



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Alfonso Chin

Heard: July 22, 2014, in Toronto, Ontario
Reasons for Decision: October 10, 2014

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Thomas J. Lockwood, Q.C,	Chair
Terrence Bourne	Industry Representative

Appearances:

Michelle Pong)	Enforcement Counsel, Mutual Fund Dealers
)	Association of Canada
)	
Shannon M. Puddister)	For the Respondent
)	
)	

A. THE ALLEGATIONS

1. By Notice of Hearing, dated December 20, 2013, the Mutual Fund Dealers Association of Canada (“MFDA”) made the following allegations against Alfonso Chin (the “Respondent”):

Allegation #1: Between 2006 and 2011, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member, by selling, recommending, referring or facilitating the sale of at least \$3,105,000 of investments in a mortgage investment corporation to 2 clients and 11 other individuals outside the Member, contrary to MFDA Rules 1.1.1(a) and 2.1.1.

Allegation #2: Between 2006 and 2011, the Respondent had and continued in another gainful occupation that was not disclosed to and approved by the Member, by selling, recommending, referring or facilitating the sale of at least \$3,105,000 of investments in a mortgage investment corporation to 2 clients and 11 other individuals, contrary to MFDA Rules 1.2.1(d)¹ and 2.1.1.

Allegation #3: Between 2006 and 2011, the Respondent received at least \$102,053.56 in referral fees or other compensation for selling, recommending, referring or facilitating the sale of investments in a mortgage investment corporation to 2 clients and 11 other individuals, thereby participating in a referral arrangement in relation to securities related business to which the Member was not a party, contrary to the requirements of Sections 13.7 and 13.8 of National Instrument 31-103, and MFDA Rules 2.4.2 and 2.1.1.

B. FIRST APPEARANCE

The First Appearance in this matter took place on February 18, 2014, by teleconference, before this Hearing Panel.

¹ Effective December 2, 2010, MFDA Rule 1.2.1(d) was renumbered to 1.2.1(c)

3. At the First Appearance, the Respondent was represented by Counsel. Service of the Notice of Hearing was established.

4. After considering submissions from Counsel for the Respondent and Staff of the MFDA, the Hearing Panel ordered that the Hearing on the Merits was to take place from July 21 to July 22, 2014.

C. NOTICE OF SETTLEMENT HEARING

5. On June 23, 2014, the MFDA announced that it had issued a Notice of Settlement Hearing. This Notice provided that the Settlement Hearing, previously scheduled to take place as a Hearing on the Merits on July 21 and 22, 2014, would instead take place on July 22, 2014.

D. SETTLEMENT HEARING

6. At the Settlement Hearing on July 22, 2014, one of the Industry Representatives did not appear. After waiting an appropriate amount of time, the matter was discussed with Counsel for the parties.

7. The parties were anxious to proceed. A Settlement Agreement had been entered into. Public notice had been provided. The Hearing Panel was urged to proceed with two Members.

8. Section 19.9 of MFDA By-law No. 1 provides that a Hearing Panel shall ordinarily be comprised of three Members of the Regional Council. However, Section 19.9(b) provides that the Hearing Panel can be comprised of two Members of the Regional Council “in the event that an industry representative is unable to serve”. The Chair of the Hearing Panel, who must be the public representative, “shall decide whether or not to proceed with a two-member Hearing Panel.”

9. Rule 1.3 of the Rules of Procedure provides that “these Rules shall be liberally construed to secure the most expeditious and cost-effective determination of every proceeding on its merits consistent with the requirements of fairness.”

10. Applying the general principle of liberal construction to Section 19.9(b) of By-law No. 1, the Chair determined that the industry representative was “unable to continue” and that the matter would proceed with a two-member Hearing Panel.

11. The industry representative, who is no longer employed by an MFDA firm, took no part in either the Settlement Hearing or these Decision and Reasons.

