



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: Peter Chi Yan Pang

Heard: January 6, 2016, in Vancouver, British Columbia
Reasons for Decision: July 5, 2016

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Stephen D. Gill	Chair
Holly A. Millar	Industry Representative
Tammi Walsh	Industry Representative

Appearances:

Christopher Corsetti)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Peter Chi Yan Pang)	In attendance by teleconference; not represented
)	by counsel
)	

Introduction

1. The Mutual Fund Dealers Association of Canada (“MFDA”) commenced a disciplinary proceeding in respect of Peter Chi Yan Pang (“Pang” or the “Respondent”) by Notice of Settlement Hearing dated December 1, 2015 (the “Notice of Settlement Hearing”).

2. The Respondent and the MFDA entered into a Settlement Agreement, dated December 1, 2015 (the “Settlement Agreement”) in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to Section 24.1 of By-law No. 1. On January 6, 2016, after hearing submissions from counsel for the MFDA, and from the Respondent, we approved the Settlement Agreement and signed an order reflecting that approval. Reasons were to follow, and these are those Reasons.

Agreed Facts

Registration History

3. The Respondent was registered in British Columbia from January 1, 2003 to October 6, 2014 as a mutual fund salesperson (now known as a Dealing Representative) and from January 27, 2009 to October 6, 2014 as a Branch Manager with TD Investment Services Inc. (“TD”), a Member of the MFDA.

4. The Respondent was terminated by TD on October 6, 2014 as a result of the events described herein below.

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

6. At all material times the Respondent carried on business from a branch office of TD located in Vancouver, British Columbia.

7. The Respondent has not previously been disciplined by TD or the MFDA.
8. At all material times, TD's policies and procedures prohibited its Approved Persons from "falsifying any account information, record or documentation in any way" and "signing or initialing documentation for or on behalf of customers" on account forms.
9. On March 14, 2014 the Respondent falsified client PC's signature (i.e.: the Respondent cut and pasted PC's signature on to an account form), on a joint TD Mutual Fund Non-Registered Account Application with Know-Your-Client ("KYC") information contained in the application (the "NAAF").
10. On or about October 6, 2014 the Respondent was interviewed by TD. In that interview the Respondent admitted to the above-noted misconduct. TD terminated the Respondent following the interview.
11. On November 8, 2014 the Respondent e-mailed MFDA staff. In that e-mail the Respondent, once again, admitted that he falsified client PC's signature by cutting and pasting it on the NAAF.
12. The Respondent was registered as a Branch Manager with TD during the material times.

TD's Response

13. TD reviewed 300 transactions processed by the Respondent between June 25, 2013 and June 25, 2014 and no additional issues were found.
14. The parties agree there is no evidence that the Respondent processed any trades or changes to client information without the acknowledgement or authorization of clients; any clients that suffered any financial harm as a result of the falsification on the form by the Respondent; or the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees to which he would have been ordinarily entitled had the

transactions in the clients' accounts been carried out in the proper manner; and no clients have complained about the Respondent's conduct.

15. As per the Settlement Agreement, the Respondent admits that, on March 14, 2014, he did falsify a client's signature on an account form containing KYC information, contrary to MFDA Rules 2.1, 2.5.1 and 1.1.2.

16. As per the Settlement Agreement, the Respondent agrees:

- (a) to pay a fine in the amount of \$4,000.00;
- (b) he shall pay costs in the amount of \$2,500.00;
- (c) he will attend the settlement hearing.

17. The obligations of a Hearing Panel at a settlement agreement hearing are very different than is usual at a contested hearing. In *Re Milewski*¹ the panel stated:

“We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel “will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness”.

18. Further, we adopt the view expressed by the Panel in *Re: Sterling Mutuals Inc.*² that, in general, a settlement agreement should be accepted bearing in mind the following criteria:

- (a) that it is in the public interest to do so and that the penalties proposed will be sufficient to protect investors;
- (b) that the agreement is reasonable and proportionate, having regard to the conduct of the Respondent (as per the Settlement Agreement);
- (c) that the agreement addresses the issues of both specific and general deterrence;

¹ (1999) IDACD No. 17

² 2008 LNCMFDA 16

- (d) that the agreement is likely to prevent the type of conduct set out in the facts from occurring again in the future;
- (e) that the agreement will foster confidence in the integrity of the Canadian Capital Markets;
- (f) that the agreement will foster confidence in the integrity of the MFDA; and
- (g) that the agreement will foster confidence in the regulatory process itself.

