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: My Phuong "Vicky" Luong Dao

Heard: February 2, 2021 by electronic hearing in Toronto, Ontario
Decision: February 2, 2021
Reasons for Decision: April 9, 2021

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth	Chair
Samuel Mah	Industry Representative
Joseph Yassi	Industry Representative

Appearances:

Brendan Forbes	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Nicole McAuley	)	Counsel for the Respondent
My Phuong "Vicky" Luong Dao	)	Respondent

I. BACKGROUND

1. By Notice of Hearing dated November 26, 2019, a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (the "MFDA") was convened to consider whether, pursuant to section 24.4 of By-law No. 1 of the MFDA, the Panel should accept a settlement agreement dated December 8, 2020, ("Settlement Agreement") entered into by the Staff of the MFDA ("Staff") and My Phuong "Vicky" Luong Dao (the "Respondent").

2. At the outset of the proceeding, the Panel considered a joint motion by Staff and the Respondent to move the proceedings "*in camera*". The Panel granted the motion. The Panel then considered the provisions of the Settlement Agreement, aided by submissions as to the applicable law, which should guide the Panel in determining whether or not to accept or reject the Settlement Agreement. The Panel unanimously accepted the Settlement Agreement and issued an Order accordingly. These are the Panel's reasons for doing so.

II. THE CONTRAVENTIONS

3. In the Settlement Agreement, the Respondent admits that:

a) commencing in March 2010, she has been engaged in an outside business activity that was not disclosed to or approved by the Member, contrary to the policies and procedures of the Member and MFDA Rule 1.2.1(d) (now Rule 1.3.2) and MFDA Rules 2.10, 2.5.1 and 1.1.2;

b) commencing in March 2010, she engaged in personal financial dealings with client MH by:

   i. purchasing two condominium units (the "Condominium Units") with client MH and accepting payments from client MH to finance the costs of purchasing and maintaining the Condominium Units;

   ii. opening and maintaining a joint bank account with client MH to facilitate:

      a. the receipt of deposits including payments from client MH towards the costs of the Condominium Units;

      b. the deposit and accounting for rental income generated by the Condominium Units; and

      c. the payment of expenses (including mortgage payments) associated with the purchase and maintenance of the Condominium Units.

iii. accepting three cheques from client MH totaling $95,000 which were deposited into the Respondent's personal bank account,

all of which gave rise to conflicts or potential conflicts of interest that the Respondent failed to disclose to her Member, disclose in writing to the client, or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures, and MFDA Rules 2.1.4, 2.1.1, 1.1.2, 2.10, and 2.5.1; and

c) between November 2012 and November 2016, she submitted five Annual Representative Compliance Certification questionnaires to the Member that contained false or misleading responses, thereby interfering with the ability of the Member to supervise the Respondent's activities, failing to observe high standards of ethics and conduct in the transaction of business, and engaging in conduct that is unbecoming and detrimental to the public interest, contrary to MFDA Rules 2.1.1, 1.1.2 and 2.5.1

III. THE FACTS

4. In the Settlement Agreement, Staff of the MFDA and the Respondent agreed to the existence of a series of facts, which are set out in Part IV of the said Settlement Agreement. The Settlement Agreement is attached as Appendix "A" to these Reasons.

5. As set out in the Settlement Agreement, on August 4, 2005 until December 5, 2018, the Respondent was registered in Ontario as a mutual fund sales person (now known as "dealing representative") with WFG Securities Inc. (the "Member"), a member of the MFDA. At all material times, the Respondent conducted business in Richmond Hill, Ontario. The Member terminated the Respondent on December 5, 2018 after discovering the conduct described in the Settlement Agreement. The Respondent has not been registered in the securities industry in any capacity since her termination.

IV. DISCUSSION

6. The Hearing Panel was aware that prior to accepting a Settlement Agreement, a Hearing Panel must be satisfied that:

a) The facts admitted by the Respondent constitute misconduct in contravention of the By-law, MFDA Rules or policies, or provincial securities legislation; and

b) The penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness, bearing in mind the nature and extent of the misconduct and all the circumstances.

7. The Panel accepted that the role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re),* citing the I.D.A. Ontario District Council in *Milewski (Re)*:

> We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel "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." [Emphasis added].
>
> *Sterling Mutual Inc. (Re),* MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at para. 37
>
> *Milewski (Re),* [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999

8. The Panel also considered the principle that a Hearing Panel will not reject a settlement agreement unless the proposed penalty clearly falls outside the reasonable range of appropriateness. Settlements are necessary to assist the MFDA to fulfill its regulatory objective of protecting the public. Settlements advance this regulatory objective by proscribing activities that are harmful to the public, while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent.

