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: Lisa Hua Deng Huang

Heard: September 8, 2016 in Toronto, Ontario
Decision and Reasons (Penalty): October 21, 2016

DECISION AND REASONS
(Penalty)

Hearing Panel of the Central Regional Council:

The Honourable P.T. Galligan, Q.C.	Chair
Brigitte J. Geisler	Industry Representative
Selwyn Kossuth	Industry Representative

Appearances:

Maria L. Abate	)	Counsel for the Mutual Fund Dealers Association of Canada
	)	
	)	
Lisa H.D. Huang	)	Not in person or represented by counsel
	)	
	)	
	)	

1. By a Notice of Hearing, dated November 23, 2015 (the "Notice of Hearing"), Lisa Hua Deng Huang (the "Respondent") faces the following allegations:

> Allegation # 1: Between November 8, 2012 and May 1, 2013, the Respondent borrowed $455,000 from client EA, thereby engaging in personal financial dealings with a client which gave rise to a conflict or potential conflict of interest between the Respondent and the client that the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.1 and 2.1.4.
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> Allegation #2: Commencing on January 27, 2015, the Respondent failed to cooperate with Staff's investigation into her conduct, contrary to section 22.1 of MFDA By-law No. 1.

2. The Respondent did not file a Reply, nor did she attend at the hearing. Having been satisfied that she had been properly served, we proceeded with the hearing in her absence.

3. Enforcement Counsel suggested that we exercise our discretion, under Rules 7.3(1)(b) and 8.4(1)(b), to accept the facts alleged and the conclusions drawn in the Notice of Hearing. We declined to do so and directed that evidence be produced. We were provided with an extensive affidavit of Robert E. Lambshead, Investigator at the MFDA. That affidavit contains transcripts of two lengthy interviews with the Respondent and a transcript of an interview with the client, EA Enforcement Counsel then made her submissions in respect to liability.

4. At the conclusion of those submissions we withdrew to consider them and to consider the evidence which had been presented to us. After deliberation we concluded that both allegations had been established to the requisite standard of proof.

5. We then returned to the hearing room and announced our decision and stated that written reasons would follow. Enforcement Counsel made submissions in respect to the appropriate

penalty to be imposed. We reserved our decision and terminated the hearing. These constitute our decisions and our reasons for them.

6. We will discuss separately the two allegations.

The Loans from EA

7. The Respondent was a long time employee of the Royal Bank of Canada as a financial planner and of Royal Mutual Funds as a mutual fund salesperson. For a number of years EA was a client of hers to whom she sold mutual funds and to whom she gave financial planning advice.

8. She borrowed money from him twice while he was her client. It is not necessary to review in any detail the circumstances of those loans because the Respondent admitted them and gave to Staff full details of them in her first interview.

9. On November 8, 2012, she borrowed $380,000 from EA It was a short term loan, without interest, and was repaid on November 15, 2012.

10. On February 20, 2013, the Respondent borrowed a further amount of $75,000 from EA It, too, was a short term loan, without interest. It, too, was repaid in full on its due date, May 1, 2013.

11. The position taken by Enforcement Counsel is that borrowing from a client amounts to a violation of both Member Rule 2.1.1 and Rule 2.1.4. Those rules provide as follows:

> **2.1.1 Standard of Conduct.** Each Member and each Approved Person of a Member shall:
>
> (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; and

(d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

…

2.1.4 Conflicts of Interest

(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).

12. There can be no doubt that there is always a conflict of interest between a borrower and a lender. Borrowing from a client has been discussed in a number of cases. See *Re Tonnies*, [2005] MFDA No. 200503; *Re Raymond Brown-John*, [2005] MFDA No. 200502; *Re Blair Addison*, [2014] MFDA No. 201338; *Re Bruce Ian Mower*, [2014] MFDA No. 201331; and *Re Glen Murray Greyeyes*, [2006] MFDA No. 200510. What is unique about this case is, that, unlike those cases, there has been no client loss and no client complaint.

