



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: Libin Shen

Heard: July 6, 2021 by electronic hearing in Toronto, Ontario

Decision: July 6, 2021

Reasons for Decision: February 2, 2022

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

John Lorn McDougall, Q.C.
Selwyn Kossuth
Timothy Pryor

Chair
Industry Representative
Industry Representative

Appearances:

Brendan Forbes)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Libin Shen)	Respondent
)	
)	

I. INTRODUCTION

1. By a Notice of Hearing dated November 6, 2020 the Mutual Fund Dealers Association of Canada (the “MFDA”) gave notice of a hearing to be held before a hearing panel of the Central Regional Council (the “Hearing Panel”) of the MFDA on January 14, 2021 at 10:30am (Eastern).

II. ALLEGATIONS

2. The Notice of Hearing sets out the following allegations that the Respondent, Libin Shen (the “Respondent”) violated By-laws, Rules or Policies of the MFDA:

Allegation #1: Between January 2017 and May 2018, he opened and processed trades in fictitious mutual fund client accounts which made him eligible to receive promotional monies that were payable to new banking clients, thereby failing to observe high standards of ethics and conduct in the transaction of business or engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

Allegation #2: Commencing in August 2019, he failed to cooperate with an investigation into his activities conducted by Staff of the MFDA, contrary to section 22.1 of MFDA By-law No. 1.

3. The parties entered a document which they entitled “Agreed Statement of Facts,” dated March 16, 2021. The Agreed Statement of Facts (“ASF”) provides as follows:

III. ADMISSIONS AND ISSUES TO BE DETERMINED

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

5. Staff and the Respondent jointly request that the Hearing Panel determine, on the basis of this Agreed Statement of Facts, the appropriate penalty and costs to be imposed on the Respondent.

These admissions are repeated in paragraph 35 of the ASF.

4. While the ASF does set out a number of facts which are agreed it also contains the following which is not a factual matter:

6. Staff and the Respondent agree that submissions made with respect to the appropriate penalty are based only on the agreed facts in Part IV, and no other information, facts or documents, subject to the content of this paragraph and paragraph 7 below.

7. In the event that the Hearing Panel advises one or both of Staff and the Respondent of any additional facts that it considers necessary in order to determine the issues before it, Staff and the Respondent agree that such additional facts may be provided to the Hearing Panel, either: (a) with the consent of both Staff and the Respondent if the additional facts are agreed upon; (b) if the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel; or (c) if the parties are both present at the hearing and are not in agreement about the additional facts requested by the Hearing Panel, the parties will be given a reasonable opportunity to lead evidence concerning the additional facts. In circumstances where a party leads evidence concerning additional facts requested by the Hearing Panel, the opposing party may cross-examine any witness tendered to lead such evidence and shall be given a reasonable opportunity to lead responding evidence if they wish to do so.

The Hearing Panel will address this provision in Part IV, Analysis and Reasons which follows later in these Reasons for Decision.

5. The ASF is attached hereto as Appendix “1”. The relevant portions for the Hearing Panel’s purposes are as follows:

Registration History

9. From July 24, 2015 to December 13, 2018, the Respondent was registered in Ontario as a dealing representative with TD Investment Services Inc. (the “Member”), a Member of the MFDA. During this time, the Respondent was also employed by Toronto Dominion Bank (“TD Bank”).

10. The Member operates as a subsidiary of TD Bank.

11. On December 13, 2018, the Member terminated the Respondent and he is no longer registered in the securities industry in any capacity.

12. At all material times, the Respondent conducted business in the Markham, Ontario area.

Facts

Allegation #1: The Respondent Opened Fictitious Client Accounts

13. At all material times, TD Bank offered new customers a promotional payment of \$300 that would be paid into the bank account of bank customers (the “Welcome Offer”) approximately 12 weeks after the customer opened a new TD Bank “unlimited” or “all inclusive” chequing account, if the customer also completed two of the following actions within 45 days of opening the account:

- a) a direct deposit to the new account;
- b) make a minimum \$50 Canadian or US online bill payment; and/or
- c) set up a pre-authorized debit of a minimum of \$50.

