



**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: Lucillia Sok Cheng Tan**

Heard: October 4, 2021 electronically by videoconference in Vancouver, British Columbia

Decision: October 4, 2021

Reasons for Decision: March 24, 2022

**REASONS FOR DECISION**

Hearing Panel of the Pacific Regional Council:

Joseph A. Bernardo  
Susan Monk  
Tammi Walsh

Chair  
Industry Representative  
Industry Representative

Appearances:

Zaid Sayeed	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Lucillia Sok Cheng Tan	)	Respondent, not in attendance or represented by
	)	counsel
	)	

## **I. OVERVIEW**

1. Lucillia Sok Cheng Tan (the “Respondent”) was registered as a dealing representative with WFG Securities Inc. (the “Member”), a Member of the Mutual Fund Dealer’s Association of Canada (the “MFDA”).

2. On March 17, 2021, the staff of the MFDA (“Staff”) issued a Notice of Hearing alleging that:

- a) Between approximately August 22, 2012 and April 24, 2019, the Respondent engaged in outside business activities that had not been disclosed to or approved by the Member, contrary to the Member’s policies and procedures and MFDA Rules 1.2.1(c) (as it then was, henceforth referred to as MFDA Rule 1.3.2), 1.1.2, 2.1.1, and 2.5.1.
- b) Between approximately 2013 and April 24, 2020, the Respondent failed to disclose to the Member a conflict or potential conflict of interest that arose from the Respondent’s outside business activities, contrary to MFDA Rules 2.1.1 and 2.1.4.
- c) From on or about approximately April 22, 2019, the Respondent failed to cooperate with an investigation by Staff into her conduct, contrary to section 22.1 of MFDA By-law No. 1.

3. A disciplinary hearing concerning these allegations, which the Respondent declined to attend, was held electronically by videoconference on October 4, 2021. At the conclusion of the hearing, the Hearing Panel ordered sanctions against the Respondent. The Order is attached as Appendix “A”.

4. These are the reasons for the Hearing Panel’s decision.

## **II. PROCEDURAL MATTERS**

### **Notice**

5. The Respondent did not attend or send anyone to represent her at the first appearance for this hearing, which took place on May 21, 2021.

6. Under Rule 4(2)(1) of the MFDA’s *Rules of Procedure*, Staff may serve a Notice of Hearing upon a respondent by any one of the following methods:

- a) by personal service on the respondent;
- b) by registered and ordinary mail or by courier with confirmation of delivery to the respondent's last known address in the records of the MFDA or those of the relevant jurisdiction's securities commission;
- c) by providing it to the respondent's counsel or agent, provided they consent; or
- d) by any other means, with the consent of the respondent or by order of the hearing panel.

7. At the first appearance, Staff tendered affidavits to establish that:

- a) On August 19, 2020, Staff interviewed the Respondent by videoconference, during which she provided Staff with her:
  - i) then current residential address;
  - ii) "long time" email address; and
  - iii) telephone number, which was the same as the number already recorded for her in the National Registration Database.
- b) On April 1, 2021, a process server attempted but was unable to personally serve the Notice of Hearing on the Respondent at the address she had given Staff during the interview, which was a unit in an apartment building. The concierge of the building told the process server that the Respondent owned the unit, but no longer lived in it.
- c) On April 1, 2021, Staff sent the Notice of Hearing to the email address the Respondent had given during the interview.
- d) On April 5, 2021, a Staff member placed a call to the telephone number given by the Respondent during the interview. The person answering the call identified herself as the Respondent. When the Staff member asked if the MFDA could forward the Notice of Hearing to her last known email address, the Respondent refused and stated that she no longer used it. When asked to provide another email address, the Respondent terminated the call. The Staff member immediately called back the same number, but the call went unanswered.
- e) On April 23, 2021, Staff again called the Respondent's last known telephone number. The person who answered sounded like the Respondent. She stated that the telephone number no longer belonged to the Respondent and did not know what number she was using now. The call then disconnected.

