



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: Hong Lam

Heard: September 18, 2018 in Toronto, Ontario
Decision and Reasons: October 19, 2018

DECISION AND REASONS

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC
Melody Potter
Matthew Prew

Chair
Industry Representative
Industry Representative

Appearances:

| | | |
|---------------|---|--|
| Michelle Pong |) | Enforcement Counsel for the Mutual Fund |
| |) | Dealers Association of Canada |
| |) | |
| |) | |
| Hong Lam |) | Respondent, not in attendance or represented |
| |) | by counsel |
| |) | |

Background

1. This is a Hearing under Sections 20 and 24 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”). The hearing was held on September 18, 2018. Hong Lam (the “Respondent”) was not in attendance or represented by counsel at the hearing.
2. The Respondent was first registered in the mutual fund industry in about March 2001. He was registered as a mutual fund salesperson (now known as a dealing representative) in Ontario from June 20, 2006 to January 20, 2016, and in British Columbia from June 25, 2007 to January 20, 2016, with Investia Financial Services Inc. (“Investia”), a Member of the MFDA.
3. Between November 21, 2006 and January 20, 2016, Investia designated him as a branch manager. At all material times, the Respondent was also a licensed insurance agent and mortgage broker. He conducted business in Richmond Hill, Ontario.
4. The Respondent resigned from Investia on January 20, 2016 and is not currently registered in the securities industry in any capacity.
5. A Notice of Hearing involving the Respondent was issued by the MFDA on January 8, 2018. A first appearance by teleconference was held on March 22, 2018. The Respondent did not appear at that hearing in person or by counsel. A hearing date on the merits was set by the Chair of the Panel for September 18, 2018. Again, the Respondent did not appear in person or by counsel at the present hearing.
6. An affidavit by Lara Rowles, a Manager in the Investigations group of the MFDA Enforcement Department, sworn on September 14, 2018 and outlining the service of the various notices and the facts of the case, was filed at the hearing. We reserved our decision. This is our decision and the reasons for the decision.

The Alleged Misconduct

7. In brief, the MFDA alleges that the respondent had referral arrangements with three companies, Titan Equity Group Ltd., Fortress Real Capital, and Tier 1 Mortgages, which were real estate and development companies that offered investments. These investments included syndicated or pooled mortgage investments. The Respondent referred clients of Investia to invest in these investments outside the accounts and facilities of Investia and without Investia's knowledge or approval. In addition, other Approved Persons at Investia referred clients to the Respondent to invest in these investments through the Respondent. The Respondent obtained referral fees from the companies, and paid fees to the Approved Persons for their referrals of clients to him. Between 2012 and 2014, the Respondent recommended, sold and/or facilitated the sale of these investments to at least 24 Investia clients and 3 individuals totaling just over two million dollars. The facts are described in greater detail in the Notice of Hearing.

8. He also had other gainful employment, which was not disclosed to and approved by the Member. Between 2001 and 2015, he was an officer and director of a company, Kirin Capital Corporation, and a partner of another company, Access Real Capital, both of which the Respondent operated to accept referral fees outside the Member and without the knowledge or consent of the Member. Further the Respondent failed to disclose to the Member that in 2015 he had transferred his mortgage license to a new mortgage broker company.

9. The Respondent also misled the Member during an interview with the Respondent by denying the extent to which he was involved in the transactions involving one of the companies offering investments and his involvement with more than one Approved Person.

10. Finally, the Respondent failed to cooperate with the MFDA investigation by not providing bank records or attending an interview with MFDA Staff. Because of this failure to cooperate, the MFDA has not been able to determine the full nature and extent of the Respondent's conduct and the extent to which he may have engaged in similar conduct with other clients and individuals.

Specific Allegations

11. In the Notice of Hearing, the MFDA alleged the following specific violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between 2012 and 2015, the Respondent engaged in securities related business that was not carried on for the account of the Member and through its facilities by recommending, selling, facilitating the sale of, and/or making referrals in respect of the sale of investments to approximately 24 clients and 3 individuals totaling approximately \$2,016,660, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 2.1.1, 2.4.2, 2.5.1 and 1.1.2 and the requirements of sections 13.7 and 13.8 of National Instrument 31-103.

