



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: Jay Kim

Heard: November 4, 2019 in Toronto, Ontario

Decision: November 4, 2019

Reasons for Decision: January 6, 2020

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick H. Webber
Robert Christianson
Guenther W.K. Kleberg

Chair
Industry Representative
Industry Representative

Appearances:

Paul Blasiak)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Jay Kim)	Respondent, in person
)	
)	

I. ALLEGATION

1. On April 8, 2019, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing, a copy of which is attached hereto as Schedule “1” (the “NOH”) in respect of Jay Kim (the “Respondent”), which alleges the following:

Allegation #1: Commencing in August 2017, the Respondent failed to cooperate with MFDA Staff during the course of an investigation into his conduct, contrary to section 22.1 of MFDA By-law No. 1.

2. The relevant facts are set out in the NOH including particulars of the failure to cooperate commencing November 14, 2016 and continuing through November 12, 2018. Since the NOH alleged misconduct “commencing August 2017”, the panel could only consider the Respondent’s conduct occurring on or after August 2017 for the purposes of determining whether the allegation had been proven. However, the Respondent’s conduct prior to August 2017 could be taken into account in determining an appropriate penalty. MFDA counsel agreed with this position at the hearing.

3. On July 26, 2019, the Respondent served and filed a Reply to the NOH, which did not deny the allegation. At the hearing, the Respondent admitted that he did not cooperate with the MFDA’s investigation, as alleged.

II. DECISION ON LIABILITY

4. Since the Respondent did not deny the allegation in his Reply and, in fact, admitted the allegation at the hearing, the panel concluded that the MFDA had proven the Respondent’s misconduct as set forth in the allegation. With the consent of both parties, the hearing then proceeded to consider the appropriate penalty for such misconduct.

III. PENALTY

5. The MFDA sought the following penalty:

- a) a permanent prohibition on the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member;
- b) a fine in the amount of \$50,000; and
- c) costs in the amount of \$5,000.

IV. FACTORS REGARDING APPROPRIATE PENALTY

6. The panel agreed with MFDA's submission that in exercising its discretion to impose a penalty, the Hearing Panel should take into account the following considerations:

- a) the protection of the investing public;
- b) the integrity of the securities market;
- c) specific and general deterrence;
- d) the protection of the MFDA's membership; and
- e) the protection of the integrity of the MFDA's enforcement process.

Tonnies (Re), [2005] MFDA File No. 200503

7. Other factors that hearing panels frequently consider when determining whether a penalty is appropriate include the following:

- a) the seriousness of the allegations proved against the Respondent;
- b) the Respondent's past conduct, including prior sanctions;
- c) the Respondent's experience and level of activity in the capital markets;
- d) whether the Respondent recognizes the seriousness of the improper activity;
- e) the harm suffered by investors as a result of the Respondent's activities;
- f) the benefits received by the Respondent as a result of the improper activity;
- g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;

- i) 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;
- j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- k) previous decisions made in similar circumstances.

Tonnies (Re), supra, at p. 23.

8. The panel also referred to the MFDA's Sanction Guidelines, which came into effect on November 15, 2018. The Guidelines are not mandatory or binding on the panel, but provide a summary of the key factors upon which discretion can be exercised consistently and fairly. Many of the same factors that are listed above, which have been considered in previous decisions of MFDA hearing panels, are also reflected and described in the Guidelines.

V. FACTORS IN THIS CASE

Nature of the Misconduct

9. Failing to cooperate with an MFDA investigation is very serious misconduct which demonstrates a fundamental breach of a registrant's obligations and illustrates that the registrant is ungovernable. As stated by the Hearing Panel in *Gizzo (Re)*, [2011] MFDA FILE NO. 201024:

A failure to cooperate is a failure to comply. It prevents the MFDA from performing its regulatory function. It prevents the regulatory body from fully investigating a matter and determining all of the relevant facts, as well as the full extent, and implications of the underlying events.

10. Due to the Respondent's failure to cooperate with MFDA's investigation, it has been unable to determine the full nature and extent of his conduct, including determining whether he knew that the supporting documents that were submitted with AM's loan application were fabricated, his role in producing the fabricated loan documents, and whether he had knowledge of the falsified loan applications that were submitted and arranged by NK.

The Respondent's Recognition of the Seriousness of the Misconduct

11. During the investigation, Staff sent numerous requests to the Respondent to provide information and to attend an interview. The Respondent ignored all but one of the requests, and he misled Staff in the one response that he provided. By impeding MFDA's investigation in this manner, the Respondent demonstrated a complete failure to recognize the importance of complying with the regulation of the securities industry. In his Reply and at the hearing, the Respondent stated that he consulted with NK when he received requests from the MFDA to cooperate with the investigation and was told to ignore the MFDA, which he did. The requirement to cooperate with an MFDA investigation exists even if the Approved Person received legal advice from counsel to not cooperate with the investigation. (*Vitanchi and Ho (Re)*, [2011] MFDA File No. 201430) and *Douglas (Re)*, [2018] MFDA File No. 201824. Relying on such advice from NK does not excuse the failure to cooperate with the MFDA; it is an aggravating factor to rely on that advice rather than simply contact and comply with the MFDA.