14. The Respondent executed a scheme to obtain the Welcome Offer for his own benefit by opening fictitious TD Bank chequing accounts which he could access and control. He subsequently opened fictitious mutual fund accounts with the Member, signed the signatures of each mutual fund

client on mutual fund account documentation, and processed transactions in the fictitious bank and mutual fund accounts that were necessary to qualify for the “Welcome Offer”.

15. TD Bank conducted an investigation of the Respondent’s conduct and determined that the Respondent opened approximately 46 fictitious TD Bank chequing accounts.

16. Between January 2017 and May 2018, the Respondent subsequently opened fictitious mutual fund accounts with the Member in order to satisfy the pre-authorized debit condition that was necessary to establish eligibility for the Welcome Offer. In each of these instances, the Respondent:

- a) created a fictitious customer profile and signed client signatures on account opening documents, including Know-Your-Client (“KYC”) forms required by the Member;
- b) deposited monies into the TD Bank chequing account; and
- c) made a lump-sum purchase or set up a pre-authorized debit from the bank account to money market mutual funds in the fictitious investment accounts that he opened with the Member. The pre-authorized debits were funded from the initial deposits that the Respondent made into the TD Bank chequing accounts.

17. The TD Bank investigation revealed and the Respondent admits that in total, the Respondent opened approximately 40 fictitious mutual fund accounts.

18. Subsequently, after the 12 week period had elapsed, the Bank deposited the \$300 Welcome Offer payments into some of the fictitious accounts opened by the Respondent.

19. In or about December 2018, TD Bank completed its investigation of the Respondent’s conduct described above and reported the Respondent’s conduct to the Member. Prior to discovery of the Respondent’s conduct, TD Bank had paid a total of \$2,700 in Welcome Offer payments into some of the fictitious TD Bank chequing accounts that had been opened by the Respondent. The Respondent subsequently withdrew those amounts from the fictitious bank accounts.

20. By making contributions into mutual fund investments held in investment accounts with the Member, the Respondent also accumulated credit towards mutual fund sales targets that qualified the Respondent for financial bonuses if achieved.

21. On December 13, 2018, TD Bank and the Member terminated the Respondent.

Allegation #2: Failure to Cooperate with the MFDA’s Investigation

22. On or about February 4, 2019, Staff of the MFDA (“Staff”) sent a letter by registered and regular mail to the Respondent notifying him that Staff had opened an investigation into his conduct, and requesting that the Respondent confirm whether he had opened accounts without client authorization or had falsified or forged client signatures on account documentation. Staff further requested that the Respondent provide any additional information or documentation related to the allegations.

23. On February 26, 2019, Staff received a handwritten statement from the Respondent in which he admitted that he misused his position at TD Bank by creating false accounts in order to benefit from the Welcome Offer. The Respondent stated that he had reviewed a list of client names associated with the falsified accounts with TD Bank and that he was willing to review the client

list with Staff. The Respondent provided Staff with his primary address and contact information within the letter.

24. On August 6, 2019, Staff sent a letter by registered and regular mail to the Respondent and requested bank, credit card and investment account information for all accounts in which the Respondent held a beneficial interest so that Staff could further investigate the scope and extent of the Respondent's alleged misconduct. Staff further requested that the Respondent contact Staff to schedule a date for an interview relating to the subject matter within the letter.

25. The registered mail copy of the August 6, 2019 letter was received and signed for by the Respondent on August 7, 2019.

26. The Respondent states that he sent a response to the August 6, 2019 letter to Staff by regular mail. The Respondent states that his response letter explained that he was unable to provide bank statements from the fraudulent accounts which the Respondent opened as the Respondent did not have access to these accounts after his termination. Staff did not receive the Respondent's responses to the August 6, 2019 letter and the Respondent has not produced a copy of his response to the August 6, 2019 letter to Staff at any time. Furthermore, the Respondent never produced any of his own banking records and never contacted Staff to schedule an interview.

