



**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: Chun-Yi Tay**

Heard: January 25, 2018 in Vancouver, British Columbia

Decision: January 25, 2018

Reasons for Decision: May 18, 2018

**REASONS FOR DECISION**

Hearing Panel of the Pacific Regional Council:

Joseph A. Bernardo  
Kathleen Jost  
Richard Sydenham

Chair  
Industry Representative  
Industry Representative

Appearances:

Christopher Corsetti	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
	)	
Chun-Yi Tay	)	Respondent, in Person
	)	
	)	
	)	

1. On February 8, 2017, the Mutual Fund Dealer's Association of Canada (MFDA) issued a Notice of Hearing alleging that Chun-Yi Tay, the Respondent, had on two occasions violated the rules of the MFDA by redeeming mutual funds without proper client instructions and, in the course of the second instance, made a false representation to her employer.

2. The disciplinary hearing took place on January 25, 2018, at the conclusion of which the hearing panel rendered its decision. These are our reasons.

### Evidence

3. At the hearing, the MFDA and the Respondent tendered an Agreed Statement of Facts executed on January 14, 2018. The parties supplemented this evidence with oral and written clarifications submitted jointly and by mutual consent.

4. In summary, the MFDA and the Respondent agreed that

- a) From February 15, 2013 to December 20, 2015, the Respondent was registered as a mutual fund salesperson, now known as a dealing representative, with BMO Investments Inc. (BMO Investments) in Richmond, British Columbia. She subsequently held the same registration with another Member from June 17, 2016 to August 11, 2017. The Respondent is not currently registered in the securities industry.
- b) On May 26, 2015, the Respondent received a message from the email account of one of her clients (Client). The email requested that \$21,200 USD in mutual funds held in the Client's BMO Investments account be redeemed and the proceeds forwarded to a bank account in the Client's name located in the United Kingdom (First Bank Account).
- c) The Client had previously entered into a Message Agreement with BMO Investments.
- d) Under BMO Investments' policies and procedures, a client account with a Message Agreement permitted Approved Persons to act on financial instructions transmitted by telephone or fax, but expressly prohibited acting on email instructions.

- e) The Respondent sought to obtain telephone confirmation of the email instructions by calling the contact number for the Client found in the account file.
- f) When she was unable to reach the Client, the Respondent replied to the May 26, 2015 email with a message asking for an alternative telephone contact number. The Respondent received an email response stating the Client was in transit and urgently required the requested monies; no telephone number was provided.
- g) On May 28, 2015, further to the instructions contained in the May 26, 2015 email the Respondent:
  - i. Processed the redemption of \$21,200 USD in mutual funds held in the Client's account.
  - ii. Submitted to a Customer Service Representative (CSR) employed by the Bank of Montreal (BMO Bank) the information required to wire transfer the redemption proceeds to the First Bank Account.
- h) On June 1, 2015, the Respondent received another message from the Client's email account, asking that a further \$32,020 USD be redeemed from the Client's BMO Investments account, and advising that wire transfer instructions would follow later.
- i) On June 3, 2015:
  - i. The Respondent again attempted to contact the Client by telephone and was once more unsuccessful. She left a voicemail for the Client seeking confirmation of the redemption instructions. The message was left at approximately 2:10 p.m.
  - ii. The Respondent replied to the June 1, 2015 email by, again, asking for an alternative telephone contact number.
  - iii. The email she received in response stated the Client was travelling and could not provide a telephone number.
  - iv. The Respondent then received a second message from the Client's email account, instructing her to wire transfer the proceeds of the second redemption to a United Kingdom bank account held in the name of a corporate entity (Second Bank Account).

- v. Further to the instructions contained in the June 1, 2015 email, the Respondent attempted to process the requested \$32,020 USD redemption. She was unable to do so because the value of the mutual funds in the Client's BMO Investments account was insufficient.
  - vi. After an exchange with the Client's email account, the Respondent received revised instructions.
  - vii. Further to the revised instructions, the Respondent processed the redemption of mutual funds held in the Client's BMO Investments account in the amount of \$30,000 USD.
- j) Also on June 3, 2015:
- i. The Respondent presented the email instructions relating to the second redemption to a CSR employed by the BMO Bank. When doing so, the Respondent told the CSR that she had not been able to reach the Client by telephone to obtain oral confirmation of the instructions.
  - ii. The CSR prepared two documents required to implement the wire transfer of the second redemption proceeds to the Second Bank Account.
  - iii. The documents prepared by CSR both incorrectly stated that the Respondent had contacted the Client and obtained telephone instructions at 2:10 p.m.
  - iv. The Respondent and CSR each signed the wire transfer documents.
- k) On June 11, 2015:
- i. The Respondent received a message from the Client sent from a different email account.
  - ii. The email informed the Respondent that the Client's previous email address had been compromised and should therefore no longer be used to communicate with the Client. It also directed that no money should be wired without speaking to the Client.
  - iii. The Respondent reported to BMO Investments that the Client's email account had been compromised.
- l) The Respondent was duped into processing the redemptions and wire transfers by an unknown person exploiting unlawful access to the Client's email account.

