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: Antony Kin San Chau

Heard: April 26, 2022 by electronic hearing in Toronto, Ontario
Decision: April 26, 2022
Reasons for Decision: May 11, 2022

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C., Q.C.	Chair
Brigitte J. Geisler	Industry Representative
Edward V. Jackson	Industry Representative

Appearances:

Alan Melamud	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
	)	
	)	
Antony Kin San Chau	)	Respondent
	)	
	)	

I. BACKGROUND

1. This is a Settlement Hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the "MFDA"). The Hearing was held on April 26, 2022. The full settlement agreement, dated April 20, 2022 (the "Settlement Agreement"), entered into between Staff of the MFDA and Antony Kin San Chau (the "Respondent") is available on the MFDA website. Mr. Chau appeared electronically and was not represented by counsel.

2. The Panel reserved its decision on the proposed Settlement Agreement at the conclusion of the April 26, 2022 Hearing. On April 27, the Panel announced that they accepted the Settlement Agreement, with reasons to follow. These are our reasons for our decision.

3. A Notice of Hearing was issued by the MFDA on July 9, 2021. A first appearance was set for September 14, 2021, but was adjourned at the Respondent's request for medical reasons, as were further dates for the Hearing. A date was set for March 14-16, 2022, but was again adjourned for medical reasons. A firm date was set for April 19-21, 2022. When the Hearing commenced on April 19, the Parties informed the Panel that they were working on a Settlement Agreement and on Thursday, April 20, a Settlement Agreement was reached. On April 21, the Panel agreed to hold the Settlement Agreement Hearing on April 26, 2022.

4. At the Hearing on April 26, the Parties requested that the Panel exercise its discretion under the MFDA rules to abridge the ordinary requirement set out in MFDA Rule of Procedure 15.2 that a Settlement Hearing be heard only upon 10 days' notice to the public. The public notice of this Settlement Hearing had been published on April 21, 2022, short of the required period. The Panel agreed to this request as no prejudice would be caused to members of the public if the request was granted. Settlement Hearings are held in camera and therefore, even if the ordinary notice period was provided, members of the public would be excluded from the proceeding until the Settlement Agreement was accepted by the Hearing Panel. Many cases have granted such relief. See, e.g., *Re Gowan* 2022 LNCMFDA 8 and *Re Investia Financial Services Inc.* 2019 LNCMFDA 3.

II. THE RESPONDENT

5. Beginning in 1995, the Respondent was registered as a mutual fund salesperson, now known as a dealing representative. From September 2009 to January 29, 2021, the Respondent was the majority and controlling shareholder, officer, and sole director of TeamMax Investments Corp.

(the "Member"), a Member of the MFDA. From September 2009 to March 1, 2021, the Respondent was registered as a dealing representative with the Member.

6. From January 4, 2010 to April 17, 2014, the Respondent was registered as the Chief Compliance Officer ("CCO") of the Member. The Respondent also served as interim CCO from January 25, 2018 to February 22, 2018 and from February 21, 2019 to August 7, 2019.

7. From January 4, 2010 to January 10, 2020, the Respondent was registered as the Ultimate Designated Person ("UDP") of the Member.

8. At all material times, the Respondent was the UDP and the sole director of the Member.

9. On January 27, 2021, the Respondent transferred ownership of the Member to another individual. The Respondent is not currently registered in the securities industry in any capacity.

10. At all material times, the Respondent conducted business in the Toronto, Ontario area.

III. CONTRAVENTIONS

11. The Notice of Hearing, dated 9 July 2021, alleged the following violations of the By-laws, Rules or Policies of the MFDA:

> **Allegation #1:** Between February 2016 and April 2017, the Respondent failed to fulfill his responsibilities as Ultimate Designated Person with respect to concerns that an Approved Person at the Member was not accurately recording Know-Your-Client information, contrary to MFDA Rules 2.5.2 and 2.1.1; and
>
> **Allegation #2:** Commencing on or about October 30, 2016, the Respondent while acting in the capacity as Ultimate Designated Person, failed to take adequate steps to ensure the Member's compliance with the terms of an Order of a MFDA Hearing Panel dated July 8, 2014 in MFDA File No. 201406, contrary to the terms of the Order and MFDA Rules 2.5.2 and 2.1.1.

