</b>	<b>Net Redemption</b>
August 1, 2000	Investors Latin American Growth	\$25,503.76	\$503.76	\$25,000
November 15, 2000	IG Sceptre Canadian Equity	\$25,503.45	\$503.45	\$25,000
February 5, 2001	Investors Canadian Small Cap	\$25,504.98	\$504.98	\$25,000
April 6, 2001	IG Sceptre Canadian Equity	\$20,384.92	\$384.92	\$20,000
	<b>Total</b>	\$96,897.11	\$1,897.11	\$95,000

28. By processing the redemptions without obtaining instructions, authorization or approval from MS, the Respondent engaged in discretionary trading contrary to his registration as a mutual fund salesperson.

29. Between November 12, 1999 and March 2002, the Respondent persuaded MS to redeem additional IG approved mutual fund products valued at \$127,356.13 and to provide \$125,000 from the net proceeds of redemption to the Respondent. Acting on the Respondent's advice, MS instructed the Respondent to redeem mutual fund investments on the dates and in the amounts set out below (the "Authorized Redemptions"):

<b>Date</b>	<b>Account</b>	<b>Redemption Amount</b>	<b>Transaction Fees Deducted</b>	<b>Net Redemption</b>
November 12, 1999	Cdn Smallcap Fund	\$3063.27	\$ 63.27	\$3,000
	U.S. Growth Fund	\$7,127.44	\$127.44	\$7,000
	U.S. Opportunities	\$7,089.34	\$ 89.34	\$7,000
	Latin American Growth	\$1,000.00	\$0	\$1,000
	Sceptre Cdn Equity	<u>\$7,146.61</u>	<u>\$146.61</u>	<u>\$7,000</u>
		\$25,426.66	\$426.66	\$25,000
November 14, 2001	Investors U.S. Large Cap Value	\$50,714.62	\$714.62	\$50,000
February 28, 2002	Investors Canadian Money Market	\$15,000	\$0	\$15,000
	Investors Canadian Small Cap	\$11,166.63	\$166.63	\$11,000
	Investors Mergers & Acquisitions	\$ 873.54	\$0	\$ 873.54
	Investors Latin American Growth	\$ 7,098.51	\$ 98.51	\$ 7,000
	IG Sceptre Canadian Equity	<u>\$15,227.20</u>	<u>\$227.20</u>	<u>\$15,000</u>
		\$49,365.88	\$492.34	48,873.54
March 4, 2002	Investors Canadian Small Cap	\$414.27	\$ 6.21	\$ 408.06
	Investors Latin American Growth	\$477.91	\$ 7.17	\$ 470.74
	IG Sceptre Canadian Equity	<u>\$956.79</u>	<u>\$ 14.35</u>	<u>\$ 942.44</u>
		\$1,848.97	\$ 27.73	\$1,821.24
	<b>Total</b>	\$127,356.13	\$1,661.35	\$125,694.78

30. Each time that an Authorized Redemption was made from the mutual fund holdings of MS, the proceeds of the redemption were paid into the personal bank account of MS. The Respondent then requested and obtained cheques from MS drawn on the client's personal bank account on the dates and in the amounts set out below, purportedly for the purpose of acquiring Non-IG Investments:

- (a) a cheque in the amount of \$25,000 dated November 12, 1999 that was payable to the Respondent;
- (b) a cheque in the amount of \$50,000 dated November 16, 2001 that was payable to Investors Group and subsequently amended by the Respondent to refer to the Respondent's corporation by the addition of "765398 AB"; and
- (c) a cheque in the amount of \$50,000 dated March 3, 2002 that was payable to 765398 Alberta Ltd. (the Respondent's corporation).

31. The Respondent advised MS that he would place the funds in lucrative Non-IG Investments. However, on each occasion, the Respondent deposited the cheque obtained from MS into the Corporate Account, thereby misappropriating the funds for his own benefit. The Respondent did not apply the money towards the purchase of any investments on behalf of MS.

32. The Respondent often met with MS when MS visited Canada between work assignments overseas. The Respondent prepared fraudulent investment account summaries to present to MS at these meetings ostensibly for the purpose of consolidating all of the information relevant to his Non-IG investments and the holdings in his IG mutual fund investment account so that MS could more clearly understand how his investments were performing. Using these false account statements, the Respondent misled MS about the extent of his holdings (in both IG and Non-IG Investments) and the performance of his investment portfolio.

