



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: Cheng Han Lee

Heard: November 14, 2012 in Vancouver, British Columbia
Reasons for Decision: November 29, 2012

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Murray A. Clemens, Q.C.

Chair

Darlene Barker

Industry Representative

Cecilia Wong

Industry Representative

Appearances:

Shari L. Boyd

)
)

For the Mutual Fund Dealers Association of
Canada

Cheng Han Lee

)
)

No appearance

PROCEDURAL BACKGROUND

1. By Notice of Hearing dated July 20, 2012 the MFDA alleged the following violations of the by-laws, rules, or policies of the MFDA:

Allegation #1: Between April 8, 2010 and April 14, 2010, the Respondent failed to deal fairly, honestly and in good faith with client SW by processing redemptions in client SW's accounts and then re-investing the redemption proceeds in a manner which required client SW to unnecessarily incur \$4,513 in deferred sales charges and allowed the Respondent to earn \$2,528 in sales commissions, contrary to the Member's short-term investment policy and MFDA Rule 2.1.1.

Allegation #2: Commencing April 7, 2011, the Respondent has failed or refused to attend an interview requested by the MFDA during the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1.

2. The first appearance before this hearing panel took place by teleconference and at the hearing room located in the MFDA offices at 650 West Georgia Street, Suite 1220, Vancouver, British Columbia, on September 27, 2012 at 10:00 a.m. The Respondent did not attend. This panel made the following orders at the first appearance meeting:

- (a) The requirement that the Motion Record for the Motion for substituted service be served on the Respondent is hereby waived;
- (b) Service of the Notice of Hearing in the proceedings herein has been effected via substituted service in accordance with the provisions of MFDA Rules of Procedure 4.1(1)(d) and 4.8(1), by emailing the Notice of Hearing to the Respondent and by posting the Notice of Hearing on the MFDA public website and issuing an MFDA news release on August 9, 2012; and
- (c) The hearing of this matter on its merits shall take place before the hearing panel at a venue to be determined in Vancouver, British Columbia on November 14, 2012 at 10:00 a.m. (Pacific).

3. Notwithstanding his right to do so, the Respondent did not file or serve a reply to the allegations raised in the Notice of Hearing.

4. The September 27, 2012 Order was delivered to the Respondent by email.

5. This hearing convened, as directed in our Order of September 27, 2012, at 10:00 a.m. Pacific time at the offices of MFDA at 650 West Georgia Street, Suite 1220, Vancouver, British Columbia. The Respondent did not appear and the hearing proceeded.

EVIDENCE

6. Counsel for MFDA tendered evidence by way of affidavit of James Chee sworn October 31, 2012. Mr. Chee was in attendance and available for cross examination by the Respondent if he had attended and for questions by the panel if required. No questions were asked of Mr. Chee.

7. The evidence adduced by MFDA was accepted by the panel in the form tendered.

Registration History

8. The Respondent was registered as a mutual fund salesperson with Investors Group Financial Services Inc. (“Investors Group”) in British Columbia from June 1, 2009 to April 16, 2010.

9. In May 2009, the Respondent executed the Schedule “G” Agreement of Approved Person in which he agreed to be bound by, observe and comply with the MFDA Rules, among other things.

10. On June 10, 2009, the Respondent executed the Investors Group Consultant’s Agreement in which, among other things, he agreed to comply with the rules, regulations and policies of Investors Group.

11. On April 16, 2010, the Respondent was dismissed for cause by Investors Group and he is not currently registered in the securities industry in any capacity.

12. On April 21, 2010, Investors Group filed METS Event Report AE2573 indicating that the Respondent had advised a client to redeem investments in his accounts and re-invest at an appropriate time and the funds were deposited back one week later and no 60-day reinvestment

was requested from the Respondent.

13. On May 11, 2010, Investors Group filed METS Event Report 2DD839 in respect of the Respondent indicating that a client complaint had been received in relation to the unsuitability of Deferred Sales Charge (“DSC”) funds for the client’s short term objectives.

14. On May 12, 2010, Investors Group filed METS Event Report 4CD59B in respect of the Respondent indicating that a client complaint had been received in relation to the unsuitability of DSC funds for the client’s short term objectives.

15. On May 12, 2010, Investors Group filed METS Event Report 909050 in respect of the Respondent and indicated that the Respondent’s Consultant Agreement with Investors Group was terminated for cause on April 16, 2010 as a result of compliance concerns.

16. On September 24, 2010, Investors Group filed METS Event Report FF2A18 in respect of the Respondent indicating that a client complaint had been received in relation to the client incurring DSC fees when advised by the Respondent to redeem certain amounts from his accounts pending a re-investment opportunity.

Evidence concerning allegations

17. With respect to the first allegation, the evidence discloses that SW opened a new unregistered account with Investors Group, for which the Respondent was the responsible mutual fund salesperson. On the same date, SW also opened a TSFA account with Investors Group, for which the Respondent was identified as the person responsible for servicing the account.

18. The evidence set out in Mr. Chee’s affidavit establishes in detail with corroborating and contemporaneous documentation that the Respondent processed redemption in SW’s account and then reinvested the redemption proceeds in a manner which required SW to unnecessarily incur \$4,513 in deferred sales charges and allowed the Respondent to earn \$2,528 in sales commissions.

19. Had the Respondent indicated that the funds obtained by the redemptions were

reinvested, the DSC fees incurred and the commissions paid to the Respondent would have been reversed pursuant to Investors Group's Redemption Policy.