12. The Respondent admits these allegations. See paragraph 4 of the Settlement Agreement.

IV. TERMS OF SETTLEMENT

13. The proposed Terms of Settlement are:

a) the Respondent shall be prohibited from being an officer, director or acting in a supervisory capacity including without limitation acting as Ultimate Designated Person, Chief Compliance Officer, Branch Manager or Compliance Officer, while in the employ of or in association with a Member of the MFDA for a period of 5 years from the date when this Settlement Agreement is accepted;

b) the Respondent shall pay a fine in the amount of $20,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1;

c) the Respondent shall pay costs in the amount of $7,500, pursuant to section 24.2 of MFDA By-law No. 1;

d) the fine and costs shall be payable in instalments as follows:

i. $2,500 (fine) and $7,500 (costs) in certified funds on the date this Settlement Agreement is accepted;

ii. $3,000 (fine) payable on or before May 31, 2022;

iii. $3,000 (fine) payable on or before June 30, 2022;

iv. $3,000 (fine) payable on or before July 31, 2022;

v. $3,000 (fine) payable on or before August 31, 2022;

vi. $3,000 (fine) payable on or before September 30, 2022; and

vii. $2,500 (fine) payable on or before October 31, 2022; and

e) the Respondent shall in the future comply with MFDA Rules 2.5.2 and 2.1.1; and

f) the Respondent will attend by videoconference on the date set for the Settlement Hearing.

V. AGREED FACTS

14. There is a long history leading to the present Settlement Agreement. This history is set out in detail in the Settlement Agreement. It started in 2013 with a compliance Examination of the Member during the period of March 1, 2010 to January 31, 2013 in order to assess the Member's compliance with MFDA By-laws, Rules, and Policies.

15. During the course of the compliance Examination, MFDA Staff identified a number of compliance deficiencies including that the Member failed to respond to Staff's request for information: failed to conduct an historical leveraging review; failed to update its policies and procedures; and failed to effectively discharge its supervisory obligations, including failing to identify patterns in the client Know-Your-Client ("KYC") information (i.e., KYC uniformity) recorded by three Approved Persons.

16. As a result of various concerns, Staff brought an application for interim relief against the Member and on July 8, 2014 a Hearing Panel of the MFDA made an order, which among other things, sought to address Staff's concerns described in the previous paragraph.

17. The 2014 Order, amongst other items:

a) required the Member to conduct and provide to Staff an historical leverage review of all non-registered leveraged accounts, and take such remedial action as directed by Staff to address any concerns raised by the review; and

b) prohibited the Member from opening any new non-registered leveraged client accounts making any new leveraged trade recommendations (i.e., borrowing to invest), or processing any leveraged trades in any existing non-registered client accounts, until such time as the Member, to the satisfaction of Staff, resolved all deficiencies identified by Staff, either previously or arising from the historical leverage review.

18. The 2014 Order also prevented the Respondent from becoming registered as the Member's CCO and required MFDA approval before replacing the CCO, who had been retained in April 2014. The 2014 Order also required that the Respondent, as the Member's UDP, be responsible for ensuring that the Member comply with the terms of the 2014 Order.

19. In 2015, MFDA Compliance Staff conducted a further compliance Examination of the Member for the period of February 1, 2013 to January 31, 2015. That Examination identified a number of compliance deficiencies including, but not limited to, some of the same ongoing issues and concerns previously identified in the 2013 Examination and the 2014 Order.

20. On January 11, 2017, the Member entered into a Settlement Agreement with Staff, concerning the various deficiencies identified in the 2013 and 2015 Examinations. See *Re TeamMax Investment Corporation* MFDA File No. 201695. The 2015 Examination identified a number of compliance deficiencies including, but not limited to, some of the same ongoing issues and concerns previously identified in the 2013 Examination and the 2014 Order.

21. The 2017 Settlement Agreement is summarized in paragraphs 20 to 23 of the Settlement Agreement. The Member admitted to various contraventions of the MFDA's Rules and Policies, including that it failed to respond, or provided untimely, incomplete or inadequate responses, to requests for information and documents requested by Staff.

22. There were also admissions by the Member dealing with leveraging in that the Member failed to establish, implement and maintain adequate policies and procedures to supervise leveraging recommendations and ensure the suitability of leveraging recommendations made by Approved Persons to clients. Further, the Member failed to conduct historical leveraging reviews

of the Respondent's leveraged client accounts to identify and correct deficiencies identified by Staff relating to those leveraged client accounts.

23. Amongst other failures, the Member failed to adequately detect and query patterns in the KYC information collected from clients by three approved persons, one of whom, EYCQ, is involved in the misconduct in the present hearing.

24. In April 2014, the Member retained a new CCO in response to the concerns raised by Staff during the 2013 Examination about the CCO and UDP roles being held by a single individual, the Respondent.