> *British Columbia (Securities Commission) v. Seifert*, [2006] B.C.J. No. 225 at paras. 48-49 (S.C.), aff'd, [2007] B.C.J. No. 2186 at para. 31 (C.A) ["*British Columbia (Securities Commission)*"]

V. OUTSIDE ACTIVITY WITH CLIENT

9. MFDA Rule 1.3.2 (formerly Rule 1.2.1(d)) allowed Approved Persons to engage in an outside activity provided that:

a) The MFDA and the securities regulatory authority in the jurisdiction in which the Approved Person carries on, or proposes to carry on, the outside activity do not prohibit the Approved Person from engaging in such outside activity;

b) The Approved Person discloses the outside activity to the Member;

c) The Approved Person obtains written Member approval of the outside activity prior to engaging in such outside activity;

d) The outside activity of the Approved Person must not be such as to bring the MFDA, its Members, or the mutual fund industry into disrepute; and

e) To the extent that the outside activity could be confused with Member business, clear written disclosure is provided to clients that any activities related to the outside activity are not the business of the Member and are not the responsibility of the Member.

MFDA Rule 1.3.2.

10. MFDA Hearing Panels have held that, consistent with the subsections (b) and (c) of MFDA Rule 1.3.2, Approved Persons must disclose all outside activities to the Member and the outside activities must be approved by the Member, in writing, prior to the Approved Person engaging in the outside activity.

Wemple (Re), [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201654, Hearing Panel Decision dated June 9, 2017 at paras 25-26.

Notis (Re), [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201953, Hearing Panel Decision dated December 4, 2019 at para. 47.

11. More specifically, prior MFDA Hearing Panels have held that Approved Persons must disclose to the Member all outside activities which amount to a "gainful occupation".

Notis, supra, at para. 5.

Wemple, supra, at para. 24.

Vitch (Re), [2011] Hearing Panel of the Central Regional Council, MFDA File No. 201103, Hearing Panel Decision dated September 22, 2011 at para. 53

12. In the current matter, the Respondent admits that she engaged in an outside activity comprised of condominium investments which was designed to generate profit for the Respondent and client MH. The Respondent engaged in this outside activity without disclosing the outside activity to her Member and without obtaining approval from the Member prior to engaging in the outside activity.

Settlement Agreement, paras. 59-60.

13. The Respondent further admits that her conduct in respect of the outside business activity was contrary to the policies and procedures of the Member as well as MFDA Rule 1.2.1(d) (now Rule 1.3.2).

Settlement Agreement, para. 73.

14. MFDA Hearing Panels have held that where an Approved Person fails to comply with the policies and procedures of a Member requiring disclosure of an outside activity, the Approved Person has violated MFDA Rules 1.1.2 and 2.5.1.

Notis, supra at para 5.

Shelson (Re), [2018] Hearing Panel of the Central Regional Council, MFDA File No. 2017117, Hearing Panel Decision dated December 19, 2018 at para. 36.

Sarang (Re) [2016] Hearing Panel of the Pacific Regional Council, MFDA File No. 201535, Hearing Panel Decision dated March 21, 2016.

15. In the present case, the Respondent admits that she violated MFDA Rules 1.1.2, 2.5.1 and 2.10 by failing to disclose and have approved by the Member an outside activity, contrary to the policies and procedures of the Member. It was clear to the Panel that the first contravention was proven.

Settlement Agreement, para. 73.

VI. PERSONAL FINANCIAL DEALINGS WITH CLIENT

16. MFDA Rule 2.1.4 prescribes the duties of Approved Persons when dealing with conflicts of interest. The Rules require, among other things, that:

a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member;

b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d); and

c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall immediately be disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or the Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.

MFDA Rule 2.1.4(a) – (c).

17. Prior MFDA Hearing Panels have held that when an Approved Person purchases real property with clients for the purposes of an investment, such circumstances give rise to a conflict of interest within the meaning of Rule 2.1.4.

Notis, supra, at para. 44-45

Mawer, supra, at para 26.

18. MFDA Hearing Panels have also held that when an Approved Person holds a joint bank account with a client, such circumstances give rise to a conflict of interest within the meaning of Rule 2.1.4.

Bott (Re), [2017] Hearing Panel of the Central Regional Council, MFDA File No. 2016101, Hearing Panel Decision dated April 18, 2017, at para. 12.

19. MFDA Hearing Panels have further held that when an Approved Person holds client monies in a personal bank account, such circumstances also give rise to a conflict of interest within the meaning of Rule 2.1.4.

Wang (Re), [2017] Hearing Panel of the Pacific Regional Council, MFDA File No. 201762, Hearing Panel Decision dated October 2, 2017 at para 16.

20. In the current matter, the Respondent admits that she engaged in personal financial dealings with client MH when she jointly purchased condominium investments with client MH, opened a joint bank account with client MH to facilitate payments and receipt of rental income related to the condominium investment and by accepting three cheques from client MH totaling $95,000.

Settlement Agreement, para 61.

