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: Frank Siu-Cheong Pa

Heard: June 25, 2020 by electronic hearing in Toronto, Ontario
Decision: June 25, 2020
Reasons for Decision: July 21, 2020

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Joan Smart	Chair
Kenneth P. Mann	Industry Representative
Joseph Yassi	Industry Representative

Appearances:

Shelly Feld	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Bruce O'Toole	)	Counsel for the Respondent
Frank Siu-Cheong Pa	)	Respondent

I. INTRODUCTION

1. By Notice of Settlement Hearing, dated June 3, 2020, the Mutual Fund Dealers Association of Canada (the "MFDA") commenced proceedings against Frank Siu-Cheong Pa (the "Respondent") indicating that an electronic hearing would be held on June 25, 2020 to consider whether the Hearing Panel should accept the settlement agreement, dated June 22, 2020, (the "Settlement Agreement") entered into between the staff of the MFDA ("Staff") and the Respondent.

2. At the Settlement Hearing on June 25, 2020, the Hearing Panel, after hearing the submissions of counsel for the parties and considering the Settlement Agreement, decided to accept it. These are our reasons for that decision.

II. THE RESPONDENT'S ADMISSION OF CONTRAVENTIONS

3. The Respondent admitted that:

   a) between 2009 and March 2018, he engaged in outside business activities, including serving as President, Chief Executive Officer and director of a mortgage investment corporation without prior written approval from the Member, contrary to the policies and procedures of the Member and MFDA Rules 1.2.1(d)[1] [now Rule 1.3.2] and 1.1.2 as it relates to Rule 2.5.1 and 2.10;

   b) between September 2014 and March 2018, he engaged in securities related business that was not carried on for the account of the Member or processed through the facilities of the Member by selling, recommending, referring or otherwise facilitating investments in preferred shares of a mortgage investment corporation by 12 individuals including one client of the Member, contrary to MFDA Rule 1.1.1(a); and

   c) between 2014 and 2017, he provided inaccurate responses to the Member on four annual compliance questionnaires by inaccurately denying that he was engaged in any unapproved outside activities, contrary to MFDA Rule 2.1.1.

[11]In the Settlement Agreement Staff relied on MFDA Rule 1.2.1(d) that was in effect when the Respondent became engaged with Atlantic Capital in 2009. On December 3, 2010, Rule 1.2.1(d) was renumbered as Rule 1.2.1(c) and effective March 17, 2016, former Rule 1.2.1(c) was amended and renumbered as Rule 1.3.2.

III. PROPOSED SETTLEMENT

4. Staff and the Respondent agreed to the following terms of settlement:

a) the Respondent shall be suspended from conducting securities related business in any capacity while in the employ of, or associated with, any Member of the MFDA for five months commencing from the date of the Hearing Panel's Order accepting the Settlement Agreement, pursuant to s. 24.1.1(c) of MFDA By-law No. 1;

b) the Respondent shall pay a fine of $25,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1 which shall be payable in instalments as follows:

    i. $5,000 payable on the date the Settlement Agreement is accepted by the Hearing Panel; and

    ii. $1,667 payable on the first day of each month from August 1, 2020 to July 1, 2021; and

c) the Respondent shall pay costs to the MFDA of $5,000 on the date the Hearing Panel issues an Order accepting the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1.

IV. AGREED FACTS

5. Set out below are the agreed facts that are material in this case.

Registration History - Ontario

6. The Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Portfolio Strategies Corporation ("PSC" or the "Member") since August 3, 2001 and since October 7, 2003, he has been a PSC branch manager.

7. In 1988 the Respondent became a mortgage broker.

Failure to Seek Approval for Outside Business Activity

8. At all material times, the policies and procedures of the Member required Approved Persons to obtain written approval from the Member prior to engaging in any outside business activity, including being a partner, director, or officer of any company or other entity, and provide

updates about their involvement in outside business activities at least annually and in the event of a material change.

9. The Respondent was aware of the policy and had previously obtained approval from the Member to work as a mortgage broker and serve as the principal mortgage broker and sole director of Atlantic (HS) Financial Corporation ("Atlantic Financial"). This outside activity had been recorded on the National Registration Database.

10. In approximately 2009, the Respondent became one of four founding shareholders of Atlantic (HS) Capital Inc. ("Atlantic Capital"), a mortgage brokerage that was set up to fund private mortgages. The Respondent was not paid a salary by Atlantic Capital but sometimes earned income from mortgages facilitated by Atlantic Capital. Atlantic Capital also paid referral fees to Atlantic Financial for investment opportunities identified by Atlantic Financial that Atlantic Capital funded.

