



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: Raymond Ho

Heard: August 2, 2012 in Vancouver, British Columbia
Reasons for Decision: September 10, 2012

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

The Hon. H. Benjamin Casson, Q.C.	Chair
Martha Kane	Industry Representative
Holly Millar	Industry Representative

Appearances:

Shari L. Boyd)	For the Mutual Fund Dealers Association of
)	Canada
Raymond Ho)	In Person
)	

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A. LIST OF EXHIBITS

EXHIBIT NO.	DESCRIPTION
#1	Notice of Hearing dated April 17, 2012
#2	Affidavit of Service sworn April 25, 2012
#3	Reply of the Respondent dated April 30, 2012
#4	Order dated May 28, 2012 setting date for Hearing on the Merits on August 2, 2012
#5	Affidavit of Indira Nadarajan sworn July 5, 2012

B. REVIEW OF PROCEEDINGS

1. By Notice of Hearing dated April 17, 2012, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a disciplinary proceeding against Raymond Ho (the “Respondent”) pursuant to ss. 20 and 24 of MFDA By-law No. 1 (Exhibit #1).

2. The Notice of Hearing was served on the Respondent in compliance with Rule 4 of the MFDA’s Rules of Procedure and the Affidavit of Service is marked as Exhibit #2.

3. The Notice of Hearing set out the following allegation:

Allegation #1: On or about May 5, 2010, the Respondent failed to deal fairly, honestly and in good faith with the client DH by falsifying client DH’s signature on a New Account Application Form in order to open an account in DH’s name and purchase \$192,000 of a mutual fund for the account, contrary to MFDA Rule 2.1.1.

4. A First Appearance was held by teleconference on May 28, 2012. Both parties were present with counsel, i.e. the MFDA being represented by Shari L. Boyd (“Enforcement Counsel”) and the Respondent appeared on his own behalf.

5. No preliminary issues were raised at the First Appearance and no objections were made to marking the Notice of Hearing and the Affidavit of Service as Exhibits #1 and #2, respectively.

6. The parties agreed to holding a disciplinary hearing on the merits in Vancouver on August 2, 2012.

7. The disciplinary hearing was held, as scheduled, on August 2, 2012.

C. AGREED FACTS

8. The Respondent agreed to the facts as alleged by MFDA staff in the Notice of Hearing, Exhibit #1, as follows:

- The Respondent was registered in British Columbia as a mutual fund salesperson with TD Investment Services Inc. (“TDIS”) from September 11, 2008 until May 22, 2010, at which time the Respondent resigned as a result of the events herein described.
- Prior to TDIS, the Respondent was registered in British Columbia as a mutual fund salesperson with BMO Investments Inc. from September 2006 until July 2008.
- The Respondent is not currently registered in the securities industry in any capacity.
- TDIS became a Member of the MFDA on January 11, 2002.

Allegation #1 – Falsification of Client DH’s Signature

- At all material times, DH was a customer of the TD Canada Trust Bank.
- On or about May 5, 2010, the Respondent had a telephone conversation with DH in relation to a TD Canada Trust GIC in the amount of \$192,000 which DH owned that had recently matured. DH directed the Respondent to deposit the proceeds from the matured GIC into her TD Canada Trust bank account.

- On or about May 5, 2010, contrary to DH's directions, the Respondent completed a NAAF to open a non-registered mutual fund account in DH's name at TDIS. The Respondent did not discuss or confirm in any way with DH the information the Respondent used to complete the NAAF, including information relating to DH's net income, net worth and other required Know-Your-Client ("KYC") information. Instead, the Respondent copied the information from a closed mutual fund account previously held by DH with TDIS. The Respondent included on the NAAF an order to purchase \$192,000 of a TD mutual fund for the newly opened account using the proceeds from DH's matured GIC held in her TD Canada Trust bank account. The Respondent falsified DH's signature on the NAAF, thereby signifying her authorization to open the account and her authorization to purchase the mutual fund for the account.
- On or about May 17, 2010, DH contacted the Respondent to complain that she had not authorized the purchase of the mutual fund and that she wanted the proceeds from her matured GIC used to purchase the mutual fund returned to her TD Canada Trust bank account.
- On May 19, 2010, the Respondent contacted DH and advised her that DH would have to hold the mutual fund for 30 days in order to avoid incurring any early redemption penalties but that the transaction would be reversed after that time and the Respondent would personally reimburse DH for any losses that she incurred as a result of the purchase. The Respondent also provided client DH with a coffee gift card at this time.
- On or about May 19, 2010, the Respondent's Financial Services manager, AK, received an email complaint from DH's daughter in relation to the Respondent's use of the proceeds from the matured GIC to purchase a mutual fund for DH.
- On or about May 21, 2010, the Respondent was interviewed by Manager AK. The Respondent stated during the interview that he had understood, based on his conversation with DH on May 5, 2010, that DH had authorized the opening of the account and the use of the proceeds from her matured GIC to purchase the mutual fund for the account. The Respondent also stated to Manager AK that he had told DH during that May 5, 2010 telephone conversation that DH did not need to attend at the branch to sign any documents because he would take care of everything on her behalf.
- The Respondent did not make, or if he made, he did not retain, any notes of his telephone conversation with DH on May 5, 2010 that indicated that DH had authorized an account

