Reasons for Decision

File No. 201124

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: Punch Bun Chiu Lui

Heard: July 12, 2012 in Toronto, Ontario
Reasons for Decision: July 27, 2012

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. Fred Kaufman, C.M., Q.C.	Chair
Anne Traczuk	Industry Representative
Linda Anderson	Industry Representative

Appearances:

Lyla Simon	))	Counsel, Mutual Fund Dealers Association of Canada ("MFDA")
Punch Bun Chiu Lui	))	Respondent, appeared in person

Introduction

1. By Notice of Hearing dated April 12, 2012, and served on the Respondent, Punch Bun Chiu Lui, by courier on April 18, 2012, Mr. Lui was notified that a hearing would be held for the purpose of determining whether or not he violated certain By-laws, Rules or Policies of the MFDA, as stated in the allegations set out below:

> **Allegation #1:** Between August 4, 2005 and March 2, 2010, the Respondent engaged in personal financial dealings with clients GC and HW in relation to amounts ranging from $170,000 to $118,000 that clients GC and HW had loaned to a company in which the Respondent had an interest and that the Respondent had personally guaranteed to repay, thereby giving rise to a conflict of interest between his interests and those of the clients which the Respondent did not ensure was resolved by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1.
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> **Allegation #2:** Between January 2007 and March 2, 2010, the Respondent personally guaranteed to repay, and then failed to repay or otherwise account for $118,000 (as well as interest payments owing on that amount) that the Respondent had arranged for clients GC and HW to lend to a company in which the Respondent had an interest, thereby failing to deal fairly, honestly and in good faith with clients GC and HW, contrary to MFDA Rule 2.1.1.
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> **Allegation #3:** Between August 4, 2005 and February 2006, the Respondent had and continued in another gainful occupation that was not approved by the Member in respect of his involvement in and activities on behalf of two companies in which he had an interest, contrary to MFDA Rules 1.2.1(d)[1] and 2.1.1.

2. The first appearance in this matter was conducted by means of a telephone conference on May 24, 2012, which the Respondent attended without counsel via teleconference. Upon hearing the submissions of Staff of the MFDA and the Respondent, it was decided that the hearing on the merits shall take place on July 12, 2012, and so it was.

[1] As a result of amendments to the MFDA's Rules, MFDA Rule 1.2.1(d) then in force has since been re-numbered as current MFDA Rule 1.2.1(c). The wording of the re-numbered Rule did not change.

3. At that point, the Respondent had not filed a Reply, but he did so by way of electronic mail on June 19, 2012, addressed to Enforcement Counsel, stating, "I am prepared to accept all the allegations as per MFDA." In light of the unconventional form of his message, Enforcement Counsel asked Mr. Lui on July 3, 2012, to confirm that that was indeed his Reply, which he did on the same day, adding "that I have decided not to return to the Mutual Fund Industrial (sic) anymore no matter what the outcome of the case will be."

4. At the hearing on the merits, the Panel asked the Respondent if he stood by his Reply, that is to say that he accepted all the allegations made against him and he replied in the affirmative.

5. Considering the Respondent's admission, as well as the evidence contained in the investigator's affidavit, the Panel declared the allegations proven, and thereupon moved to the penalty stage of the proceedings.

The Facts

6. The facts of this case are set out in detail in the Notice of Hearing:

Registration History

7. From August 4, 2005 to March 2, 2010, the Respondent was registered in Ontario as a mutual fund salesperson with Investia Financial Services Inc. ("Investia"), a Member of the MFDA.

8. The Respondent was previously registered as a registered representative with Dundee Securities Corporation ("Dundee Securities"), a Member of the Investment Dealers Association of Canada[2] from September 2002 to July 2005.

9. Prior to Dundee Securities, the Respondent was registered as a mutual fund salesperson with three different mutual fund dealers from August 1994 to July 2002.

[2] The Investment Dealers Association of Canada or "IDA" has since been renamed as the Investment Industry Regulatory Organization of Canada or "IIROC".

10. The Respondent is not currently registered in the securities industry in any capacity.

Background – Ameradio Inc. and Toronto First Radio Inc.

11. On August 12, 2004, Ameradio Inc. ("Ameradio") was incorporated in Ontario and was identified as carrying on business in Richmond Hill, Ontario. An individual, GLN, was listed in the corporate documents as the sole director and officer of Ameradio. The Respondent asserts that he was also a director of Ameradio.

12. In or about 2004, Toronto First Radio Inc. ("Toronto First Radio") was established as a subsidiary or affiliated entity of Ameradio.

