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: Yan Feng Li
(also known as Frank Li)

Heard: June 29, 2017 in Toronto, Ontario
Decision: June 29, 2017
Reasons for Decision: September 12, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

John Lorn McDougall, Q.C.	Chair
Lorraine Bate-Boerop	Industry Representative
Joseph Yassi	Industry Representative

Appearances:

David Halasz	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
Yan Feng Li	)	Respondent, In Person
	)	
	)	
	)	

Introduction

1. By Notice of Hearing dated January 22, 2015, the Mutual Fund Dealers Association of Canada ("MFDA") commenced disciplinary proceedings in respect of Yan Feng Li (also known as Frank Li) ("Respondent").

2. The Notice of Hearing set out the following allegation:

   a) between February 2008 and December 2012, the Respondent issued advertisements to clients or prospective clients which were not reviewed and approved by the Member, contrary to MFDA Rules 2.7.3 and 1.1.2, and MFDA Rule 2.1.1.

3. The Respondent filed a Reply dated February 23, 2015 in which he made the following admission:

   Yan Feng Li (the "Respondent") admits the facts alleged and conclusions drawn by Staff of the Mutual Fund Dealers Association of Canada ("Staff") in paragraphs 1, 2, 3, 4, 5, 6(a), 6(c), 7, 8, 9, 10, 12, 13, 14, 15(a), 15(b), 15(c), 15(d), 16, 17, 18, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 of the Notice of Hearing except as otherwise noted below.

4. The Reply ends with the following paragraph:

   Finally, I know that I made a mistake, I am so sorry for that, I feel happy that no client was misled by my articles. I did wrong, please MFDA forgive me and give me a chance to correct my mistake, I will study and fully understand and keep all MFDA rules.

5. The parties entered into an Agreed Statement of Facts ("ASF"). The relevant portions of the ASF are as follows:

II. IN PUBLIC/IN CAMERA

3. The Respondent and Staff of the MFDA ("Staff") agree that this matter should be heard in public pursuant to Rule 1.8 of the MFDA Rules of Procedure.

III. ADMISSIONS AND ISSUES TO BE DETERMINED

4. The Respondent has reviewed this Agreed Statement of Facts (the "ASF") and admits the facts set out in Part IV herein. The Respondent admits that the facts in Part IV constitute misconduct for which the Respondent may be penalized on the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

5. Subject to the determination of the Hearing Panel, Staff submits, and the Respondent does not oppose, that the appropriate penalty to impose on the Respondent is:[1]

a. a prohibition against the Respondent from conducting securities related business in any capacity while in the employ of or associated with any MFDA member for a period in the range of 4 to 6 months, effective from the date of the Order, pursuant to section 24.1.1(e) of MFDA By-law No. 1.; and

b. costs of $2,500, pursuant to section 24.2 of MFDA By-law No. 1

6. The Respondent claims to be impecunious and unable to pay any additional amounts towards either a fine or costs.

IV. AGREED FACTS

7. Staff and the Respondent agree that submissions made with respect to the appropriate penalty are based only on the agreed facts in Part IV and no other facts or

[1] Emphasis added by Hearing Panel.

documents. In the event the Hearing Panel advises one or both of Staff and the Respondent of any additional facts it considers necessary to determine the issues before it, Staff and the Respondent agree that such additional facts shall be provided to the Hearing Panel only with the consent of both Staff and the Respondent. If the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel.

8. Nothing in this Part IV is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

Registration History

9. The Respondent was registered as a Mutual Fund Salesperson (now known as a Dealing Representative) with Investia Financial Services Inc. ("Investia") from February 13, 2008 until March 14, 2013, at which time Investia terminated the Respondent's registration.

10. Prior to Investia, the Respondent was registered with Sun Life Financial Services (Canada) Inc. from July 2003 until January 2008.

11. The Respondent is currently not registered in the securities industry in any capacity.

12. The Respondent was licensed by the Financial Services Commission of Ontario as an insurance agent.

13. At all material times, the Respondent carried on business in Markham, Ontario.

Allegation #1: Unapproved advertisements

14. As described in greater detail below, the Respondent wrote articles for publication and placed advertisements in a Chinese language print publication ("*Fame Weekly"*).

15. The advertisement and article content published or presented by the Respondent referred to in this ASF were written in the Chinese language. All of the excerpts contained

in this ASF have been translated from the Chinese language to English by a third-party interpreter retained by MFDA Staff.

A. ***Fame Weekly*** **publication**

16. *Fame Weekly* is a Chinese language publication distributed in the Greater Toronto Area.

i. The *Fame Weekly* Article

17. In the November 30, 2012 print issue of *Fame Weekly,* the Respondent placed a Chinese language advertisement, and wrote a Chinese language article entitled "Canadian TSX Stock Market: Last Week's Review and Next Week's Forecast".