13. We have not been referred to any jurisprudence which deals with a client loan where there has been no harm done to the client. We have, however, been provided with MFDA Staff Notice – 0047 (October 3, 2005) which provides as follows:

> ***a) Borrowing from Clients***
>
> Borrowing from a client by either the Member or Approved Person raises a significant and direct conflict that in almost all cases will be impossible to resolve in favour of the client.
>
> While such activity is not explicitly prohibited under MFDA Rules, MFDA staff are unaware of any circumstances where Members or Approved Persons proposing to enter into any such arrangements would be able to demonstrate that the conflict has been properly dealt with.

14. While it is an expression of Staff's opinion rather than an extract from jurisprudence, it seems to us to correctly emphasize the problems created by taking loans from clients. We subscribe to that opinion.

15. Member Rule 2.1.1(b) requires Approved Persons to observe high standards of ethics and conduct. It is, in our view, clear that high standards of ethics and conduct do not permit an Approved Person to be in a conflict of interest with her client.

16. Member Rule 2.1.1(c) prohibits engaging in conduct which is unbecoming or detrimental to the public interest. We have no hesitation in holding that being in a conflict of interest with one's client is unbecoming and is detrimental to the public interest which is to protect the investor and to ensure confidence in the investment industry. That confidence would be badly shaken if Approved Persons were permitted to be in conflicts of interest with their clients.

17. We hold that Allegation #1 has been established under Member Rule 2.1.1.

18. Member Rule 2.1.4 deals specifically with conflicts of interest.

19. Rule 2.1.4(a) requires that an Approved Person, on becoming aware of the possibility of a conflict of interest with a client, must "immediately" disclose it to the Member. The Respondent must have been aware of her conflict of interest with EA when she accepted the loans from him.

It is clear that she did not disclose her conflict of interest to her Member. That failure to disclose constitutes a violation of Rule 2.1.4.

20. Rule 2.1.4(b) directs what must be done to address a conflict of interest which has arisen. Because we have found Allegation #1 to have been established under Rules 2.1.1(a) and (b) and 2.1.4(a) it is unnecessary to comment upon what could constitute "responsible business judgment". It is our view that the issue should be left to be decided in a case where it is necessary to do so.

21. Before leaving this allegation it is worth noting that at the end of her first interview, the Respondent herself thought that she had misconducted herself. She said to Enforcement Counsel:

> "But obviously I'm in the misconduct right now, right?"

The answer given to her was "Yes".

22. We hold that Allegation #1 has been established to the requisite degree of proof.

Failure to Co-operate

23. As a result of information received from the Respondent's employers, MFDA, pursuant to s. 21 of By-law No. 1, began an investigation into her conduct. During that investigation the Respondent submitted to two interviews. One of them took place on October 19, 2014. The second took place on November 20, 2014.

24. At those interviews she admitted that she had obtained the two loans from EA and provided full details of the transactions. She was also asked about dealings with another person. In the course of the questioning she was asked about the source of the funds which made up a deposit of $290,000 to her personal bank account on October 12, 2012. The Respondent stated that she could not then remember where the money had come from. However, she undertook to ask her bank "for a copy of where's this money coming from". She has never fulfilled her

undertaking to provide the investigation with a copy of a bank document showing the source of the funds notwithstanding several requests that she do so.

25. On January 13, 2015, Mr. Lambshead by email asked the Respondent to provide the following:

> Documentation from RBC that identifies the source of the $535,191.71 transfer into your personal bank account on November 14, 2012.

26. The Respondent replied that she would seek the information and “keep you in the loop”. She has not provided the information.

27. On November 2, 2015, Mr. Lambshead wrote to the Respondent and advised that unless the information respecting the sources of the funds making up the two deposits was provided by November 9, 2015, proceedings might be taken against her for failure to co-operate with the investigation. She has neither replied to the letter nor provided the requested information.

