

BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: Re Meng Xi Li, 2022 BCSECCOM 31

Date: 20220131

Meng Xi Li and the Mutual Fund Dealers Association

Panel	Gordon Johnson Deborah Armour, QC Judith Downes	Vice Chair Commissioner Commissioner
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Submissions completed December 22, 2020

Decision date January 31, 2022

Parties

Meng Xi Li	For herself
Justin Dunphy	For the Mutual Fund Dealers Association
Shaneel Sharma	For the Executive Director

Ruling

I. Introduction

- [1] The Mutual Fund Dealers Association of Canada (MFDA) imposed sanctions on Meng Xi Li (Li) in a January 16, 2020 Order in File No. 201935 (MFDA Order). The MFDA issued its Reasons for Decision in respect of the MFDA Order on February 6, 2020.
- [2] Under the MFDA Order, the MFDA permanently prohibited Li from conducting securities-related business while in the employ or associated with any of its members and ordered Li to pay a fine of \$100,000 and costs of \$7,500.
- [3] Li seeks a hearing and review of the MFDA Order and has applied to the Commission for an extension of time to request that review (Extension Application). Section 165(9) of the *Securities Act*, RSBC 1996, c. 418 (Act) gives the Commission the discretion to grant an extension of time to a date it considers appropriate.
- [4] This is our Ruling on the Extension Application.

II. Background facts

- [5] MFDA staff initially contacted Li in May and June 2017, by sending letters by registered mail to an address in Richmond, British Columbia (Richmond Address) which was her residential address on file in the National Registration Database and in the MFDA records.

- [6] By letter dated September 26, 2017, and sent by process server to the same Richmond Address, MFDA staff advised Li that the matter had been escalated to the investigations group within the enforcement department of the MFDA. Li personally accepted service of the September 26, 2017 letter.
- [7] Later in September 2017, Li contacted MFDA staff via email from an account at gmail.com (Gmail Account) to respond to questions staff had asked in earlier letters. Li continued to correspond with MFDA staff via the Gmail Account in October 2017.
- [8] Li attended an interview with MFDA staff on November 6, 2017, during which she:
- a) confirmed that her address was the Richmond Address and her email address was the Gmail Account,
 - b) informed staff that she was going to be moving to China, but did not yet have a new address in China,
 - c) indicated that staff could reach her by sending letters to her mother at the Richmond Address, and
 - d) confirmed that she would provide MFDA staff with her updated contact information once she had moved to China.
- [9] Li was advised at the outset of the interview that the MFDA investigation might result in disciplinary action against her pursuant to MFDA By-Law No. 1. There is nothing in the evidence to indicate that Li provided the MFDA with an updated mailing address or e-mail address after the interview with MFDA Staff. Li did not assert that she provided such an address.
- [10] By letter dated May 9, 2019, MFDA staff sent a Notice of Hearing, the document which commenced disciplinary proceedings against her, to Li at her Richmond Address by both registered mail and process server.
- [11] The Notice of Hearing contained five allegations:
- a) **Allegation #1:** Between January 2016 and January 2017, the Respondent allowed a client to open and trade in an investment account at the MFDA Member using the identity and contact information of a different individual, thereby concealing the identity of the true account holder, and circumventing the Member's account and trade supervision processes, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.2.1, 2.5.1 and 1.1.2.
 - b) **Allegation #2:** Between January 2016 and January 2017, the Respondent recorded notes in the Member's client management system which falsely described trade instructions for trades submitted in a client account, thereby misleading the Member and circumventing the Member's account and trade supervision processes, contrary to MFDA Rule 2.1.1.
 - c) **Allegation #3:** In September 2016, the Respondent transferred \$100,000 from a client investment account to the Respondent's personal bank account, thereby engaging in

personal financial dealings with the client which gave rise to a conflict or potential conflict of interest that the Respondent failed to disclose to the Member or address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the policies and procedures of the Member and MFDA Rules 2.1.4 and 2.1.1.

- d) **Allegation #4:** Commencing in January 2017, the Respondent made false or misleading statements to the Member and/or Staff of the MFDA during the course of investigations into her conduct, contrary to MFDA Rule 2.1.1.
- e) **Allegation #5:** On November 2, 2016, the Respondent falsified a client's signature on an account form and submitted it to the Member for processing, contrary to MFDA Rule 2.1.1.