Re: Sterling Mutuals, paragraph 36.

19. We accept that a Hearing Panel should not interfere lightly in a negotiated settlement as long as the penalties agreed upon are within a reasonable range of appropriateness having regard to the conduct of the Respondent.

20. In our view the Parkinson³ and Tonnie's⁴ decisions correctly found that in determining the appropriate sanction, a Hearing Panel should, *inter alia*, take into account the following considerations:

- (a) the protection of the investing public;
- (b) the integrity of the securities market;
- (c) specific and general deterrence;
- (d) protection of the MFDA's membership; and
- (e) the protection of the integrity of the MFDA's enforcement processes.

21. In *Re Jacobson*⁵ the panel stated:

“In past cases, 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 penalties imposed would protect investors;

³ In the matter of Robert Roy Parkinson (2005) 28 OSCB4324 (Ontario Regional Council) MFDA File No. 200501

⁴ In the matter of Arnold Tonnie's (2005) MFDA File No. 200503 at page 21

⁵ 200712 MFDA

- (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;
- (g) whether the Settlement Agreement will foster confidence in the regulatory process itself.”

Re: Jacobson, page 9.

22. Counsel also referred us to the MFDA Penalty Guidelines, which are an additional source of factors we have taken into account with regards to penalty. The Penalty Guidelines are not binding or mandatory but are intended to assist hearing panels, MFDA staff and respondents when considering the appropriate penalties in MFDA disciplinary proceedings.

23. Where an approved person fails to adhere to the standard of conduct, the MFDA Penalty Guidelines recommend one or all of the following:

- (a) a minimum fine of \$5,000.00;
- (b) writing or re-writing an appropriate industry course;
- (c) suspension;
- (d) a permanent prohibition in egregious cases.

24. In our view it is clear that the use of a falsified form is a serious breach of MFDA Rule 2.1.1 (*Re: Byce*⁶; *Re: Ewart*⁷)

⁶ (2013) MFDA File No. 201311, Decision dated September 4, 2013

⁷ (2015) MFDA File No. 201528, Panel Decision September 11, 2015

25. In this case there is no evidence of client harm, and the client did not report any concerns to the Member. Further, there is no evidence that the Respondent received any financial benefit from engaging in the misconduct other than the commissions and fees he would ordinarily be entitled to receive had the transaction been carried out in the proper manner.

26. We note that the Respondent has been registered in the Mutual Fund industry since 2003, and he was a Branch Manager from January 2009 to October 2014. There is no doubt that he was an experienced Dealing Representative, and in our view knew, or ought to have known, the Member's and the MFDA's compliance requirements.

27. With respect to the fine and costs, in our view they will be a sufficient deterrence to both the Respondent, and the industry. The fine is \$4,000.00, and costs of \$2,500.00.

28. We note that the Respondent has not previously been subject to MFDA disciplinary proceedings, and that by entering into this Settlement Agreement, the Respondent has accepted responsibility for his misconduct. The settlement has voided the necessity of the MFDA incurring the time and expense in conducting a full disciplinary hearing.

29. Significantly, the Respondent also co-operated with the Member's internal investigation into his conduct and understands the seriousness of his actions.

30. We note that the fine is below the minimum suggested in the Penalty Guidelines. However, we note this is the first time the Respondent has been disciplined in his 12 years as a Dealing Representative, there was no client harm, and the fine is a significant amount which will act as a deterrent.

31. Having carefully considered the submissions of counsel, the authorities, the facts and circumstances and penalties set forth in the Settlement Agreement, we concluded that the Settlement Agreement, and particularly the penalty agreed upon by the parties, were within a reasonable range of appropriateness, and for that reason we accepted the Settlement Agreement.

32. Attached as Appendix A to these Reasons is a copy of the Settlement Agreement.
33. These Reasons may be signed in counterpart.