27. On September 4, 2019, Staff sent a letter by registered and regular mail to the Respondent which repeated the request for information that had previously been made in the August 6, 2019 letter, and again requested that the Respondent contact Staff to schedule an interview.

28. On September 10, 2019, the registered mail copy of the September 4, 2019 letter was received and signed for by the Respondent.

29. The Respondent did not provide a response to Staff's September 4, 2019 letter.

30. On September 29, 2019, Staff personally served a letter dated September 23, 2019 on the Respondent which repeated the requests for the information that had previously been requested in the September 4, 2019 letter and the August 6, 2019 letter, and stated that an interview with the Respondent had been scheduled for October 22, 2019. The September 23, 2019 letter also stated that, should the Respondent fail to provide the documentation or attend for an interview with Staff, Staff would seek authorization to commence enforcement proceedings against the Respondent for failing to cooperate with Staff's investigation.

31. The Respondent did not respond to Staff's September 23, 2019 letter, and failed to attend the interview with Staff that was scheduled to take place on October 22, 2019.

32. Due to the Respondent's failure to cooperate with Staff's investigation, Staff has not been able to determine the full nature and extent of the Respondent's conduct described above.

Additional Factors

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

34. By entering into this Agreed Statement of Facts, the Respondent has saved the MFDA the time, resources and expenses associated with conducting a full hearing of the allegations.

Misconduct Admitted

35. By engaging in the conduct described above, the Respondent admits that:
- a) between January 2017 and May 2018, he opened and processed trades in fictitious mutual fund client accounts which made him eligible to receive promotional monies that were payable to new banking clients, thereby failing to observe high standards of ethics and conduct in the transaction of business or engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1; and
 - b) commencing in August 2019, he failed to cooperate with an investigation into his activities conducted by Staff of the MFDA, contrary to section 22.1 of MFDA By-law No. 1.

III. ANALYSIS AND REASONS

6. As was indicated in paragraph 4 above, the Hearing Panel considers it to be desirable to address the provisions of the ASF in which the parties purport to reserve the right to limit the Hearing Panel's access to facts unless both Staff and the Respondent agree such facts can be given to the Hearing Panel.

7. Section 24.4 of MFDA By-law No.1 and Rules 14 and 15 of the MFDA *Rules of Procedure* ("ROP") create a system for hearing panels authorizing settlement agreements reached by the parties. This is achieved by the hearing panel "accepting" the settlement reached by the parties independently prior to the hearing. This is done instead of the hearing panel "approving"; it "accepts" the result of the settlement process.

8. In order to encourage settlements prior to hearings on the merits, the MFDA necessarily chose to formulate a test for acceptance that was less rigorous than that which a hearing panel would apply were it deciding the case itself and choosing what it considered to be the appropriate sanctions and/or penalties.

9. As is made clear in By-law No. 1 of the MFDA, the role of a hearing panel at a settlement hearing is fundamentally different from its role at a contested hearing. As was stated by the MFDA hearing panel in *Sterling Mutuals Inc. (Re)*, quoting the reasoning in the I.D.A matter of *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 Mutuals Inc. (Re), 2008 LNCMFDA 16, at para. 37.

Milewski (Re), [1999] I.D.A.C.D. No. 17 at p. 11, Ontario District Council, Decision dated July 28, 1999.

10. The principle that a hearing panel will not reject a settlement agreement unless the proposed penalty clearly falls outside the reasonable range of appropriateness assists 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, as long as the result falls within a reasonable range of what is appropriate.

British Columbia Securities Commission v. Seifert, [2007] BCCA 484 at para. 31.

11. However, that is not the case we are dealing with in this instance; what we are dealing with is not a settlement agreement but an agreed statement of facts which is a commonplace procedure much encouraged by those charged with administering justice in an efficient and fair manner.

