



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Christopher Sung-II An

Heard: January 26, 2017 in Toronto, Ontario

Decision: January 26, 2017

Reasons for Decision: March 29, 2017

**REASONS FOR DECISION FOR ACCEPTANCE OF
SETTLEMENT AGREEMENT**

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.

Chair

Robert C. White

Industry Representative

Kenneth Mann

Industry Representative

Appearances:

Paul Blasiak

)
)
)
)
)
)
)

Counsel for the Mutual Fund Dealers
Association of Canada

Christopher Sung-II An

In Person

Settlement Agreement

1. The Hearing Panel accepted the settlement agreement dated January 17, 2017 (the “Settlement Agreement”) between the staff of the MFDA and Christopher Sung-II An (the “Respondent”). A copy of the Settlement Agreement is attached to these reasons as Schedule “1”. The agreed facts are set out in section III of the agreement.

Contraventions

2. The Respondent admitted that:

- a) between February 2014 and September 2014, he processed five (5) trades in the accounts of one client without the client’s authorization, contrary to MFDA Rules 2.3.1 and 2.1.1;
- b) between February 2014 and November 2014, he falsified the signature of one (1) client on five (5) account forms, contrary to MFDA Rule 2.1.1;
- c) in February 2014, he completed Know-Your-Client information on an account form in respect of one (1) client without having met or discussed the information with the client, contrary to MFDA Rule 2.1.1; and
- d) in February 2014, he, without client authorization, changed one (1) client’s address on the Member’s back office system so that it falsely appeared that the client was a resident of Ontario, thereby enabling the respondent to circumvent the Member’s prohibition on processing trades in the accounts of clients who did not reside in Ontario, contrary to MFDA Rule 2.1.1.

Agreed penalties

3. The agreed penalty was that the Respondent be permanently prohibited from conducting securities business in any capacity while employed by a Member.

Considerations

4. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the settlement agreement. First, the agreed penalty had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalty had to be fair and reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalty should serve as a deterrent to the Respondent and to industry. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the respondent, and the impact on him of the agreed penalty.

Certain other factors considered in assessing the appropriateness of the agreed penalty

5. The Respondent's employment was terminated by his Member.

6. As a result, any financial benefit to the Respondent of his misconduct was taken away from him.

7. The Respondent advised the panel that he now realizes that he is not suitable to be in the securities business.

8. He has been out of the business since his employment was terminated and is no longer registered.

9. The Respondent was co-operative with his Member and the MFDA in their investigations and in the settling of this matter with minimal costs and expenses to the MFDA.

10. The Respondent is remorseful for his misconduct.

11. The misconduct involved one client's account and was over a relatively short period of time.

12. We noted that the settlement did not provide for a fine or a costs award against the respondent. However, the Respondent has paid the ultimate penalty which permanently protects the public and the industry from similar future misconduct by him: a permanent prohibition.

Guideline and precedents

13. The MFDA's penalty guidelines provide for a possible mix of penalties, including fines and/or prohibition, including a permanent prohibition. They do not suggest that a fine will always be appropriate. We agreed with staff that the agreed penalty, a permanent prohibition, which is a very severe penalty, was consistent with the recommendations in the penalty guidelines.

14. We reviewed the precedent cases referred to by staff in its submission and in the book of authorities it provided to us.

15. In the MFDA contested case in 2008 concerning *O'Brien and Snow, MFDA (200809)*, the imposed sanction against the Respondent, Mr. O'Brien, included a permanent prohibition, a \$60,000 fine, and a costs award of \$5,000. Mr. O'Brien's misconduct was similar to that of our Respondent. But Mr. O'Brien had profited by his misconduct in an amount approximating his fine. And the contested proceedings were, we can reasonably conclude, much more extensive and costly to the MFDA, than in our case.

16. We determined that the agreed penalty was within the range of appropriateness taking into account the guidelines, the precedents we reviewed, and the particular circumstances of our case.