- [12] Between May and December of 2019, MFDA sent correspondence to Li, both to the Richmond Address and the Gmail Account, with respect to the scheduling and location of the hearing on the merits of the allegations in the Notice of Hearing. No response was received from Li to any of the correspondence.
- [13] On July 3, 2019, counsel for the MFDA appeared before the chair of the MFDA hearing panel and described the efforts made to that date to serve Li. The description was, in very general terms, consistent with the description of background facts set out above. During the appearance, counsel for the MFDA represented that Li had not provided any new contact information, despite her statement during her prior interview that she would do so. Based on the information then available the chair of the MFDA hearing panel granted an order for "substitute service" on Li at her last known address, which was the Richmond Address. That service was completed and verified by affidavit.
- [14] The MFDA held the hearing on the merits on January 16, 2020. In light of Li's non-participation in the hearing, the evidence against her was introduced by affidavit from an MFDA staff member. The affidavit provides a factual background which supported a submission by MFDA counsel to the effect that although Li opened an account on behalf of an individual, conducted trades and transferred funds in that account on behalf of that individual and purported to accept instructions from that individual in reality all activities were on behalf of her husband and not the individual. This evidence provided some support for the first four of the five allegations against Li, evidence which was sufficient in the judgment of the MFDA panel. The fifth allegation, of falsifying a client signature, was a separate issue supported by other evidence within the MFDA staff affidavit. The hearing panel issued the MFDA Order the same day. The MFDA found against Li with respect to all five allegations in the Notice of Hearing.
- [15] By email on January 21, 2020, MFDA staff sent the MFDA Order and a related news release to Li to the Gmail Account.
- [16] On February 6, 2020, the MFDA issued its Reasons for Decision in respect of the MFDA Order. MFDA staff sent the Reasons and a related news release to Li to the Gmail Account the same day. In that email, MFDA staff wrote:

The period for seeking a review of a decision of Regional Council Hearing Panel is prescribed by the securities regulatory authority in the relevant jurisdiction. You should consult with the securities regulatory authority in your region immediately to determine the date by which you must commence a review. In many jurisdictions, the deadline for applying for a Hearing and Review of an MFDA Hearing Panel decision is 30 days from the date the Reasons for Decision are published by the MFDA.

[17] On June 18, 2020, Li emailed MFDA staff and the Commission to seek a hearing and review of the MFDA Order.

[18] In her email, Li advised that she was and had been away from Canada, that she had not received any letter or emails and that "...when I noticed, the decision was already made..." Li also addressed the third allegation in the Notice of Hearing, which alleged that she had transferred \$100,000 from a client account to her own personal bank account, by stating that the client was in fact her husband.

[19] In a July 8, 2020 email to MFDA staff and the Commission, Li set out her reasons for requesting a review, as quoted directly below:

1. The decision to be reviewed and the grounds for review:

- a) Allegation #2: it says that I -"falsely described trade instruction for trade..." - since the money belongs to my husband and not [name redacted], so I did not ask [name redacted] for instruction. Instead, I asked my husband for every instruction.
- b) Allegation #3: "the respondents transferred \$100,000 from a client investment account to person account..." - my husband regularly transferred money to me for many years, so it's not a "stranger client". Also, I did not do this transaction - my coworker from my branch did this transaction, so I didn't transferred money from his account.
- c) Allegation#4: "respondent made false or misleading statement to the member of MFDA during investigation..." - I said I wanted to buy an apartment using the money, and it was true, I went to see few apartments in Richmond, BC at that time(REALTOR can prove) but ended up not buying because I moved back to China, it does not mean I misleading the member of MFDA.

2. How the person is directly affected:

The suggestion fine and cost was between \$50K to 75K, however, the final decision was \$100K. I do not understand why it's go much beyond its suggestion fines. I did not have a chance to appear in the hearing Panel and I believe I have the right to appear in the panel before the final decision made.

[20] MFDA staff responded to Li by email the next day and stated that:

- a) the MFDA's Reasons for Decision had been sent on the day it was issued to an email address that Li had previously used for communication with MFDA staff,

- b) Li had been served on June 3, 2019 with the Notice of Hearing issued on May 3, 2019, by having a process server affix the Notice of Hearing to the door of her last known address for service,
- c) Li failed to submit a Reply to the Notice of Hearing and failed to participate in the hearing on the merits before the MFDA, and
- d) Li responded in April 2020 to demand letters from MFDA staff for payment of financial penalties imposed by the MFDA Order.