13. Toronto First Radio's goal was to take over the operations of another Toronto radio station, CHIN Sing Tao Chinese Radio (AM 1540) ("CHIN Sing Tao Chinese Radio"), which would include, among other things, bringing in new management and extending the hours of operation. The proposed plans further included acquiring airtime on radio stations in Buffalo, New York and China, as well as share ownership of a media company in Markham, Ontario. Toronto First Radio's stated goal was to have its shares listed for trading on a recognized stock exchange by December 2010.

14. Toronto First Radio did take over the operations of CHIN Sing Tao Chinese Radio, and broadcasted on air from approximately November 2004 until February 2008, at which time it was taken over by an unrelated entity.

15. In July 2011, Ameradio's corporate status was cancelled by the Companies Branch.

The Respondent's involvement in Ameradio and Toronto First Radio

16. The full nature and extent of the corporate relationship between Ameradio and its subsidiary or affiliated entity, Toronto First Radio, if any[3], as well as the Respondent's relationship to both entities, is not known. The Respondent and GLN are identified as the only

[3] In a business plan for the fiscal year ended March 31, 2008, Ameradio Inc. is described as "operating as Toronto First Radio Inc.", suggesting the two companies may not have been separate entities.

two individuals comprising Ameradio's "management" in some company business plans. The Respondent has also acknowledged that he was, and/or he is also referred to in company documents and materials as having been, among other things:

(i) a Director of Toronto First Radio;
(ii) the Chief Financial Officer of Toronto First Radio;
(iii) the Financial Controller of Ameradio; and
(iv) the Chief Financial Officer of Ameradio.

17. The Respondent's duties and responsibilities with Ameradio and Toronto First Radio included, among other things, maintaining the books and records; performing banking transactions; performing the accounting function; and drafting financial plans for the companies.

18. By way of compensation for his services, the Respondent was promised $4,000 per month, and was ultimately paid a total of approximately $28,000 for the seven month period from January to July 2005.

19. The Respondent claims that he ceased to be involved in Ameradio in or around February 2006.

Clients GC and HW

20. In order to finance the takeover and expansion of CHIN Sing Tao Chinese Radio, Ameradio and Toronto First Radio sought to raise capital by approaching individuals to purchase shares in or lend money to Ameradio.

21. GC and HW considered the Respondent a personal friend. They had known him since the 1990s and had attended the same church in Hong Kong. In addition, the Respondent was their accountant and was responsible for, among other things, assisting them with the preparation of their annual tax returns. GC and HW were also acquainted with GLN, who had also attended the same church.

22. In or about late 2004, while the Respondent was registered at Dundee Securities and GC

and HW were clients of Dundee Securities, the Respondent approached GC and HW about investing in Ameradio.[4]

23. GC and HW agreed to do so. Acting on their instructions, the Respondent processed a redemption from the joint non-registered account of GC and HW at Dundee Securities in the amount of $120,000, the proceeds of which GC and HW then loaned to Ameradio by delivering two cheques, in the total amount of $120,000 and payable to Ameradio, to the Respondent at his office, as follows:

(i) December 30, 2004 – Cheque from GC to Ameradio in the amount of $23,000; and
(ii) December 30, 2004 – Cheque from GC to Ameradio in the amount of $97,000.

24. The Respondent did not confirm the terms of GC and HW's loan to Ameradio or provide them with any documents in respect of their investment. However, the Respondent and GLN gave assurances to GC and HW that they would be repaid the full amount of their loan in three years. As well, either at the time of the transaction or shortly thereafter, the Respondent provided (or arranged to be provided) a series of post-dated cheques to GC and HW representing interest payments that were going to become due to them in respect of the return on their investment

25. In April 2005, the Respondent persuaded GC and HW to invest an additional $50,000 in Ameradio, bringing the total amount of their investment in Ameradio to $170,000. As with the initial $120,000 investment, the Respondent did not confirm the terms of their investment in writing or provide GC and HW with any documents in respect of the investment.

26. On July 16, 2005, the Respondent resigned from Dundee Securities. On August 4, 2005, the Respondent became registered as a mutual fund salesperson of Investia and, as such, became subject to the jurisdiction of the MFDA as of that date. GC and HW became clients of Investia. The Respondent was the mutual fund salesperson at Investia responsible for servicing their accounts.