Conclusion

17. We concluded that the agreed penalties were within an acceptable range based on precedents, would serve as a specific and general deterrent, and were fair and reasonable. We concluded, therefore, that the settlement agreement was in the public interest and, consequently, we accepted it.

DATED this 29th day of March, 2017.

“Paul M. Moore”

Paul M. Moore, Q.C.
Chair

“Robert C. White”

Robert C. White
Industry Representative

“Kenneth Mann”

Kenneth Mann
Industry Representative

DM 528644 v1



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Christopher Sung-II An

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and Christopher Sung-II An (the "Respondent"), consent and agree to settlement of this matter by way of this agreement (the "Settlement Agreement").

2. Staff conducted an investigation of the Respondent's activities which disclosed activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No. 1.

II. JOINT SETTLEMENT RECOMMENDATION

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:

- a) between February 2014 and September 2014, the Respondent processed 5 trades in the accounts of one client without the client's authorization, contrary to MFDA Rules 2.3.1 and 2.1.1;
- b) between February 2014 and November 2014, the Respondent falsified the signature of one client on 5 account forms, contrary to MFDA Rule 2.1.1;
- c) in February 2014, the Respondent completed Know-Your-Client information on an account form in respect of one client without having met or discussed the information with the client, contrary to MFDA Rule 2.1.1; and
- d) in February 2014, the Respondent, without client authorization, changed one client's address on the Member's back office system so that it falsely appeared that the client was a resident of Ontario, thereby enabling the Respondent to circumvent the Member's prohibition on processing trades in the accounts of clients who did not reside in Ontario, contrary to MFDA Rule 2.1.1.

5. Staff and the Respondent agree and consent to the following terms of settlement:

- a) the Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA, pursuant to s. 24.1.1(e) of MFDA By-law No. 1; and
- b) the Respondent will attend by teleconference on the date set for the Settlement Hearing;

6. Staff and the Respondent agree to the settlement on the basis of the facts set out in Part III herein and consent to the making of an Order in the form attached as Schedule "A".

III. AGREED FACTS

Registration History

7. From November 2011 to December 2014, the Respondent was registered in Ontario as a dealing representative with TD Investment Services Inc. (“TDIS”), a Member of the MFDA.
8. At all material times, the Respondent was also employed by TDIS’s bank affiliate.
9. On December 11, 2014, TDIS terminated the Respondent and the Respondent is not currently registered in the securities industry.
10. At all material times, the Respondent conducted business in the Toronto, Ontario area.

Unauthorized Account Activity and Signature Falsification

11. In October 2006, client YS became a client of TDIS.
12. The Respondent was not an advisor responsible for servicing client YS’s accounts at TDIS. As described below, the Respondent had not met or communicated with client YS prior to November 2014.
13. Between February 2014 and September 2014, the Respondent processed 5 trades (the “Trades”) in client YS’s accounts at TDIS without client YS’s knowledge and authorization, and without having met or communicated with client YS. The Trades are summarized in the table below:

Trade No.	Trade Date	Trade Type	Trade Amount
1	February 26, 2014	Purchase	\$8,583.91
2	February 26, 2014	Switch	\$8,119.57
3	September 15, 2014	Purchase	\$33,881.00

Trade No.	Trade Date	Trade Type	Trade Amount
4	September 15, 2014	Switch	\$597.38
5	September 15, 2014	Switch	\$541.98

14. In order to process Trades #1, #2 and #3, the Respondent falsified client YS's signature on 3 trade forms.¹

15. In order to process the two mutual fund purchases described in the table above (Trades #1 and #3), the Respondent redeemed Guaranteed Investment Certificates ("GICs") held by client YS in her accounts at TDIS's bank affiliate without client YS's knowledge and authorization, and used the proceeds from the GIC redemptions to make purchases of mutual funds for Trades #1 and #3 in the amount of approximately \$42,465.

16. In February 2014, in order to process the Trades described in the table above, the Respondent:

- completed a Know-Your-Client form (the "KYC Form") regarding client YS without having met or discussed the information on the KYC Form with client YS;
- falsified client YS's signature on the KYC Form, and submitted the KYC Form to TDIS for processing; and
- changed the address on file for client YS to an address in Toronto, Ontario, where client YS no longer resided, without client YS's knowledge and authorization.

