



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: Jesse Vu

Heard: November 7, 2019 in Calgary, Alberta

Decision: November 7, 2019

Reasons for Decision: December 6, 2019

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, QC
Diane Jaspers
James Samanta

Chair
Industry Representative
Industry Representative

Appearances:

Justin Dunphy)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Jesse Vu)	Respondent, in person
)	
)	

Background

1. On May 6, 2019 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 Jesse Vu, (the "Respondent").
2. The Respondent entered into a Settlement Agreement with MFDA Staff, dated November 6, 2019 in which the Respondent agreed to a proposed settlement of matters.
3. On November 7, 2019, after hearing submissions from Enforcement Counsel and the Respondent, this Hearing Panel approved the Settlement Agreement dated November 6, 2019, and signed an Order reflecting that approval. These are our written reasons for doing so.

Agreed Facts

Registration History

4. From January 2016 to January 2018, the Respondent was registered in Alberta as a mutual fund salesperson (now known as a dealing representative) with Peak Investment Services Ltd. (the "Member"), a Member of the MFDA.
5. On or about January 15, 2018, the Member terminated the Respondent's registration as a result of the events described below. The Respondent is not currently registered in the securities industry in any capacity.
6. At all material times, the Respondent conducted business in the Calgary, Alberta area.

Unapproved Outside Business Activities

7. At all material times, the Member's policies and procedures required its Approved Persons to obtain prior Member approval for any outside activities, including the use of a corporate name. The Member's policies and procedures specifically required, among other things, that:
 - a) Approved Persons complete and sign a dual employment form; and
 - b) all documents must be sent to the Member and approved by the Member's compliance department.

8. On or about February 23, 2016, upon joining the Member, the Respondent completed dual employment forms and obtained Member approval to engage in an outside business activity offering the following services through the use of a tradename “Exceedia Financial Services” a sole proprietorship (“Exceedia”):

- a) tax consulting and financial services; and
- b) the sale of life insurance.

9. Commencing in March 2016, the Respondent discontinued the use of the tradename Exceedia. On or about March 7, 2016, without obtaining approval from the Member, the Respondent and her spouse incorporated a new company, Exceedia Consulting Ltd. (“Exceedia Consulting”) in order to engage in the following activities:

- a) tax preparation services;
- b) the sale of life insurance and segregated funds;
- c) fee for service financial planning and financial literacy workshops;
- d) business consulting and networking; and
- e) assisting individuals applying for government grants.

10. Without disclosing or obtaining approval from the Member, the Respondent through Exceedia Consulting:

- a) received approximately \$600 as payment for assisting one individual to secure provincial government grant funding with respect to a Canada-Alberta job grant while registered with the Member; and
- b) in December 2016, entered into an unapproved referral arrangement with a mortgage brokerage, as described in further detail at paragraph 15 below.

11. The Respondent states that in October and November 2016, she communicated with her branch manager regarding obtaining errors and omissions insurance for Exceedia Consulting and a change of business address for the company. The Respondent acknowledges that she did not complete a dual employment form or obtain the Member’s approval to operate the outside business activity prior to the incorporation of Exceedia Consulting or engage in the additional activities set out in sub paragraphs 9(c) to (e) above.

12. In or around March 2017, as a result of a branch audit, the Member first identified that the Respondent had entered into an unapproved agreement with a mortgage brokerage to refer individuals seeking residential mortgages, as set out in paragraph 15 below. In addition, the Member subsequently identified the additional unapproved outside business activities conducted through Exceedia Consulting, as set out in sub paragraphs 9(c) to (e) above.

13. On or about March 21, 2017, the Respondent completed an outside business activity disclosure statement disclosing her involvement with Exceedia Consulting and the activities referred to above at paragraph 9. The Member subsequently provided approval to the Respondent to engage in the outside business activities referred to in sub paragraphs 9(c) to (e) above.

Unapproved Referral Arrangement

14. At all material times, the Member's policies and procedures required that prior to its Approved Persons entering into referral arrangements with clients, the Member must be a party to any arrangement, and all fees or other forms of remuneration must go through to the books and records of the Member.

15. On or about December 8, 2016, as described above, the Respondent, through Exceedia Consulting entered into a referral arrangement with a mortgage brokerage where the Respondent would receive a referral fee of 20% of the placement fees received by the mortgage brokerage from mortgage lenders for each referral that resulted in a mortgage placement.

16. Between May 2017 and October 2017, the Respondent referred three individuals and one client of the Member to the mortgage brokerage, accordingly, the Respondent received referral fees of \$1085.95 for doing so.