11. In July 2014, Atlantic Advantage Mortgage Investment Company ("AAMIC") commenced operations extending residential and commercial mortgages to borrowers in market segments under-serviced by large financial institutions. The Respondent was one of the founding common shareholders and an investor in preferred shares of AAMIC and he agreed to serve as the President, Chief Executive Officer ("CEO") and as a director of AAMIC. He was not paid for fulfilling his executive functions with AAMIC but he earned investment income from his preferred shares in AAMIC. The day to day operations of AAMIC were handled by the general manager and chief financial officer.

12. The Respondent also became the President, CEO, a director and the largest shareholder of Atlantic Advantage Management Inc. ("Atlantic Management"), a company that fulfills management responsibilities for AAMIC and receives management fees from AAMIC. Atlantic Management may also receive a performance fee but to date has not done so.

13. An offering memorandum was issued by AAMIC in support of its efforts to raise capital for investment in mortgages by selling preferred shares of AAMIC. The Respondent's role as an Approved Person of PSC was not referenced in the AAMIC offering memorandum.

14. The Respondent did not provide prior written disclosure to, or obtain approval from, the Member with respect to his outside activities with Atlantic Capital, AAMIC and Atlantic Management.

15. In May 2018, after the Ontario Securities Commission (the "OSC") questioned the Respondent about his role with AAMIC during the OSC's Capital Raising Review, the Respondent requested and received authorization from the Member to continue in his roles as President, CEO and director of AAMIC.

Securities Related Business Not Processed Through the Member

16. Prior to March 2018, 68 investors purchased at least $25,000 worth each of preferred shares in AAMIC. The Respondent personally solicited investments totaling $1,815,610 in preferred shares of AAMIC from 12 investors who were family members or close friends of the Respondent, including his spouse who was a client of the Member.

17. Prior to March 2018, purchases of preferred shares of AAMIC were not carried on for the account of the Member or processed through the facilities of the Member.

18. Since November 2018, the Member has added preferred shares of AAMIC to its product shelf and transactions in AAMIC shares have been processed through the Member.

Inaccurate Responses to Member's Questionnaire

19. Between 2014 and 2017, the Respondent submitted four annual compliance certification questionnaires to the Member on which he stated he had previously notified the Member of all outside business activities he was engaged in and specified that he was engaged in mortgage brokering.

20. On the 2017 questionnaire, as a result of a modification to the form, the Respondent also affirmed that he had disclosed to the Member all cases in which he had been a director, officer or shareholder of a company.

21. The Respondent had not disclosed to, or obtained approval from, the Member to engage in his roles with AAMIC, Atlantic Management or Atlantic Capital, and consequently, his responses

on the annual compliance certification questionnaires were inaccurate, contrary to MFDA Rule 2.1.1.

V. CONSIDERATIONS

The Role of the Hearing Panel

22. Section 24.4.3 of MFDA By-law No. 1 provides that a hearing panel may only accept or reject a settlement agreement. Accordingly, it was not up to the Hearing Panel to substitute our judgement for that of the parties with respect to the proposed penalty.

23. It is generally accepted that a hearing panel will not lightly interfere with a negotiated settlement and will not reject a settlement agreement unless it clearly falls outside a reasonable range of appropriateness. See for example, *Fike (Re),* 2017 LNCMFDA 279.

24. In our view, a hearing panel should be particularly reluctant to interfere with a settlement that has been negotiated by experienced counsel representing both parties.

25. In deciding whether to accept the Settlement Agreement, the Hearing Panel considered primarily: whether it was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's conduct and previous MFDA cases; whether it would serve as a specific and general deterrent; and whether it was aligned with the MFDA's objective of ensuring high standards of conduct in the mutual fund industry.

Misconduct

Failure to Obtain Approval for Outside Business Activity

26. According to MFDA Rule 1.2.1(d), now Rule 1.3.2, an Approved Person may have, and continue in, another gainful occupation (now outside activity under Rule 1.3.2), provided that the Member for whom the Approved Person carries on business is aware and approves of the Approved Person engaging in such other gainful occupation (now outside activity under Rule 1.3.2).

27. Under MFDA Rules 2.10 and 2.5.1, every Member must establish and maintain written policies and procedures for ensuring compliance with, among other things, the MFDA Rules. In

accordance with those requirements, the Member in this case had implemented policies and procedures requiring that its Approved Persons obtain approval prior to engaging in outside business activity.

28. MFDA Rule 1.1.2 requires that each Approved Person comply with the MFDA Rules as they apply to the Member. Where a Member, as mandated under MFDA Rules 2.10 and 2.5.1, has implemented policies and procedures to ensure compliance with regulatory requirements, it is incumbent on Approved Persons to obey those policies and procedures in order for the regulatory regime to be effective.

