



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

**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: Yuk Hang Sam Cheung

Heard: November 14, 2018 in Toronto, Ontario
Decision and Reasons: January 28, 2019

DECISION AND REASONS

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC
Robert Christianson
Guenther W.K. Kleberg

Chair
Industry Representative
Industry Representative

Appearances:

Michelle Pong)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Yuk Hang Sam Cheung)	Respondent, not in attendance or represented
)	by counsel
)	

Background

1. This is a Hearing under Sections 20 and 24 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”). The hearing was held on November 14, 2018. Yuk Hang Sam Cheung (the “Respondent”) was not in attendance or represented by counsel at the Hearing.
2. Between April 2002 and September 29, 2006, the Respondent had been registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with WFG Securities of Canada Inc. (now known as WFG Securities Inc.), a Member of the MFDA.
3. Between October 2006 and April 1, 2017, the Respondent was registered in Ontario as a mutual fund salesperson with Investia Financial Services Inc. (“Investia”), a Member of the MFDA. Between May 15, 2011 and August 16, 2016, Investia designated the Respondent as an Alternate Branch Manager. At all material times, the Respondent conducted business in Richmond Hill, Ontario.
4. In March 2017, because of the conduct described in these reasons, Investia issued a Termination Notice to the Respondent with an effective date of April 1, 2017. The Respondent subsequently filed a letter of resignation, effective March 29, 2017.
5. The Respondent is not currently registered in the securities industry in any capacity.
6. A Notice of Hearing involving the Respondent was issued by the MFDA on January 8, 2018. A first appearance by teleconference was held on March 22, 2018. The Respondent did not appear at that hearing in person or by counsel. A hearing date on the merits was set by the Chair of the Panel for November 14, 2018. Again, the Respondent did not appear in person or by counsel at the present hearing.
7. An affidavit by Lara Rowles, a Manager in the Investigations group of the MFDA Enforcement Department, sworn on November 8, 2018 and outlining the service of the various notices and the detailed facts of the case, was filed at the hearing. We reserved our decision. This is our decision and the reasons for the decision.

8. This, we were told, is the last case in a series of four related cases involving the sale of syndicated mortgages at the Richmond Hill Branch conducted outside the Member and without the knowledge of the Member. See *Re Hong Lam*, File No. 201805; *Re Grace Wong Uy*, File No. 201806; and *Re Percy Kwun Chung Poon*, File No. 201807.

The Alleged Misconduct

9. In about 2011, another Approved Person, Hong Lam (“HL”) (See *Re Hong Lam*, File No. 201805), the Branch Manager, spoke with the Respondent about offering syndicated mortgage investments to clients (the “Investments”). These Investments were offered by a real estate investment company, Titan Equity Group Ltd., with whom HL had a referral arrangement. The Respondent agreed to introduce clients to HL to discuss the Investments and to purchase the Investments through HL. In most cases, the Respondent, along with HL met with the clients.

10. The Respondent sold, facilitated the sale of, and/or made referrals in respect of the sale of the Investments to at least five clients, who invested a total of \$244,300. The Respondent also personally invested at least \$49,910 in the Investments, and an additional sum of \$50,000 (half of \$100,000 invested) in the name of a company through which he and HL conducted their insurance business. The Respondent received referral fees of 5% from these Investments, totalling almost \$20,000.

11. The Respondent did not disclose these transactions to Investia and the transactions were not recorded on the Member’s accounts or conducted through the Member’s facilities. Investia did not approve the Investments for sale to its clients by Approved Persons.

12. In early 2016, Investia found out about HL’s conduct through another Approved Person, Grace Wong Uy (*Re Grace Wong Uy*, File No. 201806), who was also improperly selling these Investments, and sent a questionnaire to the Approved Persons in the Branch. The Respondent denied soliciting investments in these securities. He did not, he wrote, know anything about the Investments and had no undisclosed outside business activities. The Respondent’s written answers were false and misleading.

13. The Respondent met with Staff of the MFDA on February 10, 2017 and admitted that the above conduct had taken place. When asked about why he had not disclosed this in the questionnaire, he answered that if he filled it out accurately “they will ask more questions and I don’t have time for that.” The Respondent did not subsequently cooperate with the MFDA in any of the later hearings.

Specific Allegations

14. In the Notice of Hearing, the MFDA alleged the following specific violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between 2012 and 2015, the Respondent engaged in securities related business which was not carried on for the account of the Member or through its facilities, by recommending, selling, facilitating the sale of, and/or making referrals in respect of the sale of investments to at least 5 clients totaling approximately \$244,300, contrary to the Member’s policies and procedures and MFDA Rules 1.1.1, 2.1.1, 2.4.2, 2.5.1 and 1.1.2 and the requirements of sections 13.7 and 13.8 of National Instrument 31-103. [The Notice of Hearing had, in fact, alleged that the total amount was \$246,100, but it turned out to be \$244,300.]