DATED this 5th day of July, 2016.

“Stephen D. Gill”

Stephen D. Gill
Chair

“Holly A. Millar”

Holly A. Millar
Industry Representative

“Tammi Walsh”

Tammi Walsh
Industry Representative



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Re: Peter Chi Yan Pang

SETTLEMENT AGREEMENT

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 Pacific 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 Peter Chi Yan Pang (the "Respondent").

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.

IV. AGREED FACTS

Registration History

6. The Respondent was registered in British Columbia from January 1, 2003 to October 6, 2014 as a mutual fund salesperson (now known as a Dealing Representative) and from January 27, 2009 to October 6, 2014 as a Branch Manager with TD Investment Services Inc. (“TD”), a Member of the MFDA.

7. The Respondent was terminated by TD on October 6, 2014 as a result of the events described herein below.

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

9. At all material times the Respondent carried on business from a branch office of TD located in Vancouver, British Columbia.

10. The Respondent has not previously been disciplined by TD or the MFDA.

Falsified Signature

11. At all material times, TD's policies and procedures prohibited its Approved Persons from "falsifying any account information, record or documentation in any way" and "signing or initialing documentation for or on behalf of customers" on account forms.

12. On March 14, 2014 the Respondent falsified client PC's signature (ie. the Respondent cut and pasted PC's signature on to an account form), on a joint TD Mutual Fund Non-Registered Account Application with Know-Your-Client ("KYC") information contained in the application (the "NAAF")..

13. On or about October 6, 2014 the Respondent was interviewed by TD. In that interview the Respondent admitted to the above-noted misconduct. TD terminated the Respondent following the interview.

14. On November 8, 2014 the Respondent e-mailed MFDA staff. In that e-mail the Respondent, once again, admitted that he falsified client PC's signature by cutting and pasting it on the NAAF.

15. The Respondent was registered as a Branch Manager with TD during the material times.

TD's Response

16. TD reviewed 300 transactions processed by the Respondent between June 25, 2013 and June 25, 2014 and no additional issues were found.

17. There is no evidence that:

- (a) the Respondent processed any trades or changes to client information without the knowledge or authorization of his clients;
- (b) client suffered any financial harm as a result of the falsification on the form by the Respondent;
- (c) the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees to which he would have been ordinarily entitled had the transactions in the clients' accounts been carried out in the proper manner; and
- (d) any clients have complained about the Respondent's conduct.

V. CONTRAVENTIONS

18. The Respondent admits that, on March 14, 2014, he did falsify a client's signature on an account form containing KYC information, contrary to MFDA Rules 2.1.1, 2.5.1 and 1.1.2.

VI. TERMS OF SETTLEMENT

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

- (a) the Respondent shall pay a fine in the amount of \$4,000, pursuant to section 24.1.1(b) of By-law No. 1;
- (b) the Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1; and
- (c) the Respondent will attend the Settlement Hearing in person.

VII. STAFF COMMITMENT

20. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

21. Acceptance of this Settlement Agreement shall be sought at a hearing of the Pacific Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

22. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive its his rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction.

23. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1.

24. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

25. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

26. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule "A" is not made by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

27. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

XI. DISCLOSURE OF AGREEMENT

28. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

29. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

XII. EXECUTION OF SETTLEMENT AGREEMENT

30. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

31. A facsimile copy of any signature shall be effective as an original signature.

DATED this 1st day of December, 2015.

“Jessica Franske”

Witness – Signature

Jessica Franske

Witness – Print name

“Peter Chi Yan Pang”

Peter Chi Yan Pang

“Shaun Devlin”

Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – Enforcement



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**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: Peter Chi Yan Pang

ORDER

WHEREAS on _____, 2015, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Peter Chi Yan Pang (the "Respondent");;

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated December ____, 2015 (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that the Respondent, on March 14, 2014, did falsify a client's signature on an account form containing KYC information, contrary to MFDA Rule 2.1.1;

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. the Respondent shall pay a fine in the amount of \$4,000, pursuant to section 24.1.1(b) of By-law No. 1;
2. the Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1; and;
3. If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then 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 [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]