



**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: Quan Matthew Anh Nguyen**

Heard: March 5, 2019 in Toronto, Ontario

Decision: March 5, 2019

Reasons for Decision: March 28 , 2019

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Joan Smart  
Susan Dicks  
Brigitte J. Geisler

Chair  
Industry Representative  
Industry Representative

Appearances:

Alan Melamud	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Quan Matthew Anh Nguyen	)	Respondent, not in attendance or represented by
	)	counsel
	)	

## **I. INTRODUCTION**

1. By Notice of Hearing, dated October 1, 2018, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a disciplinary proceeding against Quan Matthew Anh Nguyen (the “Respondent”). In the Notice of Hearing the MFDA alleged that, commencing in or about September 2017, the Respondent failed to cooperate with an investigation by the MFDA into the Respondent’s conduct, contrary to section 22.1 of MFDA By-law No. 1.

2. The Notice of Hearing provided that a first appearance was to be held by teleconference before a hearing panel in the hearing room at the MFDA offices, 121 King St. West, Suite 1000, Toronto Ontario on December 11, 2018 at 9 a.m. At that time the Respondent did not appear in person or by counsel or agent on his behalf.

3. At the first appearance, MFDA Enforcement Counsel filed two Affidavits of Service. The first was by a process server who stated that, on October 24, 2018, she had served: the Notice of Hearing; a letter, dated October 9, 2018, to the Respondent from MFDA Enforcement Counsel concerning the proceeding; a copy of the MFDA’s Rules of Procedure; and a copy of the MFDA’s Guide to the Disciplinary Hearing Process, by leaving a copy with the Respondent’s father at 635 DC, Mississauga, Ontario (the “DC address”). That process server had been advised by another process server that he had personally attempted to serve the Respondent at the same address on October 13, 2018. That process server received a phone number for the Respondent and called the Respondent who advised him to leave the documents at the DC address as he was then in Montreal and would not be returning for two weeks.

4. The second Affidavit of Service was by an administrative assistant in the Enforcement Department of the MFDA who stated that she sent the same documents referred to in paragraph 3 above by email to the email address from which the Respondent had previously written to the MFDA (the “Respondent’s last email address”).

5. At the first appearance, held on December 11, 2018, the Chair of the Hearing Panel decided that the manner of service as described in paragraphs 3 and 4 above constituted valid service of the Notice of Hearing on the Respondent and set the date for the hearing on the merits for March 5, 2019.

6. On December 20, 2018, MFDA Enforcement Counsel sent the Respondent a copy of the Order arising from the first appearance by email to the Respondent's last email address. The email further advised the Respondent of the date for the hearing on the merits.

7. The Respondent did not file a Reply to the Notice of Hearing.

8. On January 28, 2019, MFDA Enforcement Counsel sent a letter to the Respondent by regular mail to the DC address and by email to the Respondent's last email address advising him of his right to receive pre-hearing disclosure, and stating that, if the Respondent did not make a request for disclosure, Enforcement Counsel would proceed with the hearing without providing pre-hearing disclosure.

9. On February 11, 2019, MFDA Enforcement Counsel sent a letter to the Respondent by regular mail to the DC address and by email to the Respondent's last email address advising him of his right to receive hearing materials on which staff of the MFDA would rely, and advising him that if the Respondent did not advise that he wished to receive such materials, Enforcement Counsel would proceed with the hearing without providing such materials to the Respondent.

10. The Respondent did not reply to either of the above letters or otherwise make a request for pre-hearing disclosure or the hearing materials.

11. The Respondent did not appear at the hearing on March 5, 2019, nor was he represented there by counsel or an agent.

12. Prior to the commencement of the hearing, at the request of the Hearing Panel, MFDA Enforcement Counsel attempted to contact the Respondent by telephone but was unsuccessful.

## **II. MANNER OF PROCEEDING**

13. Section 20.4 of MFDA By-law No. 1 states:

“If a Member or person summoned before a hearing of a Hearing Panel by way of Notice of Hearing fails to:

- a) serve a reply in accordance with Section 20.2; or

b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a reply may have been served;

the Hearing Panel may proceed with the hearing of the matter on the date and at the time and place set out in the Notice of Hearing (or any subsequent date, at any time and place), without further notice to and in the absence of the Member or person, and the Hearing Panel may accept the facts alleged by the Corporation in the Notice of Hearing as having been proven by the Corporation and may impose any of the penalties described in Section 24.1.”