28. Prior to the start of its investigation, MFDA had been advised by the Respondent’s employer that it had terminated her because it discovered that she had been engaging in personal financial dealings with clients. It had been advised of the results of the employer’s investigation. By the time it asked about the source of the funds which made up the deposits it knew that, during the time frame of the deposits, the Respondent had engaged in serious misconduct in relation to her client EA In the light of that information, we think that MFDA was legitimately interested in those two large deposits, made within the space of a month, into the account of a person who was selling mutual funds.

29. It is common sense and common law that members of a self-governing organization must co-operate with its investigations. See *Artesian v. College of Physicians and Surgeons of Ontario* (1990), 73 O.R. (2d) 70 (Div. Ct.). That duty is codified in s. 22.1 of By-law No. 1. It is our opinion that, in failing to provide the information relating to the two deposits, the Respondent was in breach of her duty to co-operate with MFDA’s investigation into her conduct.

30. We hold that Allegation #2 has been established to the requisite degree of proof.

Penalty

31. While we have found that the two Allegations have been established, we have decided not to impose separate penalties for each violation. Rather the penalty at which we arrive will cover both.

32. Much has been written about the purpose of penalty when regulatory offences are committed. We do not intend to add to that voluminous jurisprudence. We content ourselves with paraphrasing the language of Iacobucci J. found at para. 42 of his judgment in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 SCR 132. The purpose of public interest jurisdiction is neither remedial nor punitive. It is protective and preventive. It is intended to prevent future harm to the capital markets. It is also intended to "foster … confidence in capital markets" (see para. 41).

33. These principles have particular significance in this case because the Respondent's conflict of interest with her client EA did not cause him harm. But the permitting of conflict of interest to exist between Approved Persons and their clients would cause serious harm to the confidence of the public in the integrity of those persons who work in the investment industry. Thus the penalty so far as it relates to conflict of interest must be preventive. It must be sufficient to deter persons in the investment industry from coming into conflict of interest with their clients.

34. Similar considerations apply to the Respondent's failure to co-operate. Self-governing organizations cannot govern and regulate themselves unless their members co-operate with its investigations. The fulfillment of that obligation is particularly important to MFDA because it has no statutory authority to search and seize or to compel the production of documents. Without the co-operation of Approved Persons its ability to regulate and discipline them is gravely fettered. Thus the penalty for failure to co-operate should be protective of the organization's

ability to govern itself. It must warn persons that they are at serious personal risk if they fail to fulfill their duty to co-operate.

35. Enforcement Counsel submitted that these two violations call for a permanent prohibition of the Respondent to conduct securities related business. We do not accept that submission. Permanent prohibition is a maximum penalty. It has been wisely said that maximum penalties are reserved for worst cases. We do not think that either of these violations is a worst case.

36. The conflict of interest did not cause the client harm. The cases cited to us where conflicts of interest caused serious client harm are not helpful in determining the appropriate penalty in a case where no harm has been caused to the client.

37. The Respondent's failure to co-operate was not total. She co-operated fully in respect of the client loans. She gave the investigation all of the evidence it required to successfully prosecute her.

38. Nevertheless we conclude that in order for the penalty to be both preventive and protective it must contain a meaningful prohibition. The prohibition will be for a period of 10 years.

39. We do not disagree with Enforcement Counsel's submission that the penalty should include a fine. We fix the amount of the fine at $50,000.

40. We also allow costs in the amount of $7,500.

<u>Disposition</u>

41. For the Reasons set out above:

    1. We find that the violations set out in Allegations 1 and 2 of the Notice of Hearing have been proven.

2. We impose the following penalty:

   a) a prohibition for 10 years 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 of $50,000

3. We award MFDA $7,500 as costs of the proceedings

DATED this 21st day of October, 2016.

"P.T. Galligan"

The Honourable P.T. Galligan, Q.C.
Chair

"Brigitte J. Geisler"

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