- [21] In short, MFDA staff took the position that Li had received notice of the merits hearing, had responded to demands for payment after the issuance of the MFDA Order, and was out of time to seek a hearing and review before the Commission.
- [22] In her own email of July 9, 2020 to MFDA staff and the Commission, Li advised again that she had not received any letters and that in China, her Gmail Account was blocked and inaccessible.
- [23] On August 9, 2020, Li sent an email to MFDA staff and to the Commission to apply formally for an extension of time to request a hearing and review of the MFDA Order.
- [24] In her August 2020 email, Li repeated her reasons for the request as set out in her email of July 8, 2020.
- [25] In the same email, Li provided pictures of stamps in her passport to support her position that she had been away from Canada and she repeated that she had not received any letters and that she could not access her Gmail Account while in China.

III. Position of the parties

- [26] The MFDA opposes the Extension Application. MFDA staff submits that Li bears the onus of demonstrating why this panel should extend the 30-day time period under section 165 of the Act and notes that Li has not filed an affidavit to provide evidentiary support for the Extension Application.
- [27] The MFDA does not dispute that Li is a party “directly affected” by the MFDA Order for the purposes of section 165(3) of the Act. The MFDA does take issue, however, with the timing of Li’s request for a hearing and review.
- [28] Relying on *Re Marrelli*, 2017 BCSECCOM 326, the MFDA submits that it is the date of the MFDA Order that is relevant to the calculation of time in section 165(3), not the date of the Reasons for Decision. Further, the MFDA submits that the MFDA Order was sent to Li promptly, in compliance with the notice requirements in section 180 of the Act.
- [29] The MFDA also submits that Li was aware of and participated in the MFDA investigation into her conduct and that Li received notice of the MFDA proceeding, including the Notice of Hearing, in accordance with the MFDA’s procedural requirements and her own directions to MFDA staff.

- [30] The executive director takes no position on the Extension Application but did file a Statement of Points on the relevant law to assist the panel as it considers the application.
- [31] The executive director notes that section 165(9) is a new provision in the Act, having come into force with other amendments on March 27, 2020. Because the Commission has not interpreted section 165(9) of the Act before, the executive director made submissions on the appropriate test for this panel to adopt in considering the Extension Application.
- [32] In particular, the executive director submits that we should adopt the test set out in *Clock Holdings Ltd. v. Braich*, 2009 BCCA 437, which considered an appeal from the decision of a chambers judge who had refused to grant an extension of time to bring an appeal. That test, if applied to an extension of time to request a hearing and review before the Commission, would include these factors:
- a) Was there was a bona fide intention to request a hearing and review?
 - b) When were the other parties informed of that intention?
 - c) Would the other parties be unduly prejudiced by an extension?
 - d) Is there merit in the proposed review?
 - e) Is it in the interests of justice that an extension be granted? This question is often the most important because it encompasses the other four.

IV. Legal test

- [33] Section 28 of the Act establishes the process for a party directly affected by a decision of the MFDA to apply to the Commission for a hearing and review. Section 165 of the Act sets out time periods applicable to a review application.
- [34] Section 165(3) states that an applicant may request a hearing and a review of a decision by providing a notice in writing “within 30 days” after the date on which notice of the decision is sent. Section 165(9) confers a discretion on the Commission to extend the time period in 165(3) “to a date the commission considers appropriate.”
- [35] It is clear that Li did not make a request within 30 days. The issue on this Extension Application is whether the panel considers it appropriate to extend that 30-day time period under the discretion conferred on the Commission by section 165(9) of the Act.

V. Analysis and conclusion

- [36] We conclude that section 165(9) should be approached in a flexible manner which balances the benefits of finality against the potential for unfairness arising from the strict enforcement of deadlines. The non-exclusive factors identified in *Clock Holdings*, above, were developed in a somewhat different context but they are still a useful guide to our analysis.

A. Bona Fide intention to request a hearing and review

[37] There is no suggestion here that Li had an intention to seek a hearing and review during the 30 day period created by the Act. However, this factor has limited weight in this instance because Li's position is she did not know of the MFDA Order until after the 30 day period had expired. A related consideration might be whether Li decided to seek a hearing and review promptly upon learning of the MFDA Order. In this case it is not clear how long after Li learned about the MFDA Order that she developed an intention to have that order reviewed.

B. Other parties informed of the intention

[38] As noted above, Li's position is that she did not learn of the MFDA Order until after the 30 day statutory period expired. As a consequence, we assign little weight to her failure to inform others of an intention to seek a hearing and review during that 30 day period. That said, Li's own conduct contributed to the timing of her receipt of the MFDA Order. We examine that conduct and its effect on our analysis below in *Section E Interests of justice*.