Allegation #2: Between 2012 and 2015, the Respondent engaged in another gainful occupation, which was not disclosed to and approved by the Member, when he recommended, sold, facilitated the sale of, and/or made referrals in respect of the sale of investments to at least 5 clients totaling approximately \$244,300, contrary to the Member’s policies and procedures, MFDA Rules 1.2.1(c) (now MFDA Rule 1.3), 2.1.1, 2.4.2, 2.5.1 and 1.1.2, and the requirements of sections 13.7 and 13.8 of National Instrument 31-103. [Council for the MFDA stated that if we accept that the Investments were “securities related” under allegation #1, we should disregard Allegation #2.]

Allegation #3: Between 2012 and 2015, the Respondent referred clients to Approved Person HL to purchase investments outside the Member, and received at least \$12,305 in referral fees for doing so, thereby participating in an unapproved referral arrangement to which the Member was not a party, contrary to the Member’s policies and procedures,

MFDA Rules 2.1.1, 2.4.2, 2.5.1 and 1.1.2, and the requirements of sections 13.7 and 13.8 of National Instrument 31-103.

Allegation #4: In February 2016, the Respondent misled the Member during its investigation into his conduct when he provided false answers to the Member with respect to his knowledge of and involvement in referring clients to purchase investments outside the Member, contrary to MFDA Rule 2.1.1.

Allegations Proved

15. It is clear that the Respondent participated in all of the conduct described in the four allegations. In his interview with Staff of the MFDA on February 10, 2017, he admitted his involvement.

16. MFDA Rules provide that all securities related business must be carried on for the account of the Member, and through the facilities of the Member; and all revenues, fees or consideration in any form relating to any business engaged in by the Member must be paid or credited directly to the Member and recorded on the books of the Member. See MFDA Rule 1.1.1.

17. Syndicated mortgages are securities and transactions in respect of them come within the definition of securities related transaction. An Approved Person cannot sell syndicated mortgages under a mortgage broker license outside the Member. See MFDA Bulletin #0583-P, dated November 12, 2013.

18. The rules, regulations and decisions by Hearing Panels make it clear that these rules are to protect the public (as well as the Member). Investment products should be approved by the Member and transactions recorded on the books of the Member. If this is not done, the Member cannot properly supervise the Approved Person. Supervision is the backbone of the system of securities regulation.

19. At all material times, Investia's policies and procedures required that its Approved Persons only offer products Investia had approved for sale, and that all products be sold through Investia. It also required that its Approved Persons only participate in referral arrangements that it had approved, and that all fees or commissions must flow through the books and records of Investia.

Penalty

20. Counsel for the MFDA proposed the following penalties against the Respondent:

- a) A permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any Member of the MFDA, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- b) A fine in the amount of at least \$50,000, pursuant to section 24.1.1 (b) of MFDA By-law No. 1;
- c) Costs in the amount of \$6,000, attributable to conducting the investigation and hearing of this matter, pursuant to section 24.2 of MFDA By-law No. 1.

21. A permanent prohibition is clearly required in this case. We agree with Counsel for the MFDA that the conduct in this case was “egregious”. The Respondent has been registered in the mutual fund industry since 2002 and admitted in his interview with MFDA Staff that he knew that he should not deal in these securities outside the Member. Although he participated in a MFDA interview, he did not enter a reply to the Notice of Hearing or participate in the Hearing.

22. His conduct is especially egregious in that he was an Alternate Branch Manager. As such, he would, in the absence of the Branch Manager, have been supervising others in the branch.

23. This was not a single incident. It went on for a number of years.

24. An award of costs of \$6,000 is reasonable under the circumstances to recover a portion of the costs attributable to conducting the investigation and the hearing of this matter.

25. Determining what the monetary penalty should be is more difficult. The conduct was not as serious of that of HL, who was fined \$250,000. HL was the ringleader, who brought other Approved Persons into the scheme, sold more of the Investments than did others, profited to a greater extent than the Respondent, and had other unreported outside business activities. Moreover, he did not cooperate in any way with the investigation or the hearings, which made it very difficult for the MFDA to determine the full range of his improper activities.

26. In two of the other related cases, there was a Settlement Agreement, which is normally an important consideration in determining an appropriate penalty. Not only does it shorten the time and expense devoted to concluding the matter but it is an acknowledgment of the seriousness of the conduct. In both of these cases the penalties were, therefore, lower than the penalty requested here.

27. There were no client complaints and it is not known the extent of client harm. Further the failure of the Respondent to participate in the proceedings makes it difficult to know what that harm was and whether there were other clients harmed. At least one of the mortgage investments resulted in a bankruptcy and will likely result in some client harm. We also take into account the fact that the Respondent and members of his family also appear to have suffered financial harm by investing in the syndicated mortgages.

28. We have decided that the appropriate penalty in the present case should be \$75,000, somewhat higher than the minimum penalty proposed by the MFDA.

29. It is a substantial penalty. A permanent prohibition and a \$75,000 fine provides the necessary deterrence concerning the conduct that likely occurred.

DATED this 28th day of January, 2019.

“Martin L. Friedland”

Martin L. Friedland, CC, QC
Chair

“Robert Christianson”

Robert Christianson
Industry Representative

“Guenther W.K. Kleberg”

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