



**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: Dan Vivian Wang**

Heard: August 15, 2017 in Vancouver, British Columbia

Decision: August 15, 2017

Reasons for Decision: October 2, 2017

**REASONS FOR DECISION**

Hearing Panel of the Pacific Regional Council:

Robert G. Ward, QC

Chair

Susan Monk

Industry Representative

Bob Sokugawa

Industry Representative

Appearances:

Christopher Corsetti

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Counsel for the Mutual Fund Dealers

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Association of Canada

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Alexandra Luchenko

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Counsel for the Respondent

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Dan Vivian Wang

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Respondent

)

## Background

1. This hearing was duly constituted by the Mutual Fund Dealers Association of Canada (“MFDA”). Subject to a decision of the Hearing Panel, a Settlement Agreement (“Settlement Agreement”) dated June 22, 2017, was entered into between staff of the MFDA (“Staff”) and Ms. Wang, the Respondent. The Respondent, represented by Ms. Luchenko, was personally present at the hearing. On August 15, 2017, the Settlement Agreement between the Staff and the Respondent was considered by the Panel. The proposed Settlement Agreement concerns allegations that:

- a) between December 18, 2014 and February 2, 2015, the Respondent accepted \$15,000 cash from client PL, and deposited the monies into her own bank account prior to transferring the monies to the client PL’s bank account, thereby engaging in personal financial dealings with a client contrary to MFDA Rules 2.1.4 and 2.1.1;
- b) between December 20, 2014 and February 2, 2015, the Respondent deposited \$15,000 cash from client PL into her own bank account in two separate transactions, thereby circumvented the large cash transaction reporting requirements to the Financial Transactions and Report Analysis Centre of Canada, contrary to MFDA Rule 2.1.1 and the Member’s policies and procedures regarding proceeds of crime, money laundering and terrorist financing; and
- c) between December 18, 2014 and March 31, 2015 the Respondent falsely represented to the Member that she had returned \$15,000 cash received from client PL when she had in fact deposited the monies into her own bank account, thereby misleading the Member and interfering with its ability to supervise her conduct, contrary to MFDA Rule 2.1.1.

2. On August 15, 2017 the Hearing panel considered the Settlement Agreement to consider whether or not the Settlement Agreement should be accepted. Mr. Corsetti and Ms. Luchenko made helpful submissions which the Panel also considered.

3. By unanimous order the Settlement Agreement was accepted.

## **Facts**

4. The MFDA and the Respondent agreed to certain facts for the purpose of the Settlement Agreement. The facts, as agreed to by the MFDA and the Respondent, taken verbatim from the Settlement Agreement are as follows:

- a) The Respondent was registered in the securities industry from 2006 to April 16, 2015. The Respondent is not currently registered in the securities industry.
- b) From November 3, 2011 to April 16, 2015, the Respondent was registered in British Columbia as a mutual fund salesperson (now known as a dealing representative)<sup>1</sup> with Royal Mutual Funds Inc. (“RMFI”), a Member of the MFDA.
- c) The Respondent resigned from RMFI on April 16, 2015.
- d) At all material times, the Respondent carried on business in the Vancouver, British Columbia area.

## **Background**

- e) On September 8, 2012, client PL became a client of RMFI. At all material times, the Respondent was responsible for servicing client PL’s account.
- f) At all material times, RMFI’s policies and procedures required its Approved Person to file a Large Cash Transaction Report (“LCTR”) when depositing cash of \$10,000 or more into an account, as required by the Financial Transactions and Report Analysis Centre of Canada (“FINTRAC”).
- g) At all material times, RMFI did not allow its Approved Persons to accept cash from clients or deposit cash on behalf of clients.

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<sup>1</sup> In September 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force.

