



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: Leo Thach Quang Lam

Heard: November 22, 2018 in Calgary, Alberta

Decision: November 22, 2018

Reasons for Decision: January 25, 2019

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, QC
James Samanta
Greg Wiebe

Chair
Industry Representative
Industry Representative

Appearances:

Justin Dunphy)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Leo Thach Quang Lam)	Respondent, not in attendance or represented by
)	counsel
)	

Background

1. On May 7, 2018 the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 in respect of a disciplinary proceeding commenced against Leo Thach Quang Lam (the “Respondent”). The allegations in the Notice of Hearing stated as follows:

- a) Commencing no later than July 2013, misappropriated or failed to account for monies invested by client AL, thereby failing to deal fairly, honestly and in good faith with his client, failing to observe high standards of ethics and conduct in the transaction of business, or engaging in conduct that is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1;
- b) Commencing no later than July 2013, processed trades in client AL’s investment accounts without the client’s knowledge or authorization, thereby engaging in discretionary trading, contrary to MFDA Rules 2.3.1(a) and 2.1.1; and;
- c) Commencing in July 2016, has failed to cooperate with the MFDA’s investigation into his conduct, contrary to section 22.1 of MFDA By-Law No. 1.

Evidence as to Service

2. The evidence as to attempted service was submitted through the affidavit evidence of Patricia West (“West”), a Senior Investigator with MFDA, in which she deposed:

- a) From July 5, 2016 to October 19, 2016, multiple attempts were made to contact the Respondent without success at the registered address on the National Registration Database for the Respondent, confirmed by a search on the Alberta Land Titles Registry, which shows the address on the National Registration Database is listed in the name of the Respondent.
- b) By registered and regular mail from MFDA on July 5, 2016, an agent of MFDA requested the Respondent provide a written statement by July 27, 2016 with respect to the complaint of a client known here as “AL”. An “L. Lam” signed for the registered letter and the regular mail was not returned.

- c) Other registered and regular mail sent from MFDA to the Respondent on August 2, and October 18, 2016, July 17, 2017 and May 29, 2018 were returned to MFDA, marked “Moved” and no responses were received from the Respondent.
- d) On November 21, December 13, 2016 and July 20, 2017, MFDA instructed a process service to deliver letters to the Respondent requesting he attend for an interview with MFDA Staff, but the Process server could not locate the Respondent.
- e) On May 29, 2018, the Notice of Hearing in this matter was delivered by regular mail, registered mail, and via process server without success to the last known address of the Respondent.

3. At the first appearance by teleconference before the Chair of a hearing panel of the Prairie Regional Council of the MFDA (the “Hearing Panel”) on July 17, 2018 at 10:30 a.m. (Mountain) in accordance with s. 19.13(b) of MFDA By-Law No. 1, a hearing on the merits was scheduled before a Hearing Panel on November 22, 2018 at 10:00 a.m. (Mountain) in Calgary, Alberta at the offices of the MFDA.

4. In addition, West deposed:

- a) At the first appearance, the Chair ordered that service of the Notice of Hearing be effected by posting the Notice of Hearing on the public MFDA website, and that the Order arising out of the first appearance be provided to an adult residing at the last known address of the Respondent, or affixed on the door of said address.
- b) MFDA Staff attempted to serve the Respondent with the Notice of Hearing, and the Order of the Hearing Panel was later affixed to the door of the last known address of the Respondent.

5. On the day of the hearing, neither the Respondent nor anyone on his behalf appeared.

6. At the hearing, Enforcement Counsel noted that the signature accepting service of the registered letter sent on July 5, 2016 was inconsistent with the Respondent’s signature on other account documentation, that the Respondent remains listed as the registered owner at this address in the Alberta Land Titles Registry, that in connection with attempts to serve the Notice of Hearing

on the Respondent, and the affidavit of attempted service of the process server, Ms. Sandy Fucile, deposed that she spoke with the Respondent's son at the Respondent's registered address.

7. At the hearing, Enforcement Counsel noted that police are also currently investigating the whereabouts of the Respondent.

8. Under the relevant provisions of the MFDA By-law No. 1, the Rules of Procedure, and applicable case authorities, a hearing panel may conduct a hearing into the allegations in the absence of the Respondent. For ease of reference these provisions include:

- a) Section 24.1.4 of MFDA By-law No. 1 provides that an Approved Person remains subject to the jurisdiction of the MFDA notwithstanding the fact that such an individual ceases to be an Approved Person.
- b) The Ontario Court of Appeal in *Taub v Investment Dealers Association of Canada*, 2009 ONCA 628, determined that there is no statutory impediment preventing self-regulatory organizations like the MFDA from continuing to exercise jurisdiction over former Approved Persons.
- c) MFDA Rule of Procedure 1.6 specifically permits hearsay statements to be admitted as evidence
- d) MFDA Rule of Procedure 13.4 permits evidence to be adduced by way of sworn statements
- e) The decision in *Tonnies (Re)*, MFDA File No. 200503, Hearing Panel of Prairie Regional Council, Decision and Reasons dated June 27, 2005 ("Tonnies") at paras. 10-12 established that MFDA Hearing Panels and other regulatory bodies routinely consider and rely on hearsay and affidavit evidence in making findings of fact.
- f) MFDA Rule of Procedure 7.3 provides that a Hearing Panel may proceed with a hearing on the merits in the absence of a Respondent, where he fails to attend the hearing on the date and at the time and location specified in the Notice of Hearing, and may accept the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing as proven and impose any of the penalties and costs described in sections 24.1 and 24.2 respectively of MFDA By-law No. 1.

- g) MFDA Rule of Procedure 13.5 provides that the Hearing Panel may proceed in accordance with Rule 7.3 where a Respondent, having been served with a Notice of Hearing, fails to attend the hearing of the proceeding on its merits.

Finding as to sufficiency of service

10. This Hearing Panel has concluded that, while imperfect, the intention of the MFDA to investigate potential wrongful conduct of the Respondent, more likely than not, came to his attention between July 5, 2016 and the date of the hearing. He probably received such notice either by service of correspondence from MFDA to the last known address of the Respondent provided by the Respondent to MFDA, signed by him or on his behalf, by communication from his son, by notice posted on the door of his residence, and/or by notice of the hearing posted on the MFDA website.

11. Accordingly, considering all of the foregoing, this Hearing Panel finds that good and sufficient service of notice of the intention of the MFDA to proceed to hearing of the allegations in the absence of the Respondent was effected.

12. The Hearing Panel then proceeded to receive affidavit and oral evidence from West as to the allegations in the Notice of Hearing.

Evidence as to the allegations

13. The evidence in the West affidavit established that:

- a) From June 24, 2001 to December 31, 2013, the Respondent was registered in Alberta as a mutual fund salesperson (an “Approved Person”) with Portfolio Strategies Corporation (“PSC”);
- b) From 2007 onwards, the Respondent serviced the accounts of a client described in these proceedings as “Client AL” at PSC, who was the sister-in-law of the Respondent. Client AL used the Respondent’s address as her own for account statement purposes.
- c) While registered as an approved person under MFDA jurisdiction, the Respondent processed unauthorized redemptions of \$5,000 in Client AL’s open account at PSC

(the “Open Account”), and misappropriated the proceeds by directing the redemption cheques to his address and depositing them in his own personal account with PC Financial. The Respondent forged Client AL’s signature on letters of direction in order to do so.

- d) The Respondent’s registration with PSC was terminated in December 2013.
- e) While no longer registered as an MFDA Approved Person, but while maintaining his life insurance licence with Birnco Financial Group Ltd., the Respondent processed additional mutual fund redemptions of \$23,012.70 by sending letters of direction with Client AL’s forged signature directly to the mutual fund companies holding the investments.
- f) The Respondent misappropriated the net proceeds of these mutual fund redemptions, totaling \$22,630.35, by directing the redemption cheques to his address and depositing them in his own personal account with PC Financial.
- g) In connection with his life insurance licence, the Respondent opened two RRSP policies with IVARI with Client AL’s forged signature on account opening documents, conducted purchases of various segregated funds, and processed segregated fund redemptions of \$24,386.11 by sending letters of direction with Client AL’s forged signature (except on one authorized occasion) directly to the segregated fund company holding the segregated funds.
- h) The Respondent misappropriated net proceeds from the segregated fund redemptions, totaling \$19,796.28 by directing the redemption cheques to his address and depositing them in his own personal account with PC Financial.
- i) In total, the Respondent processed unauthorized redemptions of \$47,714.82, and misappropriated net proceeds of \$47,426.63, \$5,000 of which occurred while the Respondent was registered as an Approved Person under MFDA jurisdiction.
- j) Client AL was subsequently reimbursed the net proceeds of \$47,426.63 by CIBC Bank and Mackenzie Investments due to the forged endorsements on the cheques that were made out to client AL but deposited into the Respondent’s PC Financial account.
- k) The Respondent has not cooperated with Staff’s investigation into his conduct by providing requested documents or attending a scheduled interview.

14. This Hearing Panel is satisfied on the evidence that the portion of the Respondent's aforementioned conduct that occurred while he was registered as an Approved Person constituted unauthorized discretionary trading, contrary to MFDA Rule 2.3.1. *Garries, (Re)*, MFDA File No. 201605, Decision of the Prairie Regional Council, Decision and Reasons dated November 14, 2016 at para. 44 and *Rounthwaite (Re)*, MFDA File No. 201123, Hearing Panel of the Central Regional Council, Decision and reasons dated July 30, 2012, at paras. 7-8 further support the finding on the evidence presented here.