- f) On May 10, 2021, Staff sent texts to the Respondent's last known telephone number. These informed her that Staff had sent her a Notice of Hearing containing allegations against her, and that an order could be issued against her without her involvement if she failed to respond.
- g) On May 11, 2021, Staff sent the Notice of Hearing to the Respondent's last known residential address by way of both regular and registered mail. Staff also once more emailed the Notice of Hearing to the Respondent's last known email address.
- h) On May 11 and 12, 2021, process servers attempted to serve the Respondent personally at two residential addresses they had identified as potentially belonging to her, but were again unsuccessful.
- i) On May 14, 2021, Staff texted the Respondent at her last known telephone number to advise that a first appearance was scheduled for May 21, 2021. The Respondent was again cautioned that a failure to respond could result in an order being issued against her.
- j) Canada Post tracking data indicate that the Notice of Hearing sent by registered mail to the Respondent's last known residential address was redirected and on May 14, 2021 delivered to another, undisclosed address. For reasons that were not explained, Canada Post did not obtain the recipient's signature.

8. Staff asked the Hearing Panel to order that the Notice of Hearing had been successfully served by other means. The Panel declined to make the order, observing that the Canada Post tracking data confirmed the process server's information that the Respondent no longer resided at her last known address. Instead, the Panel adjourned the proceeding to a July 23, 2021 continuation.

9. At the continuation, which the Respondent also failed to attend, Staff tendered additional affidavits establishing that:

- a) Staff had engaged a skip tracing agency to determine the Respondent's whereabouts.
- b) On June 21, 2021, a representative of the agency telephoned the last known telephone number for the Respondent in the MFDA's records. The person answering the call identified herself as the Respondent and provided her current residential address.

- c) On July 8, 2021, Staff sent the Notice of Hearing to the Respondent's new address by both registered and regular mail. The registered mail package was eventually returned to the MFDA without recipient acknowledgement. The Notice of Hearing sent by regular mail was not returned.
- d) On July 15, 2021, Staff followed up by both texting and emailing the Respondent to advise her the next appearance was scheduled for July 23, 2021. No reply was received.

10. The uncontradicted evidence is that an agent of the Staff determined the Respondent's current residential address by speaking to her directly. Although the registered mail sent to the address was returned without confirmation of receipt, Rule 4(2)(1)(b) is clear that sending a Notice of Hearing to a respondent's last known address by ordinary mail is by itself sufficient to effect service.

11. The Notice of Hearing satisfies the requirements of Rule 7(2)(1), which, among other things, requires that a respondent be:

- a) provided with the particulars of Staff's case;
- b) advised of the potential sanctions that may follow an adverse finding; and
- c) warned that failing to file a Reply to the allegations or failing to attend the hearing could result in the misconduct being accepted as proved and penalties being ordered in the respondent's absence.

12. The Hearing Panel ordered that:

- a) the Respondent had been served with the Notice of Hearing in accordance with Rule 4.2(1)(b); and
- b) a hearing on the merits of Staff's case take place by videoconference on October 4, 2021.

### **Hearing in Respondent's absence**

13. When a respondent has been properly served with a Notice of Hearing but fails to file a Reply or attend the hearing, Rules 8.4(1) and Rule 7(3) give a hearing panel the discretion to proceed with the hearing, accept the uncontested allegations as proved and order sanctions, all without further notice to the respondent. While this is a significant departure from usual hearing practices, it is nonetheless consistent with procedural fairness.

14. A respondent's procedural rights in a MFDA hearing must be understood in the context of the public interest, which requires the timely and efficient resolution of outstanding allegations of misconduct. Under Rules 8.4(1) and 7(3), a hearing panel is limited to accepting Staff's case as particularized in the Notice of Hearing: it may accept as proved only those factual and legal assertions which the respondent has declined to answer after having been given explicit notice of them and choosing not to participate in the hearing. In these circumstances, it is neither unreasonable nor unfair to leave it to the hearing panel to decide whether or not it is necessary to test Staff's case.

15. Moreover, nothing in Rules 8.4(1) or 7(3) changes the onus on Staff to establish its case on the civil standard of a balance of probabilities. To accept a violation as proved, a hearing panel must always be satisfied that the facts, whether deemed or established on evidence, *prima facie* establish the legal elements of the misconduct alleged in the Notice of Hearing.

### **III. EVIDENCE**

16. Staff elected to supplement the deeming provisions of Rules 8.4(1) or 7(3) Staff with an affidavit sworn by the principal investigator in the case. The witness also testified in person to affirm all the particulars of her affidavit, except for an inconsequential typographical error in one paragraph. This was an incorrect reference to the Respondent's last day of registration, which the witness amended in her live testimony.