- h) On December 18, 2014, the Respondent accepted \$15,000 in cash from client PL for investment in client PL's mutual fund account. Later that day, the Respondent attended at a Royal Bank of Canada ("RBC") branch and proceeded to deposit the \$15,000 cash into client PL's bank account.
- i) The \$15,000 cash deposit triggered a requirement on the part of the bank teller to file a LCTR explaining the transaction and the source of the cash. The Respondent states she attempted to fill in the LCTR on behalf of client PL indicating the source of cash as business income, which was the Respondent's understanding of the source of the funds. The RBC bank branch manager ("RBC Bank Manager") asked to speak with client PL to verify the source of the cash. The Respondent states that client PL indicated he did not have time to speak about the matter. Accordingly, the Respondent indicated to client PL that the transaction would be cancelled.
- j) The Respondent advised the RBC Bank Manager that she would not proceed with the deposit of the \$15,000 in cash and would instead return the \$15,000 cash to the client PL that evening.
- k) The RBC Bank Manager reported to the Respondent's branch manager at RMFI ("RMFI Branch Manager") that the Respondent had attempted to make a large cash deposit on behalf of a client and had promised to return the money to the client. On December 20, 2014, the RMFI Branch Manager questioned her about the transaction and asked whether she had returned the \$15,000 in cash to client PL. The Respondent falsely stated that she had returned the money to client PL. The Respondent states she had not yet done so because she understood client PL was out of town. The Respondent deposited the \$15,000 in cash into her own bank account in the interim and eventually returned it to client PL as set out below.
- l) At all material times, the Respondent was aware that, if she accurately and honestly completed a LCTR concerning the \$15,000 in cash, she would be required to disclose that she had received the money from client PL.
- m) In order to avoid detection of her conduct and circumvent the requirement to complete a LCTR, the Respondent deposited the \$15,000 that she had received

from client PL into her personal bank account by means of two separate transactions. On December 20, 2014, the Respondent deposited \$7,500 in cash into her personal bank account, and on December 29, 2014, the Respondent deposited the remaining \$7,500 into her personal bank account.

- n) As a result of the Respondent's conduct, no LCTR was required to be submitted for either transaction.
- o) On February 2, 2015, the Respondent wire transferred \$15,000 from her personal bank account to client PL's bank account.

### **Contraventions**

- p) The Respondent admits that:
  - i. Between December 18, 2014 and February 2, 2015, the Respondent accepted \$15,000 cash from client PL, and deposited the monies into her own bank account prior to transferring the monies to the client PL's bank account, thereby engaging in personal financial dealings with a client contrary to MFDA Rules 2.1.4 and 2.1.1;
  - ii. Between December 20, 2014 and February 2, 2015, the Respondent deposited \$15,000 cash from client PL into her own bank account in two separate transactions, thereby circumvented the large cash transaction reporting requirements to the Financial Transactions and Report Analysis Centre of Canada, contrary to MFDA Rule 2.1.1 and the Member's policies and procedures regarding proceeds of crime, money laundering and terrorist financing; and
  - iii. Between December 18, 2014 and March 31, 2015, the Respondent falsely represented to the Member that she had returned \$15,000 cash received from client PL when she had in fact deposited the monies into her own bank account, thereby misleading the Member and interfering with its ability to supervise her conduct, contrary to MFDA Rule 2.1.1.

## APPLICABLE RULES AND REGULATIONS

5. MFDA Rule 2.1.1 provides standards of conduct which are applicable herein, including the obligation on each Approved Person to (inter alia):

- a) deal fairly, honestly and in good faith with its clients;
- b) observe high standards of ethics and conduct in the transaction of business;
- c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.

6. MFDA Rule 2.1.4 provides, (inter alia):

- a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.
- b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d).
- c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.

...

7. By Rule 2.2.1, each Approved Person is to use due diligence:

- a) To learn the essential facts relative to each client and to each order or account accepted;
- b) To ensure that the acceptance of any order for any account is within the bounds of good business practice;
- ...
- e) To ensure that the suitability of the investments within each client's account is assessed:
  - i) Whenever the client transfers assets into an account at the Member;
  - ...

8. On April 14, 2008 (revised February 22, 2013), the MFDA issued Staff Notice MSN-0069 (Suitability) providing guidance on how to establish a suitability framework in satisfying the KYC ("Know Your Client") obligations.

### **PRINCIPLES GOVERNING THE DETERMINATION OF THIS PANEL**

9. The principles governing the determination of the Hearing Panel in considering this Settlement Agreement are well known, and have been considered on numerous occasions. The Hearing Panel is to:

- a) accept the Settlement Agreement; or
- b) reject it.

Stated alternatively, the Panel is not to determine the penalty that it considers appropriate, but to consider whether the Settlement Agreement is reasonable under the circumstances.

10. The role of the Hearing Panel at a Settlement Hearing is different than at a contested hearing, when a Panel is required to determine a correct penalty. The Hearing Panel is not to

alter a penalty that it considers to be within a reasonable range, considering particularly the fact that the parties have agreed.