15. This Hearing Panel is also satisfied that that misappropriation of client funds by the Respondent while an Approved Person constituted a breach of MFDA 2.1.1 which requires that each Member and Approved Person: deal fairly, honestly, and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest. *Douglas (Re)*, MFDA File No. 201824, Hearing Panel of the Central Regional Council, Decision and Reasons dated October 9, 2018, at para. 24 further supports this finding.

16. On the allegation of failure to cooperate, pursuant to s. 21 of MFDA By-law No. 1, the MFDA has a duty to conduct examinations and investigations of a Member, an Approved Person, and any other person under its jurisdiction as it considers necessary or desirable in connection with any matter related to that Member's or person's compliance with, among other things, the By-laws, Rules and Policies of the MFDA.

17. In carrying out its s. 21 duty, s 22.1 provides that the MFDA is authorized to request and oblige a Member, Approved Person or any other person under its jurisdiction to:

- a) submit a report in writing with regard to any matter involved in any investigation;
- b) produce for investigation and provide copies of the books, records and accounts of such person relevant to the matters being investigated;
- c) attend and give information respecting such matters; and
- d) make any of the above information available through any directors, officers, employees, agents and other persons under the direction or control of the Member, Approved Person or other person under the jurisdiction of the MFDA.

18. Correspondingly, under s 22.1, the Member, Approved Person or other person under investigation is obliged to cooperate with the s. 21 requirements.

19. In *Parkinson (Re)*, MFDA File No. 200501, Hearing Panel of the Ontario Regional Council, Decision and Reasons dated April 29, 2005, at pages 19-20, noted that the Respondent disappeared without notice to, *inter alia*, MFDA and found such conduct constituted a failure to cooperate. It also noted that in the Ontario Divisional Court decision in *Artinian v. College of Physicians and Surgeons of Ontario* held that “fundamentally, every professional has an obligation to cooperate with his self-governing body”.

20. *Douglas (Re)*, *supra*, and *Roskaft (Re)*, MFDA File No. 201317, Hearing Panel of the Central Regional Council, Decision and Reasons dated May 2, 2014 are authorities for the propositions that an Approved Person must provide Staff with information and documentation, and attend an interview with Staff 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.

21. This Hearing Panel has concluded that the below listed circumstances were sufficient to establish Allegation 3:

- a) the Respondent as an Approved Person provided an address for the purpose of receiving communications from MFDA in respect of issues as to his conduct while acting as an Approved Person, which address happened also to be the property registered at Land Titles in his name.
- b) The MFDA attempted to deliver communications to the Respondent over an extended interval in order to perform its obligations under the MFDA By-law and Rules in respect of investigating potential wrongful conduct of the Respondent.
- c) The Respondent did not respond or reply to any of the communication delivered to the above address although, in the view of this Hearing Panel, one or more of those communications likely came to his attention.
- d) To allow Approved Persons to avoid their obligations under the By Law and Rules by evading service of the communications by the MFDA would be contrary to the

public interest, and would fail to foster public confidence in the integrity of the Canadian capital markets and the industry.

Penalties

22. Enforcement Counsel sought the following penalties:

- a) A permanent prohibition on the authority of the Respondent to conduct securities related business 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 of \$100,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1; broken down as follows:
 - i. A fine of \$50,000 in respect of the violation of Rules 2.1.1 and 2.3.1.
 - ii. A fine of \$50,000 for the Respondent's failure to cooperate; and
- c) Costs of \$7,500, pursuant to s. 24.2 of MFDA By-law No. 1.

Appropriateness of a Permanent Prohibition

23. In the present matter, while gross unauthorized redemptions and net proceeds of only \$5,000 were redeemed and misappropriated while the Respondent was registered as an Approved Person under MFDA jurisdiction, the conduct outside MFDA jurisdiction is relevant because it demonstrates that:

- a) the Respondent continued to engage in misconduct with respect to the same client from July 2013 to January 2015;
- b) the misconduct was not an isolated incident; and
- c) the Respondent is wholly unfit to ever be registered again in the mutual fund industry.

24. In the matter of *Cox (Re)*, MFDA File No. 201515, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated April 8, 2016 at paras. 56-58, the hearing panel did not consider the amounts misappropriated outside the MFDA's jurisdiction as part of its assessment of penalty, but did observe that such conduct demonstrated that the respondent was ungovernable and unsuitable to be registered in the future.

25. The failure of this Respondent to cooperate during the course of the MFDA investigation into the Respondent's conduct hindered the ability of the MFDA to provide effective oversight of the mutual fund industry.

26. As the Respondent has demonstrated disregard for the mutual fund industry and the protections put in place to ensure investor protection, he remains a significant risk to other investors and the market at large if he is allowed to return to the industry.