17. The Respondent has provided evidence that the individuals and client signed fee disclosure documents that disclosed the Respondent would receive referral fees in relation to the referral.

18. At no time was the Member a party to the referral arrangement, and no referral fees received by the Respondent were recorded on the books and records of the Member.

The Member's Investigation

19. As described above in paragraph 12, in or around March 2017, the Member identified the Respondent's unapproved referral arrangement and other outside business activities conducted through Exceedia Consulting as a result of a branch audit. The Member subsequently conducted an investigation into the Respondent's conduct.

20. On or about January 8, 2018 the Member terminated the Respondent's mutual fund registration.

21. In or around January 2018, the Member sent audit letters to the clients serviced by the Respondent to determine if any clients participated in the Respondent's outside business activities. No clients reported any concerns.

Additional Factors

22. The Respondent has not been the subject of prior MFDA disciplinary proceedings.

23. The Respondent cooperated with the MFDA's investigation into her conduct.

24. The Respondent states that she is unable to contribute any additional amounts toward a fine in this matter due to financial circumstances. The Respondent acknowledges that absent her limited ability to pay, it would have been appropriate for her to be subject to a penalty that included a greater fine due to the conduct that is the subject of the Settlement Agreement.

25. There is no evidence of client loss.

26. By admitting to the facts and contraventions described above, the Respondent has saved the MFDA the time and resources associated with conducting a fully contested hearing on the merits.

Analysis

27. The Respondent admits that she engaged in outside business activities which were not disclosed to or approved by the Member. The Respondent admits that she referred one client and

three other individuals to a mortgage brokerage outside the Member and received at least \$1085.95 outside the Member for doing so.

28. The Settlement Agreement provides that the Respondent shall be prohibited for one month from conducting securities related business with a Member of the MFDA, and shall pay a fine of \$1000 and costs of \$2500.

29. A hearing panel should not interfere lightly in a negotiated settlement and should not reject a settlement agreement unless it views the proposed penalty as clearly falling outside the range of reasonableness. In our view, this Settlement Agreement advances the public interest and is reasonable and proportionate, having regard to all of the circumstances.

30. We have arrived at this conclusion having considered the following factors:

Nature of the Misconduct: Outside Business Activities

31. The Respondent's misconduct is serious: she engaged in outside business activities that were not disclosed to or approved by the Member and became an officer and director of a corporation to engage in additional activities that were not previously approved by the Member for which the Respondent was required to complete a dual occupation form.

Nature of the Misconduct: Referral Arrangement

32. The Respondent also entered into an unapproved referral arrangement with a mortgage brokerage where the Member was not a party to the referral arrangement, and referred 1 client and 3 other individuals.

The Respondent's Experience in the Securities Industry

33. The Respondent was registered in the mutual fund industry from January 2016 until January 2018, and now is not currently registered in it. She has no prior record of discipline with the MFDA.

The Respondent's Recognition of the Seriousness of the Misconduct

34. By entering into the Settlement Agreement, the Respondent has accepted responsibility for her misconduct and avoided the necessity of the MFDA incurring the additional time and expense of a full contested hearing.

Client Harm and Benefits Received by the Respondent

35. There were no client complaints or evidence of client loss or harm. The Respondent's financial benefits were low.

Deterrence

36. The Respondent's conduct was serious however the outside business activities, with the exception of the referral arrangement, were subsequently approved by the Member. In addition, the referral arrangement related to residential mortgage financing only and thus was not securities related.

Conclusion

37. Despite our initial concern that the reputational effect of a prohibition, which is reflected on an Approved Person's registration history, might have a disproportionately severe impact on this Respondent, whereas the amount of the fine, being at the lowest end of the spectrum, might have a disproportionately minor financial impact, after taking into account all the aggravating and mitigating circumstances, we concluded that the requirements of specific and general deterrence would balance the components of the penalty to be imposed for the unique circumstances of this case.

38. We have considered the existing precedents on penalty, as well as the MFDA's non-binding Sanction Guidelines.

39. In summary, we find that the Settlement Agreement is in the public interest. As said, it is reasonable and proportionate, it addresses specific and general deterrence and will foster public confidence in the integrity of the Canadian capital markets, and the industry.

Order

40. For these reasons, the Settlement Agreement was approved.

41. We thank Enforcement Counsel and the Respondent for their cooperation during the hearing.

DATED this 6th day of December, 2019.

“Shelley L. Miller”

Shelley L. Miller, QC
Chair

“Diane Jaspers”

Diane Jaspers
Industry Representative

“James Samanta”

James Samanta
Industry Representative

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