29. In our view, the requirement for an Approved Person to obtain their Member's approval to engage in an outside business activity is important to the regulatory system and a failure to do so is a serious breach. Members need to be aware of Approved Persons' outside activities in order to, among other things, properly supervise the activities, manage potential risk of litigation alleging that the activity was within the scope of the Approved Person's employment with the Member and address potential conflicts of interest and client confusion.

30. We have found that, as admitted by the Respondent, he engaged in outside business activities, including serving as President, Chief Executive Officer and a director of AAMIC, without the prior approval of the Member, contrary to the Member's policies and procedures and MFDA Rules 1.2.1(d) [now Rule 1.3.2] and Rule 1.1.2 as it relates to Rule 2.5.1 and 2.10.

Securities Related Business Not Processed Through the Member

31. Under MFDA Rule 1.1.1(a), no Approved Person shall engage in any securities related business, except if all such securities related business is carried on for the account of the Member through the facilities of the Member.

32. The requirement that all securities related business be carried on through the Member allows the Member to properly supervise the transactions and assess their suitability for investors. A failure to comply with this requirement is a serious contravention.

33. We have found that, as admitted by the Respondent, he engaged in securities related business in relation to the preferred shares of AAMIC, that was not carried on for the account of the Member or processed through the facilities of the Member, contrary to MFDA Rule 1.1.1(a).

Inaccurate Responses to the Member's Questionnaire

34. MFDA Rule 2.1.1 requires that Approved Persons, among other things, observe high standards of ethics and conduct in the transaction of business and not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.

35. It is critical to the ability of a Member to properly supervise its Approved Persons that such persons provide accurate responses to compliance questionnaires and the failure to do so is serious misconduct.

36. We have found that, as admitted by the Respondent, between 2014 and 2017, he provided inaccurate responses to the Member on four annual compliance questionnaires by inaccurately denying he was engaged in any unapproved outside activities, contrary to MFDA Rule 2.1.1.

Penalty

Seriousness of the Contraventions

37. As we have noted above, each of the Respondent's contraventions was serious and, together, they were even more concerning.

38. We were also troubled by the fact that the Respondent had been in the securities industry for more than 20 years and should have been aware of the requirements, and indeed at least with respect to the requirement to obtain approval for outside business activities, it appears he was aware.

Mitigating Factors

39. The Hearing Panel considered a number of mitigating factors in determining the penalty, including the following:

a) the Respondent had no prior disciplinary record;

b) there was no evidence that any client suffered financial harm as a consequence of the Respondent's conduct and there was no evidence of any client complaints;

c) with respect to soliciting investors to buy preferred shares of AAMIC, the Respondent did not solicit clients of the Member, with the exception of his wife;

d) the Respondent stated that, prior to the founding of AAMIC, he informed a senior executive of the Member that he was planning to start a mortgage investment company;

e) if initially the Respondent had requested authorization to engage in the subject outside business activities and asked the Member to permit the sale of preferred shares in AAMIC through the Member, it is likely that the Member would have provided the authorization at the time;

f) the Respondent fully cooperated with the MFDA investigation; and

g) by entering into the Settlement Agreement and admitting to the subject misconduct, the Respondent accepted responsibility for his misconduct, demonstrated remorse and saved the MFDA the resources, time and costs of a full hearing.

<u>Previous Cases</u>

40. The proposed sanction fell within a reasonable range of appropriateness in relation to previous decisions of MFDA hearing panels in relation to settlements in similar circumstances, including the cases referred to below.

Abate (Re), 2015 LNCMFDA 105

Prueter (Re), 2015 LNCMFDA 84

41. We note that the proposed sanction is at the lower end of the range of appropriateness when compared to previous cases. However, we were satisfied that it was reasonable in light of the mitigating factors and the fact that the settlement was negotiated by experienced counsel.

<u>Deterrence</u>

42. We were of the view that the suspension, together with the fine, will deter the Respondent from engaging in similar misconduct in the future and should also discourage others in the industry from engaging in such misconduct.

VI. CONCLUSION

43. We concluded that the proposed settlement was proportionate and fell within a reasonable range of appropriateness, having regard to the Respondent's misconduct and previous MFDA cases. It should serve as both a specific and general deterrent. Also, we were of the view that it was aligned with the MFDA's regulatory objective to enhance investor protection and ensure high standards of conduct in the mutual fund industry. Accordingly, we decided to accept the Settlement Agreement.

DATED this 21st day of July, 2020.

"Joan Smart"
Joan Smart
Chair

"Kenneth P. Mann"
Kenneth P. Mann
Industry Representative

"Joseph Yassi"
Joseph Yassi
Industry Representative

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