12. On the other hand, the MFDA has in Rule 14 of the ROP closely defined what constitutes a settlement agreement that qualifies for the broader treatment. In this instance, the requirement in Rule 14.1(c) of the ROP is the most important one as follows:

14.1 Contents of Settlement Agreements

1. A Settlement Agreement made pursuant to section 24.4.1 (Settlement Hearings) of MFDA By-law No. 1 shall be in writing and signed by the parties and contain:
 - c) the consent and agreement of the Respondent to the terms of the Settlement Agreement, including the penalties and costs to be imposed on the Respondent.

13. The ASF therefore does not qualify as a settlement agreement. In a sense, it is the polar opposite; it is a non-settlement agreement. The agreement is that the hearing committee should decide.

14. Having done so, the parties cannot by agreement fetter the Hearing Panel's need for facts which might assist in performing its task. We are charged with deciding the correct penalty and not in any fashion bound by what the parties may have agreed regarding the relevant facts.

15. The decision of Justice Moldaver of the Supreme Court of Canada, writing on behalf of the full court in *R v. Anthony-Cook*, is of assistance. In *Anthony-Cook*, the issue was, broadly, the considerations to be applied when a court is deliberating departing from a joint submission by the parties in a criminal case. However, it was written, and has subsequently been accepted, to apply to all cases involving joint submissions with respect to penalty or other sanctions.

R v. Anthony-Cook, 2006 SCC 43, [2016] 2 S.C.R. 204.

16. In a portion of his judgement in *R v. Anthony-Cook*, under the title Guidance for Trial Judges, Justice Moldaver states the following:

[49] Finally, I would offer some brief guidance to trial judges on the approach they should follow when they are troubled by a joint submission on sentence.

And he elaborates as follows:

[54] Counsel should, of course, provide the court with a full account of the circumstances of the offender, the offence, and the joint submission without waiting for a specific request from the trial judge. As trial judges are obliged to depart only rarely from joint submissions, there is a “corollary obligation upon counsel” to ensure that they “amply justify their position on the facts of the case as presented in open court” (Martin Committee Report, at p. 329). Sentencing — including sentencing based on a joint submission — cannot be done in the dark. The Crown and the defence must “provide the trial judge not only with the proposed sentence, but with a full description of the facts relevant to the offender and the offence”, in order to give the judge “a proper basis upon which to determine whether [the joint submission] should be accepted” (*DeSousa*, at para. 15; see also *Sinclair*, at para. 14).

[55] This is not to say that counsel must inform the trial judge of “their negotiating positions or the substance of their discussions leading to the agreement” (*R. v. Tkachuk*, 2001 ABCA 243, 293 A.R. 171, at para. 34). But counsel must be able to inform the trial judge why the proposed sentence would not bring the administration of justice into disrepute or otherwise be contrary to the public interest. If they do not, they run the risk that the trial judge will reject the joint submission.

Anthony-Cook, *supra* at paras 49, 54-55

17. The present case is, of course, not a joint submission on sentence but it remains of paramount importance that a hearing panel be provided with all the necessary facts to reach a just decision. The presence of a term such as the one in the ASF in this case raises the question whether any relevant facts have been withheld and if so, why. Neither party provided any information in that regard to the Hearing Panel, although fairly the Hearing Panel for its part did not pose any questions in that regard either.

18. However, in our view we were entitled to conclude, as we did, that Staff had provided full and complete information as described by Justice Moldaver and had held nothing relevant back.

Proceeding on that basis, the Hearing Panel had to determine what it considered to be the correct sentence.

19. As is the usual practice, Staff filed extensive written submissions (“Submission”) in which a very strong view of the seriousness of the Respondent’s misconduct was taken. We agree that the misconduct was extremely serious, striking as it does at the heart of the mutual fund industry, that is to say the necessity that there be absolute integrity in both of the participants in the securities industry and of the records of the Member. These are immutable requirements.

