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: Chanrith Yin

Heard: May 26, 2022 by electronic hearing in Toronto, Ontario
Decision: July 4, 2022
Decision and Reasons: July 4, 2022

DECISION AND REASONS

Hearing Panel of the Central Regional Council:

Martin L. Friedland C.C., Q.C.	Chair
Guenther K. Kleberg	Industry Representative
Samuel Mah	Industry Representative

Appearances:

Justin Dunphy	Senior Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Michael A. M. Mantle	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Chanrith Yin	Respondent, not in attendance or represented by counsel

Background

1. This is a Hearing under Sections 20 and 24 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the "MFDA"). The Hearing was held electronically on May 26, 2022. Chanrith Yin (the "Respondent") was not in attendance or represented by counsel at the Hearing.

2. From June 2007 to January 2020, the Respondent was registered in Ontario as a dealing representative with Equity Associates Inc. (the "Member"), a Member of the MFDA. Commencing May 2016, the Respondent operated under the trade name "Prime Wealth." Prior to this, he operated under the trade name "Better Financial."

3. On January 20, 2020, the Respondent's registration was terminated as a result of the matters discussed in these reasons and he is not currently registered in the securities industry in any capacity.

4. At all material times, the Respondent carried on business in the London, Ontario area.

5. On December 21, 2021, the MFDA issued a Notice of Hearing against the Respondent pursuant to sections 20 and 24 of By-law No. 1 in respect of a disciplinary proceeding commenced against the Respondent. On January 28, 2022, the first appearance in this proceeding was held by videoconference before the Chair of the present Panel.

6. The Respondent did not attend the first appearance and did not serve or file a Reply to the Notice of Hearing. Indeed, as will be discussed in further sections of these reasons, the MFDA has not been able to make contact with the Respondent, despite many attempts to give him notice of the proceedings.

7. At the January 28, 2022, appearance, MFDA Staff requested, and the Chair of the Panel ordered, that the manner of service of the Notice of Hearing appearance be deemed to be effective on the Respondent, pursuant to Rules 1.5 and 4.2(1)(d)) of the MFDA Rules of Procedure.

8. A hearing on the merits was ordered to take place by videoconference on May 26th and 27th, 2022. The present Hearing took place on May 26th.

Alleged Misconduct

9. The MFDA alleged the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between March 2014 and July 2019, the Respondent misappropriated or otherwise failed to account for monies from clients and another individual, contrary to MFDA Rule 2.1.1.

Allegation #2: Between March 2014 and July 2019, the Respondent solicited or obtained monies from clients and another individual to invest in unapproved investments outside the Member, thereby engaging in:

a) securities related business that was not carried on for the account of the Member and through the facilities of the Member, contrary to the Member's policies and procedures, and MFDA Rules 1.1.1, 2.1.1, 1.1.2, and 2.5.1; or

b) personal financial dealings with the clients, which gave rise to a conflict or potential conflict of interest which the Respondent failed to disclose to the Member, or failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to the Member's policies and procedures, and MFDA Rules 2.1.4, 2.1.1, 1.1.2, and 2.5.1.

Allegation #3: Between November 2012 and January 20, 2020, the Respondent engaged in outside business activity that was not disclosed to or approved by the Member, contrary to the Member's policies and procedures, and MFDA Rules 1.2.1(c), (now 1.3), 2.1.1, 1.1.2, and 2.5.1.

Allegation #4: Commencing in January 2020, the Respondent failed to cooperate with an investigation by MFDA Staff into his conduct, contrary to section 22.1 of MFDA By-Law No. 1.

10. The MFDA Rules of Procedure provide that if the Respondent fails to file a Reply to a Notice of Hearing (Rule 8.4) or to attend a Hearing (Rule 7.3) the Panel is entitled to accept the facts alleged and conclusions drawn by the MFDA. MFDA Staff elected, however, to present evidence at the Hearing on the Merits in order to ensure that a complete evidentiary record was established which supported the allegations in the Notice of Hearing.

11. At the present Hearing, counsel for the MFDA presented oral evidence of the Respondent's misconduct through a number of sworn witnesses who had been clients of the Respondent. Those witnesses had also prepared sworn affidavits. Because much confidential financial information is disclosed in the sworn testimony and affidavits, the Panel has identified the clients by alphabetical letters, as had the Notice of Hearing, and not their names.

