

Decision (Penalty) and Reasons

File No. 201949



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: Rui Guo (also known as Ray Guo)

Heard: March 10, 2020 in Toronto, Ontario
Decision (Misconduct): March 10, 2020
Decision (Penalty) and Reasons: April 2, 2020

DECISION (PENALTY) AND REASONS

Hearing Panel of the Central Regional Council:

The Honourable Robert P. Armstrong QC	Chair
Brigitte J. Geisler	Industry Representative
Guenther W. K. Kleberg	Industry Representative

Appearances:

Francis Roy)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Rui Guo)	Respondent, in person
)	
)	

I. INTRODUCTION

1. From November 18, 2015 to May 25, 2017, Rui Guo (the “Respondent”) was registered in Ontario as a dealing representative with TD Investment Services Inc., a member of MFDA. The Respondent is no longer registered in any capacity in the securities industry.
2. By Notice of Hearing dated August 30, 2019 (“Notice of Hearing”), the MFDA commenced a disciplinary proceeding against the Respondent pursuant to sections 20 and 24 of MFDA By-Law No. 1.
3. The Notice of Hearing contains the following allegation against the Respondent:

Allegation #1: Between December 2016 and April 2017, the Respondent opened and processed trades in at least 29 fictitious mutual fund client accounts in order to receive promotional monies that were payable to new banking clients and to increase his sales revenues for compensation purposes, thereby failing to observe high standards of ethics and conduct in the transaction of business, or engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.
4. The public hearing of this matter was held on March 10, 2020 at the offices of the MFDA in Toronto. The Respondent appeared without counsel. The MFDA was represented by senior Enforcement Counsel, Francis Roy.
5. The facts related to the alleged misconduct were agreed to by the Respondent. However, the issue of the appropriate penalty was the subject of disagreement.

II. THE FACTS

6. An Agreed Statement of Facts was filed by the parties. Paragraphs 15 through 20 of the Agreed Statement of Facts contains the following:
 15. At all material times, TD Bank offered new clients a promotional payment of \$300 (the “\$300 Welcome Offer”) payable 12 weeks after the opening of TD Bank chequing accounts if the clients completed any two of the following within 45 days of opening TD Bank chequing accounts:
 - i. make at least one online bill payment;
 - ii. complete a preauthorized withdrawal or transfer in the minimum amount of \$50; or

iii. set up a direct deposit of funds into the TD Bank chequing account.

16. The Respondent executed a scheme to obtain for his benefit the \$300 Welcome Offer and increase his TD sales revenues for compensation and retention purposes. As described in more detail below, the Respondent opened fictitious bank and mutual fund accounts based on real people, signed client signatures on bank and mutual fund account documentation, and processed transactions in these accounts.

17. In particular, between December 2, 2016 and May 25, 2017, the Respondent opened 29 TD Bank chequing accounts and 29 Member mutual fund accounts. In each of the 29 instances, the Respondent:

- a) created a fictitious customer profile by fabricating information and signing client signatures on account opening documents, including Member Know-Your-Client forms;
- b) deposited his own funds into the newly opened TD Bank chequing accounts;
- c) using the funds he had deposited in the TD Bank chequing account, the Respondent:
 - i. processed at least one bill payment from the opened TD Bank chequing accounts; and
 - ii. set up a pre-authorized withdrawal in the amount of \$50 from the TD Bank chequing accounts for the purchase of mutual funds in the mutual fund accounts he opened at the Member; and
- d) once TD Bank deposited the \$300 Welcome Offer payments into the TD chequing accounts, the Respondent used some or all of the monies for personal purposes.

18. In or about May 2017, TD Bank discovered and halted the Respondent's activities described above. Prior to doing so, TD Bank had paid approximately \$8,000 worth of \$300 Welcome Offers into TD Bank chequing accounts that the Respondent had opened.

19. On May 25, 2017, TD Bank and the Member terminated the Respondent.

20. By engaging in the conduct described above, the Respondent admits that he failed to observe high standards of ethics and conduct in the transaction of business, and engaged in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

7. In addition to the agreed facts, the Respondent filed a copy of his personal financial records, which included records from CIBC, RBC, WebBroker, Canada Revenue Agency, OSAP and the National Student Loans Service Centre of the Government of Canada. These records were included in a bundle and marked as Exhibit 5 at the hearing.

III. THE POSITION OF COUNSEL FOR THE MFDA

8. Counsel for the MFDA addressed two issues. Firstly, he submitted that the admitted facts establish the alleged misconduct and a breach of MFDA Rule 2.1.1 and secondly, that the appropriate penalty calls for a substantial sanction.

(i) The Misconduct

9. MFDA Rule 2.1.1 provides:

Each Member and each Approved Person of a Member shall:

- a) deal fairly, honestly and in good faith with its clients;
- b) observe high standards of ethics and conduct in the transaction of business;
- c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and
- d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

10. Counsel cited a number of authorities dealing with dishonest conduct by persons subject to the MFDA rules. In particular, he cited *Rihawi et al. (Re)*, MFDA File no. 201727 and *Lipski (Re)*, [2010] MFDA Pacific Regional Council, File No. 201012, which involved falsifying, fabricating or altering client forms. He also cited *Arcuri (Re)*, [2011] MFDA Central Regional Council, File No. 200801 & 200933 and *Yoannou (Re)*, [2013] MFDA Central Regional Council, File No. 201235, which involved dealing with failure to account for client funds and/or misappropriating client monies.