21. The Respondent's conduct created a conflict of interest between the Respondent and client MH. The Respondent was required to disclose the conflict to the Member, disclose the conflict in writing to the client and to ensure that the conflict was addressed by the exercise of responsible business judgment influenced only by the best interests of the client. The Respondent admits that

she did not disclose the conduct leading to the conflict of interest to the Member, failed to disclose the conduct in writing to the client and failed to address the conflict by the exercise of responsible business judgment influenced only by the best interests of the client. It was clear to the Panel, that the Respondent's actions were therefore contrary to MFDA Rule 2.1.4.

Settlement Agreement, para 74.

22. MFDA Hearing Panels have held that where an Approved Person engages in a conflict of interest and in turn fails to comply with the Member's Policies and Procedures, the Approved Person contravenes MFDA Rules 2.5.1 and 1.1.2.

Wemple, supra at para. 10

23. In the present case, the Respondent admits that by failing to properly disclose or address a conflict of interest with client MH, she acted contrary to the Member's policies and procedures and MFDA Rules 2.5.1, 2.10 and 1.1.2.

Settlement Agreement, para. 76.

24. MFDA Hearing Panels have consistently held that an Approved Person who engages in personal financial dealings or conflicts of interest with a client related to purchasing investment properties, and fails to take appropriate action to disclose or address the conflict of interest with the client, has engaged in conduct that is contrary to MFDA Rule 2.1.1.

Mawer, supra at para. 27.

Notis, supra at para. 4.

25. In the present case, the Respondent admits that she contravened MFDA Rule 2.1.1 by not disclosing the conflict of interest with client MH to the Member and by contravening the Member's policies and procedures. It was therefore clear to the Panel that the second contravention was proven.

Settlement Agreement, para. 74.

VII. MISLEADING THE MEMBER

26. MFDA Hearing Panels have further held that when an Approved Person makes a false or misleading statement to a Member, the Approved Person has contravened MFDA Rule 2.1.1.

Notis, supra at para. 53-56.

Wemple, supra

27. In the current matter, the Respondent admits that she violated MFDA Rule 2.1.1 by providing false or misleading responses on five annual compliance certifications, thereby interfering with the ability of the Member to supervise the Respondent's activities, failing to observe high standards and conduct in the transaction of business and engaging in conduct that is unbecoming and detrimental to the public interest.

Settlement Agreement, para. 75.

28. MFDA Hearing Panels have held that where an Approved Person misleads the Member and in turn fails to comply with the Member's Policies and Procedures, the Approved Person contravenes MFDA Rules 2.5.1 and 1.1.2.

Wemple, supra at para. 10

Notis, supra at para. 53-56

29. In the present matter, the Respondent admits that she violated MFDA Rules 2.5.1 and 1.1.2 by providing false or misleading responses on five annual compliance certifications contrary to the policies and procedures of the Member and MFDA Rules 1.1.2 and 2.5.1. The Panel therefore concluded that the third contravention was proven.

Settlement Agreement, para. 73.

VIII. PENALTY

30. 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.

Headley (Re), [2006] Hearing Panel of the Pacific Regional Council, MFDA File No. 200509, Hearing Panel Decision dated February 21, 2006, at para.

31. 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. The Guidelines recommend considerations of many of the same factors that have been applied in previous cases and are listed and applied above.

MFDA Sanction Guidelines

32. The Respondent's actions were serious. The Respondent engaged in personal financial dealings with a client which she did not disclose to the Member. The Respondent's actions deprived the Member of the ability to address the conflict by withholding mandatory disclosure of the conflict from the Member.

33. The Respondent's actions also amounted to an outside activity, which she also did not disclose to the Member. This action also deprived the Member of the ability to review and approve the outside activity and potentially address the issue caused by the outside activity in the best interest of the client.

34. In addition, the Respondent made false or misleading statements to the Member on five annual compliance certifications related to the conflict of interest and co-mingling client's monies with the Respondent's monies. This conduct further limited the Member's ability to resolve the conflict of interest created by the Respondent in the best interest of the client.

35. Given the seriousness of these actions, the sanctions against the Respondent were warranted. The Panel considered that the client had invested a total of approximately $145,800. This money is still invested in the condominium properties held jointly by the Respondent and the client.

36. As of the date of the Settlement Agreement, the client's monies remained at risk and had not been returned to her by the Respondent.

37. The Panel concluded that the client may ultimately suffer potential financial harm, if the value of the condominium properties decreased to a value lower than the purchase price of the real estate.

38. Conversely, if the value of the condominium increased or in the future increases to a value above the initial purchase price, the Respondent may stand to realize a direct financial benefit from the investments in the condominium project she had made in conjunction with the client.

39. In addition, the Respondent obtained a total of $95,000 from the client, which she held in a personal bank account. The Respondent obtained access to these, interest free and without terms of repayment. The Panel concluded that this amount constituted a financial benefit that the Respondent derived from her personal financial dealings with the client.