17. Evidence that is adduced in a respondent's absence must still be assessed in the usual fashion for relevance and probative value. If the evidence changes the character of Staff's case in any significant respect from what was alleged in the Notice of Hearing, it is incumbent on the hearing panel to consider whether it would be unfair to receive the evidence into the record without prior notice to the respondent. Nothing in the affidavit contradicts, or introduces any uncertainties about, the allegations in the Notice of Hearing or otherwise changes the character of Staff's case.

18. The affidavit establishes the following material facts.

19. On September 15, 2005, the Respondent became registered and commenced carrying on business as a dealing representative with the Member in Burnaby, British Columbia.

20. The Member's policies and procedures required Approved Persons to:

- a) submit an “Outside Business Activities Disclosure Form” to the Member and obtain its prior written approval before engaging in outside business activities;
- b) provide timely notice to the Member of any changes to their outside business activities;
- c) disclose to the Member any website used to promote or affiliated with the Approved Person’s outside business activities; and
- d) report to the Member all client dealings giving rise to conflicts or potential conflicts of interest.

21. On February 6, 2013, the Respondent submitted an Outside Business Disclosure Form to the Member.

- a) In the form, she disclosed that she was the corporate secretary of a company called A.T. Property Investors Hub Inc. (ATPIH), with which she had been affiliated since December 10, 2012. The Respondent described her role as limited to acting as an authorized signatory to the company’s bank account, and that her husband had made her a shareholder.
- b) In response to a Member inquiry for more details, the Respondent stated that her husband had set up ATPIH to avoid triggering estate taxes on his United States real estate investments in the event of his passing.
- c) The Respondent did not disclose any other outside business activity to the Member.

22. On or about February 21, 2013, the Member approved the Respondent’s involvement in ATPIH.

23. On January 18, 2019, the Member reported to the MFDA that it had suspended the Respondent due to her potential involvement in an undisclosed outside business activity.

24. Staff commenced an investigation and requested further information from the Member, which advised that:

- a) The Respondent had answered a branch audit inquiry with an email, which the Member’s audit team noticed included the website address “www.FairFlockpartners.com” in the signature block.
- b) The Member found a video on the internet that identified the Respondent as of one the founders of “Fair Flock Partners” (Fair Flock).

- c) On January 17, 2019, the Member suspended the Respondent.
- d) During a January 21, 2019 telephone interview, the Respondent among other things disclosed to the Member that:
  - i) Fair Flock was a marketing name for ATPIH.
  - ii) Her husband and son informed potential investors of real estate projects that were available for investment, and set up investment contracts under which investors placed a minimum of \$50,000.
  - iii) At least four clients of the Member had become involved in Fair Flock. These were all long-standing friends of the Respondent, who described them as “flipping co-partners”.
  - iv) In addition to being the corporate secretary for ATPIH, she was also a guarantor of a loan made to the company.

25. Upon reviewing the website located at [www.FairFlockpartners.com](http://www.FairFlockpartners.com), Staff discovered:

- a) The website described Fair Flock’s business as identifying real estate opportunities in the United States and Canada.
- b) The previously mentioned video, which:
  - i) appeared designed to solicit investors in Fair Flock;
  - ii) identified the Respondent as one of Fair Flock’s founders; and
  - iii) included testimonials from investors that praised the real estate investment services provided by the Respondent and the other founder.

26. On April 12, 2019, Staff directed the Member to obtain a statement from the Respondent explaining how Member clients were solicited to invest in Fair Flock, how their investments were recorded and tracked, and how they were able to withdraw or redeem their investments.

27. On April 19, 2019, the Member replied to Staff advising that instead of providing the required statement the Respondent had submitted her resignation effective April 20, 2019.

28. Further investigation by Staff revealed that:

- a) In addition to being the corporate secretary for ATPIH, in 2018 the Respondent had become a director of the company.
- b) As at December 31, 2013, the Respondent had become an officer of Property Investors Hub Inc., a now defunct Nevada corporation.

- c) The Respondent had been a director of Triumph Homes Real Estate Inc., a Florida corporation, from August 22, 2012 to February 18, 2015, the date of the corporation's dissolution.
- d) Prior to the investigation, the Respondent had not disclosed to the Member:
  - i) her involvement with Fair Flock, its promotional efforts, or its capital raising activities; or
  - ii) her role in United States corporations.