33. In total, the Respondent misappropriated \$220,000 from MS:

- (a) \$95,000 obtained by means of unauthorized redemptions processed from MS's mutual fund account; and
- (b) \$125,000 obtained from MS purportedly for the purpose of purchasing Non-IG Investments on his behalf.

34. MS incurred total losses of at least \$224,253.24 as a result of these transactions when fees associated with the transactions are taken into account. This calculation does not take into account foregone growth and appreciation on the amounts misappropriated and capital gains taxes paid on amounts that were redeemed.

35. In the fall of 2003, MS attempted to transfer his account to a new advisor at another dealer. During the transfer process it became apparent that there was a substantial shortfall in his investment account. In January 2004, MS informed IG that unauthorized redemptions had been processed through his investment account and a substantial amount of money was unaccounted for.

36. IG immediately commenced an investigation of the Respondent's conduct. The Respondent admitted that he had misappropriated funds from MS and also identified JH, LH, PP, RG, NML, PW and his wife GA as other clients from whom he had misappropriated funds.

*Compensation Paid By IG To MS*

37. In March 2004, IG paid compensation to MS totaling \$263,116.41 for losses attributable to the Respondent's conduct on the dates and in the amounts set out below:

<b>Date</b>	<b>Amount</b>
March 15, 2004	\$237,616.41
March 15, 2004	\$ 500.00
March 25, 2004	\$ 25,000.00
<b>Total</b>	<b>\$263,116.41</b>

**Client PP**

38. PP became a client of the Respondent in February 1997. PP is now 33 years old. For a number of years PP has been working overseas as a teacher in Taiwan and he rarely visits Canada. His IG account statements are sent to his father's residential address in Edmonton.

39. On August 28, 2002, PP gave the Respondent a cheque in the amount of \$10,000 to be deposited into PP's mutual fund investment account at IG. The Respondent provided PP with a receipt for the \$10,000 deposit and an IG investment instructions form that the Respondent signed

identifying the mutual fund investments that PP expected the Respondent to purchase on his behalf with the \$10,000.

40. Contrary to PP's instructions, the Respondent did not deposit the \$10,000 into PP's mutual fund investment account or purchase any mutual fund investments on his behalf.

41. Rather, on August 29, 2002, the Respondent deposited the \$10,000 that he received from PP into the Corporate Account, thereby misappropriating the funds.

42. In October 2003, PP gave the Respondent a cheque drawn on his personal bank account in the amount of \$15,000 for the purpose of purchasing mutual fund investments. No payee was identified on the cheque.

43. The Respondent provided PP with a copy of the IG investment instruction form that identified the mutual fund investments that PP expected the Respondent to purchase on his behalf with the \$15,000.

44. Contrary to PP's instructions, the Respondent did not deposit the \$15,000 into PP's mutual fund investment account or purchase any mutual fund investments on his behalf.

45. Rather, on October 23, 2003, the Respondent deposited the \$15,000 into the Corporate Account, thereby misappropriating the funds.

#### *Compensation Offered By IG To PP*

46. On May 19, 2004, IG offered to pay PP \$27,716.60 as compensation for losses attributable to the Respondent's conduct. To date, PP has not responded to IG's settlement offer.

#### **Clients RG and NML**

47. RG became a client of the Respondent during the summer of 2002. He was referred to the Respondent by his sister who was a close friend of the Respondent's wife. RG is a truck driver who runs a trucking business called NML. He is frequently on the road for long periods of time. RG opened an IG mutual fund investment account in his own name in July 2002 and he opened an account in the name of his company NML in November 2002.

48. During the summer of 2003, the Respondent processed 2 redemptions from the account held in RG’s name and 1 redemption from the account held in the name of NML without the knowledge, authorization or approval of RG. The unauthorized redemptions occurred on the dates and in the amounts set out below:

<b>Date</b>	<b>Account</b>	<b>Redemption Amount</b>	<b>Transaction Fees Deducted</b>	<b>Net Redemption</b>
July 7, 2003	IG Dividend – RG	\$29,876.26	\$869.06	\$29,007.20
July 7, 2003	IG Mack Income – NML	\$23,470.85	\$683.06	\$22,787.79
August 11, 2003	Inv CD L/Cap Val D/N – RG	\$2,060.15	\$ 60.15	\$2,000
	<b>Total</b>	\$55,407.26	\$1,612.27	\$53,794.49

49. By processing the redemptions without the knowledge, authorization or approval of RG, the Respondent engaged in discretionary trading contrary to his registration as a mutual fund salesperson and MFDA Rules 2.1.1 and 2.3.4.