40. The Respondent's actions are an example of the type of conduct that can bring the reputation of the mutual fund industry into disrepute. The Respondent ought to have recognized the harm that such conduct could cause to the advisor-client relationship and the fact that such conduct contravened her duty to comply with her regulatory obligations and the policies and procedures of the Member.

41. Finally, the Respondent also provided false information on five annual compliance certifications that she submitted to the Member.

42. The Panel concluded that, each of the Respondent's contraventions caused harm to the integrity of the capital markets.

43. The Panel was mindful that the proposed penalties would deter the Respondent from engaging in similar conduct by permanently prohibiting her from engaging in securities related business on behalf of any Member. The penalties would also deter other licensed individuals from engaging in similar misconduct by imposing meaningful sanctions on Approved Persons who engage in such behavior.

44. Finally, the Respondent had not previously been the subject of MFDA disciplinary proceedings. Additionally, by entering into the Settlement Agreement, the Respondent had

accepted responsibility for her misconduct. She had also saved the MFDA and the Membership at large, the time, resources and expenses associated with a full disciplinary hearing.

IX. RESULT

45. For all the above reasons, the Panel concluded that the Settlement Agreement was reasonable and proportionate. Accordingly, the following penalties were imposed upon the Respondent:

a) The Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member commencing from the date of this Order, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

b) The Respondent shall pay a fine of $50,000 in certified funds on the date of this Order, pursuant to section 24.1.1(b) of MFDA By-law No.1;

c) The Respondent shall pay costs of $10,000 in certified funds on the date of this Order, pursuant to section 24.2 of MFDA By-law No.1; and

d) 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 9th day of April, 2021.

"Frederick W. Chenoweth"
Frederick W. Chenoweth
Chair

"Samuel Mah"
Samuel Mah
Industry Representative

"Joseph Yassi"
Joseph Yassi
Industry Representative

Appendix "A"

Settlement Agreement

File No. 201971

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: My Phuong "Vicky" Luong Dao

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the "MFDA") will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (the "Hearing Panel") of the MFDA should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of the MFDA ("Staff") and My Phuong "Vicky" Luong Dao (the "Respondent").

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondent's activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to section 24.1 of By-law No.1.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule "1".

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule "1", will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

III. ACKNOWLEDGMENT

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part IX) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

IV. AGREED FACTS

Registration History

6. From August 4, 2005 until December 5, 2018, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative)[1] with WFG Securities Inc. (the "Member"), a Member of the MFDA.

7. The Member terminated the Respondent on December 5, 2018 after discovering the conduct described in this Settlement Agreement. The Respondent has not been registered in the securities industry in any capacity since her termination.

8. At all material times, the Respondent conducted business in Richmond Hill, Ontario.

The Member's Policies and Procedures

9. At all material times, the Member's Policies and Procedures Manual:

a) required Approved Persons to obtain the prior written approval of their Branch Manager and the Member's Registrations Department before entering into an Outside Business Activity;

b) prohibited Approved Persons from engaging in personal financial dealings with clients; and

c) required Approved Persons to immediately disclose conflicts and potential conflicts of interests to the Member's compliance department and to

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

potentially impacted clients in writing and together with the Member to ensure that conflicts are addressed by the exercise of responsible business judgment influenced only by the best interests of the client.

Client MH

10. In or about 2006, the Respondent met client MH.

11. On May 20, 2007, client MH became a client of the Member. Client MH was born in 1953 and is currently 66 years old.

12. The Respondent states that she and client MH had a pre-existing relationship and a friendship prior to client MH becoming a client of the Member.

13. At all material times, the Respondent was the Approved Person responsible for servicing client MH's accounts at the Member.

The Western Battery Property

14. On March 6, 2010, the Respondent and client MH signed an Agreement of Purchase and Sale to purchase a condominium unit in a property which was to be built on Western Battery Road in Toronto, Ontario (the "Western Battery Property"). The Respondent and client MH purchased the Western Battery Property directly from the condominium developer for the purchase price of $278,900.

15. The purchase price and related costs for the Western Battery Property were to be split between the Respondent and client MH. On February 20, 2014, the purchase of the Western Battery Property closed. In advance of the closing date, the Respondent paid a deposit of $41,835 in three installment payments. On February 18, 2014, client MH made a payment of approximately $27,000 representing the funds due on closing.

16. In order to finance the purchase of the Western Battery Property, the Respondent and client MH jointly obtained a mortgage in the amount of $223,119 which was secured against the property. The mortgage listed the Respondent and client MH as the borrowers. The mortgage terms required the Respondent and client MH to make monthly payments of $1,046.54.

17. Commencing in March 2014, the Western Battery Property was intermittently rented to tenants. The rental income was paid to the Respondent by tenants and was deposited each month

into a joint bank account that the Respondent and client MH opened in their names on July 2, 2013 (the "Joint Bank Account").

