



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: Bill Hsueh

Heard: April 26, 2012 in Toronto, Ontario
Reasons for Decision: May 1, 2012

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. John B. Webber, Q.C.	Chair
Linda J. Anderson	Industry Representative
Kenneth P. Mann	Industry Representative

Appearances:

Francis Roy)	Counsel, Mutual Fund Dealers Association of
)	Canada ("MFDA")
Andrew Lin)	Agent for the Respondent
Bill Hsueh)	Respondent did not appear
)	

1. By Notice of Hearing dated the 30th day of January, 2012, a Hearing Panel of the Central Regional Council of the MFDA was convened to hear the merits of this matter. The hearing proceeded by way of an Agreed Statement of Facts. The Respondent admitted that he engaged in misconduct as set out in the Agreed Statement of Facts as follows:

Allegation #1: Between May 14, 2008 and September 15, 2008, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member, by recommending and facilitating the transfer of mutual funds from client GL's account to accounts at an online discount broker opened in the name of GL and then trading equity securities held in the online accounts for client GL, contrary to:

- (a) MFDA Rules 1.1.1(a) and 2.1.1; and
- (b) the terms of the Respondent's registration as a mutual fund salesperson.

Allegation #2: Between May 2008 and September 2008, the Respondent engaged in conduct unbecoming an Approved Person by failing to inform GL about the status of her investments in the online accounts in an honest and accurate manner and by failing to respond sufficiently or at all to specific queries by GL concerning the status of her investments in the online accounts, contrary to MFDA Rule 2.1.1(c)

Allegation #3: Between September 12, 2008 and December 9, 2009, the Respondent failed to handle complaints received from client GL concerning the status of client GL's investments in the online accounts by failing to inform the Member of the complaints and by attempting to settle the complaints directly with client GL without the Member's knowledge and involvement, contrary to:

- (a) MFDA Policy No. 3, MFDA Policy No. 6 and MFDA Rules 2.11 and 2.1.1; and
- (b) the Member's policies and procedures, thereby interfering with the ability of the Member to supervise the Respondent and comply with its obligations under MFDA Rule 2.11, contrary to MFDA Rules 1.1.2 and 2.5.1.

2. The Respondent had reviewed the Agreed Statement of Facts and admits the facts set out

in Part IV, paras. 6 to 37. Mr. Andrew Lin, who appeared on the Respondent's behalf before the Panel, advised the Panel that the Respondent fully understood the allegations and the omissions and that the Respondent did not seek or wish the assistance of legal counsel nor to be represented by legal counsel.

3. Our consideration of the Agreed Statement of Facts, the admissions of the Respondent, the submissions of counsel for the MFDA and the agent for the Respondent, the provisions of the by-laws of the MFDA and the applicable legal principles led us to conclude that the MFDA has proven, on a balance of probabilities, the allegations recited above.

FACTS

4. From July 23, 2007 to December 10, 2009, the Respondent was registered in Ontario as a mutual fund salesperson with Desjardin Financial Security Investments Inc. ("Desjardins"). The Respondent was terminated by Desjardins on December 10, 2009 as a result of the following facts and is no longer registered in the securities industry in any capacity. The client, a 66-year old lady, was a client of Desjardins as of September 2007. The Respondent was assigned to be responsible for her account.

5. As a result of the Respondent's recommendations, the client transferred two mutual funds to Bank of Montreal Investment Line Discount Brokerage (BMO) to be invested in stocks rather than mutual funds. The client transferred \$54,000 of non-registered funds and \$27,500 of registered funds to a BMO margin account and a BMO RRSP account respectively.

6. The Respondent dealt with the client outside Desjardins' offices at her home. Desjardins was not aware of his involvement. The Respondent was not registered to trade equity securities nor did he have any proficiency in that area.

7. Numerous trades were made in the margin account. The client paid at least \$6,700 in commission as well as being charged \$700 for interest to make certain margin trades. Also a major trade in the RRSP account resulted in the sale of the mutual funds and the purchase of shares which involved a commission of \$1,500. The Respondent did not receive personally from the client sales commissions, payments or other fees for his advice relating to the trades. BMO

did send monthly statements to the client which she did not understand. Her calls to the Respondent for an explanation did not receive an answer.

8. On September 9, 2008, a \$35,000 margin call was made on the client's account. The Respondent, although asked to correct this problem, did nothing, the result of which was the sale of securities of approximately \$35,000. The margin account was reduced to \$6,500. The value of securities in the RRSP account had dropped to \$12,600.