- m) BMO Investments recovered the proceeds of the first redemption by reversing the wire transfer to the First Bank Account, and reimbursed the Client for the balance of the defrauded funds.
- n) There is no evidence the Respondent derived any financial benefit from the redemptions beyond normal commissions and fees.
- o) On July 2, 2015, following an internal investigation BMO Investments issued a reprimand letter to the Respondent.
- p) The Respondent has not been previously disciplined by the MFDA.

### Liability decision

5. The Notice of Hearing alleges that the Respondent:

- a) Failed to comply with BMO Investments' policies and procedures prohibiting its Approved Persons from accepting client instructions by email, contrary to MFDA Rules 1.1.2, 2.5.1, and 2.1.1 (allegation one).
- b) With respect to the June 3, 2015 redemption, falsely represented to BMO Investments that she had obtained telephone confirmation of the Client's instructions, contrary to MFDA Rule 2.1.1 (allegation two).

6. The Respondent was an Approved Person by virtue of her registration as a mutual fund salesperson.

7. MFDA Rules 1.1.2 and 2.5.1 impose on Approved Persons the obligation to follow the supervisory policies and procedures of the Member firms that employ them. MFDA Rule 2.1.1 requires them to observe high ethical standards and to refrain from business conduct unbecoming or detrimental to the public interest.

### Allegation one

8. BMO Investments' policies and procedures prohibited Approved Persons from acting on financial instructions communicated by email.

9. The Respondent's awareness of the prohibition is evident in her attempts to telephone the Client. When she was unable to do so, the Respondent should have declined the emailed instructions but, unfortunately, she lacked the necessary resolve and chose to follow them instead.

10. The Respondent admits to facts that unambiguously establish that she executed transactions in the Client account without proper instructions, as alleged in allegation one and contrary to MFDA Rules 1.1.2, 2.5.1, and 2.1.1.

### Allegation two

11. The substance of the business conduct standards imposed on Members and Approved Persons by MFDA Rule 2.1.1 is that mutual fund business must in every respect be conducted honestly and with complete forthrightness.

12. The essence of allegation two is that the Respondent breached MFDA Rule 2.1.1 when she "falsely represented to the Member" that she had spoken to the Client to confirm instructions. In short, the claim is that the Respondent lied to BMO Investments.

13. Finding that a person has lied is synonymous with concluding the person had an intent to deceive. This is not a legal test, but an observation about language: accusing a person of deception is inherently a claim about that person's purposes.

14. Allegation two claims that the Respondent: (1) said something she knew to be untrue; (2) directed it towards BMO Investments; and (3) did so with the purpose of deceiving BMO Investments.

15. On June 3, 2015, the Respondent endorsed a statement in wire transfer documents to the effect that she had obtained telephone instructions from the Client in respect of a \$30,000 USD mutual fund redemption. This was not true. In reality, the Respondent had instead only left a voicemail message requesting confirmation of instructions.

16. The Respondent admits she was aware that the wire transfer documents contained a false statement; the circumstantial facts are in any case indisputable. They are less clear about to whom the documents were directed.

17. The evidence does not directly address which legal entity, the BMO Bank or BMO Investments, implemented the wire transfer, but since the relevant documentation was prepared by a bank employee at the Respondent's request it is reasonable to infer the wire transfer was effected by the BMO Bank.

18. The record therefore provides a basis for concluding that the Respondent directed the wire transfer documents to the BMO Bank. The facts as admitted, however, do not support a finding that the Respondent, as allegation two would have it, directed the documents to BMO Investments.

19. Another difficulty with respect to allegation two is that the facts raise doubt that the Respondent intended to mislead anybody at all.

20. Paragraph 22 of the Agreed Statement of Facts states the Respondent disclosed to the CSR that she had been unable to contact the Client to obtain oral confirmation of the email instructions. It appears the Respondent was forthright with the CSR about the true state of affairs. Moreover, in the course of the hearing the parties by mutual consent tendered evidence to the effect that the June 3, 2015 wire transfer documents had been signed not only by the Respondent, but by the CSR as well.

21. Allegation two accuses the Respondent of having lied to BMO Investments. The facts as admitted do not support finding on those highly specific grounds that the Respondent breached MFDA Rule 2.1.1.