12. At the outset of the Settlement Hearing on July 22, 2014, the Hearing Panel considered a joint Motion by Staff and the Respondent to move the proceedings “in camera”. We granted the Motion.

13. The Hearing Panel then considered, in detail, the provisions of the Settlement Agreement itself. We heard submissions, both written and oral, as to the applicable law which should guide this Panel in determining whether to accept or reject the Settlement Agreement. We then considered submissions as to why this particular Settlement Agreement met the appropriate criteria.

14. The Hearing Panel then retired to consider both the Settlement Agreement and the applicable legal principles. After deliberation, we unanimously concluded that it was appropriate to accept the Settlement Agreement.

15. The Hearing Panel reconvened in public. We advised the parties that we had accepted the Settlement Agreement. It was marked as an Exhibit. We indicated that we would provide Reasons for our Decision. These are those Reasons.

E. THE SETTLEMENT AGREEMENT

16. The salient terms of the Settlement Agreement are as follows:

“I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the “MFDA”) will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (the “Hearing Panel”) of the MFDA should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Alfonso Chin.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondent’s activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No. 1.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

III. ACKNOWLEDGEMENT

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts

is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part IX) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel. For greater certainty, this agreement is not intended to and does not prohibit the Respondent's ability to conduct business in the purchase and sale of insurance products, including segregated funds.

IV. AGREED FACTS

Registration History

6. Between January 10, 1997 and April 26, 2012, the Respondent was registered in Ontario as a mutual fund salesperson with Quadrus Investment Services Ltd. ("Quadrus"), a Member of the MFDA. On or about April 26, 2012, the Respondent was terminated by Quadrus as a result of the events described herein.

7. During the material time, the Respondent was also licensed in Ontario as a life insurance agent with London Life Insurance Company ("London Life") and carried on business as a financial planner.

8. During the material time, the Respondent carried on his insurance and financial planning businesses through his company, CHC Financial Planning Concepts Inc. ("CHC"). The Respondent was an officer and employee of CHC.

9. During the material time, the Respondent conducted mutual fund business from a Quadrus branch office in Mississauga, Ontario.

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

11. The Respondent resides in Mississauga, Ontario.

Securities Related Business Outside the Member

12. On January 11, 2012, Staff became aware of the Respondent's conduct following receipt of a report submitted by Quadrus through the MFDA's Member Events Tracking System ("METS"), in accordance with MFDA Policy No. 6, that the Respondent had an undisclosed outside business activity.

Lexxco Investment Corporation

13. According to its marketing materials, Lexxco Investment Corporation² ("Lexxco") is a private company that carries on business lending monies to real estate owners and developers and funds those loans by issuing promissory notes to investors. The promissory notes have terms between one to three years and pay interest monthly or annually at rates between 7 to 12 per cent annually (the "Lexxco Investment").

14. According to Lexxco's website:

We are a diversified, financial solution mediator. Lexxco has been a premier provider of real estate investment opportunities to investors in the GTA since 1997. The foundation of our service is the depth of our local market knowledge. Our 14 year history of maintaining investor-borrower relationship in local markets its (sic) enables us to be the best information source for investors locally. We specialize in tax minimization, investment advisors for clients, brokerage and related professional services. Lexxco seamlessly integrates next-generation thought leadership with best-of-breed methodologies, technology & human capital.

Our investment consultants and loan professionals are able to provide clients with an unparalleled perspective on investment as well as on the lending side of real estate market locally and regionally. Included in our activities, but not limited to have been transaction involving shopping centers, office and industrial buildings, apartment properties, single tenant, net-lease properties, hotel / motels, senior housing facilities, self-storage and land, in addition to the more traditional mortgage arrangement / financing mediation. Lexxco has established itself in real estate on the GTA level.