Allegation #2: The Respondent had and continued in another gainful occupation, which was not disclosed to and approved by the Member, when:

- a) between 2012 and 2014, he recommended, sold, facilitated the sale of, and/or made referrals in respect of the sale of investments outside the Member to approximately 24 clients and 3 individuals totaling approximately \$2,016,660.00;
- b) between 2011 and 2015, he was an officer and director of a company, and a partner of a company, which the Respondent operated to accept referral fees outside the Member; and
- c) in 2015, he failed to disclose that he had transferred his mortgage license to a new mortgage broker company,

contrary to the Member's policies and procedures and MFDA Rules 1.2.1(c) (now MFDA Rule 1.3), 2.1.1, 2.4.2, 2.5.1 and 1.1.2, and the requirements of sections 13.7 and 13.8 of National Instrument 31-103. [Council for the MFDA stated that if we accept that the investments were "securities related" under allegation #1, we should disregard subsection (a) in allegation 2.]

Allegation #3: Between 2012 and 2015, the Respondent had unapproved referral arrangements with three Approved Persons who referred clients to invest outside the Member through the Respondent in exchange for referral fees paid directly or indirectly by the Respondent, contrary to the Member's policies and procedures, MFDA Rules 2.1.1, 2.4.2, 2.5.1 and 1.1.2, and the requirements of sections 13.7 and 13.8 of National Instrument 31-103.

Allegation #4: On November 15, 2015, the Respondent misled the Member during an investigation by falsely stating that he had not referred any clients to invest in a real estate and development company, contrary to MFDA Rule 2.1.1.

Allegations #5: Commencing on or about April 1, 2016, the Respondent failed to cooperate with the MFDA during the course of an investigation into his conduct, contrary to section 22.1 of MFDA By-law No. 1.

Allegations Proved

12. Failure to cooperate has been clearly proved. There is no doubt that the Respondent knew that an investigation was being undertaken by the MFDA. The affidavit by Lara Rowles lists the various occasions in which the Respondent was personally served with requests for information. The evidence established, for example, that commencing on April 1, 2016, Staff sought to obtain bank records from the Respondent on at least 11 separate occasions, by letter, email and telephone. The Respondent did not provide Staff with the bank records requested. There had been a measure of cooperation at the early stages of the investigation – several T4 tax slips were provided by the Respondent – but the numerous requests for bank statements were not complied with by the Respondent, who claimed he could not get the relevant bank records. The MFDA, however, were later able to get them without the Respondent's cooperation. In addition, the Respondent ignored the MFDA's request for an interview. On May 25, 2016, the Respondent advised Staff that he wanted to consult with his lawyer and on June 3, 2016, the Respondent advised the MFDA that he had decided to decline further participation in MFDA's investigation.

13. The Respondent contravened section 22.1 of MFDA By-law No. 1. Section 21 states that the MFDA has a duty to conduct examinations and investigations of Approved Persons relating to compliance with By-laws, Rules and Policies of the MFDA. Section 22 states that an Approved Person has an obligation to submit to the MFDA reports, records, etc. and to attend and give information to the MFDA.

14. There are, of course, many cases that make it clear that an Approved Person must provide Staff with information and documentation when requested to do so. To hold otherwise would hinder the MFDA's ability to investigate the conduct of registrants in the mutual fund industry and prevent the MFDA from fulfilling its regulatory mandate to protect the public.

15. As stated by a Panel in *Re Vitich* (2011 LNCMFDA 63) at paragraph 55):

“There can be no exceptions to that obligation. The fulfillment of that obligation is particularly important to the MFDA because it has no statutory power to search and seize or to compel the production of documents. Without the cooperation of Members and Approved Persons, the MFDA's ability to investigate and discipline its Members and Approved Persons is gravely fettered.”

16. In the present case, the evidence establishes that the Respondent has failed to submit information and documents requested by Staff during the course of the investigation into his conduct and did not enter a Reply or participate in any way in the Hearing.

17. The Respondent's conduct in this case, by failing to cooperate and misleading the MFDA has prevented MFDA Investigation Staff from determining the full nature and extent of his activities. We do not know the exact numbers of person involved in these outside activities. Nor do we know the extent to which the Respondent profited by his conduct. And we do not know the extent that the clients involved were harmed because, as Counsel for the MFDA informed us, there are ongoing bankruptcy and other proceedings.