14. Rules 7.3, 8.4 and 13.5 of the MFDA Rules of Procedure provide powers to the Hearing Panel similar to those set out in section 20.4 of MFDA By-law No. 1. Rules 7.3 and 8.4 also include the power to impose costs.

15. MFDA Enforcement Counsel submitted that, in the circumstances, the hearing should proceed in the absence of the Respondent and the Hearing Panel concurred.

### **III. THE FACTS**

#### **Our Approach to the Evidence**

16. As was stated by the Supreme Court of Canada in the case of *F.H. McDougall*, [2008] 3 S.C.R. 41 at para. 40, “there is only one civil standard of proof at common law and that is proof on the balance of probabilities”. The Court went on to state at para. 45, “evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test”. That is the standard we have applied in this case.

17. The primary evidence presented to the Hearing Panel was the Affidavit of Lara Rowles, a Manger of Investigations in the Enforcement Department of the MFDA, sworn on February 28, 2019, together with attached exhibits.

18. The MFDA Rules of Procedure contain provisions relating to the admissibility of evidence and sworn statements.

19. MFDA Rule 1.6 (1) provides that:

“Subject to sub-Rule (3), a Panel may admit as evidence any testimony, document or other thing, including hearsay, which it considers to be relevant to the matters before it and is not bound by the technical or legal rules of evidence.”

20. MFDA Rule 13.4 (1) provides that:

“The Hearing Panel may allow the evidence of a witness or proof of a particular fact or document to be given by sworn statement unless an adverse party reasonably requires the attendance of the witness at the hearing for cross-examination.”

21. Accordingly, we admitted and marked as Exhibit 4 the Affidavit of Lara Rowles, together with the attached exhibits.

22. We have set out herein the facts as we have found them in this case.

### **Registration History of Respondent**

23. From May 2009 to June 10, 2013, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Investors Group Financial Services Inc., a Member of the MFDA.

23. From December 5, 2013 to May 12, 2017, the Respondent was registered in Ontario as a dealing representative with Carte Wealth Management Inc. (“CWM”), a Member of the MFDA.

24. On May 12, 2017, the Respondent resigned from CWM and is no longer registered in the securities industry.

### **Suspicious Loan Applications**

25. B2B Bank is a financial institution that, among other things, provides investment loans to individuals. While registered with CWM, the Respondent processed certain loans on behalf of clients through B2B Bank.

26. On April 4, 2017, B2B Bank advised CWM that it was terminating its relationship with the Respondent because: nine out of eighteen active loans processed by the Respondent for clients were in default; clients redeemed RRSP assets securing the loans shortly after the loans were

obtained; and there was some indication of fraud with two of five loans applications submitted on behalf of clients that were in process.

27. In response to information CWM received from B2B Bank, it commenced an investigation and suspended the Respondent.

28. In response to a request for information from MFDA Staff, CWM advised that on April 11, 2017, CWM had interviewed the Respondent who denied any wrongdoing. The Respondent initially committed to cooperating with CWM's investigation by contacting his leveraged clients to obtain originals of all documents supporting his clients' assets and income, but shortly thereafter failed to follow up and did not respond to emails from CWM regarding two of his clients' loans going into default.

29. On May 12, 2017, the Respondent submitted his resignation to CWM.

30. At the time when MFDA Staff commenced its investigation of the Respondent, MFDA Staff had two ongoing investigations of other Approved Persons with different MFDA Members in connection with submitting fraudulent loan applications to National Bank and B2B Bank. Among the Respondent's clients, MFDA Staff identified six individuals who were suspected of making fraudulent loan applications in the other investigations. MFDA Staff identified various concerns in loan applications submitted by the Respondent on behalf of those six clients to B2B Bank and Manulife Bank, which included those set out below.

- a) The Respondent's branch manager at CWM had difficulty contacting the six subject clients.
- b) In the case of three of the clients, the phone numbers provided were all either not in service, incorrect or always busy.
- c) Loan applications submitted for three of the clients by the Respondent to National Bank contained certain supporting documents which the bank concluded were fraudulent. One of those was an application by TN, which included a Manulife Investments statement that the bank concluded was fraudulent. That statement shows the address of TN as being the DC address and the beneficiary as being the

Respondent. The original MFDA investigator in this matter had concluded that TN was the Respondent's mother.