29. Staff sought to obtain information directly from the Respondent:

- a) By a letter dated November 12, 2019 and sent by registered and ordinary mail to the Respondent, Staff asked that she:
  - i) provide details about the real estate development companies she was involved with and her role in them;
  - ii) provide a list of all investors and details of their investments; and
  - iii) respond to the allegation that she was involved in undisclosed outside business activities.

The registered mail was returned to the MFDA, and Staff did not receive a response to its inquiries.

- b) By a letter dated April 30, 2020 and served personally on the Respondent, Staff: reiterated its previous information request; reminded the Respondent that she had a continuing obligation to co-operate with the investigation; and asked that she make herself available for an interview. Staff offered three potential dates for the interview, advised that she could propose her own date, and specified a deadline by which it needed an answer. The Respondent failed to respond.
- c) By a letter dated June 4, 2020 and served personally on the Respondent, Staff once again: reiterated its information request; reminded the Respondent that she was obligated to co-operate with the investigation; and asked for dates on which she could attend a videoconference interview. Staff warned the Respondent that a failure to co-operate could lead to disciplinary proceedings, and gave a new deadline by which it needed an answer. The Respondent again failed to respond.

30. Finally, on July 10, 2020, Staff was able to contact the Respondent by telephone and arrange a videoconference interview for August 19, 2020. During the interview, the Respondent:

- a) Acknowledged that she had been obligated to disclose outside business activities to the Member and update the disclosure annually.
- b) Committed to provide Staff with ATPIH's incorporation documents, and the company's monthly bank account statements and annual returns since incorporation.
- c) Explained that Fair Flock was a marketing name for a family business through which she and her husband pooled capital together with friends and relatives to invest in United States real estate properties. Member clients who participated in these investments did so through partnership arrangements.
- d) Disclosed that she has a Master's degree in Business Administration.
- e) Explained that with respect to her and her husband's United States real estate investments, ATPIH served a function similar to that of a general partner.
- f) Explained that she and her husband owned all of their investments jointly, including their real estate investments.
- g) Contrary to what she had previously said when interviewed by the Member, stated that she was not a guarantor of an ATPIH loan but rather of loans made to other companies.
- h) Explained that she had resigned from the Member because the information it had requested from her was confidential and private to her husband and herself.
- i) Repeatedly refused to disclose any details regarding the investments made in partnership with Member clients, complaining that Staff's questions about them were a "witch hunt" and an intrusion on her and her husband's privacy.

31. On September 10, 2020, Staff emailed the Respondent to arrange a continuation of the interview and confirm the delivery of the ATPIH documents she had undertaken to provide. Staff also advised that:

- a) If the Respondent failed to respond to the email, the continuation would be scheduled for September 30, 2020.
- b) Failure to deliver the ATPIH documents by September 25, 2020 or to attend the continuation would result in Staff seeking authorization to commence enforcement proceedings against her for failing to co-operate with the investigation.

32. The Respondent did not respond to Staff's email, failed to deliver the ATPIH documents, and failed to attend the interview continuation.

#### **IV. MISCONDUCT**

33. The circumstances of this case justify accepting the allegations of fact in the Notice of Hearing as proved by operation of Rules 8.4(1) and 7(3). Those facts and the principal investigator's affidavit evidence establish that the Respondent engaged in three different types of misconduct.

##### **Allegation one**

34. An Approved Person is required by MFDA Rule 2.1.1 to observe high ethical standards. This includes refraining from business conduct that is unbecoming or detrimental to the public interest.

35. This broad ethical obligation is informed by the specific requirements imposed by the other Rules, including:

- a) Rules 1.1.2 and 2.5.1, which obligate an Approved Person to follow the employing Member's supervisory policies and procedures.
- b) Rule 1.3.2, which prohibits an Approved Person from carrying on any business outside of their employment duties without the Member's prior written approval.

36. Under the Member's disclosure policy, the Respondent was under a continuing obligation to provide timely notice if she intended to assume a more active role in the management in ATPIH or become involved in a new outside business, and to disclose the existence of any website associated with her outside business activities. Under Rule 1.3.2, the Respondent was prohibited from expanding her involvement in outside business activity unless and until she had the Member's approval.

