



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: Xinyi (Millie) Pu

Heard: June 20, 2022 by electronic hearing in Toronto, Ontario

Decision: June 20, 2022

Reasons for Decision: August 23, 2022

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Joan Smart
Cheryl Hamilton
Michael-Murray Coulter

Chair
Industry Representative
Industry Representative

Appearances:

Julie Grajales)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
Xinyi (Millie) Pu)	Respondent
)	
)	

I. INTRODUCTION

1. By Notice of Settlement Hearing, dated April 20, 2022, The Mutual Fund Dealers Association of Canada (the “MFDA”) commenced proceedings against Xinyi (Millie) Pu (the “Respondent”) indicating that an electronic hearing would be held on June 20, 2022 (the “Settlement Hearing”) to consider whether a hearing panel of the MFDA (the “Hearing Panel”) should accept the settlement agreement entered into between Staff of the MFDA (“Staff”) and the Respondent, dated April 18, 2022 (the “Settlement Agreement”).

2. At the Settlement Hearing on June 20, 2022, after hearing from MFDA counsel and the Respondent and considering the Settlement Agreement, the Hearing Panel decided to accept it. These are our reasons for that decision.

II. CONTRAVENTIONS

3. The Respondent admitted to the following violations of the Rules of the MFDA:

On February 20, 2020, the Respondent posted a portion of a client’s quarterly investment statement to a social media and messaging application without the client’s consent in order to promote her profile in the financial services industry, thereby failing to maintain in confidence all information received by the Member relating to a client, contrary to the Member’s policies and procedures and MFDA Rules 2.1.3, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1).

III. TERMS OF SETTLEMENT

4. Staff and the Respondent agreed to the following terms of settlement under which the Respondent shall:

- a) pay a fine in the amount of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No.1;
- b) pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No.1;
- c) successfully complete the Ethics and Professional Conduct Course offered by the IFSE Institute, or an industry course acceptable to Staff, within 6 months of acceptance of the Settlement Agreement, pursuant to section 24.1.1(f) of MFDA By-law No. 1; and

- d) in the future comply with MFDA Rules 2.1.3, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1).

IV. AGREED FACTS

Registration History

5. Between August 7, 2018 and April 16, 2021, the Respondent was registered in Ontario as a dealing representative with Investors Group Financial Services Inc. (the “Member”), a Member of the MFDA.

6. Since April 19, 2021, the Respondent has been registered in Ontario with Investors Group Securities Inc., a Dealer Member of the Investment Industry Regulatory Organization of Canada.

Disclosure of Confidential Client Information

7. At all material times, the Member’s policies and procedures prohibited Approved Persons from disclosing client information to anyone outside of the Member without the client’s written consent.

8. At all material times, client #1 was a client of the Member whose account was serviced by the Respondent. In February 2020, client #1 was a senior, and a vulnerable client due to age.

9. On February 20, 2020, without the consent of client #1, the Respondent posted a portion of client #1’s quarterly investment statement from the Member (the “Statement”) on a social media and messaging application called “WeChat”.

10. At the material time, the Respondent had approximately 850 contacts on WeChat that were able to view the post containing the Statement.

11. The Statement contained the following confidential personal information of client #1:

- a) client #1’s surname, and one of client #1’s given names;
- b) part of client #1’s address; and
- c) the account opening value, redemptions for the quarter, change in value, and current value for client #1’s account at the Member.

12. The Respondent stated that she posted the Statement to WeChat as a marketing strategy to increase her client base.

13. By posting the Statement on a social media application to promote her business without the prior written consent of client #1, the Respondent failed to maintain the information of a client in confidence.

Member's Investigation

14. On February 24, 2020, an individual reported to the Member that the Respondent had posted the subject Statement on WeChat.

15. The Member commenced an investigation into the Respondent's conduct, during which the Respondent admitted to the conduct described above.

16. The Respondent stated that she deleted the Statement from WeChat after being contacted by the Member during its investigation.

17. The Member contacted client #1 regarding the Respondent's conduct and offered to have another Approved Person assigned to client #1's account. Client #1 requested that the account be reassigned to another Approved Person.

18. On April 9, 2020, the Member issued a Warning Letter to the Respondent for failing to maintain in confidence client information.

V. CONSIDERATIONS

Role of the Hearing Panel

19. Pursuant to s. 24.4.3 of MFDA By-law No. 1, a hearing panel may only accept or reject a settlement agreement. It can not substitute its own decision.