25. In the 2017 Settlement Agreement, the Member admitted to failing to adequately detect and query patterns in the KYC information recorded by Approved Person EYCQ. The new CCO believed that EYCQ was still not accurately recording KYC information from clients. Clients were given identical KYC profiles even though their background, wealth and needs would not be the same.

26. When the CCO attempted to address these issues with EYCQ, she found him to be unresponsive. She reported her concerns about EYCQ to the Respondent in repeated conversations with the Respondent, in various review reports, and in reports to the Board of Directors of the Member in October 2016 and January 2017, as well as in multiple emails in 2016 and 2017.

27. The CCO recommended to the Respondent that EYCQ's registration be terminated due to his failure to accurately record KYC information and his resistance to the CCO's attempts to address the issue with him.

28. The Respondent did not follow the CCO's recommendations to terminate or otherwise discipline EYCQ, but simply said that he would speak to EYCQ. The Respondent did not take adequate steps to ensure that the KYC information recorded by EYCQ was accurate.

29. The CCO's concerns about EYCQ's failure to accurately record KYC information continued from the time that she first reported her concerns to the date of EYCQ's termination which occurred on April 20, 2017, for, among other issues, his failure to accurately record KYC information.

30. The CCO was also concerned about Approved Persons making leveraged trade recommendations and/or processing leveraged trades. The 2014 Order prohibited the Member

from opening any new non-registered accounts, making any new leveraged trade recommendations, or processing any leveraged trades in any existing non-registered accounts.

31. In 2016, the CCO raised concerns to the Respondent that some of the Approved Persons may have made leveraged trade recommendations and/or processed leveraged trades. She discovered several instances where large dollar amount trades were made shortly after a line of credit or home equity loans (from another organization) had been approved for a client. The Respondent, however, directed the CCO not to speak with any of the Approved Persons and stated that he wanted to speak with the Approved Persons personally.

32. The Respondent claims that he spoke to the Approved Persons, but no records of doing so were kept.

VI. IMPORTANCE OF AN ULTIMATE DESIGNATED PERSON ("UDP")

33. As stated by the Ontario Securities Commission in *Re Argosy Securities Inc*., (2016 LNONOSC 21 at paragraph 171): "The role of UDP is critically important. The UDP bears ultimate responsibility for establishing, maintaining and promoting a culture of compliance and ethical behaviour within the firm."

34. MFDA Staff Notice MSN-0057, 2.5.2, states that the UDP "must supervise the activities of the Member that are directed towards ensuring compliance with MFDA requirements and all applicable securities legislation by the Member and the individuals acting on its behalf…The UDP should ensure that all instances of non-compliance are resolved in a timely and effective manner." See also *Re Northern Securities* 2012 LNIIROC 63 at paragraph 102 and *Re DeRosa* 2018 LNCMFDA 238 at paragraph 23.

35. The regulatory regime with respect to the roles of UDP and CCO of a Member is set out in MFDA Rules 2.5.2 and 2.5.3. Pursuant to MFDA Rule 2.5.3, the CCO of a Member is responsible for monitoring and assessing compliance by the Member and Approved Persons with the MFDA By-laws, Rules, and Policies and applicable securities legislation and reporting such non-compliance to the UDP. Pursuant to MFDA Rule 2.5.2, the UDP of a Member is responsible for *supervising* the activities of the Member directed towards ensuring compliance by the Member and its Approved Persons with the MFDA By-laws, Rules, and Policies, and applicable securities legislation.

36. The UDP's conduct is to be judged by an objective standard. MSN-0057 states that "the individual's conduct will be judged by reference to a reasonably proficient individual holding the same position."

37. In multiple cases, MFDA and IIROC Hearing Panels have repeatedly held that supervisory staff cannot resolve issues by solely accepting explanations or assurances from the individuals subject to their supervision. See, for example, *Re Northern Securities* 2012 LNIIROC 63; *Re Cavalaris* 2017 LNIIROC 4; and *Re DeRosa* 2018 LNCMFDA 238.

VII. THE FACTS ADMITTED CONSTITUTE MISCONDUCT

38. The Respondent has admitted that he failed to fulfil his responsibilities as UDP with respect to concerns that EYCQ was not accurately gathering KYC information. See: paragraph 4(a) of the Settlement Agreement.

39. As set out in the Settlement Agreement, the CCO of the Member repeatedly raised concerns with the Respondent about the business conduct of former Approved Person EYCQ and the Respondent's only response was that he would address the compliance concerns with EYCQ by speaking with him. Except to the extent that such conversations occurred, the Respondent took no supervisory steps to address the compliance concerns raised by the CCO. In addition, the Respondent maintained no records or notes of any such conversations.