37. However, following the submission of her 2013 Outside Business Disclosure Form the Respondent never reported the existence of Fair Flock, its website, or any other developments that had the effect of increasing her involvement in outside business. These only came to light after the Member's accidental discovery of the Fair Flock website address. The January 21, 2019 interview conducted by the Member was the first time the Respondent disclosed that:

- a) ATPIH was not merely an investment vehicle for her husband, but was associated with her family's marketing of real estate investments under the Fair Flock name.

- b) Fair Flock was promoting real estate projects to third parties in which the minimum investment was \$50,000.
- c) Member clients were among the investors involved in Fair Flock.
- d) She had guaranteed a loan made to her outside business.

38. Other details about the scope of the Respondent's outside business activities only surfaced as a result of Staff's investigation:

- a) In her 2013 outside business disclosure, the Respondent failed to disclose that she had been a director of a Florida corporation since August 2012.
- b) She failed to update the Member when, in December 2013, she became an officer of a Nevada corporation.
- c) Likewise, the Respondent failed to inform the Member when she became an ATPIH director in 2018.

39. The Respondent was not forthcoming to the Member about the scope of her outside business activities, contrary to MFDA Rules 2.1.1., 1.1.2, 2.5.1, and 1.3.2.

### **Allegation two**

40. Under MFDA Rule 2.1.4, an Approved Person who becomes aware of any conflict or potential conflict of interest is required to immediately disclose it to their employing Member. The Approved Person and the Member then become jointly obligated to exercise responsible business judgment to address the situation in the client's best interests.

41. On October 3, 2005, the MFDA issued Staff Notice #MSN-0047. The Notice identifies specific conflicts of interest "where the exercise of responsible business judgment would require prohibition of the arrangements". These include private investment schemes "where client funds are put into investments that are to be directly or indirectly managed by the Approved Person".

42. In her interviews with the Member and Staff, the Respondent acknowledged that:

- (a) Fair Flock was an arrangement through which she and her husband had pooled capital together with at least four Member clients to invest in United States real estate properties; and
- (b) each client had invested a minimum of \$50,000.

43. Although there is no direct evidence of how the Fair Flock investments were managed, circumstantial evidence supports the inference that the Respondent exercised a measure of control over them:

- a) The Fair Flock video contains testimonials from investors praising the Respondent's role in providing real estate investment services.
- b) In 2018, the Respondent became a director of ATPIH, the company owned by her and her husband that acted something like a general partner in facilitating Fair Flock's investments in United States real estate.
- c) The Respondent and her husband were equal owners of all their investments, and she holds a Master's degree in Business Administration. Absent evidence to the contrary, it is reasonable to infer that the investments she and her husband made in United States real estate together with Member clients occurred with her knowledge and consent.

44. When it comes to conflicts of interest, the Rules do not distinguish between an Approved Person's arm's length clients and those who happen to be close personal intimates. Whether or not the Member clients who invested through Fair Flock were the Respondent's relatives or friends is irrelevant. The determining criterion is that she played a role in the investment of client funds outside of the Member's supervision. The Respondent never disclosed those conflicts of interest to the Member, contrary to MFDA Rules 2.1.1 and 2.1.4.

### **Allegation three**

45. There is perhaps no greater obligation on an Approved Person than that imposed by Section 22.1 of MFDA By-law No.1, which among other things states that:

For the purpose of any examination or investigation pursuant to this By-law, [an]... Approved Person... under the jurisdiction of the Corporation pursuant to the By-laws or the Rules may be required by the Corporation... to produce for inspection and provide copies of the books, records and accounts of such person relevant to the matters being investigated; and... to attend and give information[.]

46. The importance of the duty to co-operate with a MFDA investigation is emphasized by Section 24.1.4 of MFDA By-law No.1, which provides that an individual who ceases to be an Approved Person nonetheless remains subject to Section 22.1 for a period of five years.

47. In the Respondent's own words Fair Flock was a label for a real estate marketing program, and the video found on its website establishes that she played an active role in it. Upon learning

that Member clients were among the investors, Staff was confronted with a situation that to all appearances pointed to the Respondent being in a conflict of interest. In other words, investor protection urgently required that Staff get to the bottom of the Respondent's involvement in a situation in which Member clients were potentially at risk. This is why Staff directed the Member to obtain a statement from the Respondent explaining the circumstances, nature, and status of the investments that Member clients had made through Fair Flock.