50. Shortly after these redemptions were processed, the proceeds of redemption together with cash held on deposit in the mutual fund investment accounts of RG and NML (as shown in the chart below) were deposited into their respective bank accounts by electronic funds transfers (“EFTs”):

<b>Dates</b>	<b>Account</b>	<b>Amounts</b>
July 9, 2003	EFT to RG’s personal bank account	\$29,007.20 <u>\$ 39.98</u> \$29,047.18
July 9, 2003	EFT to NML’s bank account	\$22,787.79 <u>\$ 43.39</u> \$22,831.18
August 11, 2003	EFT to RG’s personal bank account	\$2,000.00

51. The Respondent contacted RG after the unauthorized redemptions were processed from the mutual fund investment accounts of RG and NML on July 7, 2003. The Respondent told RG that



these transactions had been processed in error. He informed RG that RG would find that deposits had been made by EFTs to his personal bank account and the bank account of NML. The Respondent asked RG to provide him with cheques for the amounts deposited to the two bank accounts so that he could reinvest the funds for RG and NML.

52. Acting on the Respondent's directions, RG provided the Respondent with two cheques dated July 10, 2003. One cheque in the amount of \$29,047.18 was drawn on RG's personal bank account and a second cheque in the amount of \$22,831.18 was drawn on the bank account of NML. Both cheques were payable to Investors Group.

53. Contrary to the instructions and expectations of RG, the cheques were not deposited into the IG mutual fund investment accounts of RG or NML. The money was deposited into the Corporate Account maintained by the Respondent and thereby misappropriated. None of the money was repaid to RG or NML or used to purchase any investments on their behalf.

54. The net proceeds of the redemption that was processed on August 11, 2003 in the amount of \$2,000 were deposited into the personal bank account of RG. RG was not informed about this redemption and was not asked to provide the Respondent with a replacement cheque for this amount. Although RG sustained the \$60.15 loss associated with the transaction fee charged in respect of this unauthorized redemption and lost the benefit of growth and appreciation on the redeemed portion of his mutual fund investment, none of the proceeds from this unauthorized redemption was misappropriated by the Respondent.

#### *Compensation Paid By IG To RG and NML*

55. In February 2004, IG paid RG \$33,403.50 as compensation for losses attributable to the Respondent's conduct.

56. In February 2004, IG paid NML \$24,004 as compensation for losses attributable to the Respondent's conduct.

#### **Client PW**

57. PW became a client of the Respondent in the Fall of 1997. He is now 38 years old. PW is a chef who has been employed by hotels and inns in and around Edmonton. He is an unsophisticated

investor. His primary source of investment funds consisted of approximately \$80,000 that he received during the summer of 2001 as proceeds from a settlement following a serious motor vehicle accident. He also made small monthly contributions to his mutual fund account.

58. On October 31, 2003, PW received a call from the Respondent. The Respondent claimed that he was dissatisfied with the performance of some of PW’s mutual fund holdings and suggested that PW consider changing the composition of his mutual fund account. PW agreed to consider the proposal. During the telephone conversation, the Respondent did not recommend the purchase or sale of any specific investment fund and he did not specify the number of units or price associated with any proposed transaction.

59. On November 3, 2003, two redemption transactions were processed through PW’s IG mutual fund investment account without PW’s knowledge, authorization or approval as set out below:

<b>Date</b>	<b>Account</b>	<b>Redemption Amount</b>	<b>Transaction Fees Deducted</b>	<b>Net Redemption</b>
November 3, 2003	Investors Dividend	\$28,751.42	\$667.95	\$28,083.47
November 3, 2003	Investors European Growth	\$8,775.02	\$210.03	\$ 8,564.99
	<b>Total</b>	\$37,526.44	\$877.98	\$36,648.46

60. By processing the redemption without PW’s knowledge, authorization or approval, the Respondent engaged in discretionary trading contrary to his registration as a mutual fund salesperson and MFDA Rules 2.1.1 and 2.3.4.

61. On November 6, 2003, the Respondent called PW and informed him that there had been a “terrible mistake”. The Respondent stated that his assistant had redeemed mutual fund investments from PW’s account and transferred the proceeds to PW’s personal bank account. The Respondent instructed PW to provide the Respondent with a cheque in the amount deposited to his bank account as quickly as possible so that PW would not be charged any penalties associated with the redemptions.