- d) The investment loan applications submitted by the Respondent on behalf of three of the clients, including TN, failed to disclose other significant loans the clients had obtained through other Approved Persons, which MFDA Staff had learned of in its other investigations.
- e) Two of the loan applications contained investment statements that MFDA Staff determined were falsified.
- f) The investment loans of three of the clients went into default.
- g) One of the clients was an Approved Person who was also the subject of a MFDA investigation as he had connected other Approved Persons with clients who then made suspected fraudulent loan applications.

### **The Respondent's Failure to Cooperate**

31. On May 18, 2017, MFDA Staff sent the Respondent a letter by registered mail to his last known address as recorded in the MFDA's records, being the DC address. The letter advised the Respondent of MFDA Staff's investigation and requested further information concerning the Respondent's RSP loan practice. The Respondent signed for the letter and acknowledged delivery on May 23, 2017.

32. The Respondent replied to MFDA Staff's letter on May 23, 2017 by email, and provided some answers to MFDA Staff's request for information.

33. On September 21, 2017, MFDA Staff sent the Respondent a letter by registered mail to the DC address, requesting that he attend an interview pursuant to section 22.1 of MFDA By-law No. 1. The Respondent's father signed for the letter on September 26, 2017.

34. The Respondent did not respond to MFDA Staff's request for an interview.

35. On October 10, 2017, MFDA Staff sent the Respondent a second letter to the DC address by process server. In the letter, Staff advised the Respondent he was required to attend an interview scheduled for November 10, 2017 and to confirm his attendance by email prior to October 24,

2017. Staff further advised the Respondent of his obligations pursuant to section 22.1 of MFDA By-law No. 1. The letter was hand delivered at the DC address to the Respondent's father.

36. The Respondent did not respond to Staff's second letter or attend at the interview scheduled for November 10, 2017.

#### **IV. ANALYSIS**

37. Under section 22.1 of MFDA By-law No. 1, all Approved Persons and former Approved Persons have an obligation to provide information and attend an interview as required by Staff for the purpose of an investigation. The relevant portions of that section states:

“For the purpose of any examination or investigation pursuant to this By-law, ...an Approved Person of a Member or other person under the jurisdiction of the Corporation pursuant to the By-laws or the Rules may be required by the Corporation:

- a) to submit a report in writing with regard to any matter involved in any such investigation;
- b) to produce for inspection and provide copies of the books, records and accounts of such person relevant to the matters being investigated;
- c) to attend and give information respecting any such matters; ...

and the ...person shall be obliged to submit such report, to permit such inspection, provide such copies and to attend, accordingly. Any ... person subject to an investigation conducted pursuant to this By-law may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the person conducting the investigation...”

38. Pursuant to section 24.1.4 of MFDA By-law No. 1, a former Approved Person, such as the Respondent, remains subject to the jurisdiction of the MFDA for certain purposes. That section states:

“For the purposes of Sections 20 to 24 inclusive, any Member or Approved Person or other person subject to the jurisdiction of the Corporation shall remain subject to the jurisdiction of the Corporation, notwithstanding that such Member has ceased to be a Member, Approved Person or other person subject to the jurisdiction of the Corporation.”

39. Pursuant to section 21 of MFDA By-law No. 1, the MFDA has a duty to conduct such examinations as it considers necessary or desirable into compliance with certain requirements. The relevant portion of that section states:

“The Corporation shall make such examination and investigations into the conduct, business or affairs of any Member, Approved Person of a Member or any other person under the jurisdiction of the Corporation pursuant to the By-laws and/or Rules as it considers necessary or desirable in connection with any matter relating to compliance by such person with:

a) the By-laws, Rules or Policies of the Corporation...”

40. The failure by an Approved Person, or former Approved Person, to cooperate in an investigation seriously undermines the ability of the MFDA to fulfill its regulatory obligations under section 21 of By-law No. 1 and its regulatory mandate of investor protection.

41. In our view, Staff had information relating to suspicious loan applications such that there was a basis for MFDA Staff to conduct an investigation into the matter to determine whether the Respondent had failed to comply with MFDA requirements, and the Respondent had an obligation to cooperate in that investigation. As a result of the Respondent’s failure to cooperate, MFDA Staff was not able to determine the full nature and extent of the Respondent’s subject activities, including whether the Respondent knowingly submitted fraudulent loan applications, whether there were other fraudulent loan applications or other participants involved and whether the Respondent benefitted from the conduct.

