



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Bjorn Ho Hon Kwok

Heard: September 28, 2017 in Toronto, Ontario
Decision: September 28, 2017
Reasons for Decision: November 30, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC	Chair
Kenneth P. Mann	Industry Representative
Joseph Yassi	Industry Representative

Appearances:

Sarah Glickman)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Bjorn Ho Hon Kwok)	Respondent, In Person
)	
)	
)	

Settlement Agreement

1. The Hearing Panel accepted the settlement agreement dated March 6, 2017 (“Settlement Agreement”) between the staff of the MFDA and Bjorn Ho Hon Kwok (“Respondent”).
2. A copy of the Settlement Agreement is attached to these reasons as Schedule “1”. The agreed facts are set out in section III of the agreement. At the hearing, it was clarified that the Respondent repaid everything he had misappropriated, including the amount referred to in paragraph 17 of the agreement.

Contraventions

3. The Respondent admitted that:
 - a) in or around October 2015, he misappropriated \$13,750 of client monies by falsifying client account forms and a letter of direction in order to direct the proceeds of a redemption from the client’s mutual fund account to the Respondent’s bank account, contrary to MFDA Rule 2.1.1.

Agreed penalties

4. The agreed penalties were: i) a permanent prohibition from conducting securities related business in any capacity while in the employ of or associated with a Member; and ii) a costs award of \$2,500.

Considerations

5. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement. First, the agreed penalty had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalty had to be fair

and reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalty should serve as a deterrent to the Respondent and to industry. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on him of the agreed penalty.

Issue

6. The panel was concerned that the agreed penalties, without the addition of a fine, might not provide an adequate deterrent to the industry.

7. The permanent prohibition would protect the industry from further wrongdoing by the Respondent, but it might not be significant to one out of the industry with no intention or desire to return to it.

8. One would normally expect that a fine was also necessary, perhaps equal to the amount misappropriated or a multiple, so that there would be significant consequences to the wrong-doer and a deterrent to others.

9. However, the Respondent was remorseful.

10. He was fired by his Member but he did not walk away from this matter. He repaid everything he took.

11. He did not turn his back on the jurisdiction of the MFDA and its ability to enforce its judgements. He will pay \$2,500 as costs.

12. He has co-operated with the MFDA in a speedy resolution of this matter.

13. His career is at an end.

14. Unlike the circumstances in the precedent cases referred to by staff, the amounts involved were relatively small. The incident involved one occasion with one client.

15. Under the circumstances, we considered that the agreed penalties would provide an adequate deterrent.

Other considerations in determining acceptability of agreed penalties

16. The Respondent has not previously been subject to MFDA disciplinary proceedings.

17. The agreed penalties are fair and reasonable.

Costs

18. The costs award is reasonable.

Conclusion

19. We concluded, therefore, that the Settlement Agreement was in the public interest and, consequently, we accepted it.

DATED this 30th day of November, 2017.

“Paul M. Moore”

Paul M. Moore, QC
Chair

“Kenneth P. Mann”

Kenneth P. Mann
Industry Representative

“Joseph Yassi”

Joseph Yassi
Industry Representative

Schedule “1”

Settlement Agreement

File No. 201730



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Re: Bjorn Ho Hon Kwok

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, Bjorn Ho Hon Kwok (“Respondent”), consent and agree to settlement of this matter by way of this agreement (“Settlement Agreement”).

2. Staff conducted an investigation of the Respondent’s activities which disclosed activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No. 1.

II. JOINT SETTLEMENT RECOMMENDATION

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:

- a) in or around October 2015, the Respondent misappropriated \$13,750 of client monies by falsifying client account forms and a letter of direction in order to direct the proceeds of a redemption from the client's mutual fund account to the Respondent's bank account, contrary to MFDA Rule 2.1.1 .

5. Staff and the Respondent agree and consent to the following terms of settlement:

- a) the Respondent is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay costs of this proceeding in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1; and
- c) the Respondent will attend in person, on the date set for the Settlement Hearing.

6. Staff and the Respondent agree to the settlement on the basis of the facts set out in Part III herein and consent to the making of an Order in the form attached as Schedule "A".

III. AGREED FACTS

Registration History

7. Between November 21, 2011 and November 20, 2015, the Respondent was registered in Ontario as a Dealing Representative with PFSL Investments Canada Ltd. ("PFSL"), a Member of the MFDA.

