



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: Wei William Zhang

Heard: October 1, 2013 in Toronto, Ontario
Reasons for Decision: October 30, 2013

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick H. Webber)	Chair
T. Hugh McNabney)	Industry Representative
Robert C. White)	Industry Representative

Appearances:

Lyla Simon)	Counsel, Mutual Fund Dealers Association of Canada (“MFDA”)
)	
)	
Wei William Zhang (“Respondent”))	Not in attendance or represented by counsel
)	
)	

I. Disciplinary Hearing

1. The disciplinary hearing in this matter was held on October 1, 2013, pursuant to a Notice of Hearing dated June 14, 2013, a copy of which is attached hereto as Schedule “A” (the “NOH”). In accordance with the NOH, a first appearance took place on August 19, 2013. The Respondent did not appear and the Panel made an order dated August 19, 2013 for substituted service of the NOH and setting October 1, 2013 for the hearing on the merits. Prior to the hearing, the MFDA issued an announcement changing the venue of the hearing from the MFDA offices as stated in the NOH to 155 University Avenue, Suite 302, Toronto, Ontario. This announcement was not served on the Respondent, but the MFDA staff was instructed to look for the Respondent at the MFDA offices on October 1, 2013. The Respondent did not appear at the hearing on October 1, 2013 and did not appear at the MFDA offices. At the commencement of the hearing, an affidavit of service of Sofi Vasiliadis dated September 20, 2013 was filed as Exhibit 4, and an affidavit of service of Rob Lamshead dated September 23, 2013 was filed as Exhibit 5. These affidavits establish that all reasonable and required efforts were made by the MFDA to notify the Respondent of the hearing. The Respondent failed to deliver a reply to the NOH as required by the MFDA Rules of Procedure and, as noted above, he failed to appear at the hearing despite numerous efforts by the MFDA to notify him thereof. In these circumstances, Rules 8.4(1) and 7.3 entitle the Panel to proceed with the hearing without further notice to, and in the absence of, the Respondent and to accept the facts alleged and conclusions drawn by the MFDA in the NOH.

2. Accordingly, the Panel ordered that the hearing proceed in the absence of the Respondent and accepted the facts alleged and conclusions drawn by the MFDA in the NOH.

II. Allegations

3. The only allegation against the Respondent set out in the NOH was:

Commencing in or about July 2010, the Respondent has failed to cooperate with an MFDA investigation by failing to comply with a request by MFDA Staff that he attend for an MFDA interview, contrary to section 22.1 of MFDA By-law No. 1.

III. Facts

4. The facts giving rise to the allegation are set out in detail in the NOH and need not be repeated at length herein. In summary, in January 2010, the MFDA received complaints from clients of the Respondent alleging that in 2007 the Respondent had them sign blank Know-Your-Client forms and loan applications, exaggerated their incomes and net worth, and used the documents to apply for investment loans that the clients had not authorized.

5. In addition, in 2013, the MFDA received complaints from other clients of the Respondent that the Respondent had guaranteed accounts of those clients against losses, and that the Respondent failed to abide by the terms of the guarantees and failed to compensate them for losses in their accounts.

6. Commencing in or about July 2010, the MFDA made repeated requests (detailed in the NOH) that the Respondent attend an interview with the MFDA arising out of the client complaints, but the Respondent failed to respond the MFDA requests.

7. As set out in the NOH, due to the Respondent's failure to cooperate, the MFDA was unable to determine the full nature and extent of the Respondent's conduct in relation to the client complaints, and no allegations were made against the Respondent in relation to the complaints. The only allegation involved the failure to cooperate.

IV. Failure to Cooperate

8. Under section 21 of MFDA By-law No. 1, the MFDA has a duty to conduct examinations and investigations of an Approved Person (the "AP") as it considers necessary or desirable in connection with any matter related to the AP's compliance with the By-laws, Rules and Policies of the MFDA. In carrying out its duty under section 21, section 22 empowers the MFDA to require the AP to submit a written report, produce documents for inspection and attend and give information, regarding the matter under investigation.

9. Correspondingly, section 22.1 compels the AP to cooperate with the MFDA's section 22.1 investigation requirements.

10. MFDA hearing panels have consistently held that a failure by an AP to cooperate with an

MFDA investigation by failing to provide information, documents or a written report when requested to do so, is serious misconduct, contrary to section 22.1. Such failure to cooperate subverts or frustrates the MFDA's ability to perform its regulatory function and undermines the integrity and effectiveness of the self-regulatory system. See for example Re Gizzo 2011 LNCMFDA 49, Re Puri 2007LNCMFDA 34 and cases cited therein.

11. Based on the facts set forth in the NOH, it is the decision of this Panel that the Respondent has failed to cooperate with the MFDA as provided in the allegation against him, contrary to section 22.1 of MFDA By-law No. 1.