20. However, while Staff gives credit to the Respondent for ultimately entering into the ASF where he admitted to the Allegations, Staff apparently had forgotten that the Respondent filed a Reply to the Notice of Hearing dated November 6, 2020 on November 25, 2020. The Reply was as follows:

From: LiBin Shen
To: Brendan Forbes; Corporate Secretary
Subject: [EXT] Reply: File number 202057
Date: Wednesday, November 25, 2020 10:40:25 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi,

I am admitting the facts alleged and conclusions drawn by the MFDA (allegations #1 and #2) in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed. A copy of this reply is also sent via regular mail.

For future document delivery please send it to this email.

Thank you

Li Bin

It is clear from the “Caution” note that it was received by the MFDA on November 25, 2020. It is also clear from the Reply that the Respondent has been consistent in taking two positions: he has admitted the allegations and pleaded mitigating circumstances in respect of any penalties to be assessed. Further, he first admitted his misconduct in writing on February 26, 2019 according to paragraph 23 of the ASF.

21. In the Submissions at paragraphs 32 and 33, Staff made the following submissions with which the Hearing Panel agrees and found that a permanent prohibition order is required in the present case:

32. By opening fictitious mutual fund accounts for the purpose of obtaining financial incentive payments offered to new clients by TD Bank, the Respondent devised and implemented a fraudulent scheme. Fraudulent conduct cannot be tolerated in the mutual fund industry and is among the most serious types of misconduct that the MFDA disciplinary process is intended to address.

33. As stated in the *Guo* decision which involved the same misconduct contained in Allegation #1:

“The facts in this case are extremely serious involving a significant breach of trust by outright dishonesty. At the heart of the mutual fund industry is an understanding that its primary *modus operandi* is to carry out its business with unfailing honesty. This case involves grave dishonesty resulting in a most serious breach of trust.

In our view, the penalty in this case must reflect the seriousness of the dishonesty and breach of trust. There is no doubt, in our view, that the conduct here attracts the most serious penalty that is available in these circumstances, which is the permanent prohibition of Mr. Guo's authority to act and be registered as a mutual fund salesperson pursuant to section 24.1.J(e) of MFDA By-law No. 1. Such a penalty is necessary to send a clear message to the securities industry and the investing public that conduct of this nature will not be tolerated.”

Guo (Re) [2020] MFDA Hearing Panel of the Central Regional Council, Reasons for Decision dated April 2, 2020, MFDA File No. 201949, at paras 19-20.

22. The question of the correct financial penalty for the failure to co-operate with Staff's investigation of Allegation #2, was somewhat more problematic for two principal reasons; firstly, the failure to co-operate was limited. It centered on an investigation which related to possible further offences and thus seemed to the Hearing Panel to be somewhat speculative in view of the fact that there was nothing tangible to suggest that there were any such further offences. Secondly, the Respondent admitted his misconduct almost immediately. His failure to agree to the financial penalties sought by Staff, having in mind what was being asked for in the Submissions, was understandable. That proposal is contained in paragraph 25 of the Submission as follows:

Staff proposes the following penalties against the Respondent in this case:

- a) a permanent prohibition on the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

- b) a fine of at least \$50,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
- c) costs in the amount of at least \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1.

23. The determination of the correct penalty for failure to co-operate with Staff's investigation was also more complicated than it was for Allegation #1. This is because the Respondent's failure to co-operate was largely limited in time and by subject. It occurred before the filing of the Notice of Hearing and after the Respondent's employers, TD Bank and the Member had conducted an investigation which apparently concluded that there were really no clients involved but rather that the clients were fictional. Nothing was identified in this investigation or in the MFDA investigation that supported a theory that other names were involved and much less that they were real people. The ASF makes that clear.

24. 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 recognized 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] MFDA Hearing Panel of the Central Regional Council, Reasons for Decision dated February 21, 2006, MFDA File No. 200509, at para. 85.

