



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: Nathaniel Ming Shan Chan

Heard: March 3, 2016, in Vancouver, British Columbia
Reasons for Decision: March 14, 2016

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Robert G. Ward, Q.C.	Chair
Brian Cheung	Industry Representative
Elaine Davison	Industry Representative

Appearances:

Christopher Corsetti)	For the Mutual Fund Dealers Association of
)	Canada
)	
Nathaniel Ming Shan Chan)	In Person
)	
)	

BACKGROUND

1. This Hearing was duly constituted by the MFDA Staff to consider a Settlement Agreement dated January 14, 2016 (the “Settlement Agreement”) between the MFDA and Nathaniel Ming Shan Chan (“the Respondent”). The proposed Settlement Agreement concerns allegations that the Respondent falsified two clients’ signatures on account forms and used the account forms to update information in the clients’ accounts, contrary to MFDA Rule 2.1.1, 2.5.1 and 1.1.2.

2. We were constituted as a Hearing Panel of the Pacific Region of the MFDA to consider the Settlement Agreement.

3. An Order was made at the commencement of the Hearing that the proceedings be moved *in-camera*. We then considered both the submissions of counsel and the Settlement Agreement in our determination of whether or not the Settlement Agreement should be accepted.

4. By unanimous Order, the Settlement Agreement was accepted, and the Hearing was continued in public session.

FACTS

5. MFDA and the Respondent agreed with certain facts for the purposes of the Settlement Hearing. Contained in paragraphs 6 to 17 inclusive hereof are the facts, as agreed to between the MFDA and the Respondent, taken verbatim.

Registration History

6. The Respondent was registered in British Columbia from September 27, 2012 to December April 15, 2014 as a mutual fund salesperson (now known as a Dealing Representative) for TD Investment Services Inc. (“TD”), a Member of the MFDA.

7. On April 15, 2014, TD terminated the Respondent as a result of the events described below.

8. The Respondent is not currently registered in the securities industry in any capacity.

9. At all material times, the Respondent carried on business from a branch office of TD located in Coquitlam, British Columbia.

Falsification of Clients Signatures

10. At all material times, TD's policies and procedures prohibited its Approved Persons from "falsifying any account information, record or documentation in any way" and "signing or initialing documentation for or on behalf of customers" on account forms.

11. On February 18, 2014, the Respondent falsified client LW and client SL's signatures (i.e., the Respondent signed client LW and SL's names) on TD Mutual Fund Transaction and Account Maintenance Forms (the "Account Forms").

12. The Respondent used the Account Forms to update information in client LW's Registered Retirement Savings Plan account and client SL's Tax Free Savings account.

13. TD detected the Respondent's conduct with respect to the Account Forms during a routine review of the Respondent's branch office on or about April 8, 2014.

14. On or about April 8, 2014, TD interviewed the Respondent. In that interview, the Respondent admitted to falsifying client LW and client SL's signatures on the Account Forms.

15. TD subsequently reviewed 50 of the Respondent client files. TD identified two other instances of questionable signatures in client SM and client HP's files. The Respondent denied falsify (sic) client SM and client HP's signatures and TD has not been able to verify with the clients if their signatures were falsified.

16. On May 24, 2014 the Respondent provided a written statement to Staff in which he, once again, admitted to falsifying client signatures on the Account Forms.

17. There is no evidence that:

- (a) the Respondent processed any trades or changes to client information without the knowledge or authorization of his clients;
- (b) clients suffered any financial harm as a result of the falsification by the Respondent;
- (c) the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees to which he would have been ordinarily entitled had the transactions in the clients' accounts been carried out in the proper manner; and
- (d) any clients have complained about the Respondent's conduct.

18. The Respondent agreed as a term of the Settlement Agreement:

- (a) to pay costs of \$1,500.00 pursuant to Section 24.2 of By-law No. 1; and
- (b) that the Respondent is to be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA member for a period of one month, commencing from the date of the Hearing Panel's Order, pursuant to Section 24.1.1(e) of MFDA By-law No. 1.

Principles Governing the Determination of this Panel

19. By Section 24.4.3 of By-law No. 1, the Hearing Panel is to:

- (a) accept the Settlement Agreement; or
- (b) reject it.