With years of experience advising investors in real estate market, the company has established a truly superior record of knowledge. We have been trusted advisors for institutional and private investors. Our success over the years is the broad base of experience that we enjoy at Lexxco. Our knowledge of the real estate market is

² Lexxco is also known as Lexxco Mortgage Investment Corporation; and ILC Corporation.

comprehensive and cuts across the spectrum of commercial developments and geographic market place in the GTA.

15. Since in or around 2002, the Respondent has known AL, the President and CEO of Lexxco.

16. In April 2009, the Respondent personally invested a total of \$100,000 in the Lexxco Investment. In May 2009, the Respondent received his principal back plus interest of \$602.73.

Referral Fees

17. Between 2006 and 2011, the Respondent referred or facilitated the sale of a total of \$3,105,000 of the Lexxco Investment to 2 Quadrus clients and 11 other individuals (who were London Life insurance clients) and was paid referral fees or compensation in the total amount of \$105,600 on account of those investments.

18. In civil litigation arising from Lexxco investments, the Respondent has pleaded that his dealings with Lexxco were undertaken in the Respondent’s capacity as an officer and employee of CHC.

19. During the course of Staff’s investigation, the Respondent provided the following information to Staff with respect to the Quadrus clients and other individuals who purchased the Lexxco Investment from or through the Respondent (the “Lexxco Investors”):

Lexxco Investor	Date of investment(s)	Amount(s) Invested	Amount(s) Repaid to Investor	Client	Respondent’s / CHC’s Compensation
RH&DH	2006	\$700,000	\$387,525	No	2006 - \$30,000
	2008-2009	\$450,000	\$124,008		2008 - \$16,000
					2009 - \$30,000
BH&MH	2006	\$100,000	2010 - \$22,500	No	2006 - \$4,000

Lexxco Investor	Date of investment(s)	Amount(s) Invested	Amount(s) Repaid to Investor	Client	Respondent's / CHC's Compensation
	2009	Reinvested \$100,000 plus \$150,000	2011 - \$22,500		2009 - \$10,000
PP	2007	\$100,000	2010 – \$100,000 plus interest (unknown)	No	2007 - \$4,000
JS&LA	2008	\$230,000	2009 - \$19,941	No	2008 - \$9,200
			2010 - \$19,941		2010 – unknown*
	2011	Reinvested \$230,000 plus \$130,000	2011 - \$19,941		2011 – unknown*
LD	2008	\$60,000	2009 - \$5,196	Yes	2008 - \$2,400
			2010 - \$5,196		
	2011	Reinvested \$45,000 and withdrew \$15,000	2011 - \$5,196		
			2011 - \$15,000		
CV	2010	\$300,000	2010 - \$25,500	No	Unknown*
	2011	40,000	2011 – \$19,125		
JW	2010	\$100,000	None	No	Unknown*
ME	2011	\$410,000	2011 - \$19,731	No	Unknown*
LFC		\$200,000	None	No	Unknown*
MC	2011	\$150,000	None	Yes	Unknown*
Totals		\$3,105,000	\$812,000	2	\$105,600³

* = the Respondent stated that after 2009 he suspended invoicing Lexxco for personal reasons but intended to resume at a later date. Staff was unable to determine the timing and amount of the compensation, if any, received by the Respondent in respect of these particular investments.

20. The Respondent acted as an intermediary between Lexxco and the Lexxco

³ The Respondent subsequently produced documents showing that he had received exactly \$102,053.56, exclusive of the unknown amounts.

Investors by, among other things:

- (a) completing the applicable Lexxco documentation with the Lexxco Investors;
- (b) delivering completed Lexxco documentation and investment monies to Lexxco on behalf of the Lexxco Investors; and
- (c) delivering the promissory notes issued by Lexxco to the Lexxco Investors.

21. The Respondent did not seek or obtain approval from Quadrus to sell the Lexxco Investment. The Respondent did not disclose to Quadrus that the Respondent was referring or facilitating the sale of the Lexxco Investment to clients or other individuals.