40. As set out in MSN-0057, the Respondent was required to ensure that the instances of non-compliance by EYCQ, reported to him by the CCO, were resolved in a timely and effective manner. This is particularly so here, where the Respondent advised the CCO that he would address the compliance concerns with EYCQ. The Respondent, as UDP, was not required to personally undertake the necessary supervisory steps, but he was responsible for ensuring that concrete steps were taken at the Member to ensure that EYCQ's business conduct was corrected going forward and that the KYC information already gathered by EYCQ was correct. Merely having conversations with EYCQ does not accomplish either objective.

41. MFDA Hearing Panels have repeatedly recognized the importance of proper record keeping. As the Hearing Panel stated in *Re Portfolio Strategies Corp*. (2013 LNCMFDA 5 at paragraph 15): "proper record keeping is a key element in the overall supervision structure at the Member as it provides the basis for the supervision conducted by the Member's compliance

staff…and regulatory oversight by the MFDA." See also *Re Investia Financial Services Inc*. 2012 LNCMFDA 31.

42. Ultimately, a reasonably proficient and diligent UDP would have undertaken more supervisory action and kept careful and adequate notes to ensure the compliance concerns with EYCQ were appropriately addressed. EYCQ's failures to respond to the CCO and to appropriately record KYC information were not met with corrective action and discipline, but instead casual conversation from the Respondent that created the appearance that EYCQ could continue with his improper conduct with impunity. The respondent was obligated to ensure that the instances of non-compliance were resolved in a timely and effective manner. In this case, the instances of non-compliance continued for approximately two years until EYCQ's eventual termination.

43. Accordingly, the Respondent contravened MFDA Rule 2.5.2 relating to the duties of a UDP.

44. The Respondent also admits that he failed to take adequate steps to ensure the Member's compliance with the 2014 Order of an MFDA Hearing Panel that prohibited the Member's Approved Persons from recommending or processing leveraged trades. The CCO raised concerns with the Respondent that she had reason to suspect that a number of Approved Persons were acting contrary to the Order. Notwithstanding the CCO's wish to investigate, the Respondent instructed her to do nothing until he had an opportunity to speak with the Approved Persons personally. The Respondent claims that he spoke with the Approved Persons, but he maintained no notes or records of such conversations. Beyond such conversations, the Respondent failed to take adequate supervisory steps to review the potentially leveraged transactions and determine if Approved Persons were acting in violation of the 2014 Order.

45. By failing to take reasonable supervisory steps to ensure the Member's compliance with the 2014 MFDA Order, the Respondent contravened the terms of the 2014 MFDA Order and MFDA Rule 2.5.2, relating to the duties of a UDP.

46. Moreover, by failing to adequately address the issues identified by the CCO, the Respondent engaged in business conduct or practice that is unbecoming or detrimental to the public interest, contrary to MFDA Rule 2.1.1, outlining the standard of conduct required of Members and Approved persons.

VIII. IMPORTANCE OF RESPECTING SETTLEMENT AGREEMENTS

47. The case law makes it clear that Settlement Agreements should be encouraged and respected.

48. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal stated with respect to a settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, paragraph 49 (B.C.C.A.)):

> "Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation."

49. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter. The Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel. There were significant negotiations in the present case.

50. As a Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: "It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness." There are many similar statements by MFDA Panels, stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated: "A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness."

IX. SHOULD THE PANEL ACCEPT THE SETTLEMENT AGREEMENT

51. The Respondent's misconduct was very serious and warrants a significant penalty.

52. In mitigation, there is no evidence that harm was done to clients or that the Respondent received any benefit from his misconduct.

53. The Respondent has not personally been the subject of previous MFDA disciplinary proceedings, although the company he controlled has been.

54. Further, by entering into the Settlement Agreement, the Respondent has accepted responsibility for his actions and avoided the time and expense of a full disciplinary hearing.

55. Preventing the Respondent from being an officer, director or acting in a supervisory capacity for five years is a significant penalty and will serve as a deterrent to others in the industry.

56. The penalty is not out-of-line with the many cases cited to us nor with the MFDA Sanctions Guidelines.

57. The Panel found that the penalty and costs fall within a reasonable range of appropriateness and was therefore accepted by the Panel.

DATED this 11th day of May, 2022.

"Martin L. Friedland"
Martin L. Friedland, C.C., Q.C.
Chair

"Brigitte J. Geisler"
Brigitte J. Geisler
Industry Representative

"Edward V. Jackson"
Edward V. Jackson
Industry Representative

DM 886683