8. Between June 9, 2014 and November 20, 2015, PFSL designated the Respondent as a branch manager.

9. At all material times, the Respondent was also licensed to sell insurance with Primerica Life Insurance Company of Canada (“Primerica”), an insurance company licensed by the Financial Services Commission of Ontario.

10. On November 20, 2015, PFSL terminated the Respondent as a result of the conduct that is the subject of this Settlement Agreement. The Respondent is not registered in the securities industry in any capacity.

11. At all material times, the Respondent conducted business in the Toronto, Ontario area.

Misappropriated Client Monies

12. On or about October 5, 2015, without the knowledge of client EA, the Respondent completed the following 4 account forms in client EA’s name, which he submitted to PFSL in order to effect the transfer of Client EA’s monies invested in a segregated funds account with Primerica (the “Insurance Account”) into a new mutual fund account with PFSL (the “Mutual Fund Account”):

- a new account application form;
- an application form for a retirement income fund;
- a transfer authorization for registered investments; and
- a Disclosure and Authorization form for the transfer of investments between financial institutions.

13. The Respondent falsified client EA’s signature on each of the account forms described above.

14. On or about October 27, 2015, without the knowledge of client EA, the Respondent sent a letter of direction to a fund company purporting to be from client EA (the “Letter”), which requested that the fund company process a \$11,000 net redemption from the Mutual Fund

Account (the “Redemption”), and deposit the proceeds of the Redemption into a bank account that belonged to the Respondent.

15. PFSL’s policies and procedures prohibited its Approved Persons from directing any transaction directly through a fund company. The Respondent submitted the Letter directly to the fund company for processing in order to circumvent PFSL’s ability to review the Redemption.

16. The fund company processed the \$13,750 (gross) Redemption and deposited the net amount of \$11,000 into the Respondent’s bank account.

17. The Respondent used \$2,000 of the Redemption monies prior to PFSL becoming aware of the Respondent’s activities and reversing the Redemption as described below.

PFSL’s Investigation

18. On November 17, 2015, PFSL’s compliance staff became aware of the conduct that is the subject of this Settlement Agreement when the fund company that processed the Redemption provided PFSL with documentation related to the Redemption and PFSL identified no record of the Redemption in its back office.

19. PFSL reviewed all redemptions processed by the Respondent during the period of his registration and identified no other concerns. PFSL also sent letters to all clients serviced by the Respondent in order to determine whether he had engaged in any other unauthorized conduct or misappropriation. PFSL received no responses from the clients.

20. On November 20, 2015, PFSL terminated the Respondent as a result of the conduct that is the subject of this Settlement Agreement.

21. On November 26, 2016, PFSL reversed the \$13,750 Redemption and the transfer of the monies from the Insurance Account to the Mutual Fund Account.

Additional Factors

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

23. The Respondent is now a student attending a post-secondary institution. He states that he is impecunious and unable to pay any additional amounts towards either a fine or costs. The Respondent acknowledges that absent his inability to pay, it would have been appropriate for him to be subject to penalty that included a fine and increased costs due to the seriousness of the misconduct that is the subject of this Settlement Agreement.

24. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

IV. ADDITIONAL TERMS OF SETTLEMENT

25. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.

26. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (“Settlement Hearing”). At, or following the conclusion of, the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

27. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any

suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.

28. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

- a) the Settlement Agreement will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter;
- b) the Respondent waives any rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction;
- c) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in this Settlement Agreement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;
- d) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1; and
- e) neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against the Respondent.

29. If, for any reason, this Settlement Agreement is not accepted by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by the Settlement Agreement or the settlement negotiations.

30. Staff and the Respondent agree that the terms of the Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

31. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile copy of any signature shall be effective as an original signature.

DATED this 6th day of March, 2017.

“Bjorn Ho Hon Kwok”

Bjorn Ho Hon Kwok

“PL”

Witness – Signature

PL

Witness – Print Name

“Shaun Devlin”

Shaun Devlin
Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – Enforcement



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Re: Bjorn Ho Hon Kwok

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada ("MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Bjorn Ho Hon Kwok ("Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] ("Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that in or around October 2015, the Respondent misappropriated \$13,750 of client monies by falsifying client account forms and a letter of direction in order to direct the proceeds of a redemption from the client's mutual fund account to the Respondent's bank account, contrary to MFDA Rule 2.1.1.

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. the Respondent is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
2. the Respondent shall pay costs of this proceeding in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1; and
3. if at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

DATED this [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

DM 585594