V. Penalty

12. For an AP, the MFDA Penalty Guidelines recommend, and the MFDA sought:

- a minimum fine of \$50,000; and
- a permanent prohibition.

13. In addition, the MFDA sought costs in the amount of \$5,000, pursuant to section 24.2 of MFDA By-law No. 1.

14. In addition to the Penalty Guidelines, the Panel was referred to a number of previous cases for guidance as to the appropriate penalty in this case. Some of these cases involved only an allegation of a failure to cooperate. Others involved not only the allegation of a failure to cooperate, but also allegations regarding the underlying misconduct. This case involves only an allegation of a failure to cooperate and this Panel has taken this into account in comparing our case to the cases cited. The Panel recognizes that it is strictly within the jurisdiction of the MFDA to decide what allegations to bring against a respondent, but as a matter of observation, if the MFDA is able to bring allegations regarding the underlying conduct as well as an allegation of failure to cooperate, more appropriate sanctions and a sense of justice for the clients harmed by the misconduct might be better served.

15. This Panel regards the Respondent's failure to cooperate as serious misconduct, as observed in many prior cases. This Panel agrees with the Penalty Guidelines that, in determining an appropriate penalty, the Panel should have regard to the following principles:

- the protection of the investing public, MFDA’s membership and its enforcement process;
- the integrity of the securities market; and
- specific and general deterrence.

16. In this case, this Panel feels that the issue of specific deterrence will be accomplished by a permanent prohibition, and that it is necessary to emphasize the issue of general deterrence. It is the decision of this Panel that the requested fine of \$50,000 is insufficient to act as a general deterrent and that an appropriate fine should be in the amount of \$75,000.

17. Accordingly, it is the order of this Panel that the following penalties be imposed on the Respondent:

- a fine in the amount of \$75,000; and
- a permanent prohibition from conducting securities related business while in the employ of, or associated with, any MFDA Member.

18. In addition, it is the order of this Panel that the Respondent pay costs to the MFDA in the amount of \$5,000, pursuant to section 24.2 of MFDA By-law No. 1.

DATED this 30th day of October, 2013.

“Frederick H. Webber”

Frederick H. Webber,
Chair

“T. Hugh McNabney”

T. Hugh McNabney,
Industry Representative

“Robert C. White”

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Re: Wei William Zhang

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council (the "Hearing Panel") of the Mutual Fund Dealers Association of Canada (the "MFDA") in the hearing room located at 121 King Street West, Suite 1000, Toronto, Ontario on August 19, 2013 at 10:15 a.m. (Eastern), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Wei William Zhang (the "Respondent").

DATED this 14th day of June, 2013.

"Jason D. Bennett"

Jason D. Bennett
Corporate Secretary

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario, M5H 3T9
Telephone: 416-943-7431
Facsimile: 416-361-9781
Email: corporatesecretary@mfd.ca

NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Commencing in or about July 2010, the Respondent has failed to cooperate with an MFDA investigation by failing to comply with a request by MFDA Staff that he attend for an MFDA interview, contrary to section 22.1 of MFDA By-law No. 1.

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by the MFDA at the hearing:

Registration History

1. From June 29, 2007 to December 31, 2009 when he voluntarily resigned, the Respondent was registered in Ontario as a mutual fund salesperson with Monarch Wealth Corporation (“Monarch Wealth”), a Member of the MFDA.
2. From May 7, 2007 to June 26, 2007, the Respondent was registered in Ontario as a mutual fund salesperson with Global Maxfin Investments Inc. (“Global Maxfin”), a Member of the MFDA.
3. At all material times, the Respondent operated out of the Greater Toronto Area.
4. The Respondent is not currently registered in the securities industry in any capacity.

Complaint by Clients QH and ZW

5. In January 2010, Staff of the MFDA (“Staff”) received notice of a complaint by clients QH and ZW, who are spouses of one another. The Respondent was the mutual fund salesperson responsible for servicing the accounts of clients QH and ZW at Monarch Wealth.
6. In the complaint, clients QH and ZW alleged that, in mid- to late-2007, the Respondent,

among other things, had clients QH and ZW sign blank Know-Your-Client (“KYC”) forms and loan applications, exaggerated their incomes and net worth on the KYC forms and loan applications, and used the KYC forms and loan applications to apply for investment loans that clients QH and ZW had not authorized.

Failure to Cooperate

7. Commencing in or about July 2010, Staff made repeated requests of the Respondent to attend an interview with the MFDA. As set out in chart below, the Respondent failed to respond to Staff’s interview requests and thereby failed to cooperate with Staff’s investigation.