62. On November 6, 2003, acting on the Respondent's instructions, PW sent the Respondent a cheque in the amount of \$36,648.48 payable to Investors Group to be applied towards the purchase of mutual fund investments to replace the investments that had been redeemed.

63. Contrary to the instructions and expectations of PW, the cheque was not deposited into his IG mutual fund investment account or applied towards the purchase of any investments on his behalf.

64. Rather, on November 17, 2003, the Respondent deposited the cheque from PW in the Corporate Account, thereby misappropriating the funds.

65. In January 2004, PW discovered that the November 6, 2003 cheque had not been credited to his IG mutual fund investment account. He retained counsel from Ogilvie LLP to pursue a claim for the shortfall.

66. On February 4, 2004, PW's counsel sent a demand letter to IG seeking compensation for the misappropriated funds, the transaction charges associated with the redemptions and growth, appreciation and income distributions in the funds from which the redemptions were made.

#### *Compensation Paid By IG To PW*

67. In total, PW claimed \$39,683.92 in compensation. In February 2004, paid PW \$39,683.92 as compensation for losses attributable to the Respondent's conduct.

#### **Alleged Misappropriations That Are Not Referred To In The Notice Of Hearing**

68. Between May 1, 1997 and September 30, 2002, the Respondent processed a number of redemption transactions through the mutual fund investment account of the Respondent's wife, GA, without the knowledge, authorization or approval of GA. The proceeds from these redemptions amounted to approximately \$55,000. The Respondent received the redemption cheques that were issued in respect of each transaction and deposited those cheques into a bank account that he controlled, thereby misappropriating the funds.

69. In February 2004, representatives of IG met with GA and presented her with the option of accepting compensation from IG for her losses on the understanding that she would pursue criminal charges against her spouse or treating the conduct as an internal family matter. In April 2004, in the

absence of a response from GA, IG advised GA that it would be treating the redemptions from her mutual fund investment portfolio as an internal family matter and would not be providing any compensation to her.

### **Further Developments Since The Respondent's Conduct Was Discovered**

70. In January 2004, after the Respondent's conduct was discovered, the Respondent made a payment in the amount of \$26,200 to IG consisting of the balance that remained in the Corporate Account.

71. Since IG terminated the Respondent's employment in January 2004, IG has frozen investments that were held by IG in the Respondent's name. As of November 18, 2005, the approximate value of the assets was \$87,337.67 comprised of non-registered shares in the approximate value of \$1,551.07; RSP shares in the approximate value of \$72,684.12, pursuant to a share ownership plan with IG, \$13,102.48 in a Participating Investment Plan with IG.

72. During the summer of 2004, RBC and IG commenced litigation against the Respondent to recover damages that the bank and the Member sustained as a result of the Respondent's conduct.

73. The Respondent has filed and served a Defence to the RBC claim but has admitted all allegations of wrongdoing on his part. The Respondent has filed and served a Demand of Notice with respect to the IG claim, thereby admitting all of the allegations in the Statement of Claim.

74. In August 2005, GA commenced an action against the Respondent and IG to recover amounts that she lost as a result of the Respondent's conduct as described in paragraph 69 above.

75. The Respondent has filed and served a Demand of Notice in respect of the claim by GA, thereby admitting all of the allegations made in the Statement of Claim.

76. Since July 2004, following the sale of the matrimonial residence of the Respondent and GA, the Respondent's 50% interest in the proceeds from the sale of the matrimonial residence amounting to approximately \$75,000 has been held in a lawyer's trust account to be applied towards the

satisfaction of claims by IG, RBC and GA arising out of the Respondent's conduct. The funds remain in the trust account pending resolution of the on-going litigation.

**Misconduct Admitted**

77. The Respondent admits that by virtue of his conduct as described herein, he has failed to deal fairly, honestly and in good faith with his clients JH, LH, MS, PP, RG, NML and PW, contrary to MFDA Rule 2.1.1.

78. The Respondent admits that by virtue of his conduct as described herein, he has processed redemptions for clients without obtaining instructions or authorization from the clients and has thereby contravened the terms of his registration as a mutual fund salesperson and MFDA Rules 2.1.1 and 2.3.4.

Dated at Toronto, this 21st day of November, 2005.

“Robin Andersen”  
Robin Andersen  
Respondent

“Shaun Devlin”  
Shaun Devlin  
Vice-President, Enforcement–MFDA