Decision and Reasons

File No. 200607

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: Lip Fee Chan (also known as Philip Chan)

DISCIPLINARY HEARING

Heard: January 17, 2007

DECISION AND REASONS

Hearing Panel of the Central Regional Council:

The Hon. Edward Saunders Q.C., Chair
Jeanne Beverly, Panel Member
John Armstrong, Panel Member

Appearances:

H.C. Clement Wai	)	for the Mutual Fund Dealers Association of Canada
Lip Fee Chan	)	The Respondent did not attend and no one appeared on his behalf

Decision

This is a disciplinary hearing under the rules of the Mutual Fund Dealers Association of Canada (the "MFDA"). The Respondent Chan was charged with the following violations:

Allegation #1: Between June 2000 and October 2002, the Respondent engaged in securities related business outside of the accounts and facilities of the Member, by facilitating the participation of a client, WN, in various investments, contrary to MFDA Rule 1.1.1.

Allegation #2: In the alternative to Allegation #1, between June 2000 and October 2002, the Respondent engaged in gainful occupation outside the business of the Member without so advising the Member and obtaining approval of the Member, contrary to MFDA Rule 1.2.1(d).

Allegation #3: Commencing May 2001, the Respondent failed to invest monies that he received for investment purposes from a client, WN, totalling $98,000, and in so doing, placed his personal interests above those of his client, WN, contrary to MFDA Rule 2.1.4, and failed to deal fairly, honestly and in good faith with his client, WN, contrary to MFDA Rule 2.1.1(a).

Allegation #4: During September 2005, the Respondent offered to settle with a client, WN, without the written consent of the Member and on terms that the settlement between the Respondent and the client would be confidential, contrary to MFDA Policy No. 3 (Handling Client Complaints).

The Respondent did not serve and file a Reply and did not attend the hearing. Pursuant to Rule of Procedure 8.4 (1)(b), the panel decided to accept the facts alleged and conclusions drawn by MFDA in the Notice of Hearing as proven and, in addition, to rely on the affidavit evidence filed as exhibits in the proceeding. A confidentiality order was made with respect to the affidavit of WN – Exhibit "D"; Exhibit "A" of the affidavit of Vachon – Exhibit "C"; and Exhibits "D" and "E" of the affidavit of Smith – Exhibit "E".

At the conclusion of the hearing, the panel announced its decision with reasons to follow. These are the reasons.

In the affidavits the Respondent admitted the facts which support the allegations and through his representative at the preliminary hearing held on September 26, 2006, the Respondent admitted the offences and stated that he would not be contesting the allegations.

The Respondent was registered as mutual fund sales representative in Ontario from January 1996 to February 2005. From September 1999 to February 2005 he was registered with Investia Financial Services Inc. ("Investia"). Investia became a member of the MFDA on June 7, 2002.

In August and October 2002, the Respondent engaged in two transactions with WN aggregating $49,040.00. Those transactions are summarized in paragraph 4 of the Notice of Hearing and are described in the affidavits. It is not clear whether either or both transactions involve securities. To the extent that the transactions did involve securities, the Respondent engaged in a securities-related business outside the accounts and facilities of Investia. To the extent that the transactions did not involve securities, the Respondent engaged in a gainful occupation outside the business of Investia without advising Investia and obtaining its approval. The violations in Allegation #1 and/or the alternative violation in Allegation #2 have been established.

Allegation #3 concerns the failure to invest funds in the aggregate amount of $98,000.00. In May 2001, the Respondent received, from WN, $100,000.00 to invest in Carivest Management. The Respondent only invested $52,000.00 with $48,000.00 unaccounted for. In May 2002, the Respondent received, from WN, $150,000.00 to invest in Bayshore Oil and Gas but the Respondent only invested $100,000.00 with $50,000.00 unaccounted for. Through his counsel, the Respondent has admitted that he owed WN $98,000.00 with respect to these transactions. Both transactions occurred before Investia became a Member on June 7, 2002. The May 2002 transaction occurred a short time before Investia became a Member and we are prepared to accept the submission that on June 7th the Respondent could be said to have failed to invest the remaining $50,000.00 provided by WN. The May 2001 transaction, however, was over a year before Investia became a Member and we have some difficulty in accepting that on

June 7, 2002 that the Respondent was still continuing to fail to invest. By that time, in our view, the failure had become a misappropriation. Allegation #3 is therefore established but only to the extent of $50,000.00.

The panel was advised that the MFDA was not proceeding with Allegation #4.

Penalties

This conduct of the Respondent was serious. In particular, he failed to invest funds to the extent of $98,000.00. He invested funds of WN which were outside the accounts and facilities of Investia. While the jurisdiction of the panel is confined to transactions on or after June 7, 2002, the conduct of the Respondent before June 7, 2002 can be taken into account in assessing the penalty (see In the Matter of Raymond Brown-John [2005] Hearing panel of the Pacific Regional Council, MFDA File No. 200502).

The MFDA proposes the following sanctions:

1. A permanent prohibition from conducting a securities-related business in any capacity while in the employ of or sponsored by any MFDA Member pursuant to Section 24.1.1(e) of MFDA By-law No. 1;

2. A fine in the amount of $50,000.00 for engaging in outside business activity contrary to MFDA Rule 1.1.1 or 1.2.1(d), pursuant to Section 24.1.1(b) of MFDA By-law No. 1;

3. A fine in the amount of $100,000.00 for failing to invest client funds contrary to MFDA Rule 2.1.1 and MFDA Rule 2.1.4, pursuant to Section 24.1.1(b) of MFDA By-law No. 1.; and

4. Costs attributed to conducting the investigation and prosecution in the amount of $7,500.00, pursuant to Section 24.2 of MFDA By-law No. 1.

There is a need to protect the investing public from conduct of this nature. We consider the proposed penalties to be reasonable in the circumstances and an order should go accordingly.

Date: February 28, 2007

"Edward Saunders"
Edward Saunders

"Jeanne Beverly"
Jeanne Beverly

"John Armstrong"
John Armstrong

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