



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Grace Wong Uy

Heard: May 31, 2018 in Toronto, Ontario

Decision: May 31, 2018

Reasons for Decision: June 13, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC	Chair
Edward V. Jackson	Industry Representative
Joseph A. Yassi	Industry Representative

Appearances:

Michelle Pong)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Grace Wong Uy)	Respondent, in person
)	
)	

Background

1. This is a Settlement Hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (“MFDA”). The hearing was held on Thursday, May 31, 2018. The full Settlement Agreement, dated May 28, 2018, entered into between Staff of the MFDA and Grace Wong Uy (“Ms. Uy” or the “Respondent”) is available on the MFDA website. Ms. Uy was not represented by counsel and appeared in person.

2. The Panel accepted the proposed Settlement Agreement at the conclusion of the May 31, 2018 hearing, with reasons to follow. These are our reasons for the decision.

3. Between July 14, 2008 and April 17, 2016, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Investia Financial Services Inc. (“Investia”), a Member of the MFDA. The Respondent was previously registered (between March 2003 and July 14, 2008) with WFG Securities of Canada Inc. (now known as WFG Securities Inc.), a Member of the MFDA. At all material times, the Respondent conducted business in Richmond Hill, Ontario.

4. The Respondent was terminated by Investia on April 17, 2016 and is not currently registered in the securities industry in any capacity.

Contraventions

5. The Respondent admits in paragraph 33 of the Settlement Agreement that between 2012 and 2013 the Respondent engaged in securities related business which was not carried on for the account of the Member or conducted through its facilities by recommending, selling, facilitating the sale of and/or making referrals in respect of investments to at least 10 clients, totaling approximately \$360,000, contrary to the Member’s policies and procedure, MFDA Rules 1.1.1, 2.1.1, 2.4.2, 2.5.1 and 1.1.2, and the requirements of sections 13.7 and 13.8 of National instrument 31-103.

6. Further, in Paragraph 34 of the Settlement Agreement, the Respondent admits that between 2012 and 2013, the Respondent referred clients to Approved Person HL to purchase investments outside the Member, and received at least \$18,000 in referral fees for doing so, thereby participating in an unapproved referral arrangement to which the Member was not a party, contrary to the Member's policies and procedures, MFDA Rules 2.1.1, 2.4.2, 2.5.1, and the requirements of sections 13.7 and 13.8 of National Instrument 31-103.

7. And in Paragraph 35, the Respondent admits that between December 18, 2015 and January 24, 2017, the Respondent misled the Member and the MFDA during its investigations into her conduct with respect to her knowledge and involvement in referring clients to purchase investments outside the Member, contrary to MFDA Rule 2.1.1.

The Misconduct

8. The details of the misconduct are set out in paragraphs 10 to 32 of the Settlement Agreement and will not be described in detail here.

9. In brief, the Respondent's branch manager, HL had referral arrangements with three real estate investment and development companies, and the Respondent agreed to introduce her clients to HL to discuss and purchase investments in these companies. At least 10 of her clients participated in these purchases between 2012 and 2013 and invested approximately \$360,000. In addition, the Respondent also personally invested at least \$259,00 in the investments

10. The Respondent did not disclose these transactions to Investia and Investia did not approve the investments for sale to its clients by its Approved Persons. None of the purchases were carried on the account of Investia or through its facilities and none of the referral fees flowed through the books and records of Investia.

11. Investia's policies and procedures required that its Approved Person only offer products Investia had approved for sale and that all products be sold through Investia. Further, Approved

Persons were only to participate in referral arrangements that Investia had approved and all fees or commissions were to flow through the books and records of Investia.

12. In December 2015, Investia requested information from the Respondent about the referral arrangement with HL. The Respondent advised Investia that there were only three investors involved in the referrals. She further advised the Member in a response to an online questionnaire in January 2016, as described in the Settlement Agreement. In August 2016, the MFDA interviewed the Respondent, who again stated that only three investors were referred to HL. Staff then obtained bank records, which indicated that more than three persons were involved.

13. On a second interview with MFDA staff in January 2017, the Respondent provided a list of the ten referrals she had made.

Terms of Settlement

14. The Respondent agreed to the following Terms of Settlement (see Paragraph 36):

- a) the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member shall be prohibited for a period of one year commencing on the date the Settlement Agreement is accepted by the Hearing Panel;
- b) the Respondent shall pay a fine in the amount of \$31,000, payable as follows:
 - i. \$1,000 payable on or before the date of the settlement hearing;
 - ii. \$30,000 payable in 12 monthly instalments of \$2,500 each, commencing one month from the date the Settlement Agreement is accepted by the Hearing Panel;
- c) the Respondent shall pay costs in the amount of \$5,000; and
- d) the Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder.

Acceptance of Settlement Agreement

15. As stated above, the Panel accepted the terms of the Settlement Agreement. A Panel can either accept or reject a Settlement Agreement. It cannot modify it.

16. The conduct in the present case is serious. Not only did the Respondent operate outside the Member, but in the early stages of the investigation she misled the Member and the MFDA when questioned about the transactions.

17. This is, however, the first time she has been involved in disciplinary hearings and as of today no client has suffered any loss from the referrals in the present case. Moreover, by entering into a Settlement Agreement the Respondent has accepted responsibility for her misconduct and saved the MFDA the time, resources and expenses associated with conducting a full hearing.

18. The monetary penalty of \$31,000 is equal to the referral fees that were given to her by HL, so she has not profited by the transactions.

19. After initially misleading the MFDA, she has fully cooperated with the MFDA and will likely continue to cooperate with the MFDA, if needed, in further proceedings, which have been commenced against HL, her branch manager at the time of the misconduct. See *Re Hong Lam*, 201805, Notice of Hearing dated January 8, 2018, in which HL is alleged to have had at least 24 client referrals worth over \$2 million, involving three Approved Persons, including “GSU”. A hearing has been scheduled for the fall: see MFDA News Release, March 23, 2018.

20. Prohibition of employment with an MFDA Member for a year is not an insignificant penalty. It offers a substantial measure of specific and general deterrence, as does the monetary penalty agreed to in this case.

21. The penalty agreed upon is not out of line with the cases cited by counsel for the MFDA or with the MFDA Penalty Guidelines.

22. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal stated with respect to a settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49 (B.C.C.A.)):

“Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation.”

23. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter. The Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel.

24. As a Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: “It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness.” There are many similar statements by MFDA Panels, stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated: “A District Council considering a settlement agreement 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.”

25. The penalty agreed to in this case clearly falls *within* “a reasonable range of appropriateness.”

26. For the above reasons the panel accepted the Settlement Agreement.

DATED this 13th day of June, 2018.

“Martin L. Friedland”

Martin L. Friedland, CC, QC
Chair

“Edward V. Jackson”

Edward V. Jackson
Industry Representative

“Joseph A. Yassi”

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