48. The Respondent's prompt resignation had no effect whatsoever on her continuing obligation to produce the statement to Staff. Nonetheless, over the next nine months the Respondent repeatedly ignored Staff's requests that she provide the information and make herself available for an interview. When Staff was finally able to interview her, the Respondent's responses raised more questions than they answered:

- a) As she had done when interviewed by the Member, the Respondent represented Fair Flock as a marketing name for real estate investments that were limited to family and close friends. On its face, this claim is less than coherent: investments that are supposed to be intimately private do not need to be marketed, let alone advertised or promoted through a website. Fair Flock was either a truly private arrangement limited to intimates or it was an investment program marketed to a wider audience, but it cannot be both.
- b) Directly contradicting what she had previously told the Member, the Respondent told Staff that she was not a guarantor of an ATPIH loan, but rather of loans made to other companies.
- c) Relying on a specious claim of privacy, the Respondent repeatedly refused to answer Staff's most important questions, namely, those directed at obtaining details of the investments made by Member clients.

49. The Respondent's refusal to provide the statement requested by Staff, her refusal to answer highly relevant questions when interviewed by Staff, and her subsequent refusal to deliver documents and attend the continuation of the interview all constituted failures to co-operate with the MFDA's investigation, contrary to Section 22.1 of MFDA By-law No.1.

## V. SANCTION ANALYSIS

### Generally

50. Penalties in MFDA enforcement proceedings are justifiable to the extent that they serve to protect the investing public from future harm. They must be forward looking, in the sense that they should be preventative in orientation, not retrospective or punitive.

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

51. In this regard, general deterrence is the central consideration:

A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction... The respective importance of general deterrence as a factor will vary according to the breach... and the circumstances of the person charged [.]

*Cartaway Resources Corp. (Re)*, [2004] 1 S.C.R. 672 at para. 61.

52. The weight to be given general deterrence in any given case, therefore, must always be based on a thorough assessment of the character of the misconduct. Moreover, to be reasonable a penalty in the regulatory context must be supported by a rational analysis that establishes the penalty as proportional to the misconduct.

*Cartaway, supra*, at para. 64.

*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 14, 85.

53. Previous hearing panel decisions have consistently identified certain key factors as relevant to the determination of sanctions. These are summarized in the November 15, 2018 Sanction Guidelines issued by the MFDA to assist hearing panels in their deliberations. The factors most germane to this case are that:

- a) Effective specific and general deterrence is crucial to preventing inappropriate conduct and ensuring public confidence in the mutual fund industry and the fairness of the capital market.
- b) Public confidence requires that sanctions accurately reflect the mitigating and aggravating factors disclosed by the facts.
- c) Proper weight should be given to the relative seriousness of the proven misconduct. Distinctions should be drawn between negligent and deliberately deceptive conduct, and between isolated and repeated incidents.

- d) A hearing panel should consider the degree to which a respondent has accepted responsibility for their misconduct. Attempts to frustrate, delay or undermine an investigation or hearing, including by concealing or intentionally providing misleading information, should be considered an aggravating factor.
- e) Sanctions should reflect whether or not the misconduct resulted in the respondent receiving benefits or investors sustaining harm.

### **Outside business activities and conflict of interest**

54. Member review and approval of an Approved Person's outside business activities is crucial to effective supervision:

Conducting securities related business or outside business activity without the approval or knowledge of the Member is serious misconduct. The Member loses its ability to supervise the transactions and to assess the suitability of the transactions for the investors. The misconduct can have dire consequences for the investors involved as the off-book investments may not be suitable for the investors or even legitimate investments. The misconduct may bring the Member or the mutual fund industry into disrepute.

*Zhengwen (Katherine) Qi and Xiaodan (Bonnie) Huang*, MFDA File No. 201253, November 20, 2013, at para. 11.

55. The need for disclosure becomes all the more urgent when an Approved Person's outside business involves mutual fund clients. The potential for a conflict of interest is always present in such situations, and resolving it requires disinterested and objective judgment. As Staff Notice #MSN-0047 indicates:

... potential conflicts of interest must be addressed by the exercise of responsible business judgment influenced only by the best interests of the client... [which] requires the use of reasonable care and diligence as necessary in the circumstances to address the conflict or potential conflict in the best interests of the client... [and] will depend on the nature of the conflict of interest and the client's circumstances.

