



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: Yue Brenda Zhou

Heard: September 15, 2014 in Toronto, Ontario
Reasons for Decision: October 9, 2014

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. P. T. Galligan, Q.C.	Chair
Kenneth Mann	Industry Representative
Robert C. White	Industry Representative

Appearances:

H. C. Clement Wai)	Enforcement Counsel, Mutual Fund Dealers
)	Association of Canada
)	
Anthony Speciale)	Counsel for the Respondent
)	
)	

1. By Notice of Hearing dated April 20, 2012 (the “Notice of Hearing”), the Mutual Fund Dealers Association of Canada (“MFDA”) made the following allegation against Christina Lin and Yue Brenda Zhou (“Zhou”) or (the “Respondent”):

Allegation #1: Commencing in 2009, Lin and Zhou have failed or refused to attend an interview requested by MFDA Staff during the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1 and MFDA Rule 2.1.1.

2. The case came on for hearing on September 15, 2014. At that time we directed that the cases against each of the Respondents Christina Lin and Zhou proceed separately. The hearing against Ms. Zhou was heard on September 15, 2014. At the conclusion of the evidence and the argument of counsel we dismissed the charge and advised that written reasons for our decision would be delivered later. These are those reasons.

BACKGROUND

3. This case arises out of an Ontario Securities Commission (“OSC”) investigation and prosecution of MP Global Financial Ltd. (“MP Global”) and its owner Joe Feng Deng (“Deng”). The circumstances of the misconduct of MP Global and Deng are set out in the decision of the OSC dated August 19, 2011. It is not necessary to review those circumstances in any detail. What appears from them is that from approximately 2006 to February 2009, Mr. Deng through his company ran what was in effect a Ponzi scheme whereby monies provided for investment were used for personal purposes and to pay interest, and in some cases return of principal, to earlier investors. When the scheme collapsed in early 2009 investors lost millions of dollars. Ms. Zhou, who was registered as a Mutual Funds salesperson with Info Financial from March 26, 2008 until April 22, 2009 was an employee of MP Global until its collapse. Unfortunately for her she was also an investor. She lost approximately \$400,000. Ms. Zhou was born, grew up and was educated in China. She is married with two young children. She and her husband came to Canada in 2000.

THE ALLEGATION

4. The allegation against Ms. Zhou is narrow and precise. It is that she "... failed or refused to attend an interview requested by MFDA Staff ...". What the case is all about is whether she failed or refused to attend an interview after August 25, 2010.

5. At the request of MFDA Staff, Ms. Zhou with her legal counsel attended an interview on December 10, 2009. She was cooperative throughout. The interview could not be completed and it was agreed between the investigator and counsel that they would arrange for its continuation at a mutually agreeable time.

6. The collapse of MP Global had a devastating effect upon Ms. Zhou's life. She had lost her job and what to her was a fortune. She had a new baby. Her parents, in an effort to help, took her older child to live with them in China in September 2009. Ms. Zhou testified before us. She was an impressive, credible witness. We accept her evidence. She said that she and her husband discussed, at length, how they could best survive the calamity which had befallen them. They decided that their best course was to return to China permanently and live there with Ms. Zhou's parents. Ms. Zhou's husband works for a multinational corporation. He applied for a transfer to his employer's operation in China (the transfer was ultimately granted). They decided that she should make the move at as early a time as possible and that he would follow her when his transfer was granted. In accordance with that plan, on June 25, 2010, Ms. Zhou moved permanently to China and has lived there since. In our opinion her decision to move to China permanently was a very reasonable one in the circumstances which she was facing.

7. On August 25, 2010 and subsequently in early September 2010, Staff of the MFDA ("Staff") sent emails to Ms. Zhou's counsel suggesting a number of dates in October for completion of the interview. On September 17, 2010 counsel replied as follows:

I acknowledge receipt of your correspondence requesting the further examination of Ms. Zhou. I have finally been able to communicate with our client and she advises that since June 25, 2010 she has taken up residency in China. She has also advised that she does not anticipate returning to this jurisdiction in the foreseeable

future.

8. Subsequently, on October 28, 2010, Staff sent a letter to Ms. Zhou regarding scheduling the second interview and also attempted to serve a copy of the letter to Ms. Zhou through a Litigation Service. However, the evidence is clear that this letter was not received by her.

9. For a year and a half Staff did not communicate with Ms. Zhou's counsel. Some time during that period, counsel ceased to be Ms. Zhou's lawyer. On March 8, 2012, Staff wrote to Ms. Zhou's former counsel advising that in his opinion Ms. Zhou had failed or refused to provide documents and to attend an interview since August 2010. Staff warned that the MFDA was contemplating issuing a Notice of Hearing. Counsel responded the same day advising that he no longer represented Ms. Zhou. The Notice of Hearing was issued on April 20, 2012.

10. Upon learning that the Notice of Hearing had been issued on May 11, 2012, Ms. Zhou personally filed a Reply. She later retained her former counsel to represent her again. In her Reply, dated May 11, 2012, the Respondent stated: "I will represent myself this time, and I will try my best to cooperate with the investigation of the MFDA. I already respond an email about the first hearing. Since I am living in China now, so the call conference would be the best way for me to participate the hearing."

11. The hearing of this matter on its merits was originally scheduled to take place on December 12, 2013. However, counsel for the Respondent requested that the hearing be adjourned until after the Respondent had completed her interview(s) with the MFDA. The Hearing Panel (differently constituted) agreed with this request and directed that the next appearance in this matter would take place at a later date.

12. Ultimately after various negotiations the interview was completed on February 1, 2014. Similarly to the first interview, the Respondent was cooperative throughout the interview.

13. When MFDA Staff and Ms. Zhou's counsel learned on September 17, 2010 that Ms. Zhou was now residing permanently in China an obvious problem presented itself. There is no

doubt that s. 22 of MFDA By-law No. 1 gives investigators broad and important powers. However those powers must be exercised reasonably. Likewise, an Approved Person is under serious obligations. The Approved Person's fulfillment of those obligations must be judged reasonably.

14. The problem of arranging the interview of a resident of China presents some practical difficulties. Unfortunately neither the MFDA nor Ms. Zhou's counsel suggested any reasonable way of overcoming them. One might have expected some dialogue about whether the interview could be conducted by telephone conference call, by video conferencing or by Skype. One might have expected a discussion about possible visits by Ms. Zhou to Canada for personal business matters which could provide the occasion to complete the interview in person.

15. Ms. Zhou testified that she always wanted to cooperate with the MFDA in its investigation and had so instructed her counsel. We believe and accept that testimony.

16. While it is possible to say that Ms. Zhou's counsel could have done more, there is an obligation on MFDA Staff to act reasonably. We are unable to say that it was reasonable, in this case, to make no practical suggestion of any kind, for a period of a year and a half, about how a resident of China could be interviewed and then make the decision that the person failed or refused to attend an interview.

17. The exercise by the MFDA of its power to require an Approved Person to participate in an interview must be exercised reasonably. In this case the MFDA made no practical and reasonable suggestion to Ms. Zhou's counsel about how the interview could be conducted. We are therefore unable to say that Ms. Zhou has unreasonably failed or refused to attend an interview.

CONCLUSION

18. The allegation against Ms. Zhou is therefore dismissed.

DATED this 9th day of October, 2014.

“P. T. Galligan”

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

“Kenneth Mann”

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Industry Representative

“Robert C. White”

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