18. In addition to purporting to provide a review and analysis of the previous week's performance of the Toronto Stock Exchange (TSX) market, the article included the following content:

a. an invitation for readers to visit the website www.wealth178.com for daily market commentary;

b. a description of an entity called the "WealthPros Club[2]", that purported to provide "*diagnosis and guidelines for investments"* at meetings open to the public every Wednesday at the address of the Respondent's Investia sub-branch located at 3100 Steeles Ave. East, Suite 308, Markham; and

c. the following statements:

> *"We offer opinions on actual portfolios. Portfolios may include: Chinese stocks, North American stocks, foreign exchange, futures and ETFs. We welcome professional investors to join us. For investors in North American stocks, Chinese stocks, foreign exchange and mutual funds, please go to the WealthPros website at www.wealth178.com..."*
>
> *"...The WealthPros Club has established a professional investment team for portfolio mutual fund investments. The team is made up of professional investment experts including Chinese private fund managers, North American private fund managers, Canadian Investment Managers (CIM), Chartered*

[2] The Respondent and other individuals were members of the WealthPros Club.

Financial Analysts (CFA), financial planners, etc. This mutual fund investment team is, up to this point in time, the most professional, the most comprehensive, and the most deluxe investment team. The mutual fund investment team provides portfolio guidance and post-trading analysis to the members of the WealthPros Club. We do band trades in order to maximize return while risks are under reasonable control."[3]

19. The article stated that it was "Supplied By: Frank Li, WealthPros Financial"[4] and included the Respondent's email address.

20. The article in *Fame Weekly* constituted an "advertisement" within the meaning of MFDA Rule 2.7.1(a).

21. The Respondent advised Investia during its investigation of his conduct that he had published articles on *Fame Weekly* on a weekly basis since October 2012, and he subsequently advised Staff that he wrote a total of one or two articles. The Respondent states that he based his articles for *Fame Weekly* on research he conducted on the internet. He would copy all or parts of articles he found on the internet and reproduce them in his articles.

ii. The *Fame Weekly* advertisement

22. The Respondent placed an advertisement in *Fame Weekly* that appeared on the same page as his article. The advertisement included the following representations, among others:

a. the claim that "*Up to the end of October, we delivered early to our clients results that exceeded our annual performance expectation.";*

b. an invitation to a free investment seminar on December 2 and 9 where the Respondent was the speaker;

[3] The Respondent states that he did not personally include and was not aware at the time of the portion of the Fame Weekly advertisement described at subparagraph 18c., which the Respondent states was added by another person who was not registered in the mutual fund industry.

[4] WealthPros Financial Inc. was a company for which the Respondent was a director and one of the owners. The Respondent had previously sought and obtained approval from Investia to operate his business as a licensed insurance agent through WealthPros Financial.

c. a statement describing the Respondent as *having 20 years of actual investment experience; a private fund manager, multi-billion dollars of assets under his management, having achieved a performance of 600% in two years";* and

d. a statement that *"All mutual funds are provided by Investia".*

23. By promoting investment related services purportedly offered by the Respondent, his purported qualifications and experience, and his purported track record as an investment adviser, the advertisement constituted an "advertisement" within the meaning of MFDA Rule 2.7.1(a).

24. The Respondent states that references in the *Fame Weekly* advertisement to his experience and assets under management referred to a company in China with which the Respondent had previously worked. The Respondent acknowledges that he was not sufficiently clear in describing his experience in the *Fame Weekly* advertisement.

25. The Respondent did not submit the *Fame Weekly* articles and advertisement described above to Investia for approval prior to publication. Investia was not aware that the Respondent had published articles and advertisements in Chinese language publications, nor was Investia aware that the Respondent was providing seminars on investing to the public.

26. On or about February 14, 2013, Investia advised the Respondent that he was being terminated on the grounds that the Respondent had not submitted articles and advertisements published in *Fame Weekly* to Investia for approval and expressed concerns that they included statements that Investia considered to be untrue and misleading.

27. The Respondent states that he did not discuss the investment seminars advertised in *Fame Weekly* with anyone, including mutual fund clients, and he did not make any presentations at any seminars.

Investia's policies and procedures

28. At all material times, Investia's policies and procedures in respect of advertising and sales communications required, among other things, that:

- All advertising and marketing materials must be submitted to the Sales Practices Administrator at Investia for approval prior to publication or use;

- No Investia Representative shall issue or knowingly allow his/her name to be used in respect of any advertisement or marketing piece which:

    - Contains an untrue statement or omission or is false or misleading; and
    - Contains any unjustified promise of specific results; and

- All representative websites be approved by Investia prior to being launched to ensure compliance with the MFDA Rules and all other applicable legislation.

