



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: Brian Chung

Heard: March 29, 2018 in Toronto, Ontario

Decision: March 29, 2018

Reasons for Decision: July 20, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC

Chair

Kenneth P. Mann

Industry Representative

Joseph Yassi

Industry Representative

Appearances:

Sarah Glickman

)

Counsel for the Mutual Fund Dealers
Association of Canada

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)

A. Benson Forrest

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Counsel for the Respondent

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Brian Chung

)

Respondent, in person

)

Background

1. The Hearing Panel accepted the settlement agreement dated December 28, 2017 (“Settlement Agreement”) between the staff of the MFDA and Brian Chung (“Respondent”). A copy of the Settlement Agreement is attached to these Reasons as Appendix “A”). The agreed facts are set out in Section III of the Settlement Agreement.

Contraventions

2. The Respondent admitted that between September and October 2015, the Respondent:
- a) on January 28, 2016, processed an unauthorized withdrawal from the bank account of two clients in order to purchase mutual funds on behalf of the clients, contrary to MFDA Rule 2.1.1; and
 - b) between January 15, 2016 and January 29, 2016, misled two clients about the status of a cheque that the clients had provided to him for the purchase of mutual funds, contrary to MFDA Rule 2.1.1.

Agreed penalties

3. The agreed penalties were: i) a fine of \$15,000; and ii) a costs award of \$2,500.

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 the Respondent of the agreed penalty.

Nature of the Misconduct

5. Processing unauthorized withdrawals from bank accounts and misleading clients about the status of cheques are conduct contrary to MFDA Rule 2.1.1.

Other considerations in determining acceptability of agreed penalties

6. There was no evidence that the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees the Respondent would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

7. The Respondent has not previously been subject to MFDA disciplinary proceedings.

8. By entering into the Settlement Agreement, the Respondent has accepted responsibility for the misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing.

9. The agreed penalties are within the recommendations of the MFDA penalty guidelines and the reasonable range of appropriateness with regard to MFDA decisions submitted to us by staff, made by MFDA Hearing Panels in similar circumstances. They are fair and reasonable and will serve as a specific and general deterrent.

Costs

10. The costs award is reasonable.

Conclusion

11. We concluded that the Settlement Agreement was in the public interest and, consequently, we accepted it.

DATED this 20th day of July, 2018.

“Paul M. Moore”

Paul M. Moore, QC
Chair

“Kenneth P. Mann”

Kenneth P. Mann
Industry Representative

“Joseph Yassi”

Joseph Yassi
Industry Representative

DM 625686



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Re: Brian Chung

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, Brian Chung (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) on January 28, 2016, the Respondent processed an unauthorized withdrawal from the bank account of 2 clients in order to purchase mutual funds on behalf of the clients, contrary to MFDA Rule 2.1.1; and
- b) between January 15, 2016 and January 29, 2016, the Respondent misled 2 clients about the status of a cheque that the clients had provided to him for the purchase of mutual funds, 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 pay a fine in the amount of \$15,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
- d) the Respondent will attend in person, 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. Since 2003, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Investors Group Financial Services Inc. ("Investors Group"), a Member of the MFDA.

8. At all material times, the Respondent conducted business in the North York, Ontario area.

AP Processed Unauthorized Withdrawal and Misled Clients

9. On or about December 8, 2015, the Respondent received instructions from clients EF and JF to purchase units of a mutual fund in their 3 registered education savings plan accounts. The clients instructed the Respondent to purchase \$2,500 for each account, for a total contribution of \$7,500 (the "Purchases").

10. On December 8, 2015, clients EF and JF mailed a cheque (the "Cheque") to the Respondent in respect of the Purchases. The Respondent subsequently misplaced the Cheque.

11. On January 13, 2016, the Respondent received an email from client EF asking the Respondent when the Purchases would be processed. At that time, the Respondent had not located the Cheque. On January 15, 2016, the Respondent misled clients EF and JF in his response to their inquiry when he failed to advise them that he misplaced the Cheque and advised that he would deposit the Cheque on January 18, 2016.

12. On January 18, 2016, the Respondent did not process the Purchases as he had represented to clients EF and JF.

13. On January 27, 2016, the Respondent received a further email from client EF asking the Respondent when the Purchases would be processed. At the time, the Respondent had not located the Cheque.

14. On January 28, 2016, without informing clients EF and JF or obtaining their authorization, the Respondent created a pre-authorized contribution form (the "PAC Form") on which he entered the bank account information on file with Investors Group. That bank account was different than the account from which clients EF and JF drew the Cheque. Subsequently, the Respondent submitted the PAC Form to Investors Group for processing.

15. The Respondent was able to process the Purchases without client signatures because clients EF and JF had Limited Trade Authorizations on their accounts.

Investors Group's Investigation

16. On January 29, 2016, the Respondent's branch manager received a complaint from client EF about the withdrawal of monies from clients EF and JF's bank account to process the Purchases.

17. In response to client EF's complaint, Investors Group commenced an investigation, during which the Cheque was found..

18. On February 2, 2016, Investors Group reversed the January 28, 2016 transaction due to insufficient funds. As a result of the reversal, clients EF and JF incurred a charge of \$45 from their bank, which Investors Group later reimbursed to clients EF and JF.

19. On February 5, 2016, in accordance with client EF and JF's original instructions, the Respondent processed the Purchases using the Cheque at a gain of \$71.17 in each account.

20. On July 7, 2016, Investors Group issued a cautionary letter to the Respondent.

Additional Factors

21. There is no evidence that the Respondent received any benefit from the conduct set out above beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

22. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

23. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

IV. ADDITIONAL TERMS OF SETTLEMENT

24. 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.

25. 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. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

26. 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.

27. 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 contraventions described in this Settlement

Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any 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.

28. 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.

29. 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.

30. 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 28th day of December, 2017.

“Brian Chung”

Brian Chung

“JY”

Witness – Signature

JY

Witness – Print Name

“Shaun Devlin”

Shaun Devlin

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President,

Member Regulation – Enforcement



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Re: Brian Chung

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 Brian Chung (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) on January 28, 2016, the Respondent processed an unauthorized withdrawal from the bank account of 2 clients in order to purchase mutual funds on behalf of the clients, contrary to MFDA Rule 2.1.1; and

- b) between January 15, 2016 and January 29, 2016, the Respondent misled 2 clients about the status of a cheque that the clients had provided to him for the purchase of mutual funds, contrary to MFDA Rule 2.1.1.

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

1. The Respondent shall pay a fine in the amount of \$15,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
2. The Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
3. The Respondent shall in the future comply with MFDA Rule 2.1.1; and
4. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all 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]