42. By failing to respond to Staff’s letters in September and October, 2017 and attend an interview as requested by Staff, the Respondent failed to cooperate with an investigation by MFDA Staff, contrary to section 22.1 of MFDA By-law No. 1.

## **V. SANCTION**

43. Staff submitted that an appropriate penalty to impose on the Respondent would be:

a) a permanent prohibition on the Respondent’s authority to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member;

- b) a fine in the amount of at least \$75,000; and
- c) costs in the amount of \$6,500.

44. The Supreme Court of Canada, in the case of *Pezim v. British Columbia Securities Commission (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 at para. 59 held that the primary goal of securities legislation is “the protection of the investor but other goals include...ensuring public confidence in the system”.

45. We have considered a number of factors in determining the penalty, including those referenced in the case of *Tonnies (Re)*, 2005 LNCMFDA 7 at para. 46:

- a) the protection of the investing public;
- b) the integrity of the securities markets;
- c) specific and general deterrence;
- d) the protection of the MFDA’s membership; and
- e) the protection of the integrity of the MFDA’s enforcement processes.

46. In our opinion, the failure of an Approved Person, or former Approved Person, to cooperate in a MFDA investigation is a very serious breach of MFDA By-law No. 1 as it significantly impedes the ability of the MFDA to fulfill its important regulatory mandate.

47. The Respondent has not shown that he recognizes the seriousness of not cooperating with the regulator or that he takes responsibility for his conduct.

48. One mitigating factor is that the Respondent has not previously been the subject of a MFDA regulatory proceeding. However, we have given that little weight, given the seriousness of the misconduct.

49. A significant penalty is essential to achieve the goal of both specific and general deterrence, which we view as particularly critical in this case. A permanent prohibition and significant fine will prevent the Respondent from repeating the misconduct in the future, and also discourage other Approved Persons from refusing to cooperate in MFDA investigations in order to attempt to avoid potentially more serious penalties if the underlying misconduct were to be established.

50. We have decided that it is appropriate to impose a permanent prohibition on the Respondent's authority to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member. By refusing to cooperate with the MFDA in its investigation, the Respondent demonstrated he is ungovernable and would, therefore, pose a risk to investors and Members if he were allowed to continue to operate in the mutual fund industry.

51. We have also decided that it is appropriate to impose a fine of \$75,000 on the Respondent, which is reflective of the seriousness of the misconduct.

52. A permanent prohibition and a fine of \$75,000 is consistent with a number of previous decisions made by MFDA Hearing Panels.

*Armani (Re)*, 2017 LNCMFDA 185

*Gizzo (Re)*, 2011 LNCMFDA 49

*Phillips (Re)*, 2015 LNCMFDA 106

*Zhang (Re)*, 2013 LNCMFDA 81

53. We note that there was some distinction between those cases and the present case in that in the previous cases the Respondents were more directly linked to the misconduct that was the subject of the investigations. In this case it was not entirely clear whether the Respondent knowingly or unknowingly submitted the suspicious loan applications. The fact that one of the applications was for a person who the previous MFDA investigator had concluded was the Respondent's mother and included an investment statement that referenced the Respondent as beneficiary, suggested the Respondent may have been a knowing participant. In any event, because an allegation of fraud is very serious and ought to be investigated by the MFDA, we viewed the Respondent's failure to cooperate in the investigation to be a serious breach that should attract a significant penalty.

54. We have decided that the Respondent should pay costs of \$6,500 in this case. MFDA Enforcement Counsel provided the Hearing Panel with a Bill of Costs in the amount of \$6,525, which did not include all of the time expended by MFDA Staff or certain disbursements.

55. In summary, we are imposing the following sanction on the Respondent:

- a) a permanent prohibition on the Respondent’s authority to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member, pursuant to section 24.1.1 (e) of MFDA By-law No. 1;
- b) a fine in the amount of \$75,000, pursuant to section 24.1.1(b) of MFDA By-law No.1; and
- c) costs in the amount of \$6,500, pursuant to section 24.2 of MFDA By-law No. 1.

**DATED** this 28<sup>th</sup> day of March, 2019.

“Joan Smart”

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Joan Smart  
Chair

“Susan Dicks”

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Susan Dicks  
Industry Representative

“Brigitte J. Geisler”

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Brigitte J. Geisler  
Industry Representative

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