20. The proceeds of the funds, net of the DSC fees incurred and commissions, were deposited into SW's non-registered account and were used to purchase other securities.

21. When Investors Group learned of these events, it raised the matter with the Respondent who admitted that he "messed up". His employment was immediately terminated.

22. Shortly after discovering this incident, Investors Group refunded the DSC fees incurred by SW, together with the commissions paid to the Respondent.

23. By email dated July 12, 2012, the Respondent made the following acknowledgement to the MFDA:

The incident regarding SW, the DSC fees that occurred during the transaction was inadequate on my end. It was a mistake on my end, and it wasn't in the best interests for the client. I apologize for the mistake that I have caused for the client.

ALLEGATION #2 – FAILURE TO COOPERATE

24. Under section 21 of MFDA By-law No. 1, the MFDA is authorized to require an Approved Person to:

- (a) Submit a report in writing with regard to any matter involved in any investigation;
- (b) Produce for inspection and provide copies of books, records and amounts relevant to the matters being investigated; and
- (c) Attend and give information respecting the investigation.

25. The letter of the MFDA of June 2, 2010 and follow-up correspondence set out in the evidence, clearly requested the Respondent's cooperation in providing information, documents and attending at an interview, which he simply refused.

26. In June 2010, the MFDA wrote to the Respondent requesting a written statement regarding allegations raised with respect to SW and two other clients. The Respondent

acknowledged receipt of the letter but failed to respond to it or subsequent follow-up letters requesting responses and that he submit to an interview. As a result of the Respondent's refusal to respond, Mr. Chee concluded that the full nature, extent and frequency of the Respondent's conduct in relation to:

- (a) The Respondent's failure to follow Investors Group's short-term re-investment policy in the accounts of client SW and possibly other clients;
- (b) Recommending unsuitable investments, specifically DSC funds, to clients HC, JF and possibility other clients; and
- (c) The Respondent's practice of using blank pre-signed cheques and possibly other forms or documents to facilitate investments in the accounts of clients HC, JF, VG and CG, and possibly other clients;

could not be determined.

FINDINGS

Allegation #1 – Unfair trading practice

27. The evidence before the hearing panel clearly establishes, and the Respondent candidly admitted, that his conduct in failing to advise his client SW of the reinvestment policy, causing SW to incur unnecessary fees and pay an unnecessary commission to the Respondent "wasn't in the best interests for the client". The Respondent's conduct is a clear breach of MFDA Rule 2.1.1. We have no hesitation in finding that the Respondent failed to deal fairly, honestly, and in good faith with the client, SW, in processing redemptions in SW's accounts and then reinvesting the redemption proceeds in a manner which required SW to unnecessary incur \$4,513 in deferred sales charges and allowed the Respondent to earn \$2,528 in sales commissions, contrary to Investors Group's short-term investment policy.

Allegation #2 – Failure to cooperate

28. Based on the evidence described above, we have no hesitation in finding that the Respondent failed or refused to attend an interview requested by the MFDA during the course of

an investigation contrary to section 22.1 of MFDA By-law No. 1.

PENALTY

Standard of conduct contravention

29. The MFDA penalty guidelines recommend consideration of the following penalties for an approved person in relation to a standard of conduct contravention:

- (a) A fine of \$5,000;
- (b) Write or rewrite an appropriate industry course;
- (c) Suspension;
- (d) Permanent prohibition in egregious cases.

30. While we are not bound to follow the recommendation, we have concluded, on the submissions of counsel for MFDA, that a fine of \$5,000 is an appropriate penalty for this contravention. Given our conclusions concerning the Respondent's failure to cooperate, it is unnecessary to consider the other recommended heads of penalty solely in relation to a standard of conduct breach.

Failure to cooperate

31. The MFDA penalty guidelines recommend consideration of the following penalties in relation to a Failure to Cooperate:

- (a) A minimum fine of \$50,000;
- (b) Permanent prohibition of an approved person.

32. In this case, we recognize that the contravention was intentional and not inadvertent, and on the evidence of Mr. Chee, it has interfered with the due investigation of other complaints against the Respondent.

33. The panel considers that it is reasonable to infer that the Respondent has abandoned any

interest in being an Approved Person and has displayed indifference to the public interest in facilitating a lawful investigation intended for the protection of the public. Accordingly, a permanent prohibition, together with a fine of \$50,000 is an appropriate penalty in these circumstances.

COSTS

34. Section 24.2 of By-law No. 1 provides that:

A hearing panel may in any case in its discretion require that the...Approved Person pay the whole or part of the costs of the proceeding before the hearing panel and any investigations relating thereto.

35. Enforcement Counsel requested an order for costs be made against the Respondent in the amount of \$5,000. We have been told that the amount claimed does not represent the full costs incurred. We agree with the submissions of Enforcement Counsel and accordingly order that costs be fixed in the amount of \$5,000.

DISPOSITION

36. The Respondent is to pay a fine to the MFDA in the amount of \$5,000 with respect to Allegation #1.

37. The Respondent is to pay a fine to the MFDA in the amount of \$50,000 with respect to Allegation #2.

38. The Respondent is subject to a permanent prohibition on his authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member.

39. The Respondent is to pay to the MFDA costs in the amount of \$5,000.

DATED this 29th day of November, 2012.

“Murray A. Clemens”

Murray A. Clemens, Q.C.,
Chair

“Darlene Barker”

Darlene Barker,
Industry Representative

“Cecilia Wong”

Cecilia Wong,
Industry Representative