to be opened in her name or that she authorized the purchase of a mutual fund for the account using the proceeds from her matured GIC.

- The TDIS reversed the trade and returned the principal amount of \$192,000 to DH's TD Canada Trust bank account (which included compensating DH for the decline in the value of the mutual fund while it was held in her account). TDIS also compensated DH for forgone interest while her monies were invested in the mutual fund. The total compensation paid by TDIS to DH amounted to approximately \$7,000.00.

D. AGREED CONTRAVENTIONS

9. By admitting the facts as alleged by MFDA Staff in the Notice of Hearing, Exhibit #1, the Respondent has, thereby, admitted to contravening MFDA Rule 2.1.1 (Standard of Conduct).

E. PENALTY

10. Enforcement Counsel sought the following penalty against the Respondent:

- (a) A 12-month suspension on the authority of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to section 24.1(e) of By-law No. 1, commencing the date of the Order of the Hearing Panel in this matter;
- (b) A total fine in the range of \$5,000.00; and
- (c) Costs attributable to conducting the investigation and hearing of this matter in the range of \$2,500 to \$5,000, pursuant to section 24.2 of the By-law.

11. The Panel has found that the facts, as agreed to by the Respondent, support the contravention of MFDA Rule 2.1.1.

12. The Panel agrees with the submission of Enforcement Counsel in paragraph 24, p. 8 of the Submissions of Staff of the MFDA where she states:

“The conduct of the Respondent in this matter resulted in a serious contravention of the standard of conduct an Approved Person is to conduct themselves by.

Falsification of a client signature may have harmful consequences to all involved and the industry as a whole. In these particular circumstances, on the spectrum of the egregiousness, the conduct in question is closer to the less egregious end of the scale but is not an example of the least egregious conduct as the client suffered financial harm (which was remedied by the Member).”

13. The Panel considered the following factors (as set out in the MFDA’s Penalty Guidelines) in approving the appropriateness of the proposed penalty:

- The seriousness of the allegations proved against the Respondent;
- The Respondent’s past conduct, including prior sanctions;
- The Respondent’s experience and level of activity in the capital markets;
- Whether the Respondent recognizes the seriousness of the improper activity;
- The harm suffered by investors as a result of the Respondent’s activities;
- The risk to investors and the capital markets in the jurisdiction, were the Respondent continue to operate in capital markets in the jurisdiction;
- The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent’s improper activities;
- The need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- Previous decisions made in similar circumstances.

14. In approving the proposed penalty, the Panel recognized that the primary purpose of the MFDA is to enhance investor protection and strengthen public confidence in the Canadian Mutual Fund Industry by ensuring high standards of conduct by Members and Approved Persons.

15. Also, in approving the proposed penalty, the following factors were of particular significance to the Panel:

- The Respondent’s admission of the allegation and the facts which support the allegation.

- The Respondent’s full co-operation with Enforcement Staff in conducting their investigation.
- By admitting the allegation, costs necessarily involved in a full hearing on the merits were avoided.
- The Respondent had no history of violations of the MFDA regulatory system.
- The Respondent did not receive any benefit as a result of the events that occurred in relation to client DH.

16. The Panel approved penalties as follows:

(a) A 12-month suspension on the authority of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to section 24.1.(e) of the By-law, commencing the date of the Order of the Hearing Panel in this matter, i.e. August 2, 2012; and

(b) A total fine in the amount of \$5,000.00

F. COSTS

17. The Panel set costs at \$1,000.00 for the reason that the Respondent had not disputed the allegation and had co-operated fully with MFDA Enforcement Staff in their investigation.

18. The Panel was satisfied that the penalty was reasonable and appropriate having regard for the Respondent’s conduct and the circumstances of the case and signed the necessary Order on August 2, 2012.

DATED this 10th day of September, 2012.

“H. Benjamin Casson”

 The Hon. H. Benjamin Casson, Q.C.,
 Chair

“Martha Kane”

 Martha Kane,
 Industry Representative

“Holly Millar”

Holly Millar,
Industry Representative

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