12. In addition, the MFDA Senior Investigator, John Gallimore, prepared a lengthy detailed personal affidavit and also presented sworn evidence at the Hearing concerning the events. His evidence also contained sworn interviews with a number of clients. In addition, one client was not able to give oral sworn testimony, but had prepared a sworn affidavit, which was entered as evidence. In several cases, the clients recorded telephone conversations with the Respondent, which was presented in their affidavits and testimony.

13. There was no evidence presented by the Respondent.

14. Although in disciplinary hearings the burden of proof is on a balance of probabilities, the Panel has no doubt that the facts presented very clearly prove the misconduct alleged in the four contraventions. Counsel for the MFDA is correct in describing the evidence as "overwhelming."

15. The Respondent's conduct was egregious. He took substantial sums from a number of ordinary, hard-working persons, who trusted him to invest their funds wisely and prudently. The MFDA alleges that a total of 11 individuals invested their funds with the Respondent. The Respondent did this on his own, without the knowledge of the Member. When his conduct was discovered, he vanished and the MFDA has been unable to locate his whereabouts.

16. The clients invested $1,686,522. Of that sum, $312,311 was repaid by the Respondent as interest or other repayments. As of today, $1,374, 210 has not been repaid.

The Facts in Greater Detail

17. On or about November 12, 2012, without the approval of the Member, the Respondent began operating Nobis Group Property Management and Leasing ("Nobis") as a sole proprietorship, which was registered in November 2014. The Respondent established Nobis in order to, among other things, purportedly to raise capital to provide private mortgage loans to third parties.

18. This was done without the consent or knowledge of the Member. Nobis was not reported in the Respondent's entry on the Canadian Securities Association's National Registration Database. Nor was it disclosed in a 2018 Member audit questionnaire completed by the Respondent. The Member's policies and procedures, as is required by the MFDA, prohibited the Respondent from engaging in securities related business outside the Member, engaging in personal financial dealings with clients, and entering into private investment schemes with clients.

19. Some of the clients came to the Respondent because he and his father had helped in the preparation of their tax returns and with other activities, such as insurance and mortgage brokering services. The evidence indicates that the Respondent often developed a close personal relationship with his clients, who would recommend him to others.

20. Each story is similar. A certain sum was initially invested by a client in Nobis. The client was ensured by the Respondent that it was a safe investment. "Zero risk," one client recalled him stating. Some clients were involved in multiple transactions. The largest amount was by clients B1 and B2, a mother and daughter, who invested a total of $818,000. In some cases, the money invested was because of an earlier real estate sale. In one case the available funds were because of a legacy in a relative's will.

21. There was normally a twelve month "Loan Agreement" or "Investment Contract," with a stated rate of interest and maturity date. In some cases, however, there was no contract. When the term of contract ended, the funds were normally reinvested. The yearly interest rate would vary from person to person and from transaction to transaction, sometimes being as low as 5.25% a year and in other cases up to 20% a year.

22. When clients wanted to sell some of their investments in Nobis or when interest payments were missed, clients contacted the Respondent, who put them off, saying that he was having some personal issues. In some cases, cheques he sent bounced. Eventually, a number of clients complained to the Member, who then filed a METS (Member Event Tracking System) report with the MFDA. On January 20, 2020, the Member dismissed the Respondent.

23. The MFDA then undertook a thorough investigation of the Respondent's conduct.

24. Because the Respondent did not cooperate in any way in the investigation, there are gaps in our knowledge of how Nobis operated and why it was apparently unsuccessful. One of the clients was not a client of the Member. Were there more such clients, who were not clients of the Member, who invested and lost funds, but did not subsequently come forward?

25. The evidence presented to us, particularly the evidence given by videoconference, dramatically shows how the loss of their investments affected the clients' everyday lives. In one case, a retired person was not able to do the travelling she had hoped to do. Another person could not purchase a house. In other cases, career opportunities were blocked. They all suffered

emotionally and in at least one case, physically. One witness described the past few years as "dark times."

26. There are other legal proceedings taking place at the present time, but we were not given details of their status.

27. The best way of describing the various transactions is through the following chart presented by counsel for the MFDA. It shows the various clients, the dates and amounts of purchases of securities, the interest or other payments made by the Respondent, and the amounts still outstanding.

