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: Christina Lin

Heard: September 16, 2014 in Toronto, Ontario
Decision and Reasons: October 9, 2014

DECISION AND REASONS

Hearing Panel of the Central Regional Council:

The Hon. P. T. Galligan, Q.C.	Chair
Kenneth Mann	Industry Representative
Robert C. White	Industry Representative

Appearances:

H. C. Clement Wai	)	Enforcement Counsel, Mutual Fund Dealers
	)	Association of Canada
	)	
Anthony Speciale	)	Counsel for the Respondent
	)	
	)	

1. By Notice of Hearing dated April 20, 2012 (the "Notice of Hearing"), the Mutual Fund Dealers Association of Canada ("MFDA") made the following allegation against Yue Brenda Zhou and Christina Lin ("Lin") or (the "Respondent"):

> **Allegation #1**: Commencing in 2009, Lin and Zhou have failed or refused to attend an interview requested by MFDA Staff during the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1 and MFDA Rule 2.1.1.

2. The case came on for hearing on September 15, 2014. At that time we directed that the cases against each of the Respondents Yue Brenda Zhou and Lin proceed separately. The hearing against Ms. Lin was heard on September 16, 2014. At the conclusion of the evidence and the argument of counsel we reserved judgment and advised that the decision would be rendered in due course. This is that decision.

BACKGROUND

3. This case arises out of an Ontario Securities Commission ("OSC") investigation and prosecution of MP Global Financial Ltd. ("MP Global") and its owner Joe Feng Deng ("Deng"). The circumstances of the misconduct of MP Global and Deng are set out in the decision of the OSC dated August 19, 2011. It is not necessary to review those circumstances in any detail. What appears from them is that from approximately 2006 to February 2009, Mr. Deng through his company ran what was in effect a Ponzi scheme whereby monies provided for investment were used for personal purposes and to pay interest, and in some cases return of principal, to earlier investors. When the scheme collapsed in early 2009 investors lost millions of dollars. Ms. Lin, who was registered as a Mutual Funds salesperson with Info Financial from February 1, 2006 to April 20, 2009 was married to Joe Deng. The collapse of Mr. Deng's investment company led to the failure of their marriage. When their child was born in December 2009, Ms. Lin became a single mother and sole support of the child.

THE ALLEGATION

4. The allegation against Ms. Lin is narrow and precise. It is that she "… failed or refused to attend an interview requested by MFDA Staff…". The summary of facts alleged and intended to be relied upon by Staff of the MFDA ("Staff") is set out in paragraphs 28 – 30 of the Notice of Hearing:

> 28. On June 22, 2009, MFDA Staff sent a letter to Lin advising her that an investigation had been commenced in relation to her business activities with MP Global. In addition to concerns about her activities in relation to MP Global, MFDA Staff was also concerned about the possibility that Lin may have been facilitating a stealth advising arrangement with her husband, Deng, once he had ceased to be registered. (Lin took over responsibility for Deng's book of business upon Deng being terminated by Info Financial). In the letter, MFDA Staff requested Lin's attendance at an interview for the purposes of providing a statement as to her knowledge of the matters under investigation. The letter requested a response within five business days. Lin did not respond to the letter.
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> 29. On September 24, 2009, MFDA Staff sent a second letter requesting Lin's attendance at an interview. The letter requested a response by October 2, 2009. Lin did not respond to the letter.
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> 30. On November 28, 2009, a process server left a third letter from MFDA Staff, dated November 23, 2009, requesting Lin's attendance at an interview at the apartment building in which Lin resided after confirming with building security that Lin resided there. The letter requested a response within ten business days.
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> 31. To date [i.e., April 20, 2012] Lin has failed to respond to MFDA Staff's requests that she attend for an interview.

5. Evidence at the hearing discloses that the letters dated June 22, 2009 and September 24, 2009 were sent to a wrong address. They could not have come to her attention. The letter of November 28, 2009 was delivered to the premises at which she was then living. No one was at home at the time service was attempted. The process server slid the letter under the door. There is no evidence that she ever saw the letter and no basis to draw a fair inference that she became aware of its contents. On the contrary, as will be mentioned later, a reasonable inference can be drawn that she did not know about the letter or its contents.

6. Approximately two and one-half years later, on March 8, 2012, Staff wrote a warning letter to Ms. Lin. That letter was sent to an incorrect address. On April 18, 2012, Staff again wrote the warning letter to Ms. Lin giving her until April 20, 2012 to respond. This time the letter was sent to her correct address. Ms. Lin replied immediately – on April 22, 2012. She sent an email which stated that she had just received the letter. She said that she was not aware of the investigation and gave a telephone number where she could be reached. They had a telephone conversation on April 23, 2012. That led to conversations with members of MFDA Staff which culminated in an agreement to have an interview on May 29, 2012.