17. At all material times, TDIS prohibited its Approved Persons from processing mutual fund purchases in the accounts of clients who did not reside in Ontario. At the time that the Respondent changed the address on file for client YS, client YS no longer resided in Canada. The Respondent changed the address on file for client YS without her knowledge to an incorrect

¹ Client YS's signature was not required in order to process Trades #4 and #5.

address in Ontario so that the Respondent could process the unauthorized Trades described in the table above at paragraph 13.

18. In November 2014, client YS became aware of Trade #3 described in the table above after she reviewed her electronic TDIS account statements. Client YS then contacted the Respondent's branch manager, who informed the Respondent about his discussion with client YS.

19. The Respondent then contacted client YS for the first time to discuss this or any other matter and falsely advised her that he had processed Trade #3 in her account in error. Client YS requested that the Respondent process a redemption in order to reverse Trade #3.

20. On November 18, 2014, at the request of client YS, the Respondent processed a redemption from client YS's account at TDIS in the amount of \$33,881. In order to process this redemption, the Respondent falsified client YS's signature on a trade form.

21. The Respondent states that he processed the unauthorized Trades described above in order to achieve sales targets set by TDIS. Upon achieving the sales targets, the Respondent would have received increased compensation through TDIS's Branch Incentive Plan. As a result of his termination, the Respondent was not eligible for the Branch Incentive Plan.

Action Taken by the Member

22. In November 2014, TDIS commenced an investigation into the Respondent's conduct after becoming aware that client YS contacted the Respondent's branch manager about this matter.

23. On December 11, 2014, TDIS terminated the Respondent.

24. In about January 2015, TDIS and TDIS's bank affiliate reversed all of the unauthorized transactions processed by the Respondent described in this Settlement Agreement.

Additional Factors

25. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
26. The Respondent has expressed remorse for his conduct.
27. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources and expenses associated with conducting a full hearing of the allegations.

IV. ADDITIONAL TERMS OF SETTLEMENT

28. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.
29. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (the "Settlement Hearing"). At, or following the conclusion of, the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.
30. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.
31. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:
 - a) the Settlement Agreement will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter;

- b) the Respondent waives any rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction;
- c) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts and the contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in this Settlement Agreement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;
- d) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1; and
- e) neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against the Respondent.

32. If, for any reason, this Settlement Agreement is not accepted by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by the Settlement Agreement or the settlement negotiations.

33. Staff and the Respondent agree that the terms of the Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

34. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile copy of any signature shall be effective as an original signature.

DATED this 19th day of January, 2017.

“Christopher Sung-II An”
Christopher Sung-II An

“JY”
Witness – Signature

JY
Witness – Print Name

“Shaun Devlin”
Shaun Devlin
Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – Enforcement

Schedule "A"

Order

File No. 2016109



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Christopher Sung-II An

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Christopher Sung-II An (the "Respondent")

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that.

- a) between February 2014 and September 2014, the Respondent processed 5 trades in the accounts of one client without the client's authorization, contrary to MFDA Rules 2.3.1 and 2.1.1;

- b) between February 2014 and November 2014, the Respondent falsified the signature of one client on 5 account forms, contrary to MFDA Rule 2.1.1;
- c) in February 2014, the Respondent completed Know-Your-Client information on an account form in respect of one client without having met or discussed the information with the client, contrary to MFDA Rule 2.1.1; and
- d) in February 2014, the Respondent, without client authorization, changed one client's address on the Member's back office system so that it falsely appeared that the client was a resident of Ontario, thereby enabling the Respondent to circumvent the Member's prohibition on processing trades in the accounts of clients who did not reside in Ontario, contrary to MFDA Rule 2.1.1.

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

- 1) Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA, pursuant to s. 24.1.1.(e) of MFDA By-law No. 1; and
- 2) If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

DATED this [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]