27. At all material times, Investia's policies and procedures prohibited Approved Persons from engaging in outside business activities that were not first disclosed to and approved by

[4] As described in this Notice of Hearing, the investment(s) were in the form of interest bearing loans made by GC and HW to Ameradio, as opposed to purchases of shares of the company.

Investia in writing. Investia did not approve the Respondent's activities in conjunction with Ameradio and Toronto First Radio at the time the Respondent joined Investia or at any time thereafter.

28. At all material times, Investia's policies and procedures also prohibited an Approved Person from borrowing monies from a client. Investia was not advised, nor was it otherwise aware, of the Respondent's personal financial dealings with clients GC and HW with respect to their loans to Ameradio, a company in which the Respondent had a direct or indirect interest, at the time the Respondent joined Investia in August 2005, nor did the Respondent disclose these dealings thereafter.

29. In the months following their investments in Ameradio, clients GC and HW became increasingly concerned about the security of their investments, in part because the post-dated cheques they had been given were returned "NSF" and in part because they had not been provided with any documents evidencing their investments. As a result, clients GC and HW arranged for a promissory note and personal guarantee (contained in single document) to be prepared by their lawyer for execution by Ameradio, as the borrower, and by the Respondent and GLN, as the guarantors, in respect of both of their investments in Ameradio. Clients GC and HW ensured that the promissory notes included a specific provision regarding their entitlement to interest payments, which the Respondent and GLN agreed to, as set out in more detail below.

30. In late 2005, clients GC and HW met with the Respondent and GLN. The Respondent and GLN signed the promissory note and personal guarantee document prepared by clients GC and HW in respect of each of the investments.

31. The terms of the promissory note and personal guarantee documents included the following:

	Note #1 (re. $120,000)	Note #2 (re. $50,000)
Borrower	Ameradio	Ameradio
Lenders	GC and HW	GC and HW
Guarantors	Respondent and GLN	Respondent and GLN
Date of Note	December 30, 2004 (i.e. back-dated to the date of investment)	April 28, 2005 (i.e. back-dated to the date of investment)

Amount	$120,000	$50,000
Interest Rate Before Default	8% per annum	8% per annum commencing January 1, 2006
Interest After Before Default	18% per annum	18% per annum
Maturity Date	December 30, 2007	December 30, 2006
1st Interest Payment Due	October 31, 2006	October 31, 2006

32. The terms of the personal guarantee provided, among other things, that the Respondent and GLN as "primary debtors" personally guaranteed repayment of all amounts due and owing under the promissory notes when and as they came due.

33. As noted above, the Respondent claims that in or around February 2006 he ceased to be involved in Ameradio. Under the terms of the promissory note and personal guarantee document, the Respondent's obligations as a personal guarantor of the amounts owing under the promissory notes was not affected if he ceased to be involved in Ameradio.

34. In or about January 2007, clients GC and HW were repaid their April 28, 2005 investment in the amount of $50,000 plus an unspecified nominal amount representing interest earned on their investment.

35. When the purported three year maturity date of December 30, 2007 for the original $120,000 investment arrived and clients GC and HW had not been repaid, clients GC and HW arranged for the Respondent and GLN to sign another promissory note and personal guarantee document, as follows:

	Note #3 (re. $120,000)
Borrower	Ameradio and Toronto First Radio
Lenders	GC and HW
Guarantors	Respondent and GLN
Date of Note	December 31, 2007
Amount	$120,000
Interest Rate Before Default	16% per annum
Interest After Before Default	26% per annum

Maturity Date	June 30, 2008
1st Interest Payment Due	January 1, 2008

36. To date, clients GC and HW have been repaid approximately $2,000 on account of the amount owing under this promissory note and personal guarantee document. The remaining principal amount of $118,000 and all accrued interest thereon remains outstanding.

37. In January 2010, the Respondent declared personal bankruptcy and identified clients GC and HW (among numerous other parties) as creditors. The Respondent identified clients GC and HW as creditors in relation to the "Ameradio" account.

38. On March 2, 2010, the Respondent was terminated by Investia.

39. The Respondent has never repaid or accounted for the principal amount of $118,000 still owing to clients GC and HW or any of the interest payments owing on that amount, either on behalf of Ameradio or in his capacity as a personal guarantor of Ameradio's indebtedness to clients GC and HW.

40. The Respondent denies responsibility for repayment of any outstanding amounts to clients GC and HW and has directed clients GC and HW to deal with GLN in order to recover the monies owing to them.