20. It is generally accepted that a hearing panel will not lightly interfere with a settlement agreement entered into between Staff and a respondent and will not reject it unless it views the penalty as clearly falling outside a reasonable range of appropriateness. See, for example, *Sterling Mutuals Inc. (Re)*, LNCMFDA 16 at para. 37.

21. In determining whether to accept the Settlement Agreement, the Hearing Panel considered primarily whether it: was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's misconduct and previous MFDA cases; would serve as a specific and general deterrent; and was aligned with the MFDA's regulatory objectives to protect investors and strengthen public confidence in the mutual fund industry.

VI. MISCONDUCT

22. MFDA Rule 2.1.1 requires, among other things, that Approved Persons deal fairly, honestly and in good faith with clients, observe high standards of ethics and conduct in the transaction of business and not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.

23. According to MFDA Rule 2.1.3 (a), all information received by a Member relating to a client or the business or affairs of a client is to be maintained in confidence by the Member and its Approved Persons and no such information is to be disclosed to any other person without the prior written consent of the client.

24. Pursuant to MFDA Rule 2.1.3 (b), Members must develop and maintain written policies and procedures relating to confidentiality and the protection of client information.

25. MFDA Rule 2.5.1 requires Members to establish, implement and maintain policies and procedures to ensure that the handling of its business is in accordance with MFDA By-laws, Rules and Policies.

26. MFDA Rule 1.1.2 requires Approved Persons to comply with the MFDA's By-laws and Rules as they relate to the Member or Approved Person.

27. In this case, as required, the Member had policies and procedures that prohibited its Approved Persons from disclosing client information to anyone outside of the Member without the client's written consent.

28. We found, as admitted by the Respondent, that when she posted the subject Statement on WeChat without client # 1's consent, she contravened the Member's policies and procedures and MFDA Rules 2.1.3, 2.1.1 and 1.1.2 (as it relates to 2.5.1).

VII. PENALTY

29. In our view, the Respondent's misconduct in this case was serious and showed a lack of judgement that is concerning.

30. However, in reaching our decision on the penalty, we considered several mitigating factors, including:

- a) there was no evidence of client financial loss resulting from the Respondent's misconduct, although we note that client #1 chose to have the account reassigned when client #1 became aware of the misconduct;
- b) by entering into the Settlement Agreement, the Respondent accepted responsibility for her misconduct and saved the MFDA the time, resources and expense of a full hearing on the merits;
- c) the misconduct involved a single instance; and
- d) the Member issued a warning letter to the Respondent.

31. We noted that the Respondent had not previously been the subject of MFDA disciplinary proceedings, but gave this factor very little weight as she has only been registered for less than four years.

32. The penalty in this case should deter the Respondent from engaging in this kind of conduct in the future and should send a message to others that this kind of conduct will not be tolerated by the MFDA.

33. To the limited extent that there were prior MFDA cases involving somewhat similar circumstances, the proposed resolution in this case was within a reasonable range of appropriateness. The case presented to us which was closest on its facts was *Wang (Re)* that involved an Approved Person who sent an email from his address at his member firm to his personal address, attaching a spreadsheet including confidential information about 32 clients without obtaining the clients' or member firm's consent. Upon becoming registered at another member firm, the Approved Person forwarded the subject email to his new work address which then became accessible to his new firm and its affiliated bank. He subsequently created a worksheet which contained confidential information about 4 additional clients that he sent along with the original spreadsheet from his business email address to his personal email address prior to resigning from the second member firm, without obtaining the clients' or the second member firm's consent. He was subsequently not registered in the mutual fund business. In that case the settlement included a 6 month suspension, a fine of \$5,000 and costs of \$2,500. The facts in the Wang case were distinguishable from the present case as the Wang case involved multiple clients and multiple instances of misconduct.

Wang (Re), 2022 LNMFDA 25

VIII. CONCLUSION

34. We concluded that the proposed sanction was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's conduct and previous MFDA cases. It should serve as a specific and general deterrent. We were also of the view that it is aligned with the MFDA's regulatory objectives. Accordingly, we decided to accept the Settlement Agreement.

DATED this 23rd day of August, 2022.

“Joan Smart”

Joan Smart
Chair

“Cheryl Hamilton”

Cheryl Hamilton
Industry Representative

“Michael-Murray Coulter”

Michael- Murray Coulter
Industry Representative

DM 894776