25. The foregoing provides both guidance and a checklist for hearing panels and is one in which we employed in this case. There is a plethora of other guidance such as the MFDA Sanction Guidelines, publications concerning sentencing principals published from time to time by the MFDA and others, and of course there is the extensive case law which has developed over the years and which has fostered a coherent sentencing regime.

26. The never to be forgotten primary goal of securities regulation is the protection of the investor. Sanctions should also be preventative, protective and prospective in nature.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557 per Iacobucci J. at paras. 59, 68.

27. In the *Tonnies (Re)* case, the hearing panel likened its role as being similar to that of a Securities Commission when determining the appropriate penalty to impose in an enforcement proceeding. The hearing panel cited the Ontario Securities Commission decision in *Re Mithras Management Ltd. et al.* (1990), 13 O.S.C.B. 1600 at 1610 for the proposition that:

...[T]he role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily as the circumstances may warrant – those whose conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient.

Tonnies (Re), MFDA File No. 200503, June 27, 2005, paras 45 and 46.

28. In order to properly protect investors, penalties imposed by hearing panels should prevent or at least discourage the Respondent and other Approved Persons from engaging in similar conduct in the future. Deterrence is intended to capture both specific deterrence of the wrongdoer as well as general deterrence of other participants in the capital markets in order to protect investors.

29. Additional deterrence is needed in this case even though we have concluded that a permanent prohibition should be issued. More is required to ensure that the sanctions bite and are seen by others to be severe enough to act as a deterrent for similar misconduct.

30. A factor which weighed in the Respondent's favour was his conduct at the hearing. Appearing without counsel, he conducted himself admirably, gave evidence in a clear and forthright manner, both in chief and under rigorous cross-examination by Mr. Forbes. Particularly,

we were persuaded that he and his partner were the typical couple just beginning their careers with very little in the way of financial resources.

31. Having reviewed the evidence related to the two Allegations and considering the matter, we concluded, as we have stated previously that there should be a permanent prohibition but that the amount sought by Staff was excessive and we have reduced it to \$35,000.00.

32. The claim for \$5,000.00 for costs is allowed.

IV. CONCLUSION

33. For the foregoing reasons the Hearing Panel on July 6, 2021, granted the following Order:

- a) The Respondent is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1.
- b) The Respondent shall pay a fine in the amount of \$35,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1, payable as follows:
 - i. \$5,000 payable as of the date of this Order; and
 - ii. monthly installments, without interest, of \$1,250 for a period of two years commencing on August 1, 2021;
- c) The Respondent shall pay costs in the amount of \$5,000, pursuant to s. 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 2nd day of February, 2022.

“John Lorn McDougall”

John Lorn McDougall, Q.C.
Chair

“Selwyn Kossuth”

Selwyn Kossuth
Industry Representative

“Timothy Pryor”

Timothy Pryor
Industry Representative



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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: Libin Shen

AGREED STATEMENT OF FACTS

I. INTRODUCTION

1. By Notice of Hearing dated November 6, 2020, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a disciplinary proceeding against Libin Shen (the “Respondent”) pursuant to ss. 20 and 24 of MFDA By-law No. 1.

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

Allegation #1: Between January 2017 and May 2018, the Respondent opened and processed trades in fictitious mutual fund client accounts which made him eligible to receive promotional monies that were payable to new banking clients, thereby failing to observe high standards of ethics and conduct in the transaction of business or engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

Allegation #2: Commencing in August 2019, the Respondent failed to cooperate with an investigation into his activities conducted by Staff of the MFDA, contrary to section 22.1 of MFDA By-law No. 1.

II. IN PUBLIC / IN CAMERA

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

III. ADMISSIONS AND ISSUES TO BE DETERMINED

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

5. Staff and the Respondent jointly request that the Hearing Panel determine, on the basis of this Agreed Statement of Facts, the appropriate penalty and costs to be imposed on the Respondent.

IV. AGREED FACTS

6. Staff and the Respondent agree that submissions made with respect to the appropriate penalty are based only on the agreed facts in Part IV, and no other information, facts or documents, subject to the content of this paragraph and paragraph 7 below.