Additional factors

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

30. There is no evidence of client loss.

31. There is no evidence that the Respondent benefitted financially from the misconduct.

32. The Respondent has cooperated with Staff's investigation and accepted responsibility for his misconduct.

Misconduct Admitted

33. By engaging in the conduct described above, the Respondent admits that he:

a. Between October 2012 and December 2012, issued advertisements which were not reviewed and approved by the Member, contrary to MFDA Rules 2.7.3 and 1.1.2, and MFDA Rule 2.1.1.

ANALYSIS AND REASONS FOR DECISION

6. At issue when the Hearing Panel was deliberating on this case was how were we to treat it. Was it to be afforded the deferential scrutiny afforded to settlements both at law and under the MFDA Rules? Or was it simply a case that proceeded on agreed facts but without agreement on penalty? If so, then the deferential standard provided for in the Rules would not apply and the case would fall to be decided by the usual standard applicable to contested proceedings.

7. Rule 14.1 provides as follows:

> ***14.1 Contents of Settlement Agreements***
>
> (1) A Settlement Agreement made pursuant to section 24.4.1 (Settlement Hearings) of MFDA By-law No. 1 shall be in writing and signed by the parties and contain:
>
> (a) a statement of the relevant facts;
> (b) a statement of the violations admitted to by the Respondent, with reference to any specific By-law, Rule or Policy of the Corporation or any applicable statutory provision, and a statement as to future compliance therewith;
> (c) the consent and agreement of the Respondent to the terms of the Settlement Agreement, including the penalties and costs to be imposed on the Respondent;
> (d) a statement that the Respondent waives all rights to any further hearing, appeal and review;
> (e) a statement that the Settlement Agreement is conditional upon acceptance by the Hearing Panel; and
> (f) such other matters not inconsistent with (a) to (e).

8. Staff urged the Hearing Panel to treat it as a settlement. The basic submission was that "…where the Respondent and Staff will, in effect, be making a joint submission on penalties, then a Hearing Panel should not interfere unless the recommendation would bring the administration of justice into disrepute or is otherwise contrary to the public interest."

9. Mr. Halasz for Staff put the matter in the following way in his oral submissions:

> We have the Respondent agreeing to and Staff agreeing to forego a hearing in order to narrow the issues, and for Staff to proceed with a certain penalty without any opposition to that request. So, it is akin to a joint request. It is in effect a joint request.
>
> You know, the Respondent will not be making any submissions today about that penalty that is sought by Staff is inappropriate. And both parties have set aside their right to have a hearing in order to have this hearing proceed and determined on that basis.
>
> So, I would submit that it's very much similar to that kind of case. It's in effect that kind of case, and the same – the same standard would be appropriate to apply in this case. It's not an agreement like a settlement agreement, and Staff proceed in settlement agreements routinely under different sorts of situations.

10. However, one needs to consider exactly what has been agreed and what has been left to the Panel. On one hand, there has been full agreement on the facts; on the other hand, there has been no agreement on the precise penalty as the Hearing Panel has been presented with options.

11. Further, and most importantly, the Respondent has simply agreed not to oppose the range of penalties sought by Staff. What the Respondent has done is to leave it to the Hearing Panel to decide what the appropriate penalty in the present circumstances is to be and he has done so expressly. This is evidenced by the opening language of paragraph 5 of the Agreed Statement of Facts above quoted.

12. In our view, this formulation leaves the Panel responsible for determining the appropriate remedy, even if it be in a defined range. It does not meet the requirements which invoke the deferential treatment afforded to settlements under the MFDA Rules. An express agreement on penalty is, in the Hearing Panel's view, required for that to occur.

13. The leading case dealing with the MFDA settlement process has for some significant period been recognized to be *Milewski (Re)*, [1999] I.D.A.C.D. No. 17. In the course of the

District Council's (now Hearing Panel) reasons it dealt with the differences between the treatment of a settlement agreement and a contested proceeding as follows:

> In the District Council's view, settlement agreements do not define the parameters of the penalties available. These are defined in paragraph 20.11 of the By-laws. A penalty under a settlement agreement is likely to be at the low end of the spectrum in view of the fact that a settlement is negotiated, permits the Association staff to avoid the costs of a contested hearing and guarantees them a favourable result.
>
> 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.
>
> This understanding is reflected in paragraph 20.26 of the By-laws which authorizes the District Council to "accept", rather than approve, a settlement agreement. In each case a District Council must determine appropriateness, but the standards applicable to its doing so on a settlement hearing differ from those in a contested hearing. Thus, the penalties imposed under settlement agreements, while relevant to a District Council exercising its discretion to penalize, provide only limited assistance in a hearing like this one.