18. The Respondent states that both the Respondent and client MH had full access to the Joint Bank Account at all times.

19. The rental income generated by the Western Battery Property covered a portion of the mortgage payment and some expenses payable for the maintenance of the Western Battery Property. However, because the mortgage payments and expenses exceeded the amount of rent received from tenants, the Respondent states that she asked client MH to make additional deposits into the Joint Bank Account to cover additional expenses such as the property taxes and insurance for the property.

20. The amounts and frequency of the contributions that the Respondent asked client MH to deposit into the Joint Bank Account to cover expenses associated with maintaining the Western Battery Property varied over time.

21. The Respondent states that she paid more than half of the additional funds required to cover the costs of the mortgage and expenses payable to maintain the Western Battery Property.

22. The Respondent did not provide receipts or any formal accounting to client MH for expenses that were incurred and paid from money deposited into the Joint Bank Account including rent received from tenants, monetary contributions requested from and paid by client MH and amounts that the Respondent claims that she contributed in respect of the maintenance of the Western Battery Property. There was no written agreement between the Respondent and client MH dividing the profits or costs arising from the Western Battery Property.

The Dan Leckie Property

23. On March 24, 2013, the Respondent signed an Agreement of Purchase and Sale to purchase a condominium unit in a building located on Dan Leckie Way in Toronto, Ontario (the "Dan Leckie Property") for the purchase price of $610,200. The Respondent agreed to purchase the Dan Leckie Property directly from the condominium developer. The Respondent received a discount of $91,530 on the purchase price that was to be deducted from the balance owing upon closing.

24. On April 15, 2013, the Respondent paid $30,510 as a deposit for the Dan Leckie Property.

25. In May 2013, client MH and the Respondent agreed that client MH would become a joint purchaser of the Dan Leckie Property and would participate in the management and rental of the condominium unit to tenants to earn rental income.

26. The purchase of the Dan Leckie Property closed on June 24, 2013 and the Respondent and client MH took possession of the property.

27. In order to finance the purchase of the Dan Leckie Property, the Respondent and client MH obtained a mortgage in the amount of $396,500 that was secured against the property. The mortgage listed the Respondent and client MH as the borrowers. The terms of the mortgage required the Respondent and client MH to make bi-weekly mortgage payments on the Dan Leckie Property in the amount of $781.

28. Upon obtaining the mortgage, the Respondent and client MH obtained a line of credit also secured against the Dan Leckie Property (the "Line of Credit"). Both the Respondent and client MH are listed as borrowers on the Line of Credit and thereafter were permitted to draw upon the Line of Credit to cover expenses associated with the maintenance and management of the property.

29. Client MH contributed $117,900 towards the purchase of the Dan Leckie Property. Client MH financed her contribution towards the down payment by drawing on a home equity line of credit secured against her home.

30. The Respondent treated the $30,510 deposit that she paid at the time of purchase and the $91,530 discount that she had obtained from the vendor without the knowledge of client MH as her contribution to the down payment.

31. The Respondent did not inform client MH about the $91,530 discount that she was promised by the vendor of the Dan Leckie Property and did not share the benefit of that discount with client MH. The Respondent did not inform client MH that the total amount of money that the Respondent contributed towards the down payment on the Dan Leckie Property was limited to the $30,510 initial deposit that the Respondent had previously paid.

32. Commencing in July 2013, the Dan Leckie Property was intermittently rented to tenants.

33. The monthly mortgage payments for the Dan Leckie Property were made from the Joint Bank Account and deposits of the rental income received from tenants of the Dan Leckie Property were made into the Joint Bank Account.

34. The rental income received from the Dan Leckie Property covered a portion of the monthly mortgage payments and some additional expenses that were payable to maintain the property. The Respondent states that she asked client MH to make additional monthly contributions to cover additional expenses associated with the maintenance of the Dan Leckie Property including property taxes and insurance.

35. The amounts and frequency of the contributions that the Respondent asked client MH to deposit into the Joint Bank Account to cover expenses associated with maintaining the Dan Leckie Property varied over time.

36. The Respondent states that she paid more than half of the additional funds required to service the Dan Leckie Property.

37. The Respondent did not provide receipts or any formal accounting to client MH for expenses that were incurred in respect of the maintenance of the Dan Leckie Property. There was no written agreement between the Respondent and Client MH dividing the profits or costs arising from the Dan Leckie Property.

The Lawsuit Commenced by Client MH

38. In or about September 2017, client MH's representatives requested information from the Respondent about the details of the Western Battery Property and the Dan Leckie Property. Client MH's representatives also asked for an accounting from the Respondent of the value of the Western Battery Property and the Dan Leckie Property. The Respondent states that she initially asked for a signed authorization from client MH to discuss her finances with client MH's representatives but, given an ongoing complaint to the Member by client MH about the Respondent's conduct, the Respondent understood that she was not to contact client MH or her representatives.