It is only through the Member's vetting that responsible business judgment can be exercised to ensure that any conflict or potential conflict of interest in an outside business is resolved in the client's best interest.

56. In this case, it is not possible to determine the gravity of the Respondent's failures to disclose her outside business activities and conflicts of interest precisely because she has chosen to withhold the details of her actions from Staff. Whatever benefits the Respondent may have derived from Fair Flock, and whatever harm the Member's clients may have sustained, are both unknown. What can be said with certainty is that the Respondent's refusal to co-operate undercut Staff's investigation.

## **Failure to co-operate**

57. In investigations concerning the conduct of Approved Persons, the witnesses with the most relevant information will almost always be the Approved Persons themselves. Since the MFDA does not have a statutory power to compel testimony or the production of documents, Staff must typically rely on the Approved Person's co-operation to uncover key facts. It follows that failures to cooperate severely undermine the MFDA's ability to fulfill its regulatory mandate of protecting the investing public, and why there can be no exceptions to an Approved Person's obligation to be fully transparent to the MFDA.

*Vitch (Re)*, MFDA File No. 201103, September 22, 2011 at paras. 55-56.

58. Furthermore, an Approved Person is obligated to cooperate "fully and in a timely way", because a partial failure to co-operate is just as capable of forestalling an investigation as a complete failure to do so.

*Crompton (Re)*, 2015 LNCMFDA 41 at paras. 21-22.

59. Staff discovered that the Respondent was involved in raising and investing capital from mutual fund clients without the Member's knowledge or approval. The potential for client harm in this kind of undisclosed conflict of interest is enormous. To fulfill the MFDA's public protection mandate, it was therefore critical that Staff reach a full and clear understanding of Fair Flock and the Respondent's involvement in it.

60. Section 22.1 of MFDA By-law No.1 exists because a fully transparent mutual fund industry and the effective supervision of its participants is in the public interest. As an Approved Person, the Respondent was obligated to be forthright to the MFDA about her outside business and especially about how she had dealt with the financial interests of mutual fund clients outside of the Member's auspices. Instead, to the very limited extent the Respondent was prepared to say anything at all about Fair Flock, she stubbornly refused to provide substantive details and insisted, essentially, that the investments she had made in partnership with Member clients were none of the MFDA's business.

61. Far from accepting any responsibility for her disclosure failures, the Respondent engaged in a pattern of deliberately evasive behaviour. As a direct consequence of her adamant refusal to co-operate meaningfully with the investigation, Staff was blocked from learning just how much money had been raised from the Member's clients and exactly what had been done with it. To this

day, the MFDA remains in the dark about the clients' risk exposure and any harm they may have suffered.

## VI. ORDERS

62. Enforcement Counsel on behalf of Staff submitted that the following sanctions would be appropriate:

- a) a permanent prohibition;
- b) a financial penalty of not less than \$75,000; and
- c) costs of \$7,500, a significant discount from the total costs of \$17,800 itemized in the supporting Bill of Costs.

63. In support of this position, Enforcement Counsel reviewed a number of previous MFDA decisions in which the respondents had failed to disclose outside business activity and conflicts of interest with clients. The guidance provided by two of these cases is instructive.

- a) In *Mawer (Re)*, MFDA File No. 201331, April 3, 2014, the respondent solicited and accepted a total of \$103,000 from four mutual fund clients, which he pooled with his own funds and money raised from other persons to purchase investment properties, all without the knowledge of the employing Member. The respondent fully participated in the hearing process, including by giving evidence. The hearing panel ordered a permanent prohibition, a financial penalty of \$50,000, and costs of \$7,500.
- b) In *Wiseman (Re)*, MFDA File No. 201104, October 17, 2011, the respondent promoted the sale of shares of a company in which he had an interest to at least three clients and borrowed \$38,000 from another client. He interfered with the investigation of his outside activities by making misleading statements to his employing Member. When requested by Staff, he failed to provide documents and information and failed to attend an interview. The respondent filed a Reply, but did not attend the hearing. The hearing panel ordered a permanent prohibition, a financial penalty of \$150,000, and costs of \$7,500.