14. The recent decision of the Supreme Court of Canada in *R. v. Anthony-Cook,* [2016] 2 S.C.R. 204 puts the test for approval of a joint submission on the penalty in a criminal

proceeding in a slightly different way from *Milewski* as is evident from the following quote from Moldaver J's decision given on behalf of the Court:

> A. *The Proper Test*
>
> 32 Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. But, what does this threshold mean? Two decisions from the Newfoundland and Labrador Court of Appeal are helpful in this regard.
>
> 33 In *Druken*, at para. 29, the court held that a joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so "markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system". And, as stated by the same court in *R. v. B.O.2,* 2010 NLCA 19, at para. 56 (CanLII), when assessing a joint submission, trial judges should "avoid rendering a decision that [page 219] causes an informed and reasonable public to lose confidence in the institution of the courts".
>
> 34 In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee. They emphasize that a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold…

15. The *Anthony-Cook* decision rests on the existence of a joint agreement on the penalty to be approved by the Court. In the case of the MFDA, the joint submission rests on the same

agreement but there is a not so subtle distinction in that the Hearing Panel is required not to approve the settlement but only to "accept" it as being in the public interest.

16. The important point however is that there has to be a joint submission on the appropriate penalty. It is evident that there was none in this case; the Respondent expressly left it to the Hearing Panel. In such circumstances the Hearing Panel felt it could not proceed other than in the normal manner for contested hearings in considering the appropriate penalty.

17. Staff's submission as to the penalty was:

> Staff requests, and the Respondent does not oppose, that the Hearing Panel impose the following penalties and costs upon the Respondent:
>
> (a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period in the range of 4 to 6 months, effective from the date of the Order, pursuant to section 24.1.1(c) of MFDA By-law No. 1; and
>
> (b) the Respondent shall pay costs in the amount of $2,500, pursuant to s. 24.2 of MFDA By-law No. 1.

18. Staff pointed out Hearing Panels have in past taken into account the following factors, as well as others, depending on the facts of the case before them:

(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.

Cunningham (Re), 2010 LNCMFDA 54, at para. 22.

19. The most important factor in this case, and the one which generates serious concern about the Respondent's conduct, is the failure to obtain the approval of the Dealer, Investia, for the advertisements and promotional activities which he has admitted to. Additionally, the fact that such activities were carried out in the Chinese language makes it more concerning from a regulatory perspective. Others similarly positioned as Mr. Li must be deterred from acting as he did in thinking that such transgressions will go undetected.

20. On the other side of the ledger, the Respondent has not been registered in the securities industry since March 14, 2013, has admitted his misconduct, cooperated with Staff and did not profit from his activities.

21. At the opening of the hearing, Staff asked the Hearing Panel, if it was not intending to accept/approve the penalty asked for by Staff, to advise Staff and the Respondent before penalties were imposed. The Hearing Panel did so and the penalties selected by the Hearing Panel were agreed to by both parties before imposition.

22. The activities of the Respondent were, for the reasons previously stated, a serious transgression of the Rules. The securities business requires strict discipline and control of the

activities of those who represent the Members in dealings with the public on their behalf. Consequently, the Hearing Panel has concluded that a suspension of six months effective from the date of the Order is appropriate. This was the high end of the range recommended.

23. The Hearing Panel was also of the view that a fine should be imposed in a case such as this. We recognize the Respondent's impecuniosity but precedent and the Guidelines mandate that there be a fine. We have therefore decided to reduce the cost award from $2,500.00 to $1,000.00 and impose a fine of $1,500.00.

CONCLUSION

24. The Hearing Panel therefore imposes the following penalties on the Respondent:

(a) A suspension pursuant to section 24.1.2 of MFDA By-law No. 1, for a period of six months from the date hereof;
(b) A fine in the amount of $1,500.00; and
(c) Costs in the amount of $1,000.00.

25. The Hearing Panel is satisfied that the penalties imposed are reasonable and proportionate and will deter the Respondent and other MFDA members from engaging in similar misconduct. We concluded that the penalties imposed will advance the public interest and the MFDA objectives of enhancing investor protection and ensuring high standards of conduct in the mutual fund industry.

DATED this 12th day of September, 2017.

"John Lorn McDougall"

John Lorn McDougall, QC
Chair

"Lorraine Bate-Boerop"

Lorraine Bate-Boerop
Industry Representative

"Joseph Yassi"

Joseph Yassi
Industry Representative

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