12. In his Reply, the Respondent stated that he "now understand[s] the full severity of this matter". However, he failed to demonstrate any such recognition during the entirety of MFDA's investigation. Between December 2016 and November 2018, Staff gave the Respondent numerous opportunities to take steps to rectify his failure to cooperate. Each time, the Respondent failed to do so. It was not until after the commencement of this proceeding in April 2019 that the Respondent began to communicate with Staff.

The Respondent's Past Conduct

13. Although the Respondent has no past disciplinary history with the MFDA, this factor was given very little weight by the panel in light of the serious misconduct (some of which occurred prior to the commencement date in the allegation), associated with subverting the ability of the MFDA to fully investigate the Respondent's conduct.

Risk to Investors and the Capital Markets

14. The Respondent's failure to cooperate with the MFDA's investigation demonstrates that he is ungovernable. Therefore, he would pose a significant risk to investors and the market at large if he is allowed to return to the industry. A permanent prohibition is necessary to protect investors.

Deterrence

15. The panel agrees with the submission of the MFDA that the proposed penalties are necessary in order to communicate to other Approved Persons that failing to cooperate with an MFDA investigation has no place in the mutual fund industry.

16. Further, the proposed sanctions will prevent future misconduct by the Respondent, deter others from engaging in similar misconduct, improve overall compliance by mutual fund industry participants and foster confidence in the mutual fund industry.

Previous Decisions Made in Similar Cases

17. MFDA counsel reviewed previous decisions made in similar circumstances with the panel. The fine proposed in this case is lower than many of the cited cases, but is appropriate because the Respondent did eventually participate in the proceedings. Also, the proposed penalties are in line with the Guidelines.

18. The Hearing Panel was also provided with a Bill of Costs for this case.

VI. DECISION

19. It is the panel's decision that the MFDA has proven the allegation of misconduct by the Respondent and that the proposed penalties are appropriate. Accordingly, at the conclusion of the hearing the panel ordered the following penalties against the Respondent:

- a) a permanent prohibition on the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member;
- b) a fine in the amount of \$50,000; and
- c) costs in the amount of \$5,000.

DATED this 6th day of January, 2020.

"Frederick H. Webber"

Frederick H. Webber
Chair

"Robert Christianson"

Robert Christianson
Industry Representative

"Guenther W.K. Kleberg"

Guenther W.K. Kleberg
Industry Representative

DM 711035

Schedule “1”

Notice of Hearing

File No. 201930



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: Jay Kim

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council (“Hearing Panel”) of the Mutual Fund Dealers Association of Canada (“MFDA”) in the hearing room at the MFDA offices, 121 King Street West, Suite 1000, Toronto, Ontario on July 9, 2019 at 9:00 a.m. (Eastern), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Jay Kim (“Respondent”).

DATED this 8th day of April, 2019.

“Michelle Pong”

Michelle Pong
Director, Regional Councils

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Telephone: 416-945-5134
Facsimile: 416-361-9781
Email: corporatesecretary@mfd.ca

NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Commencing in August 2017, the Respondent failed to cooperate with MFDA Staff during the course of an investigation into his conduct, contrary to section 22.1 of MFDA By-law No. 1.

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by the MFDA at the hearing:

Registration History

1. From October 2010 to August 2012, the Respondent was registered in Ontario as a dealing representative (formerly known as a mutual fund salesperson)¹ with WFG Securities Inc. (“WFG”), a Member of the MFDA.
2. From March 2015 to August 2016, the Respondent was registered in Ontario as a dealing representative with Shah Financial Planning Inc. (“Shah”), a Member of the MFDA.
3. The Respondent is not currently registered in the securities industry in any capacity.
4. At all material times, the Respondent conducted business in the Oakville, Ontario area.

Background

5. In May 2016, Investors Group Financial Services Inc. (“Investors Group”), a Member of the MFDA, filed a report on the MFDA’s Member Event Tracking System (“METS”) which indicated, among other things, that the Respondent had referred Neil Kumar (“Kumar”)² to an Approved Person registered with Investors Group, and that Kumar submitted and/or arranged for

¹ In September 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force.