39. On December 22, 2017, client MH commenced a civil proceeding against the Respondent with respect to, among other things, the Western Battery Property and the Dan Leckie Property.

40. The Respondent and client MH continue to own the Western Battery Property and the Dan Leckie Property. Both the Respondent and client MH wish to sell the Western Battery Property and the Dan Leckie Property as an important step in the process of resolving the ongoing civil litigation between them that was commenced by client MH.

Conflicts of Interest

Personal Financial Dealings - The Purchase of the Rental Properties

41. By obtaining money from client MH to finance the purchase of the Western Battery Property and the Dan Leckie Property, the Respondent engaged in personal financial dealings with client MH that gave rise to a conflict of interest.

42. The Respondent did not disclose to the Member at any time that she had obtained money from client MH to finance the purchase of the Western Battery Property and the Dan Leckie Property.

43. The Respondent did not at any time disclose to client MH that obtaining money from client MH to finance the purchase of the Western Battery Property and the Dan Leckie Property gave rise to a conflict of interest.

44. As a result of the Respondent's failure to inform the Member about the fact that she had obtained money from client MH to finance the purchase of two rental properties, the Respondent contravened the policies and procedures of the Member and undermined the Member's ability to address the conflicts of interest that arose as a result of these personal financial dealings by the exercise of responsible business judgement influenced only by the best interests of client MH.

Personal Financial Dealings - The Joint Bank Account

45. As stated above, on or about July 2, 2013, the Respondent and client MH opened the Joint Bank Account in order to facilitate receipt of the rental income generated by the Western Battery Property and the Dan Leckie Property and the payment of expenses for the properties, including the monthly mortgage payments on each property. The Respondent also asked client MH to make additional contributions into the Joint Bank Account to cover miscellaneous expenses associated with the maintenance of the properties that exceeded the rental income generated by the properties, including property tax and insurance.

46. By opening and maintaining the Joint Bank Account with client MH which enabled the Respondent to comingle money obtained from client MH with the Respondent's money and which enabled the Respondent to access money contributed by or owed to client MH, the Respondent engaged in personal financial dealings with client MH that gave rise to a conflict of interest.

47. The Respondent did not disclose to the Member that she had opened the Joint Bank Account with client MH at any time.

48. The Respondent did not disclose to client MH that the opening and maintenance of a Joint Bank Account with her client gave rise to a conflict of interest.

49. Consequently, the Respondent contravened the policies and procedures of the Member and the Member was unable to take steps to ensure that the resulting conflict of interest was disclosed to the client and that steps were taken to address the conflict of interest by the exercise of responsible business judgment influenced only by the best interests of client MH.

Personal Financial Dealings – Receiving Personal Cheques from Client MH to the Respondent

50. On April 3, 2012, the Respondent accepted a cheque from client MH in the amount of $50,000 that was payable to the Respondent and was deposited into a personal bank account that was owned and controlled by the Respondent.

51. On April 25, 2013, the Respondent accepted another cheque from client MH in the amount of $20,000 that was payable to the Respondent and was deposited into a personal bank account that was owned and controlled by the Respondent.

52. On June 9, 2013, the Respondent accepted a third cheque from client MH in the amount of $25,000 that was payable to the Respondent and was deposited into a separate personal bank account that was owned and controlled by the Respondent.

53. The Respondent did not document in writing any reasons why the cheques totaling $95,000 were provided by client MH to the Respondent or the terms pursuant to which these amounts would be held or used by the Respondent or any terms of repayment.

54. In or about January 2014, the Respondent returned $25,000 to client MH. By June 2019, after the investigation of the Respondent's conduct was completed by the MFDA, the Respondent had repaid client MH the additional $70,000 that was obtained from client MH.

55. By accepting $95,000 from client MH, the Respondent engaged in personal financial dealings with client MH that gave rise to a conflict of interest.

56. The Respondent did not disclose to the Member that she had accepted $95,000 from client MH and had deposited it into her personal bank account at any time.

57. The Respondent did not disclose to client MH that her acceptance of $95,000 from client MH gave rise to a conflict of interest.

58. Consequently, the Respondent contravened the Member's policies and procedures and the Member was unable to take any steps to ensure that the conflict was addressed by the exercise of responsible business judgment influenced only by the best interests of client MH.

Outside Business Activities

59. As described above, in or about March 2010, the Respondent and client MH purchased real estate together to generate rental income for their mutual financial benefit.

60. The Respondent did not disclose to the Member that she intended to engage in real estate investing or real estate management with client MH and she did not receive approval from the Member to engage in real estate investing or management as an Outside Business Activity.

