

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: **500-17-062453-108**

DATE: June 19, 2014

IN THE PRESENCE OF THE HONOURABLE PAUL MAYER, J.S.C.

**YANPING LONG
JIANLI YANG
PLAINTIFFS**

V.

**DUN (VICTOR) WANG
VICTOR WANG INVESTMENTS AND WEALTH
MANAGEMENT INC.
LONDON LIFE INSURANCE COMPANY
QUADRUS INVESTMENTS SERVICES LTD.
DEFENDANTS**

JUDGEMENT

1. INTRODUCTION

[1] This case illustrates the old adage that friendship and money do not mix.

[2] Having formed a close social and professional relationship with their financial planner, Mr. Dun (Victor) Wang, the Plaintiffs fired him after they lost some of their savings during the financial crisis of 2008.

[3] They hold Mr. Wang and his firm, Victor Wang Investments and Wealth Management Inc. ("**Wang Inc.**"), London Life Insurance Company ("**London Life**") and Quadrus Investments Services Ltd. ("**Quadrus**") responsible for the losses they suffered because Mr. Wang did not properly assess the suitability of their investments.

[4] The Defendants request that the claim be dismissed.

2. ISSUES TO BE DECIDED

[5] The Court proposes to analyse the following issues:

- a) were Mr. Wang and his firm, Wang Inc., faulty in the fulfillment of their mandate?
- b) are London Life and/or Quadrus responsible for the acts of Mr. Wang and Wang Inc.?
- c) in the event that a fault of one or more of the Defendants is established, was it the cause of the losses suffered by the Plaintiffs?
- d) in such event, what are the damages to be awarded?
- e) are punitive damages appropriate?

3. THE PARTIES

3.1 Mr. Long and Mrs. Yang

[6] Mr. Long was 33 years old when he immigrated to Canada in November 2004 with his 29 year-old wife, Mrs. Yang. They arrived from Kunming, the capital city of Yunnan province in south-west China. They brought with them their hopes for a better world, their six year-old son and \$2.5M U.S.

3.2 Mr. Wang

[7] They met Mr. Wang some four months later in March 2005. He was 34 years old and licensed to sell insurance of persons and mutual funds. He had graduated with an MBA from McGill University a few years earlier in 2001. He was working with London Life and Quadrus as a financial security advisor.

[8] Mr. Wang resigned as an employee of London Life in November 2005, when the firm he incorporated, Wang Inc., entered into an independent representative contract with London Life.¹ He operates out of offices situated in London Life's "*Freedom 55*" Montreal Metropolitan business centre located at 3773 Côte-Vertu Boulevard, in Ville Saint-Laurent.

¹ Exhibit DLL-3.

[9] He describes himself as a generous person as it is in his blood to help people. That is what his father taught him. He says that he is highly respected and that he does a lot of community volunteer work.²

3.3 Wang Inc.

[10] Wang Inc was registered with the *Autorité des marchés financiers* (“**AMF**”) on November 21, 2005.³ As such, it is subject to the rules set out in *An Act respecting the distribution of financial products and services* (the “**DFPS Act**”)⁴ and the *Regulations respecting firms, independent representatives and independent partnerships*.⁵

[11] Wang Inc. is an independent contractor of London Life with the authority to sell and service London Life's products.⁶

3.4 London Life

[12] London Life manufactures insurance products. Founded in the 1870s, it is one of Canada's leading providers of financial security advice. It has more than 3,000 financial security advisors and some 2M clients. Until November 2005, it was Mr. Wang's employer.

3.5 Quadrus

[13] Quadrus is a subsidiary of London Life. It is one of Canada's largest mutual fund dealerships. It is registered as a firm with the AMF. Mr. Wang is a securities representative attached to Quadrus.

4. WERE MR. WANG AND HIS FIRM, WANG INC., FAULTY IN THE FULFILLMENT OF THEIR MANDATE?

4.1 The law

[14] What needs to be determined is whether Mr. Wang conducted himself as would have a reasonably prudent and diligent financial planner in similar circumstances. In the case of *Rénald Ringuette and Henriette Larochelle v. Financière Banque Nationale Inc.*, Mr. Justice Daniel W. Payette, succinctly sets out the legal analysis to be carried out in such circumstances.⁷ He explains that a financial advisor has a duty of care towards a client and that he must act in his best interest with prudence, diligence, honesty and loyalty.