22. What the facts do establish without ambiguity is that the Respondent in the course of her duties participated in the making of a false statement. This was unmistakably a breach of an Approved Person's duty under MFDA Rule 2.1.1 to "observe high standards of ethics and conduct in the transaction of business".

23. The hearing panel accepts on this ground the Respondent's admission of liability under allegation two.

### Penalty

24. The parties argued for different sanction outcomes.

25. MFDA Staff reviewed several recent cases in which an Approved Person had unwittingly facilitated fraud by redeeming mutual funds on email instructions alone, contrary to Member policies and procedures.

*Craig Richard MacDonald (Re)*, [2016] MFDA File #201506  
*Christine S.P.T. Scott (Re)*, [2017] MFDA File #201647  
*Ping-Chung Peter Chiu (Re)*, [2017] MFDA File #201757

26. *Scott* and *Chiu* were settlement decisions, while the *MacDonald* case proceeded by Agreed Statement of Facts. The sanctions in the cases included fines ranging from \$10,000 to \$12,500; costs orders ranging from \$2,500 to \$5000; and suspensions ranging from one to twelve months. Relying on these decisions, Staff argued that a fine in the \$10,000 range had emerged as something of a minimum benchmark for cases with similar facts.

27. MFDA Staff observed that the Respondent had co-operated with the investigation and, although resulting in serious harm, her breaches of the MFDA Rules had been limited. Taking a balanced view of the circumstances, Staff sought a fine of \$10,000 and declined to seek either costs or a period of suspension.

28. The Respondent argued her misconduct was an isolated episode and, on that basis, should be distinguished from the cited cases. She explained that she had been motivated only by an intention to be helpful to the Client, but accepted responsibility for her actions and was demonstrably sincere in expressing remorse. Stating she is currently unemployed, the Respondent submitted that neither a fine nor a costs order were necessary.

29. In determining the sanction outcome in this case, the hearing panel considered the following factors as particularly relevant:

- a) As both parties observed, the Respondent's misconduct was limited. It consisted essentially of two lapses arising from a failure to exercise proper judgment in connection with a single client account.
- b) Although isolated, the misconduct resulted in serious harm. The Respondent's failure to observe fundamental procedures resulted in the theft of \$51,200 from the Client. Although some of the money was recovered, BMO Investments incurred the cost of compensating the Client for the \$30,000 USD balance.
- c) Nothing in the evidence suggests the misconduct was motivated by self-interested reasons, and the Respondent did not obtain any financial benefit from her actions outside of routine compensation.
- d) The Respondent has no prior disciplinary history with the MFDA.
- e) By co-operating with the investigation and admitting her culpability, the Respondent demonstrated she has accepted responsibility for her misconduct.

30. Reviewing the available facts, it appears the Respondent was operating in good faith throughout. We believe her claim that she was motivated by a desire to provide the Client with good service.

31. The difficulty of this case is that the Respondent's lack of guile was accompanied by a lack of essential critical judgment. Without belabouring the point, emails from a purported client who simultaneously asks for money and begs off discussing it over the telephone should remind an Approved Person of the need to follow procedures, not provoke her into skirting them out of a misplaced sense of urgency. Good intentions are not an answer to misconduct.

32. Member policies and procedures are not abstractions. As this case illustrates, they exist for eminently practical reasons. The facts are abundantly clear the fraud would have been stopped in its tracks at the very outset, if only the Respondent had fully respected the prohibition against accepting email instructions.

33. In the cases cited to us by MFDA Staff, improper redemptions were only one aspect of somewhat more extensive misconduct, which variously included client signature falsification, the use pre-signed forms, the improper disclosure of client information, and discretionary trading. The lack of such collateral misconduct in the present case distinguishes it from the precedents. For that reason, we are not persuaded that the average fine of about \$10,000 in those cases represents a benchmark applicable to this one.

34. Taking into consideration the Respondent's history, the isolated nature of the breaches, and the Respondent's co-operation, the hearing panel is satisfied that a \$5,000 fine is a proportionate deterrent response to her misconduct and we so ordered, stipulating that:

- a) Payment be made under a plan of twelve equal monthly payments commencing February 1, 2018; and
- b) If the Respondent fails to make any one payment, the entire amount remaining outstanding shall become due and payable immediately.

**DATED** this 18<sup>th</sup> day of May, 2018.

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"Joseph A. Bernardo"

Joseph A. Bernardo  
Chair

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"Kathleen Jost"

Kathleen Jost  
Industry Representative

“Richard Sydenham”

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Richard Sydenham  
Industry Representative

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