22. The Lexxco Investment was not a product approved by Quadrus for sale or referral by its Approved Persons, including the Respondent. The transactions in respect of the Lexxco Investment were not processed for the account or through the facilities of Quadrus. Quadrus did not have a referral arrangement with Lexxco.

23. In July 2011, several Lexxco Investors did not receive their scheduled interest payments and contacted the Respondent. In response, the Respondent contacted AL and arranged for the interest payments to be made.

24. In early August 2011, the Financial Services Commission of Ontario (“FSCO”) issued an order freezing the assets and trust monies of Lexxco on the grounds that the public may be adversely affected by the activities of Lexxco. Lexxco had been licensed as a mortgage administrator with the FSCO since January 30, 2009.

25. On October 27, 2011, AL was arrested and subsequently charged with 12 counts of fraud over \$5,000. The police alleged that Lexxco was a Ponzi scheme; that AL was using monies from new investors to make payments to existing investors; and that AL was also using investor monies for his own personal use.

26. On October 31, 2011, Lexxco Investor CV contacted the Respondent after reading the media reports about AL's arrest and Lexxco's legal and financial difficulties. By letter dated November 3, 2011, the Respondent advised the Lexxco Investors that he had become aware that AL had been arrested and charged with several counts of fraud. The Respondent denied having any knowledge that AL was operating a Ponzi scheme.

27. As set out in the chart above, of the total amount of \$3,105,000 invested by the Lexxco Investors, the Respondent believed only approximately \$812,000 was repaid to them.

28. In or around February 2012, Lexxco Investors BH&MH, RH&DH and JS&LA commenced civil proceedings against the Respondent and CHC in respect of the Lexxco Investment.

29. In or around August 2013, Lexxco Investor CV commenced a civil proceeding against the Respondent and others in respect of the Lexxco Investment.

V. CONTRAVENTIONS

30. The Respondent admits that between 2006 and 2011, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member by referring or facilitating the sale of at least \$3,105,000 of investments in a mortgage investment corporation to 2 clients and 11 other individuals outside the Member, contrary to MFDA Rules 1.1.1(a) and 2.1.1.

31. The Respondent admits that between 2006 and 2011, the Respondent received at least \$102,053.56 in referral fees for referring or facilitating the sale of investments in a mortgage investment corporation to 2 clients and 11 other individuals, thereby participating in a referral arrangement in relation to securities related business to which the Member was not a party, contrary to the requirements of sections 13.7 and 13.8 of

National Instrument 31-103, and MFDA Rules 2.4.2 and 2.1.1.

VI. TERMS OF SETTLEMENT

32. The Respondent agrees to the following terms of settlement:

- i. a permanent prohibition 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, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- ii. a fine in the amount of \$30,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1, which fine shall be reduced by any amounts, excluding payments for legal costs, that the Respondent can establish, based on documentary evidence acceptable to Staff in its sole discretion, that he has paid to Lexxco Investors on or before July 4, 2014 to settle civil actions commenced by them against the Respondent;
- iii. costs in the amount of \$2,500, pursuant to section 24.2 of MFDA By-law No. 1; and
- iv. the Respondent will attend in person, on the date set for the Settlement Hearing.”

F. FACTORS CONCERNING ACCEPTANCE OF A SETTLEMENT AGREEMENT

17. In both its written and oral submissions, Staff correctly stated that MFDA Hearing Panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

- (a) Whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
- (b) Whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
- (c) Whether the settlement agreement addresses the issues of both specific and general deterrence;
- (d) Whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
- (e) Whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
- (f) Whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- (g) Whether the settlement agreement will foster confidence in the regulatory process itself.

In the Matter of Rodney Jacobson, [2007] MFDA Hearing Panel of the Prairie Regional Council, MFDA File No. 200712, Decision dated July 13, 2007 at pp. 9 and 12.

In the Matter of Investors Group Financial Services, [2004] MFDA Hearing Panel of the Ontario Regional Council, MFDA File No. 200401, Decision dated December 16, 2004 at pp. 2-3.