Investors	**Dates**	**Amount Accepted by the Respondent**	**Amount Received as Interest or Other Payments by Respondent**	**Amounts Outstanding**
Client A	March 2014 March 2016 September 2017	$50,000 $28,522 $10,000	$4,300	$84,222
Clients B1 and B2	December 2014 – March 2019	$818,000	$214,548	$603,452
Client C	July 2017	$10,000	Nil	$10,000
Clients D1 and D2	March 2018	$80,000	$26,680	$53,320
Client E	April 2018	$30,000	Nil	$30,000
Clients F1 and F2	November 2018 January 2019	$250,000 $180,000	$31,314.42	$398,685.58
Individual 1	February 2019	$100,000	$4,669	$95,331
Client G	July 2019	$130,000	$30,800	$99,200
TOTALS:		**$1,686,522**	**$312,311.42**	**$1,374,210.58**

28. With respect to the Respondent's failure to cooperate (Allegation 4), MFDA Staff attempted to contact the Respondent on the following occasions using the following methods:

Date	**Method**	**Location**	**Result**
January 24, 2020	Registered and regular mail	Elmwood Address	Registered Mail returned to Staff. Regular Mail not returned to Staff. The Respondent did not respond by February 17, 2020.

Date	Method	Location	Result
July 16, 2020	Process Server	Elmwood Address	Process Server unsuccessful in serving Respondent. Property listed for sale.
September 18, 2020	Process Server	Cedarcreek Address	Process Server unsuccessful in serving Respondent.
October 21, 2020	Process Server	Elmwood Address	Process Server unsuccessful in serving Respondent.
November 10, 2020	Process Server	Elmwood Address	Process Server unsuccessful in serving Respondent
November 30, 2020	Email	Chanrith.yin@gmail.com	Email confirmed to have been sent, but no confirmation Respondent accessed the email.
December 9, 2020	Process Server, Registered and Regular Mail	Elmwood Address	Process Server unsuccessful in serving Respondent. Process server left letter in mailbox at Elmwood Address. Regular mail not returned.
December 11, 2020	Process Server	Lakeshore Address	Process Server unsuccessful in serving Respondent.

The Law

29. A breach of Allegation 1 is clearly proved. The uncontested evidence shows that the Respondent engaged in a pattern of conduct whereby he solicited at least $1,686,522 from 11 persons to purportedly invest in private loans and/or mortgages through Nobis, of which he has failed to repay or otherwise account for at least $1,374,210. The word “purportedly” is used because there is no evidence that the funds were ever actually invested.

30. Such conduct is clearly a breach of MFDA Rule 2.1.1, which requires that each Member and Approved Person deal fairly, honestly, and in good faith with clients, observe high standards of ethics and conduct in the transaction of business, and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest. Cases have noted that “misappropriation is among the most serious types of misconduct encountered by securities regulators.” See *Re Ng* MFDA File No. 201539 at para. 1067; *Re Davies* MFDA File No. 201968 at para. 25; see also *Re Douglas* MFDA File No. 201824 and *Re Vanlandschoot* MFDA File No. 202024.

31. Hearing Panels have also held that misappropriation of monies from a source unrelated to mutual funds or mutual fund clients is a breach of the standard of conduct set out in Rule 2.1.1. See *Re Hothi* MFDA File No. 202012 and *Re Lee* MFDA File No. 201914.

32. Securities related business or personal financial dealings with a client, set out in Allegation #2, is also clearly proved. Rule 1.1.1 requires Approved persons to conduct all securities related business for the account of the Member and through the facilities of the Member. MFDA By-law No. 1, section 1, defines "securities related business" expansively to capture all "business and activity (whether or not carried on for gain) engaged in, directly or indirectly, which constitutes trading or advising in securities for the purposes of applicable securities legislation." Nobis was therefore conducting a securities related business.