Personal Financial Dealings

61. As described above, commencing in or about March 2010, the Respondent engaged in personal financial dealings with client MH by:

a) purchasing and maintaining real estate investments with client MH;
b) opening and operating a joint bank account with client MH and co-mingling money obtained from client MH with the Respondent's money; and
c) accepting cheques from client MH which were deposited into the Respondent's personal bank account.

62. The terms and conditions of their investment arrangement, the reasons why money was advanced by client MH, the use that could be or would be made of that money and terms of repayment were not documented in any written agreement between the parties. Furthermore, no collateral was provided to client MH to secure repayment of the $95,000 that she advanced to the Respondent in cash.

Misleading the Member

63. Between November 2012 and November 2016, while she was registered with the Member, the Respondent was required to complete Annual Representative Compliance Certificates ("ARCCs") in respect of her business practices. The Respondent completed and submitted ARCCs on November 1, 2012, October 2, 2013, October 1, 2014, November 18, 2015 and November 30, 2016.

64. In each of the ARCCs which the Respondent filed with the Member, she certified that she had fully disclosed all information relating to Outside Business Activities to the Member.

65. The following answers provided by the Respondent in the ARCCs that she submitted to the Member were false or misleading:

ARCC DATE	QUESTION	RESPONSDENT'S ANSWER
2012	Have you ever encountered or are you aware of any real or potential conflicts of interest while dealing with clients or prospective clients?	NO
2012	Have you ever co-mingled any client money with your own and/or have you ever received cash from any clients or policy holders?	NO
2013	Within the last 12 months, have you encountered or are you aware, of any real or potential conflicts of interest while dealing with clients and/or prospects?	NO
2013	Within the last 12 months have you co-mingled any client money with your own and/or have you received any cash from any clients, policy holders or directly from a product company or referral?	NO
2014	Within the last 12 months, have you encountered or are you aware, of any real or potential conflicts of interest while dealing with clients and/or prospects?	NO
2014	Within the last 12 months have you co-mingled any client money with your own and/or have you received any cash from any clients, policy holders or directly from a product company or referral?	NO
2015	Within the last 12 months, have you encountered, or are you aware of, any real or potential conflicts of interest while dealing with clients and/or prospects?	NO
2015	Within the last 12 months have you co-mingled any client money with your own and/or have you received any cash	NO

ARCC DATE	QUESTION	RESPONSDENT'S ANSWER
	from any clients, policy holders or directly from a product company or referral?	
2016	Within the last 12 months have you encountered or are you aware of, any real or potential conflicts of interest while dealing with clients and/or prospects?	NO

66. By providing the answers listed above to the Member and by certifying that she had fully disclosed all information relating to Outside Business Activities to the Member, the Respondent provided false or misleading information to the Member and thereby:

a) interfered with the Member's ability to supervise the Respondent and ensure her compliance with the policies and procedures of the Member and regulatory requirements;
b) failed to observe high standards of ethics and conduct in the transaction of business, and
c) engaged in conduct that is unbecoming and detrimental to the public interest.

Additional Factors

67. The Respondent states that she has fully reimbursed to client MH the $95,000 that was deposited with and held by the Respondent.

68. The Western Battery Property and the Dan Leckie Property are still jointly owned by the Respondent and client MH. The Joint Bank Account is still in operation to facilitate the payment of expenses and receipt of rental income from the Western Battery Property and the Dan Leckie Property.

69. The civil proceeding commenced by client MH against the Respondent in respect of the Western Battery Property and the Dan Leckie Property is still ongoing.

70. The Respondent states that at no time did she undertake any actions with an intent to harm client MH.

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

72. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses that would have been necessary to conduct a contested hearing on the merits.

V. CONTRAVENTIONS

73. Commencing in March 2010, the Respondent has been engaged in an outside business activity that was not disclosed to or approved by the Member, contrary to the policies and procedures of the Member and MFDA Rule 1.2.1(d)[2] (now Rule 1.3.2) and MFDA Rules 2.10, 2.5.1 and 1.1.2;

74. Commencing in March 2010, the Respondent engaged in personal financial dealings with client MH by:

a) purchasing two condominium units (the "Condominium Units") with client MH and accepting payments from client MH to finance the costs of purchasing and maintaining the Condominium Units;
b) opening and maintaining a joint bank account with client MH to facilitate:
    i. the receipt of deposits including payments from client MH towards the costs of the Condominium Units;
    ii. the deposit and accounting for rental income generated by the Condominium Units; and
    iii. the payment of expenses (including mortgage payments) associated with the purchase and maintenance of the Condominium Units; and
c) accepting three cheques from client MH totaling $95,000 which were deposited into the Respondent's personal bank account

all of which gave rise to conflicts of interest that the Respondent failed to disclose to her Member, disclose in writing to the client, or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures, and MFDA Rules 2.1.4, 2.1.1, 1.1.2, 2.10, and 2.5.1; and

[2] Effective December 3, 2010, Rule 1.2.1(d) concerning dual occupations was renumbered as 1.2.1(c). Effective March 17, 2016, Rule 1.2.1(c) was amended and renumbered as MFDA Rule 1.3. Approved Persons have always been required to ensure that the Member is aware of and approves of any Approved Person's engagement in outside business activities.