18. It is also clear that the Respondent participated in the conduct alleged in Allegations 1, 2 and 3.

19. MFDA rules provide that all securities related business must be carried on for the account of the Member, and through the facilities of the Member; and all revenues, fees or consideration in any form relating to any business engaged in by the member must be paid or credited directly to the Member and recorded on the books of the Member. See MFDA Rule 1.1.1. Syndicated mortgages are securities and transactions in respect of them come within the definition of securities related transaction. An Approved Person cannot sell syndicated mortgages under a mortgage broker license outside the Member. See MFDA Bulletin #0583-P, dated November 12, 2013.

20. In any event, an Approved Person cannot participate in outside activities or “dual occupations”, such as being an officer or director of a company involved in investment products, without the approval of the Member. See MFDA Rule 1.2.1(c). To be so involved creates a conflict of interest. Moreover, an Approved Person must only participate in a referral arrangement that is approved by the Member, and all referral fees must be recorded on the books of the Member. See MFDA Rule 2.4.2.

21. The rules, regulations and decisions by Hearing Panels make it clear that these rules are to protect the public (as well as the Member). Investment products should be approved by the Member and transactions recorded on the books of the Member. If this is not done, the Member cannot properly supervise the Approved Person. Supervision is the backbone of the system of securities regulation.

Penalty

22. Counsel for the MFDA proposed the following penalties against the Respondent:

- a) A permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any Member of the MFDA, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- b) A fine in the amount of at least \$200,000, pursuant to section 24.1.1 (b) of MFDA By-law No. 1;

- c) Costs in the amount of \$10,000, attributable to conducting the investigation and hearing of this matter, pursuant to section 24.2 of MFDA By-law No. 1.

23. A permanent prohibition is clearly required in this case. A failure to cooperate with an investigation by Staff ranks among the most serious forms of misconduct that an Approved Person can engage in. Hearing Panels have consistently found that an Approved Person who fails to cooperate with Staff engages in very serious misconduct, preventing 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.

24. We agree with Counsel for the MFDA that the conduct in this case was egregious. The Respondent has been registered in the mutual fund industry since 2001 and surely knew that he should not deal in these securities outside the Member, although he claimed in an e-mail exchange with an Investia compliance officer in December 2015 that he did not think it was necessary to do so.

25. It is especially egregious in that he was a branch manager. As a branch manager he should have been supervising others in the branch and not involving them in participating in wrongful conduct.

26. This was not a single incident. It went on for a number of years. Because the Respondent did not cooperate, we are not sure how long it went on or how many clients were involved.

27. We know from the tax slips that the Respondent disclosed that he received commissions of at least \$63,000. It may, however, have been substantially more, but again, without the Respondent's cooperation, we are unable to determine how much he benefited from the activity. Similarly, as stated above, we do not know what the client losses may have been. These are relevant factors in determining what the penalty should be in this or any case.

28. In the cases cited to us by counsel that were not Settlement Agreements (where other consideration may apply), a permanent prohibition was ordered. See *Re Crackower* (2005506); *Re Gizzo* (2011 LNCMFDA 49); and *Re Cudmore* (201737). See also *Re Dixon* (2017 LNCMFDA 247); *Re Armani* (2017 LNCNFDA 185); *Re McBurney* (201522); *Re Vitich* (2011 LNCMFDA 63); *Re Desbois* (200822); and *Re Headley* (2006) LNCMFDA 3), where permanent prohibitions were ordered in failure to cooperate cases.

29. An award of costs of \$10,000 is reasonable under the circumstances to recover a portion of the costs attributable to conducting the investigation and hearing of this matter.

30. Determining what the monetary penalty should be is more difficult. In the three cases cited to us that were not Settlement Hearings, the fines were substantial. In *Gizzo* the fine was \$85,000; in *Cudmore* it was \$125,000 and in *Crackower* it was \$3.5 million. Every case, of course, depends on the specific fact of that case.

31. We have decided that the appropriate penalty in the present case should be \$250,000, somewhat higher than the minimum penalty proposed by the MFDA. It is a substantial penalty.

32. A permanent prohibition and a \$250,000 fine in the present case provides the necessary deterrence concerning the conduct that likely occurred.

DATED this 19th day of October, 2018.

“Martin L. Friedland”

Martin L. Friedland, CC, QC
Chair

“Melody Potter”

Melody Potter
Industry Representative

“Matthew Prew”

Matthew Prew
Industry Representative

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