Date	Content of Letter	Method of Delivery	Outcome
July 14, 2010	Respondent requested to attend for an MFDA interview regarding a public complaint and other matters. Deadline: July 24, 2010	Registered & regular mail.	Respondent did not respond. The registered letter was returned to the MFDA marked “refused”. The letter sent by regular mail was not returned.
August 9, 2010	Respondent requested to attend for an MFDA interview, and advised that failure to cooperate could result in enforcement proceedings. Deadline: August 16, 2010	Registered & regular mail.	Respondent did not respond. The registered letter was returned to the MFDA marked “refused”. The letter sent by regular mail was not returned.
November 15, 2010	Respondent requested to attend for an MFDA interview, and advised that failure to cooperate could result in enforcement proceedings. Deadline: November 22, 2010	Served personally by process server on November 17, 2010.	Respondent did not respond.

8. Due to the Respondent’s failure to cooperate with the MFDA’s investigation, Staff was not able to determine the full nature and extent of the Respondent’s conduct in relation to the complaint described herein and, in particular, whether and to what extent other clients may have been affected by his conduct.

9. By failing to comply with requests by Staff that he attend for an MFDA interview, the Respondent has failed to cooperate with an MFDA investigation, contrary to section 22.1 of

Additional Client Complaint

10. In February 2013, Staff received notice of a complaint by clients JL and YX, who are spouses of one another. The Respondent was the mutual fund salesperson responsible for servicing their accounts at Monarch Wealth.

11. In the complaint, clients JL and YX alleged that, on or about June 15, 2007, the Respondent provided them with a written guarantee which stated that, for the 12 month period following a mutual fund transaction proposed by the Respondent, the Respondent would be responsible for any losses arising in their accounts (“Guarantee”). At the time that the Respondent provided the Guarantee to JL and YX, he was registered with Global Maxfin.

12. As stated at paragraph 1 above, on June 29, 2007, the Respondent became registered with Monarch Wealth. On or about July 17, 2007, the Respondent completed a New Client Application Form for client YX, facilitated an investment loan in the amount of \$100,000 for client YX, and invested the proceeds of the investment loan in mutual funds.

13. On or about July 23, 2007, the Respondent completed a New Client Application Form for client JL, facilitated an investment loan in the amount of \$100,000 for client JL, and invested the proceeds of the investment loan in mutual funds.

14. On or about May 18, 2009, the Respondent provided clients JL and YX with a second written guarantee which stated that the Respondent would be indefinitely responsible for any losses arising in their accounts (“Guarantee Extension”).

15. On or about January 24, 2013, Monarch Wealth became aware for the first time of the Guarantee and Guarantee Extension when clients JL and YX reported these matters to Monarch Wealth.

16. Clients YX and JL alleged, in their complaint, that the Respondent failed to abide by the terms of the Guarantee and Guarantee Extension, and failed to compensate them for losses incurred in their accounts.

17. Under MFDA Rules, an Approved Person is not permitted to guarantee the performance of investments held in a client's account.

18. As a result of the Respondent's failure to respond to Staff's requests that he attend an interview (as outlined in paragraphs 7-9 above), Staff has been unable to determine the full nature and extent of the Respondent's conduct in relation to the complaint submitted by clients YX and JL.

NOTICE is further given that the Respondent shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

NOTICE is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, the Respondent:

- has failed to carry out any agreement with the MFDA;
- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;
- has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;
- has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- is otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose any one or more of the following penalties:

(a) a reprimand;

(b) a fine not exceeding the greater of:

- (i) \$5,000,000.00 per offence; and
 - (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;
- (c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- (d) revocation of the authority of such person to conduct securities related business;
- (e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;
- (f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel;

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondent pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondent must **serve a Reply** on Enforcement Counsel and **file a Reply** with the Corporate Secretary within twenty (20) days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Attention: Lyla Simon
Fax: 416-361-9073
Email: lsimon@mfd.ca

A **Reply** shall be **filed** by:

- (a) providing 4 copies of the **Reply** to the Corporate Secretary by personal delivery, mail or courier to:

The Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Attention: Office of the Corporate Secretary; or

- (b) transmitting 1 copy of the **Reply** to the Corporate Secretary by fax to fax number 416-361-9781, provided that the Reply does not exceed 16 pages, inclusive of the covering page, unless the Corporate Secretary permits otherwise; or
- (c) transmitting 1 electronic copy of the **Reply** to the Corporate Secretary by e-mail at CorporateSecretary@mfd.ca.

A **Reply** may either:

- (i) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondent, and the conclusions drawn by the Respondent based on the alleged facts) any or all of the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing; or
- (ii) admit the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the MFDA in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondent fails:

- (a) to **serve and file a Reply**; or
- (b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the

facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven and may impose any of the penalties described in the By-laws.

END.

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