C. Prejudice to MFDA in granting an extension

[39] As we consider this factor we are focused on the existence of prejudice which might result from the proposed extension itself. No such prejudice was identified to us. In some cases there might be concerns about witnesses becoming unavailable due to the passage of time or other examples of true prejudice resulting from delays. Those concerns do not appear to be present here.

[40] We recognize that there are always benefits to a self-regulatory body in finality of decision-making. In addition there would be an additional burden on the MFDA if this application is allowed and the MFDA is required to repeat some or all of its hearing process after having gone to some additional effort to complete the original hearing without the cooperation of Li. Those factors are real but they are not the our main focus in this analysis.

D. Merits of the proposed review

[41] We have carefully considered the evidence and arguments Li proposes to rely upon if she is given another chance to participate in the MFDA process. Although we recognize that at this preliminary stage we should consider any analysis of the merits cautiously, in this case we do not find Li's submissions to be compelling. In fact, to some extent Li's evidence and arguments support both the conclusions reached by the MFDA panel and an inference that Li still struggles to understand what was inappropriate about her conduct. For example, she submits that the subject account was actually that of her husband as if that makes it acceptable for her to have falsely identified the account holder.

[42] One of the findings against Li was that she falsified a client signature. Li does not contest that finding.

[43] Regarding the allegations related to Li's opening and operation of an account in the name of one client as if it was the account of a different person, Li's submissions, referenced above, are more harmful to her than helpful. Li does not expressly address MFDA allegation #1.

- [44] Regarding allegation #2, Li's answer to the allegation that she falsely described trade instructions for a client account when she took instructions from her husband regarding an account in the name of another person is that the money belonged to her husband, so there was no need to ask the account holder. This is no answer to the allegation which was before the MFDA hearing panel.
- [45] Regarding allegation #3 related to the \$100,000 transfer to herself from the account in question, Li asserts that the funds were her husband's and the intent to transfer the funds to her was her husband's intention. Having argued that the transaction was appropriate based on what she knew of her husband's intention, Li references the role of another employee who worked with her. None of this goes to the issues of conflicting interests and the intermingling of her affairs with those of a client which go to the heart of the allegation. Li's submission does not assist her.
- [46] Allegation #4 was based on two inconsistent statements which Li gave, the first to her employer's investigator and the second to the MFDA investigator. One statement was to the effect that the \$100,000 payment to her was the repayment of a loan which had been made by Li's mother, or Li's mother's friend, to Li's husband. The other statement was to the effect that the \$100,000 payment was a loan to her from her husband so Li could buy an apartment. Li's explanation that she had intended to buy an apartment but changed her mind does not assist her.
- [47] In conclusion, Li's submissions and proposed evidence fall far short of providing a substantive basis for a hearing on the matter and we see little merit in a proposed review.

E. Interests of justice

- [48] The most important factor is essentially one of fairness. Our conclusion that Li's proposed evidence and arguments lack merit is directly related to the fairness question as, based on the materials before us and our analysis of those materials at this preliminary stage, we do not see a realistic potential for a different outcome on review. In addition, we note that Li is far from blameless in the creation of the procedural hurdle which she faces. Any participant in an investigatory or disciplinary process of a self-regulatory organization who is asked to agree and does agree to provide current contact information should understand the importance of keeping the regulator apprised of her contact information particularly given that an MFDA investigator told her there might be further proceedings. When a registrant is not able to be contacted through their own omission, the self-regulatory organization is justified in following its rules regarding alternative forms of service and a respondent should understand the risk that important information, including information which triggers statutory deadlines, might not be received in a timely way.
- [49] We have considered all of the circumstances and factors that are relevant. We have emphasized the factors from *Clock Holdings*, including the factor that there is no unusual prejudice to the MFDA in granting an extension (that is, no prejudice beyond what would normally arise from considering a hearing and review application). The lack of merit in the evidence and arguments put forward by Li together with her own responsibility for missing all of her prior opportunities to provide input are determinative for us. Those factors show that there would be no unfairness to deny the application.

[50] The onus is on Li to establish that this is an appropriate case to extend the 30 day deadline. We conclude that all of the circumstances establish that this is not an appropriate case to extend the 30 day deadline. Li's application is dismissed.

January 31, 2022

For the Commission

Gordon Johnson
Vice Chair

Deborah Armour, QC
Commissioner

Judith Downes
Commissioner