20. This is consistent with authorities on the topic which state that the Hearing Panel is not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact the parties have agreed.

21. A penalty is not to be rejected unless it clearly falls outside a reasonable range of appropriateness.¹ The overriding objective is the protection of the public.²

22. In *Re Jacobson*, 200712 MFDA, a Hearing Panel decision dated July 13, 2007 in Calgary, Alberta, stated the following factors should be considered:

- (a) whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
- (b) whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
- (c) whether the settlement agreement addresses the issues of both specific and general deterrence;
- (d) whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
- (e) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
- (f) whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- (g) whether the settlement agreement will foster confidence in the regulatory process itself.

23. In *Re Headley*, 200509 MFDA, pages 25 to 26, some relevant factors are listed as follows:

¹ *Sterling Mutuals Inc. (Re)*, 2008 LNCMFDA 16, at para. 37;

Milewski (Re), [1999] I.D.A.C.D. No. 17 at p.11, Ontario District Council Decision dated July 28, 1999;

² *British Columbia Securities Commission v. Seifert*, [2007] BCCA 484, para. 31, citing with approval from *Regina v. 974649 Ontario Inc.*, 2001 S.C.C. 81, 2001 3 S.C.R. 575 at para. 49; *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557, paras. 59 and 68.

- (a) the seriousness of the allegations proved against the Respondent;
- (b) the Respondent's past conduct, including prior sanctions;
- (c) the Respondent's experience and level of activity in the capital markets;
- (d) whether the Respondent recognizes the seriousness of the improper activity;
- (e) the harm suffered by investors as a result of the Respondent's activities;
- (f) the benefits received by the Respondent as a result of the improper activity;
- (g) the risk to investors and the capital markets in the jurisdiction were the Respondent to continue to operate in capital markets in the jurisdiction;
- (h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- (i) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- (j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- (k) previous decisions made in similar circumstances.

Considerations of the Panel

- A. Forgery and Falsified Forms are a serious breach of the MFDA Rule 2.1.1. That has been decided in numerous cases.³
- B. There is no evidence of client harm.
- C. The benefit received by the Respondent for misconduct was nominal.
- D. The Respondent has not previously been subject to MFDA disciplinary hearings. He acknowledges that he acted contrary to the Rules and to the policy of his employer.
- E. The Respondent has not conducted securities related business while associated with an MFDA member for nearly two years.

³ For example: *Re Byce*, MFDA File No. 201311, para. 6, Hearing Panel of Central Regional Council; *Re Ewart*, MFDA File No. 201528, para. 26, decision of Hearing Panel of the Central Regional Council; *Re Bell*, [2005] I.D.A.C.D No. 15, para. 35, Alberta District Council, Panel Decision March 21, 2005.

F. The proposed fine is below the minimum penalty guidelines, which suggest a minimum fine of \$5,000.00. On the other hand the penalty guidelines are suggestions only, and arguably must be more closely adhered to by a Panel when they are determining a penalty, as opposed to considering a settlement agreement arrived after negotiation.

24. The role of a Hearing Panel at a settlement hearing may be contrasted with that of a Hearing Panel at a contested hearing. It is not the role of the Panel to determine the correct penalty, but rather whether the penalty is within a reasonable range taking into account the agreement of the parties in the settlement process.

25. Settlements are beneficial both to the MFDA, and to the public and advance an objective of proscribing harmful or illegal activities but enabling parties to arrive at a flexible remedy tailored to address the interests of the Respondent, the public and the regulator.

Opinion and Decision

26. It is the opinion of the Panel that the Settlement Agreement:

- is reasonable and proportionate having regard to the conduct of the Respondent;
- sufficiently addresses the issue of both specific and general deterrents;
- will maintain confidence in the integrity of the MFDA and the regulatory process;
- and
- is in the public interest and adequately protects investors.

27. In the result, the Settlement Agreement is hereby approved and confirmed.

DATED this 14th day of March, 2016.

“Robert G. Ward”

Robert G. Ward, Q.C.
Chair

“Brian Cheung”

Brian Cheung
Industry Representative

“Elaine Davison”

Elaine Davison
Industry Representative

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