



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: Cuiqin Ammy Yang

Heard: March 8, 2018 in Toronto, Ontario

Decision: March 8, 2018

Reasons for Decision: April 16, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth)	Chair
Edward V. Jackson)	Industry Representative
Kenneth P. Mann)	Industry Representative

Appearances:

David Babin)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Cuiqin Ammy Yang)	Respondent, not in attendance nor represented
)	by counsel
)	

Background

1. By Notice of Hearing dated July 10, 2017 (Notice of Hearing), a Hearing Panel of the Central Regional Counsel of the Mutual Fund Dealers Association of Canada (the MFDA) was convened to hear evidence and submissions with respect to allegations against Cuiqin Ammy Yang (Respondent) set out in the Notice of Hearing.

2. The Notice of Hearing alleged as follows:

Allegation #1: On or about October 30, 2012, the Respondent altered two account forms without evidence of client consent and submitted the altered account forms directly to the fund company to process trades, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.10 and 1.1.2.

Allegation #2: Between October 23, 2012 and December 14, 2012, the Respondent submitted 18 account forms directly to fund companies to process trades in the accounts of 4 clients without the knowledge or approval of the Member, contrary to the policies and procedures of the Member and MFDA Rules 1.1.1(a), 2.1.1, 2.10 and 1.1.2.

Allegation #3: Commencing on April 28, 2016, the Respondent has failed to cooperate with an investigation into her activities conducted by Staff of the MFDA, contrary to section 22.1 of MFDA By-law No. 1.

3. By order of the Hearing Panel, dated March 8, 2018, the Respondent was determined to have been served with the Notice of Hearing and notified of the within proceedings.

4. The Respondent, following the service of the Notice of Hearing, failed to deliver or serve a Reply to the Notice of Hearing, failed to attend the first appearance in this matter and failed to attend, or be represented at the Hearing on the merits of the above allegations held on March 9, 2018, although duly served with notice of all proceedings, including the hearing on the merits.

5. Given the numerous failures of the Respondent to respond in this proceeding as set out above, the Panel made an order pursuant to Rules of Procedure 13.5 and 7.3(a) that it would proceed with the Hearing on the merits without further notice and in the absence of the Respondent.

6. At the Hearing, Staff at the MFDA (Staff) filed the Affidavit of Jessie Siu dated February 22, 2018, containing the facts and documents on which Staff relied. The said Affidavit was marked as Exhibit 5.

The Facts

7. The Affidavit of Jessie Siu, marked as Exhibit 5, disclosed that:

Altered Client Order Forms

- a) From May 2002 to October 2007, the Respondent was registered in Ontario as a mutual fund salesperson with Axa Financial Services Inc., a Member of the MFDA;
- b) From October 18, 2007 until December 20, 2012, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Peak Investment Services Inc. (“Peak”), a Member of the MFDA. Peak terminated the Respondent for cause on December 20, 2012, as a consequence of events and conduct described herein;
- c) On October 20, 2012, the Respondent submitted two Order Forms to Peak to process four switches for clients ZSL and XYW. Those switches were processed on October 23, 2012;
- d) On October 30, 2012, the Respondent altered the Order Forms she had previously used to process the switches for clients ZSL and XZW by crossing out the original trading instructions, entering new trading instructions, and altering the date on the Order Forms;
- e) Clients ZSL and XZW did not initial or otherwise appear to authorize the alterations;

Off Book Transactions

- f) The Respondent submitted the altered forms directly to the fund company for processing, and did not process the October 30, 2012 transaction through the facilities of Peak;
- g) On December 12, 2012, the Respondent submitted two letters of direction (“LOD”) to TD Asset Management Inc. (“TD”) directly, requesting that a total of ten switches be processed in the accounts of two additional clients, YZ and TW;
- h) On December 12, 2012, the Respondent also submitted a LOD directly to Mackenzie Investments to request that six switches be processed in the account of client WH;
- i) None of the December 12, 2012 switches were processed through the facilities of Peak;
- j) At all material times, Peak’s Policies and Procedures Manual prohibited trading that was manually sent to mutual fund companies;

Failure to Cooperate

- k) Beginning on April 15, 2016, Staff attempted to schedule an interview with the Respondent at the MFDA offices in Toronto;
- l) Staff sent letters dated April 15, 2016, May 10, 2016 and June 28, 2016 to the Respondent by email, regular mail, process server and registered mail, and none were successfully served upon the Respondent;
- m) An interview was scheduled by Staff for July 22, 2016 and the Respondent failed to attend; and
- n) The Respondent has not replied to any of the Staff’s communications regarding Staff’s investigation, or this disciplinary proceeding.

8. In weighing the facts set out above, the Panel considered that the standard of proof in this case was the civil standard of balance of probability. The Panel also considered the submissions of Staff, the Rules of the MFDA, and the numerous cases to which it was referred. After having done so, the Panel unanimously concluded that Allegation #1, Allegation #2 and Allegation #3 had been proven as against the Respondent.

Penalty: Law and Finding

9. In coming to its conclusion, with respect to appropriate penalties, the Panel was mindful that the primary goal of Securities Regulation is the protection of the investor.

Pezim v British Columbia (Superintendent of Brokers), [1994] 2 SCR 557.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007.

10. The Panel further considered that in addition to protection of the public, the goals of Securities Regulation also included fostering public confidence in the capital markets and the securities industry.

Pezim v British Columbia (Superintendent of Brokers), supra

Tonnies (Re), MFDA File No. 200503, Hearing Panel of Prairie Regional Council, Decision and Reasons dated June 27, 2005.

11. The Panel concluded that sanctions imposed by a Hearing Panel should therefore be protective and be exercised to prevent likely future harm to the markets.

12. The Panel was also aware that when determining whether a penalty is appropriate, the Hearing Panel should consider:

- a) The protection of the investing public;
- b) The integrity of the securities markets;
- c) Specific and general deterrence;
- d) The protection of the MFDA's membership; and
- e) The protection of the integrity of the MFDA's enforcement processes.

Tonnies (Re), supra

13. The Panel also considered the penalty guidelines as an additional source that might be consulted when determining the appropriateness of penalty to be imposed, understanding at all

times, that the guidelines are not mandatory, but set out penalty types and ranges that are designed to assist Panels.

14. In coming to its conclusion, the Panel also considered the numerous cases to which it was referred, including:

Price (Re), MFDA File No. 200814, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 18, 2011.

Thackray (Re), MFDA File No. 201736, Hearing Panel of the Pacific Regional Council, Decisions and Reasons dated May 24, 2017.

Headley (Re), MFDA File No. 200509, Hearing Panel of the Central Regional Council, Decision and Reasons dated February 21, 2006.

Based on the above, the Panel concluded that each of the allegations proven against the Respondent were of a serious nature and required onerous penalties.

15. The Panel also considered that the Respondent had never previously been the subject of an MFDA disciplinary proceeding. However, the Respondent, had been a dealing representative for 10 years from May 2002 to December 2012, and should have known that she was engaging in serious misconduct.

Result

16. For all the above reasons, the Panel imposed the following penalties:
- a) a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member;
 - b) a fine in the amount of \$75,000; and
 - c) costs in the amount of \$10,000.

DATED this 16th day of April, 2018.

“Frederick W. Chenoweth”

Frederick W. Chenoweth
Chair

“Edward V. Jackson”

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Industry Representative

“Kenneth P. Mann”

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