In the Matter of IQON Financial Inc. (Re), [2007] MFDA Hearing Panel of the Pacific Regional Council, MFDA File No. 200713, Decision dated May 24, 2007 at p. 9.

G. FACTORS CONCERNING THE APPROPRIATENESS OF THE PENALTY

18. We agree with the submissions of the parties that the factors that Hearing Panels frequently consider when determining whether a penalty is appropriate include the following:

- (a) The seriousness of the allegations proved against the Respondent;
- (b) The Respondent's past conduct, including prior sanctions;
- (c) The Respondent's experience and level of activity in the capital markets;
- (d) Whether the Respondent recognizes the seriousness of the improper activity;
- (e) The harm suffered by investors as a result of the Respondent's activities;
- (f) The benefits received by the Respondent as a result of the improper activity;

- (g) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction.
- (h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- (i) The need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- (j) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- (k) Previous decisions made in similar circumstances.

In the Matter of Arnold Tonnies, [2005] MFDA Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Decision dated June 27, 2005 at p. 23.

In the Matter of Stephan Headley, [2006] MFDA Hearing Panel of the Ontario Regional Council, MFDA File No. 200509, Decision dated February 21, 2006 at pp. 25-26.

19. Staff also referred to the MFDA Penalty Guidelines to seek to show that the proposed penalties fall within these Guidelines, although conceding that the Guidelines are not in any way binding on a Hearing Panel.

H. THE PRESENT CASE

20. In her written and oral submissions, Staff Counsel assessed the Respondent's conduct against the above factors. These submissions included the following:

- (a) The Respondent's conduct was egregious.
- (b) On or about April 26, 2012, the Respondent was terminated by the Member as a result of the conduct admitted herein.
- (c) The Respondent is not currently registered in the securities industry in any capacity.
- (d) The Respondent has never previously been the subject of a disciplinary proceeding.

- (e) The Respondent's admissions to the misconduct described in the Settlement Agreement indicate that he recognizes the seriousness of his misconduct. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA conducting a lengthy Hearing at considerable additional expense to the MFDA and to its membership.
- (f) Of the total amount of \$3,105,000 invested by the Lexxco investors, the Respondent believes that only approximately \$812,000 was repaid to them, leaving a shortfall of approximately \$2,293,000. Numerous civil lawsuits were commenced against the Respondent. Staff believes that more than \$30,000 has been paid by the Respondent to settle these civil actions.
- (g) The Respondent has made arrangements to pay the suggested cost award.
- (h) Staff provided the Hearing Panel with a number of MFDA Decisions seeking to show that the proposed penalties are consistent with the penalties imposed by MFDA Panels in similar circumstances.

I. DECISION

21. After carefully considering the Settlement Agreement, as well as the written and oral submissions of the parties, the Hearing Panel unanimously agreed to accept the Settlement Agreement. We believe that the proposed penalties are reasonable and proportionate and are in keeping with the purpose of the MFDA to enhance investor protection and ensure high standards of conduct in the industry.

J. ORDER

22. On July 22, 2014, the Hearing Panel issued an Order, paragraph 1 of which provided as follows:

1. The Settlement Agreement is accepted, as a consequence of which the following penalties and costs are imposed upon the Respondent:

- (i) a permanent prohibition 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, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- (ii) a fine in the amount of \$30,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1, which fine shall be reduced by any amounts, excluding payments for legal costs, that the Respondent can establish, based on documentary evidence acceptable to Staff in its sole discretion, that he has paid to Lexxco Investors to settle civil actions commenced by them against the Respondent; and
- (iii) costs in the amount of \$2,500, pursuant to section 24.2 of MFDA By-law No. 1.

DATED this 10th day of October, 2014.

“Thomas J. Lockwood”

Thomas J. Lockwood, Q.C.
Chair

“Terrence Bourne”

Terrence Bourne
Industry Representative

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