7. In the event that the Hearing Panel advises one or both of Staff and the Respondent of any additional facts that it considers necessary in order to determine the issues before it, Staff and the Respondent agree that such additional facts may be provided to the Hearing Panel, either: (a) with the consent of both Staff and the Respondent if the additional facts are agreed upon; (b) if the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel; or (c) if the parties are both present at the hearing and are not in agreement about the additional facts requested by the Hearing Panel, the parties will be given a reasonable opportunity to lead evidence concerning the additional facts. In circumstances where a party leads evidence concerning additional facts requested by the Hearing Panel, the opposing party may cross-examine any witness tendered to lead such evidence and shall be given a reasonable opportunity to lead responding evidence if they wish to do so.

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

Registration History

9. From July 24, 2015 to December 13, 2018, the Respondent was registered in Ontario as a dealing representative with TD Investment Services Inc. (the “Member”), a Member of the MFDA. During this time, the Respondent was also employed with Toronto Dominion Bank (“TD Bank”).

10. The Member operates as a subsidiary of TD Bank.

11. On December 13, 2018, the Member terminated the Respondent and he is no longer registered in the securities industry in any capacity.

12. At all material times, the Respondent conducted business in the Markham, Ontario area.

Facts

Allegation #1 – The Respondent Opened Fictitious Client Accounts

13. At all material times, TD Bank offered new customers a promotional payment of \$300 that would be paid into the bank account of bank customers (the “Welcome Offer”) approximately 12 weeks after the customer opened a new TD Bank “unlimited” or “all inclusive” chequing account, if the customer also completed two of the following actions within 45 days of opening the account:

- a) a direct deposit to the new account;
- b) make a minimum \$50 Canadian or US online bill payment; and/or
- c) set up a pre-authorized debit of a minimum of \$50.

14. The Respondent executed a scheme to obtain the Welcome Offer for his own benefit by opening fictitious TD Bank chequing accounts which he could access and control. He subsequently opened fictitious mutual fund accounts with the Member, signed the signatures of each mutual fund client on mutual fund account documentation, and processed transactions in the fictitious bank and mutual fund accounts that were necessary to qualify for the “Welcome Offer”.

15. TD Bank conducted an investigation of the Respondent’s conduct and determined that the Respondent opened approximately 46 fictitious TD Bank chequing accounts.

16. Between January 2017 and May 2018, the Respondent subsequently opened fictitious mutual fund accounts with the Member in order to satisfy the pre-authorized debit condition that was necessary to establish eligibility for the Welcome Offer. In each of these instances, the Respondent:

- a) created a fictitious customer profile and signed client signatures on account opening documents, including Know-Your-Client (“KYC”) forms required by the Member;
- b) deposited monies into the TD Bank chequing account; and
- c) made a lump-sum purchase or set up a pre-authorized debit from the bank account to money market mutual funds in the fictitious investment accounts that he opened with the Member. The pre-authorized debits were funded from the initial deposits that the Respondent made into the TD Bank chequing accounts.

17. The TD Bank investigation revealed and the Respondent admits that in total, the Respondent opened approximately 40 fictitious mutual fund accounts.

18. Subsequently, after the 12 week period had elapsed, the Bank deposited the \$300 Welcome Offer payments into some of the fictitious accounts opened by the Respondent.

19. In or about December 2018, TD Bank completed its investigation of the Respondent’s conduct described above and reported the Respondent’s conduct to the Member. Prior to discovery of the Respondent’s conduct, TD Bank had paid a total of \$2,700 in Welcome Offer payments into some of the fictitious TD Bank chequing accounts that had been opened by the Respondent. The Respondent subsequently withdrew those amounts from the fictitious bank accounts.

20. By making contributions into mutual fund investments held in investment accounts with the Member, the Respondent also accumulated credit towards mutual fund sales targets that qualified the Respondent for financial bonuses if achieved.