11. A penalty is not to be rejected unless it clearly falls outside a reasonable range of appropriateness.<sup>2</sup> The overriding objective is the protection of the public.<sup>3</sup>

12. Settlements allow the parties to address the interests of the Regulator and the Respondent, thereby achieving flexibility while ensuring that the regulatory objective of protecting the public and prohibiting activities that are harmful thereto are enforced.<sup>4</sup>

13. The decision of the Hearing Panel in the case of *Re Jacobson*, 200712 MFDA, is instructive. In that case, the Hearing Panel stated the following factors are to be taken into account:

- a) whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
- b) whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
- c) whether the settlement agreement addresses the issues of both specific and general deterrence;
- d) whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
- e) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
- f) whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- g) whether the settlement agreement will foster confidence in the regulatory process itself.

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<sup>2</sup> *Sterling Mutuals Inc.(Re)*, 2008 LNCMFDA 16, at para.37;

<sup>3</sup> *British Columbia Securities Commission v. Seifert*, [2007] BCCA 484, para.31, citing with approval from *Regina v. 974649 Ontario Inc.*, 2001 S.C.C. 81, 2001 3 S.C.R. 575 at para.49; *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557, paras. 59 and 68.

<sup>4</sup> *Regina v. 974649 Ontario Inc.*, 2001 S.C.C. 81, 2001 3 S.C.R. 575, para. 49

14. The case of *Re Headley*, MFDA File No. 200509, pages 25 and 26 is also pertinent. In considering the appropriate penalty, the following factors were stated to be relevant:

- 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 recognizes 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.

15. The MFDA penalty guidelines are also relevant, albeit they are not binding and are simply to assist Hearing Panels in considering the appropriate penalties.

## **CONSIDERATIONS OF THE PANEL**

### **A. Misconduct**

16. Depositing the client's money into her own bank account in two separate transactions to avoid detection and FINTRAC, as well as avoiding the Member's policy on large cash transactions, was clearly a serious transgression of the Respondent's duties. Moreover, the

Respondent falsely represented to the Member that she had already returned the client's money, when such was merely her intent.

#### **B. Client Harm**

17. There is no evidence of client harm.

#### **C. Benefit Received by the Respondent**

18. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding.

#### **D. The Respondent's Experience and Level of Activity in the Capital Markets**

19. The Respondent has been registered in the mutual fund industry since 2006 and should have known and respected the Member's and the MFDA's compliance requirements. On the other hand, this was a first offense.

#### **E. Deterrence**

20. The agreed upon monetary obligations are significant as is the six-month prohibition proposed. It helps MFDA Staff send a message to the Respondent and others that the conduct is considered very serious and that similar conduct will not be countenanced.

#### **F. The Respondent's Recognition of the Seriousness of the Misconduct**

21. The Respondent has accepted responsibility for the misconduct. She has also avoided the necessity of the MFDA incurring the time and expense of a full disciplinary hearing. She has not been evasive and has cooperated with the investigation into her conduct.

## **G. Penalty Guidelines**

22. The proposed penalties in the Settlement Agreement are greater than the minimum and properly reflect the seriousness of the offense. They also take into account the fact that the Respondent has cooperated, admitted her misconduct, and has not been found to have any disciplinary actions previously.

## **H. Previous Decisions Made in Similar Circumstances**

23. There are a number of precedents which are relevant for consideration. They include:

- *Re: Neil Rutley*, MFDA File No. 201523, decided in 2015
- *Re: Mary Dee Happy Iturralde*, MFDA File No. 201684, a 2017 decision
- *Re: Patricia Marva Cuthbert*, MFDA File No. 201013, a 2011 decision

24. None of the authorities are identical. Nonetheless, taken as a whole, they do demonstrate that the proposed penalty in the Settlement Agreement is within the realm of reasonableness.

## **OPINION AND DECISION**

25. It is the opinion of the Panel that the Settlement Agreement:

- a) Is reasonable and proportionate having regard to the conduct of the Respondent;
- b) Sufficiently addresses the issues of both general and specific deterrence; and
- c) Maintains confidence in the integrity of the MFDA and the regulatory process.

26. In the result, the Settlement Agreement is approved and confirmed. The Respondent:

- a) Attended the settlement hearing;

- b) Is prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 6 months, commencing on August 15, 2017, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- c) Shall pay a fine in the amount of \$20,000, pursuant to section 24.1.1(b) of By-law No. 1;
- d) Shall pay costs in the amount of \$5,000, pursuant to section 24.2 of By-law No. 1;
- e) Shall in the future comply with 2.1.4 and 2.1.1.

27. These Reasons may be signed in counterpart.

**DATED** this 2<sup>nd</sup> day of October, 2017.

“Robert G. Ward”

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Robert G. Ward, QC  
Chair

“Susan Monk”

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Susan Monk  
Industry Representative

“Bob Sokugawa”

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Bob Sokugawa  
Industry Representative

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