Summary of Allegations

41. Between August 4, 2005 and March 2, 2010, the Respondent engaged in personal financial dealings with clients GC and HW in relation to amounts ranging from $170,000 to $118,000 that clients GC and HW had loaned to a company, Ameradio, in which the Respondent had an interest, and that the Respondent had personally guaranteed to repay, thereby giving rise to a conflict of interest between his interests and those of the clients which the Respondent did not ensure was resolved by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1.

42. By personally guaranteeing to repay, and then failing to repay or otherwise account for

$118,000 (as well as interest payments owing on that amount) that the Respondent had arranged for clients GC and HW to lend to a company in which the Respondent had an interest, the Respondent failed to deal fairly, honestly and in good faith with clients GC and HW, contrary to MFDA Rule 2.1.1.

43. Between August 4, 2005 and February 2006, the Respondent had and continued in another gainful occupation that was not approved by Investia in respect of his involvement in and activities on behalf of Ameradio and Toronto First Radio, two companies in which he had an interest, contrary to MFDA Rules 1.2.1(d) and 2.1.1.

Discussion

44. As Enforcement Counsel rightly pointed out, "the Respondent's conduct in the present case – i.e. soliciting clients' funds to invest in the company in which he was a principal, failing to pay it back, and denying responsibility for repayment notwithstanding that he was a guarantor – violated the required standard of conduct." We agree. As was said in *Re Puri*, 2007 LNCMFDA 34, "MFDA Hearing Panels have consistently held that where an approved person solicits and accepts money, and fails to pay it back or otherwise account for it, the approved person engages in conduct which is inconsistent with the standard of conduct set out in MFDA Rule 2.1.1."

45. Such conduct – soliciting funds from clients – is aggravated where, as here, monies so obtained are put in investments which are directly or indirectly managed or controlled by the approved person. This creates significant conflicts of interest and violates MFDA Rule 2.1.4: see, for instance, *Re Tonnies*, 2005 LNCMFDA 7, where the Respondent borrowed $250,000 from two clients to finance outside business activities. As was said in that case, the Respondent was in a clear conflict of interest and failed to act with integrity and in good faith. So, too, in this case.

46. Lastly, as set out in Allegation # 3, the Respondent failed to notify the Member of his outside business activities, thereby making it impossible for the Member to supervise his conduct in a reasonable manner.

The Penalty

47. It is well established that a principal goal of securities regulation is the protection of investors: see, for instance, *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557. The Rules which the Respondent violated serve this purpose, and penalties imposed must reflect the gravity of this type of conduct. Other considerations also come into play, among them the integrity of the securities markets, specific and general deterrence, protection of the integrity of the MFDA's enforcement processes.

48. We note that the Respondent has not been the subject of any previous MFDA disciplinary proceedings. That is a point in his favour. But his improper conduct occurred over a lengthy period of time, the clients from whom he obtained the funds had put their trust in him and considered him to be their friend, and the amounts obtained were significant – at least $118,000 – and never repaid. As for the conflict of interest, which clearly existed, it was never explained to the clients, nor was it disclosed to the Member.

49. Previous cases dealing with similar violations underline the gravity of such conduct: see, for instance, *Re Brown-John*, 2005 LNCMFDA 6, where failure to repay $83,000, which the Respondent had borrowed from a client, and misappropriation of $67,000 from two elderly clients resulted in a permanent prohibition and a fine of $150,000; *Re Tonnies*, 2005 LNCMFDA 7, which concerned borrowing from two elderly clients and failure to repay $250,000, and resulted in a permanent prohibition and fine of $500,000; *Re Puri*, 2007 LNCMFDA 34, which involved the improper redemption of $146,400 from five clients' mutual funds accounts, as well as failure to account for a further $118,000, where the penalty was a permanent prohibition and a fine of $500,000.

Disposition

50. Considering what is set out above, after due deliberation, the Panel ordered as follows:

   (i) The Respondent is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

(ii) The Respondent shall pay a global fine in the amount of $150,000 regarding Allegations 1, 2 and 3, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

(iii) The Respondent shall pay costs in the amount of $7,500, pursuant to s. 24.2 of MFDA By-law No. 1; and

(iv) If a non-party to this proceeding requests production of or access to documents in this proceeding that contain intimate financial or personal information, the MFDA Corporate Secretary shall not provide copies of or access to the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure.

DATED this 27th day of July, 2012.

"Fred Kaufman"
The Hon. Fred Kaufman, C.M., Q.C.,
Chair

"Anne Traczuk"
Anne Traczuk,
Industry Representative

"Linda Anderson"
Linda Anderson,
Industry Representative

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