9. The client terminated her relationship with the Respondent and sold her remaining investments and transferred the proceeds to a new RRSP account with another Member of the MFDA. She met with the Respondent on September 12, 2008 at her home and during that discussion she complained about the losses she had sustained. She presented a promissory note to the Respondent which he signed. The note read as follows:

- (a) he owed GL \$43,000;
- (b) he would make monthly payments of \$300 to GL;
- (c) he would make a lump sum payment to GL of the balance owing on his 50th birthday;
- (d) he had purchased a \$100 lottery ticket for which he would give GL half the winnings; if any;
- (e) he would amend his will to ensure that $\frac{1}{4}$ of his life insurance benefits were payable to GL; and
- (f) he would prepare GL's tax filings for the 2008 taxation year.

10. The Respondent signed this promissory note. The Respondent has only made payments totaling \$677.97. The client has not been compensated for the losses she sustained.

PENALTY

11. As a Panel, we are obviously concerned with this type of conduct. We believe that the penalty fairly addresses those concerns. In determining whether the penalty should be accepted, we have considered a number of factors. These include the following:

- (a) the public interest and whether the penalty imposed will protect investors.

- (b) whether the penalty found in the Agreed Statement of Facts is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Agreed Statement of Facts.
- (c) whether the penalty found in the Agreed Statement of Facts addresses the issues of both specific and general deterrence.
- (d) whether the proposed settlement will prevent the type of conduct, which is set out in the Agreed Statement of Facts, from occurring again in the future.
- (e) whether the penalty found in the Agreed Statement of Facts will foster confidence in the integrity of the Canadian Capital Markets.
- (f) whether the penalty found in the Agreed Statement of Facts will foster confidence in the integrity of the MFDA.
- (g) finally, whether the penalty found in the Agreed Statement of Facts will foster confidence in the regulatory process itself.

12. We believe that each and every one of these factors is dealt with in an appropriate fashion by the Agreed Statement of Facts.

SUBMISSIONS AS TO PENALTY

13. Counsel for the MFDA and the Respondent's agent made submissions as to why the penalty found in the Agreed Statement of Facts at para. 5, in these words, is appropriate:

- (a) a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity over which the MFDA has jurisdiction, pursuant to s. 24.1.1(e) of MFDA By-law No. 1; and
- (b) costs in the amount of \$2,500 pursuant to s.24.2 of MFDA By-law No. 1.

14. Counsel for the MFDA, in careful and thoughtful submission, confirmed a number of matters for the Panel. No other clients have complained save and except the client herein. The Respondent has made full and complete admission as to his acts and cooperated with the MFDA investigators.

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

The Respondent has accepted no compensation for his involvement in the trading noted above. He avoided a lengthy and expensive hearing both for the MFDA and for the client. The client does not have to testify or come before the Panel to give her evidence.

16. The Respondent was suffering from mental health issues during the time period involved in this matter. He continues to suffer from the same issues today. He had encountered severe emotional stress brought on by financial hardship and marital troubles. He has been receiving therapy for this condition and has been voluntarily admitted into a psychiatric hospital and has used anti-depressant medication for about the past six years.

17. The Respondent apologizes to the client for her loss. He has experienced extreme sadness for his acts and acknowledges his misconduct. He admits the breaches of the MFDA Rules and Policies were entirely inappropriate. His income has been drastically reduced. He is experiencing difficulty in supporting himself and his family at the present time.

18. For all of these reasons, and notwithstanding the conduct of the Respondent, we have concluded that the penalty found in the Agreed Statement of Facts is reasonable. In our considerations we have been mindful of the words found in *Re Milewski*, [1999] I.D.A.C.D. No. 17, decided on July 28, 1999. The Panel made these comments at page 9:

Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

THE PENALTY

19. Accordingly, the following penalty is imposed upon the Respondent:

(a) permanent prohibition on the authority of the Respondent to conduct securities related

business in any capacity over which the MFDA has jurisdiction, pursuant to s. 24.1.1(e) of MFDA By-law No. 1; and
(b) costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1.

20. We gave brief reasons as to our acceptance of the agreed upon settlement at the end of the hearing. We advised counsel that we would prepare reasons as to our approval of the settlement and the penalty which are set forth herein.

DATED this 1st day of May, 2012.

“John Webber”

The Hon. John B. Webber, Q.C.,
Chair

“Linda Anderson”

Linda J. Anderson,
Industry Representative

“Kenneth Mann”

Kenneth P. Mann,
Industry Representative