64. The outcome ordered in *Wiseman, supra*, reflects the Hearing Panel's understanding that to preserve the MFDA's public protection capacity, egregious failures to co-operate must be met with stern sanctions in the interests of general deterrence.

65. Extremely serious misconduct demands sanctions that are commensurate with the harm the misconduct has caused to the public interest. This is why the Hearing Panel ordered that the Respondent:

- a) be permanently prohibited from conducting any securities related business while employed by or associated with any Member of the MFDA;
- b) pay a financial penalty of \$125,000; and
- c) pay costs of \$10,000.

**DATED** this 24<sup>th</sup> day of March, 2022.

“Joseph A. Bernardo”

Joseph A. Bernardo  
Chair

“Susan Monk”

Susan Monk  
Industry Representative

“Tammi Walsh”

Tammi Walsh  
Industry Representative



**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: Lucillia Sok Cheng Tan**

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**ORDER**

(ARISING FROM THE HEARING ON THE MERITS ON OCTOBER 4, 2021)

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**WHEREAS** on March 17, 2021, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing pursuant to sections 20 and 24 of By-law No. 1 in respect of a disciplinary proceeding commenced against Lucillia Sok Cheng Tan (the “Respondent”);

**AND WHEREAS**, on May 21, 2021, the first appearance in this hearing was held before a public representative (the “Chair”) of the Pacific Regional Council of the MFDA (the “Hearing Panel”) in accordance with s. 19.13(b) of MFDA By-law No. 1, at which first appearance no one appeared on behalf of the Respondent;

**AND WHEREAS**, on July 23, 2021, an appearance was held by videoconference before the Chair of the Hearing Panel, in accordance with section 19.13(b) of MFDA By-law No. 1, at which appearance no one appeared on behalf of the Respondent;

**AND WHEREAS**, at the July 23, 2021 appearance, the Chair of the Hearing Panel issued an Order (the “Order”) which, *inter alia*, (i) found that the Respondent had been appropriately served with the Notice of Hearing in accordance with Rule 4.2(1)(b) of the MFDA Rules of Procedure, and (ii) scheduled the date for the hearing of this matter on its merits for October 4, 2021;

**AND WHEREAS**, on October 4, 2021, the hearing of this matter on the merits proceeded as scheduled before the Hearing Panel, at which time no one appeared on behalf of the Respondent, although provided with proper notice of the hearing on the merits by the MFDA pursuant to the Order;

**AND WHEREAS**, at the hearing of this matter on the merits, the Hearing Panel considered the evidence and submissions presented by Staff with respect to the alleged misconduct, including but not limited to the Affidavit of Indira Nadarajan with exhibits attached thereto, sworn September 30, 2021, and the testimony of Indira Nadarajan, appearing via videoconference;

**AND WHEREAS** on the basis of the evidence and submissions presented during the hearing of this matter on the merits, in the opinion of the Hearing Panel:

- a) between approximately August 22, 2012 and April 24, 2019, the Respondent engaged in outside business activities with respect to one or more real estate investment businesses which were not disclosed to or approved by the Member, contrary to the Member's policies and procedures, and MFDA Rules 1.2.1(c) (now MFDA Rule 1.3)[1], 2.5.1, 1.1.2, and 2.1.1;
- b) between approximately 2013 and April 24, 2020, the Respondent failed to disclose to the Member a conflict or potential conflict of interest that arose when clients of the Member invested with a real estate business owned or operated by the Respondent and her family, thereby failing to ensure that the conflict or potential conflict of interest was disclosed to the Member and addressed by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.4 and 2.1.1; and
- c) commencing on approximately April 22, 2019, the Respondent failed to cooperate with an investigation by MFDA Staff into her conduct, contrary to section 22.1 of MFDA By-law No. 1.

**IT IS HEREBY ORDERED THAT:**

1. The Respondent has been appropriately notified of the date and time set for the hearing of this matter pursuant to the Order;

2. 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;
3. The Respondent shall pay a fine in the amount of \$125,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
4. The Respondent shall pay costs in the amount of \$10,000, pursuant to s 24.2 of MFDA By-law No. 1; and
5. 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 4<sup>th</sup> day of October, 2021.

“Joseph A. Bernardo”

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Joseph A. Bernardo  
Chair

“Susan Monk”

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Susan Monk  
Industry Representative

“Tammi Walsh”

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Tammi Walsh  
Industry Representative

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