11. Counsel submitted that by reason of the admitted facts in this case, it was clearly established that Mr. Guo has breached MFDA Rule 2.1.1.

(ii) The Penalty

12. Counsel for the MFDA submitted that the appropriate penalty in this case should include:

- i. a fine of at least \$15,000 pursuant to section 24.1.1(b) of MFDA By-Law No. 1;
- ii. Costs of at least \$5,000 pursuant to section 24.2 of MFDA By-Law No. 1; and
- iii. a permanent prohibition on his authority to act and be registered as a mutual fund sales person (now known as a dealing representative) pursuant to Section 24.1.1(e) of MFDA By-Law No. 1.

13. Counsel argued that the proposed penalties “reflect the seriousness of the Respondent’s misconduct and are consistent with the mandate of the MFDA to enhance investor protection and strengthen the public confidence in the Canadian mutual fund industry.” He also asserted that the proposed penalty will send a clear message to others that such misconduct will not be tolerated. Counsel filed a Bill of Costs for \$5,175, which was marked as Exhibit 4 at the hearing.

IV. THE POSITION OF THE RESPONDENT

14. The Respondent admitted the facts that constituted the alleged misconduct. His submissions were directed to the proposed penalty. He made two points. Firstly, he argued that he “does not believe that a permanent prohibition on his authority to act and be registered as a mutual fund sales person is warranted in the circumstances of this case.” Secondly, he submitted that he was not able to pay the amount of the proposed fine and costs requested by counsel for the MFDA. He argued that he was impecunious and requested that there be no financial penalty ordered against him. In the alternative, he submitted that a much reduced financial penalty was called for.

15. Mr. Guo reviewed his bundle of financial records and submitted that they established that he was in a precarious financial state. While he admitted that he had some assets of apparent significant value, he claimed that he was so highly leveraged that he was not in a position to pay the amount of the proposed fine and costs. Mr. Guo explained that he was in the final year of an MBA program at the Schulich School of Business at York University and had outstanding student loans in the amount of \$83,000.

16. Mr. Guo was hoping to find a job in the financial world upon his graduation from the MBA program this spring. He has made a number of applications for positions, but to date has not been successful in finding a position.

17. Mr. Guo's financial records indicate that he has lines of credit with two banks and an account with WebBroker valued at \$30,161.21 as of March 4, 2020. Undoubtedly that figure will be much reduced in view of the current Coronavirus pandemic. He owns a condominium in Toronto in the Yonge and Finch area. He indicated that he purchased the condominium for \$300,000 and he has a mortgage on the property for \$208,000. He is making monthly payments of \$818 on the mortgage. Mr. Guo also leases a BMW automobile in respect of which he makes monthly payments.

V. ANALYSIS AND CONCLUSION

18. On the basis of the Agreed Statement of Facts, there has been a clear breach of the provisions of MFDA Rule 2.1.1 and we so find. This is a most serious breach in that it involves intentional dishonest conduct involving the processing of at least 29 fictitious mutual fund client accounts. In carrying out this scheme, he fabricated information and signed client signatures on account opening documents as well as Know-Your-Client forms.

19. The facts in this case are extremely serious involving a significant breach of trust by outright dishonesty. At the heart of the mutual fund industry is an understanding that its primary *modus operandi* is to carry out its business with unfailing honesty. This case involves grave dishonesty resulting in a most serious breach of trust.

20. In our view, the penalty in this case must reflect the seriousness of the dishonesty and breach of trust. There is no doubt, in our view, that the conduct here attracts the most serious penalty that is available in these circumstances, which is the permanent prohibition of Mr. Guo's authority to act and be registered as a mutual fund salesperson pursuant to section 24.1.1(e) of MFDA By-law No. 1. Such a penalty is necessary to send a clear message to the securities industry and the investing public that conduct of this nature will not be tolerated.

21. In respect of the proposed fine and proposed costs award, we are not persuaded that Mr. Guo is unable to pay these sums of money, which are in the circumstances relatively low. While

we appreciate that Mr. Guo is heavily leveraged with his student loans, he does have a significant asset in his condominium and he is able to afford an expensive automobile and make payments in respect of it.

22. In the result, an order will go as follows:

- i. Mr. Guo shall pay a fine of \$15,000, pursuant to section 24.1.1(b) of MFDA By-Law No. 1;
- ii. Mr. Guo shall pay costs in the amount of \$5,000, pursuant to section 24.2 of MFDA By-Law No. 1; and
- iii. Mr. Guo shall be permanently prohibited from acting as a registered mutual fund sales person (now known as a dealing representative) pursuant to section 24.1.1(e) of MFDA By-Law No. 1.

DATED this 2nd day of April, 2020.

“Robert P. Armstrong”

The Hon. Robert P. Armstrong, QC
Chair

“Brigitte J. Geisler”

Brigitte J. Geisler
Industry Representative

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative

DM 733357