21. On December 13, 2018, TD Bank and the Member terminated the Respondent.

Allegations #2 – Failure to Cooperate with the MFDA’s Investigation

22. On or about February 4, 2019, Staff of the MFDA (“Staff”) sent a letter by registered and regular mail to the Respondent notifying him that Staff had opened an investigation into his conduct, and requesting that the Respondent confirm whether he had opened accounts without client authorization or had falsified or forged client signatures on account documentation. Staff further requested that the Respondent provide any additional information or documentation related to the allegations.

23. On February 26, 2019, Staff received a handwritten statement from the Respondent in which he admitted that he misused his position at TD Bank by creating false accounts in order to

benefit from the Welcome Offer. The Respondent stated that he had reviewed a list of client names associated with the falsified accounts with TD Bank and that he was willing to review the client list with Staff. The Respondent provided Staff with his primary address and contact information within the letter.

24. On August 6, 2019, Staff sent a letter by registered and regular mail to the Respondent and requested bank, credit card and investment account information for all accounts in which the Respondent held a beneficial interest so that Staff could further investigate the scope and extent of the Respondent's alleged misconduct. Staff further requested that the Respondent contact Staff to schedule a date for an interview relating to the subject matter within the letter.

25. The registered mail copy of the August 6, 2019 letter was received and signed for by the Respondent on August 7, 2019.

26. The Respondent states that he sent a response to the August 6, 2019 letter to Staff by regular mail. The Respondent states that his response letter explained that he was unable to provide bank statements from the fraudulent accounts which the Respondent opened as the Respondent did not have access to these accounts after his termination. Staff did not receive the Respondent's responses to the August 6, 2019 letter and the Respondent has not produced a copy of his response to the August 6, 2019 letter to Staff at any time. Furthermore, the Respondent never produced any of his own banking records and never contacted Staff to schedule an interview.

27. On September 4, 2019, Staff sent a letter by registered and regular mail to the Respondent which repeated the request for information that had previously been made in the August 6, 2019 letter, and again requested that the Respondent contact Staff to schedule an interview.

28. On September 10, 2019, the registered mail copy of the September 4, 2019 letter was received and signed for by the Respondent.

29. The Respondent did not provide a response to Staff's September 4, 2019 letter.

30. On September 29, 2019, Staff personally served a letter dated September 23, 2019 on the Respondent which repeated the requests for the information that had previously been requested in the September 4, 2019 letter and the August 6, 2019 letter, and stated that an interview with the Respondent had been scheduled for October 22, 2019. The September 23, 2019 letter also stated that, should the Respondent fail to provide the documentation or attend for an interview with Staff,

Staff would seek authorization to commence enforcement proceedings against the Respondent for failing to cooperate with Staff's investigation.

31. The Respondent did not respond to Staff's September 23, 2019 letter, and failed to attend the interview with Staff that was scheduled to take place on October 22, 2019.

32. Due to the Respondent's failure to cooperate with Staff's investigation, Staff has not been able to determine the full nature and extent of the Respondent's conduct described above.

Additional Factors

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

34. By entering into this Agreed Statement of Facts, the Respondent has saved the MFDA the time, resources and expenses associated with conducting a full hearing of the allegations.

Misconduct Admitted

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

- a) between January 2017 and May 2018, he opened and processed trades in fictitious mutual fund client accounts which made him eligible to receive promotional monies that were payable to new banking clients, thereby failing to observe high standards of ethics and conduct in the transaction of business or engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1; and
- b) commencing in August 2019, he failed to cooperate with an investigation into his activities conducted by Staff of the MFDA, contrary to section 22.1 of MFDA By-law No. 1.

Execution of Agreed Statement of Facts

36. This Agreed Statement of Facts may be signed in one or more counterparts which together shall constitute a binding agreement.

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

DATED this 16th day of March, 2021.

“Libin Shen”

Libin Shen

“Charles Toth”

Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement

DM 866618