² Kumar was the respondent in MFDA Case No. 201859. Following a disciplinary hearing, an MFDA Hearing Panel determined that Kumar, among other things, submitted falsified loan applications for himself, arranged for two individuals to submit falsified loan applications, and processed a falsified loan application for a client.

other individuals to submit falsified documents to the Approved Person in order to apply for and obtain loans and lines of credit offered by Solutions Banking.

6. After receiving the METS Report, MFDA Staff (“Staff”) commenced an investigation.

7. During the investigation, Staff became aware that in November 2015, the Respondent submitted a \$200,000 loan application on behalf of client AM that contained fabricated supporting documents.

8. The fabricated supporting documents consisted of:

- a fabricated account statement purportedly issued by WFG, which falsely stated that on September 30, 2015, client AM held assets at WFG valued at \$143,276.28 (in fact, client AM did not hold any assets at WFG); and
- a fabricated account statement purportedly issued by Sun Life Financial, which falsely stated that on September 30, 2015, client AM held assets at Sun Life Financial valued at \$105,429.16 (in fact, client AM did not hold any assets at Sun Life Financial).

9. As described below, the Respondent failed to cooperate with Staff’s investigation into the matters described above.

Allegation #1 - Failure to Cooperate

10. As set out in the table below, Staff has made a number of requests to the Respondent to provide information and to attend an interview with Staff. The Respondent failed to attend an interview and failed to respond to several requests that he contact Staff.

Date	Communication	Method of Delivery	Result
11/14/2016	Staff sent a letter requesting a written response from the Respondent concerning the matters under review. Response requested by December 6, 2016.	Registered and regular mail	The Respondent did not respond.
12/7/2016	Staff sent a letter requesting that the Respondent respond to Staff's requests in the November 14, 2016 letter by December 21, 2016.	Registered and regular mail	On December 28, 2016, the Respondent sent an email to Staff stating, among other things, that he had recently moved and "had only come yesterday to pick up [his] mail at [his] old place." In the email, the Respondent advised Staff that he did not refer Kumar to the Investors Group Approved Person described above in paragraph 5 in order to apply for a loan, mortgage or line of credit offered by Solutions Banking.
7/27/2017	Staff sent a letter advising the Respondent that he was required to attend an interview on September 6, 2017, and was required to confirm by August 8, 2017 that he would attend the interview.	Personal service (at the Respondent's last known address as shown on a driver's license search report conducted on July 26, 2017)	Process server was unable to locate the Respondent.
7/31/2017	Staff sent another letter advising the Respondent that he was required to attend an interview on September 6, 2017, and was required to confirm by August 8, 2017 that he would attend the interview.	Email	The Respondent did not respond and he did not attend the interview on September 6, 2017.
11/9/2018	Staff requested that the Respondent contact Staff.	Voice message	The Respondent did not respond.
11/12/2018	Staff again requested that the Respondent contact Staff.	Voice message	The Respondent did not respond.

11/12/2018	Staff requested that the Respondent contact Staff by November 16, 2018.	Email	The Respondent did not respond.
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11. The Respondent has not communicated with Staff in any way since sending the email on December 28, 2016 described above.

12. As a result of the Respondent's failure to cooperate with Staff's investigation, Staff has been unable to determine the full nature and extent of his conduct, including whether he knew that the loan documents described above were fabricated, his role in producing the fabricated loan documents, and whether he had knowledge of the falsified loan applications submitted by Kumar.

13. By virtue of the foregoing, the Respondent failed to cooperate with Staff's investigation into his conduct, contrary to section 22.1 of MFDA By-law No. 1.

NOTICE is further given that the Respondent shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

NOTICE is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, the Respondent:

- has failed to carry out any agreement with the MFDA;
- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;
- has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;
- has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- is otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose any one or more of the following penalties:

- a) a reprimand;

- b) a fine not exceeding the greater of:
 - (i) \$5,000,000.00 per offence; and
 - (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;
- c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- d) revocation of the authority of such person to conduct securities related business;
- e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time; and
- f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel.

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondent pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondent must **serve a Reply** on Enforcement Counsel and **file a Reply** with the Office of the Corporate Secretary within twenty days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: Paul Blasiak
Email: pblasiak@mfd.ca

A **Reply** shall be **filed** by:

- a) providing four copies of the **Reply** to the Office of the Corporate Secretary by personal delivery, mail or courier to:

The Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000

Toronto, ON M5H 3T9
Attention: Office of the Corporate Secretary; or

- b) transmitting one electronic copy of the **Reply** to the Office of the Corporate Secretary by e-mail at corporatesecretary@mfd.ca.

A **Reply** may either:

- (i) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondent, and the conclusions drawn by the Respondent based on the alleged facts) any or all of the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing; or
- (ii) admit the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the MFDA in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondent fails:

- a) to **serve** and **file** a **Reply**; or
- b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven and may impose any of the penalties described in the By-laws.

END.