27. This Hearing Panel finds these factors justify the imposition of the penalty of permanently prohibiting the Respondent from conducting securities related business while in the employ of or associated with any Member of the MFDA.

Appropriateness of fine of \$50,000 for violation of Rules 2.1.1 and 2.3.1

28. In processing gross unauthorized redemptions of \$47,714.82, and misappropriating net proceeds of \$47,426.63, the Respondent not only deprived Client AL of the use of her investments, and the unauthorized redemptions also prevented the potential for additional growth in her investment portfolio, but he also gained a direct benefit at the expense of his client.

29. Despite being reimbursed net proceeds of \$47,426.63 from CIBC bank and Mackenzie investments due to the forged endorsements on the cheques that were deposited in the Respondent's personal PC Financial account, Client AL nevertheless incurred a loss of opportunity for continued growth in her portfolio, in addition to the tax consequences of the unauthorized redemptions.

30. The Respondent has not demonstrated that he recognizes the seriousness of his misconduct, nor expressed remorse for his actions. By declining to participate in the investigative or hearing process, he has presented the impression he does not take seriously his obligations as an Approved Person.

31. This Hearing Panel considered the case of *Aksomitis (Re)*, MFDA File No. 201531, Hearing Panel of the Atlantic Regional Council, Decision and Reasons dated May 24, 2016 in its determination of the appropriate monetary penalty. There, the respondent misappropriated approximately \$19,360 from 2 clients, approximately \$97,337 from 27 individuals and entered

into a settlement with the parties to pay \$100,000. In an uncontested hearing, the hearing panel imposed as a penalty, a permanent prohibition, a fine of \$67,000 and costs of \$7,500.

32. In *Aksomitis Re (supra)*, the hearing panel specifically considered whether imposing a significant fine on activity not involving MFDA Members might create jurisdictional problems. In the result, it decided to impose a fine of three times the amount misappropriated from the mutual fund clients and imposed an additional fine in respect of the Respondent's thefts from clients at Royal Bank as constituting activity that would cause an Approved Person to be in breach of the conduct rules of the MFDA, even though no MFDA Member was involved.

33. This Hearing Panel accepts that a substantial fine is necessary to communicate to this Respondent and to other Approved Persons that engaging in unauthorized discretionary trading, as well as misappropriation, is serious misconduct that has no place in the mutual fund industry.

34. Moreover, the effect of general deterrence should advance the goal of protecting investors. As a result, the penalty levied should be sufficient so as to affirm public confidence in the regulatory system and ensure that others in the industry do not repeat the misconduct. *Cartaway Resources Corp. (Re)*, [2004] 1 SCR 672 (SCC) at paras. 52 – 62.

35. Accordingly, this Hearing Panel concludes that a fine totaling \$50,000 is appropriate here for the two allegations of unauthorized trading and misappropriation of amounts, although modest in the time interval the Respondent was an Approved Person of a member of MFDA.

Appropriateness of fine of \$50,000 for failure to cooperate

36. In *Douglas (Re)*, supra, the hearing panel imposed a fine of \$50,000 for the failure to cooperate. First, it noted that the Sanction Guidelines recommended a minimum fine of \$50,000 and a permanent prohibition for failure to cooperate. Second, it noted that failure to cooperate with an investigation by the MFDA limits the ability of Staff to properly investigate complaints and to carry out its mandate to protect the investing public. All those involved in the mutual fund industry regulated by the MFDA must know and understand that they have an obligation to cooperate with an MFDA investigation and that failure to do so will attract substantial fines and a permanent prohibition from participating in the industry.

37. In the view of this Hearing Panel, both in accordance with the Sanction Guidelines, and as a general principle, the penalty imposed should make clear that wrong-doers should not benefit from their wrong-doing, and to the extent possible, reflect the extent to which the Respondent obtained or attempted to achieve a financial or other benefit from the misconduct.

38. This Hearing Panel accepts that a fine of \$50,000 for failure to cooperate is necessary to communicate to this Respondent and to other Approved Persons that they have a clear obligation to participate fully in the investigative process.

39. In summary, this Hearing Panel orders:

- a) a permanent prohibition on the authority of the Respondent to conduct securities related business 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 of \$100,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1; broken down as follows:
 - i. A fine of \$50,000 in respect of the violation of Rules 2.1.1 and 2.3.1.
 - ii. A fine of \$50,000 for the Respondent's failure to cooperate; and
- c) payment of costs of \$7,500, pursuant to s. 24.2 of MFDA By-law No. 1.

DATED this 25th day of January, 2019.

“Shelley L. Miller”

Shelley L. Miller, QC
Chair

“James Samanta”

James Samanta
Industry Representative

“Greg Wiebe”

Greg Wiebe
Industry Representative

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