33. MFDA Rule 1.1.1 is designed to ensure that Members can implement effective oversight of any products that their Approved Persons are providing advice about and selling to clients. By directing all securities related business through the Member, clients are protected by the oversight, due diligence, and risk appraisals undertaken by Members. They are also subject to trade review by the Member to ensure that each recommendation made and each order accepted is suitable for the client. Multiple decisions from Hearing Panels of the MFDA have stressed the importance of MFDA Rule 1.1.1 to ensure that Approved Persons do not go "off book," so that Members can properly supervise the securities related business conducted by each Approved Person. In *Re Caicco* (MFDA File No. 21503 at para. 23), the Hearing Panel, citing an earlier 2010 MFDA decision, commented on some of the principles underlying the rule:

34. "MFDA Rule 1.1.1(a) is fundamental to the regulatory mandate of the MFDA. An Approved Person must not trade in securities other than through the firm employing him/her, and the firm must have knowledge and consent to those business dealings. The Rule enhances investor protection and strengthens public confidence in the Canadian Mutual Fund Industry, as it creates a regime whereby an approved person is only permitted to sell investment products that have first been approved for sale by the Member, and which are sold through the facilities of the Member, thus ensuring the trading activity is subject to appropriate review and supervision."

35. Because Allegation #2 is framed in the alternative, it is not strictly necessary for the Panel to make a holding on personal financial dealings. Nevertheless, we hold that his conduct was a prohibited conflict of interest contrary to Rule 2.1.4. See MFDA Staff Notice MSN-0047.

36. Allegation #3 has also been proved. MFDA Rule 1.3.2 states that an Approved Person may have, and continue in, an outside activity provided that, among other things, the Approved Person discloses the outside activity to the Member and obtains the Member's approval. There was no disclosure in the present case and no approval.

37. Finally, Allegation 4 on failure to cooperate is clear and needs no authority for the Panel to conclude that the Respondent failed to cooperate. It should be noted that an Approved Person continues to be subject to MFDA jurisdiction for five years after they leave the MFDA. See MFDA By-law No. 1, s. 24.1.4.

38. In addition to the Rule violations in Allegations 2 and 3, the Respondent's conduct was also a breach of the Member's policies and procedures and was therefore a violation of Rules 2.5.1 and 1.1.2. See *Re Frank* MFDA File No. 201407 and *Re O'Connor* MFDA File No. 201756.

Penalty

39. The Respondent's conduct is so egregious that he should never be readmitted to the securities industry. This is so, even though he has not previously been the subject of disciplinary proceedings.

40. The determination of an appropriate fine, however, is not an easy matter to determine.

41. The conduct not only hurt his clients, but such conduct hurts the securities industry and the Member, who had no knowledge of the conduct. A large measure of general deterrence is required in the present case.

42. We have accepted the recommendation of MFDA counsel that the Respondent pay a fine equal to the known amount of the client loss, plus an amount for the four allegations. The MFDA suggested a fine of $1,374,210 for the amount owing plus $350,000 for breaches of Allegations #1 to #4. The MFDA suggest $300,000 for Allegations #1 to #3 and $50,000 for the breach of Allegation #4. We prefer, however, to order a simple round figure of $350,000, without dividing it between allegations.

43. As stated earlier, we have no knowledge of other proceedings, except to know that there are such proceedings. If it turns out that the Respondent has funds and pays the fine, we leave it to the good judgment of others to determine how that sum is used, in the light of the client losses in

the present case. The MFDA's Investor Protection Fund only protects clients against loss when there is an insolvency.

44. The MFDA suggests that costs be assessed in the sum of at least $20,000. We raise that to $30,000 in the light of the statement of costs submitted to us showing that costs have thus far been about $40,000.

45. The fine in the present case is not out of line with the cases cited to us and the MFDA Penalty Guidelines. The penalty imposed – we recognize – is a substantial one because of the serious harm done to the clients, the potential harm to the securities industry, and the failure of the Respondent to cooperate in any manner.

46. We therefore order:

a) that the Respondent be permanently prohibited from conducting securities related business in any capacity while in the employ of, or in association with, any MFDA Member pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

b) that the Respondent pay a fine in the amount of $1,374,210 – the amount that the clients lost – plus a fine of $350,000 for breaches of Allegations #1 to #4; and

c) that the Respondent pay costs in the amount of $30,000, pursuant to s. 24.2 of MFDA By-law No. 1.

DATED this 4th day of July, 2022.

"Martin L. Friedland"
Martin L. Friedland C.C., Q.C.
Chair

"Guenther W. K. Kleberg"
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Industry Representative

"Samuel Mah"
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Industry Representative

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