75. Between November 2012 and November 2016, the Respondent submitted five Annual Representative Compliance Certification questionnaires to the Member that contained false or misleading responses, thereby interfering with the ability of the Member to supervise the Respondent's activities, failing to observe high standards of ethics and conduct in the transaction of business, and engaging in conduct that is unbecoming and detrimental to the public interest, contrary to MFDA Rules 2.1.1, 1.1.2 and 2.5.1.

VI. TERMS OF SETTLEMENT

76. The Respondent agrees to the following terms of settlement:

a) the Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member commencing from the date of acceptance of this Settlement Agreement by a Hearing Panel, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

b) the Respondent shall pay a fine in the amount of $50,000 in certified funds upon acceptance of the Settlement Agreement by a Hearing Panel, pursuant to section 24.1.1(b) of MFDA By-law No. 1;

c) the Respondent shall pay costs in the amount of $10,000 in certified funds upon acceptance of the Settlement Agreement by a Hearing Panel, pursuant to section 24.2 of MFDA By-law No.

d) the Respondent will attend the Settlement Hearing on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

77. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts set out in Part IV and the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

78. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent. 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.

79. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the Settlement Hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive her 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.

80. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to section 24.1.1 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with section 24.5 of By-law No. 1.

81. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, 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 her.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

82. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel

comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

83. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule "A" is not made 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 this Settlement Agreement or the settlement negotiations.

84. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that she will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

XI. DISCLOSURE OF AGREEMENT

85. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

86. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

XII. EXECUTION OF SETTLEMENT AGREEMENT

87. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

88. A facsimile copy of any signature shall be effective as an original signature.

DATED this 8th day of December, 2020.

"My Phuong "Vicky" Luong Dao"
My Phuong "Vicky" Luong Dao

"RD"
Witness – Signature

RD
Witness – Print Name

"Charles Toth"
Staff of the MFDA
Per: Charles Toth
Vice-President, Enforcement

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: My Phuong "Vicky" Luong Dao

ORDER

WHEREAS on November 26, 2019, 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 commencing a disciplinary proceeding against My Phuong "Vicky" Luong Dao (the "Respondent");

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

AND WHEREAS based upon the admissions of the Respondent, the Hearing Panel is of the opinion that:

a) Commencing in March 2010, the Respondent has been engaged in an outside business activity that was not disclosed to or approved by the Member, contrary to the policies and procedures of the Member and MFDA Rule 1.2.1(d)[3] (now Rule 1.3.2) and MFDA Rules 2.10, 2.5.1 and 1.1.2;

[3] Effective December 3, 2010, Rule 1.2.1(d) concerning dual occupations was renumbered as 1.2.1(c). Effective March 17, 2016, Rule 1.2.1(c) was amended and renumbered as MFDA Rule 1.3. Approved Persons have always been required to ensure that the Member is aware of and approves of any Approved Person's engagement in outside business activities.

b) Commencing in March 2010, the Respondent engaged in personal financial dealings with client MH by:

i. purchasing two condominium units (the "Condominium Units") with client MH and accepting payments from client MH to finance the costs of purchasing and maintaining the Condominium Units;

ii. opening and maintaining a joint bank account with client MH to facilitate:

I. the receipt of deposits including payments from client MH towards the costs of the Condominium Units;

II. the deposit and accounting for rental income generated by the Condominium Units; and

III. the payment of expenses (including mortgage payments) associated with the purchase and maintenance of the Condominium Units; and

iii. accepting three cheques from client MH totaling $95,000 which were deposited into the Respondent's personal bank account

all of which gave rise to conflicts or potential conflicts of interest that the Respondent failed to disclose to her Member, disclose in writing to the client, or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures, and MFDA Rules 2.1.4, 2.1.1, 1.1.2, 2.10, and 2.5.1; and

c) Between November 2012 and November 2016, the Respondent submitted five Annual Representative Compliance Certification questionnaires to the Member that contained false or misleading responses, thereby interfering with the ability of the Member to supervise the Respondent's activities, failing to observe high standards of ethics and conduct in the transaction of business, and engaging in conduct that is unbecoming and detrimental to the public interest, contrary to MFDA Rules 2.1.1, 1.1.2 and 2.5.1.

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

1. The Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member commencing from the date of this Order, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

2. The Respondent shall pay a fine in the amount of $50,000 in certified funds on the date of this Order, pursuant to section 24.1.1(b) of MFDA By-law No. 1;

3. The Respondent shall pay costs in the amount of $10,000 in certified funds on the date of this Order, pursuant to section 24.2 of MFDA By-law No. 1; and

4. 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 810779