7. As noted above Ms. Lin's response to the letter of April 20, 2012 was immediate and it was cooperative. That response has led us to the opinion that had Ms. Lin known of any one of the three letters sent to her in 2009 she would likely have responded cooperatively to it as well. Her lack of response to those letters leads us to infer that she did not ever see or become aware of any of them.

8. Ms. Lin retained legal counsel on May 4, 2012. It appears from an email sent by an MFDA investigator to counsel on May 25, 2012 that the interview scheduled for May 29, 2012 had been postponed to June 11, 2012. That interview did not take place and there is no evidence to explain why it did not. The only logical explanation is that there were ongoing problems arranging dates which were convenient to both sides. Whatever happened, there is absolutely no evidence that Ms. Lin at any time failed or refused to attend at an interview which had been requested by the MFDA.

9. The hearing of this matter on its merits was originally scheduled to take place on December 12, 2013. However, counsel for the Respondent requested that the hearing be adjourned until after the Respondent had completed her interview(s) with the MFDA. The Hearing Panel (differently constituted) agreed with this request and directed that the next appearance in this matter would take place at a later date.

10. Ultimately Ms. Lin submitted to two interviews. The first took place on February 8, 2013

and the second on July 12, 2013.

11. The evidence shows, beyond controversy, that as soon as Ms. Lin learned of the existence of the investigation she responded immediately and cooperatively and agreed to participate in an interview. At no time did she ever refuse to do so. The allegation set out and particularized in the Notice of Hearing is unfounded.

FAILURE TO FULFILL UNDERTAKINGS

12. What the MFDA has asked us to do is to find a breach of the s.22.1 of MFDA By-law No. 1 because of the failure of Ms. Lin to fulfil undertakings given by her during her interview on February 8, 2013. During that interview Ms. Lin, and counsel on her behalf, gave six undertakings to provide certain information to the investigators. Four of the undertakings have not been fulfilled.

13. The power of a Hearing Panel to impose disciplinary sanctions is limited by s. 20.1.1 of MFDA By-law No. 1. That provision reads as follows:

> 20.1 **Notice of Hearing**
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> 20.1.1 *Contents of Notice*
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> Before a Hearing Panel may impose any of the penalties provided for in Section 24.1 hereof (other than pursuant to the approval of a settlement agreement pursuant to Section 24.4.3), the Member, Approved Person or other person, as the case may be, shall have been summoned before a hearing of such Hearing Panel, of which notice shall be given in accordance with such period of time as is provided for in the Corporation's rules of procedure, by way of Notice of Hearing, to the Member or person concerned. Such Notice of Hearing shall be in writing, shall be signed by an officer of the Corporation and contain:
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> (a) the date, time and place of the hearing;
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> (b) the purpose of the hearing;
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> (c) the authority pursuant to which the hearing is held;

(d) a summary of the facts alleged and intended to be relied upon by the Corporation and the conclusions drawn by the Corporation based on the alleged facts; and

(e) the provisions of Sections 20.2 to 20.4 inclusive and a description of the penalties and costs which may be imposed pursuant to Sections 24.1 and 24.2, respectively.

14. We emphasize and make specific reference to the provisions of sub-paragraph (d). Section 20.1.1(d) of the By-law enacts a mandatory requirement that an Approved Person receive a Notice of Hearing containing "a summary of the facts alleged and intended to be relied upon by" the MFDA before a Hearing Panel can impose a sanction.

15. At paragraph 4 above we set out the facts alleged in the Notice of Hearing. There is no allegation of failure to fulfil undertakings contained in it. Therefore we have no power to impose sanctions for such a failure. In layperson's language, Ms. Lin cannot be found guilty of a charge which has not been made against her in the Notice of Hearing.

16. Because of the MFDA's failure to comply with the requirements of s. 20.1.1 of the By-law this Hearing Panel has no power to impose the sanctions sought by the MFDA against Ms. Lin for failure to fulfil undertakings. This is not a matter of mere technicality. The failure of the MFDA to comply with s. 20.1.1(d) goes right to the heart of this Hearing Panel's jurisdiction to impose sanctions. If we were to impose a sanction against Ms. Lin for failing to fulfil undertakings, we would be acting illegally. This we cannot do.

CONCLUSION AND DISPOSITION

17. The violation alleged against Ms. Lin in the Notice of Hearing has not been proven against her. It is dismissed.

DATED this 9th day of October, 2014.

"P. T. Galligan"

The Hon. P. T. Galligan, Q.C.
Chair

"Kenneth Mann"

Kenneth Mann
Industry Representative

"Robert C. White"

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Industry Representative

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