² Exhibit DLL-20, p. 18 - In July 2008, he was awarded the “*Distinguished Chinese Canadian*” award and he received a congratulatory letter from Prime Minister Stephen Harper. He is the First Vice-President of the Montreal Chinese Lions Club, a director of the *Chinese Hospital Foundation* and he gives generously to *Centraide* as a member of its select “*Leader's Circle*”.

³ Exhibit DLL-2.

⁴ CQLR, c. D-9.2.

⁵ CQLR c. D-9.2, R. 0.2.

⁶ Exhibit DLL-3.

⁷ CANLII - 2010 QCCS 5511, par. 7-15.

[15] A financial advisor has the obligation to make a diligent and business like effort to know his client. Once he does, he must then provide competent advice. It must be appropriate and in keeping with the client's investment objectives, risk tolerance and financial circumstances. For example, if a financial planner is asked to invest a sum for a young couple looking to purchase a home in a few years, he should suggest a safe and low risk product. A mutual fund with expensive back loaded fees would be unsuitable.

[16] He must explain things to the client in sufficient detail and in a balanced manner. The positive and negative factors should be indicated. He should, for instance, inform the client of the inherent risks of a proposed investment and ensure that the client understands his explanations.

[17] The intensity of the obligations of a financial advisor will vary according to the object of the mandate and the circumstances of each client relationship. It will, for example, differ depending on the degree of knowledge of a client. A financial advisor will have a higher duty of care if the client is not an informed investor.

[18] The obligation of a financial planner is one of means not of results. A poor investment return on a high risk product is not necessarily synonymous of faulty advice depending on the given facts of a case.

[19] A client also has obligations. He cannot operate as an ostrich. He must be prudent and make a minimum effort to understand the information that is provided to him.

[20] With this in mind, we will now look at the present situation in two phases:

- a) firstly, did Mr. Wang fulfill his obligation to know his clients?
- b) secondly, did he provide them with competent investment advice?

4.2 Did Mr. Wang fulfill his obligation to know his clients?

4.2.1 Position of the parties

A. Mr. Long and Mrs. Yang

[21] The Plaintiffs argue that Mr. Wang failed to adequately consider their situation and objectives when they met, even though he was well aware of them. They describe themselves at the time as a young couple who:

- a) had recently sold their business in China before immigrating to Canada;
- b) had no investment experience other than putting their savings in a term deposit with a bank; and

c) had very little ability to converse, read or write in French or English. Hence, they did not expect to be able to secure employment in Montreal. Although they were the same age as Mr. Wang, they were essentially retired and expecting to live off their investments to cover their living expenses.

[22] As such, their investment objectives were simple and conservative. They wanted the following:

- a) their capital should be protected as they needed it to generate revenues in the future;
- b) they hoped to obtain a return on their capital in the range of 5% per year that would pay their living expenses; and
- c) they wanted the ability to retrieve their money at all times.

B. Mr. Wang

[23] Mr. Wang does not have the same recollection. According to him, they were independent, sophisticated and informed about financial investments. Their principal objective was to make a lot of money.

[24] He argues that he complied with his obligation to know them. He knew them very well: better than any other clients, having met them on several occasions before they agreed to open an investment account. Not from the pen point, copious notes of a few early meetings and various other documents show that he did the diligent work required to get to know them. He filled out all the appropriate forms. After the opening of the accounts, they spent many hours together as they become fast friends.

4.2.2 The Law: The KYC rule

[25] Before looking at the present circumstances, we will first examine the scope of the legal obligation of a financial advisor to know his client as every individual has different return expectations and tolerance for risk.

[26] It is well recognized that the opening of a new account is an important first step in a relationship between a financial planner and his client. It gives the professional an opportunity to view all aspects of the client's situation. This initial analysis of the needs and objectives of a client will have a direct impact on the suitability of the investments proposed thereafter. This is known as the *Know Your Client* (“**KYC**”) rule.

[27] On the basis of this knowledge, the financial planner will establish an investment plan that will select holdings containing an asset mix of stocks, bonds and cash that offer a risk/return trade-off best suited for the client's profile. This benchmark plan will then anchor the portfolio selected and should impose a discipline that places boundaries on exposure to risk.

[28] From the regulatory point of view, as an attached representative to London Life and Quadrus in March 2005, Mr. Wang had the legal obligation to conduct a needs analysis before proposing insurance products to clients⁸ and to know his clients before proposing mutual funds to them.⁹ As for London Life and Quadrus, they had an obligation to adequately supervise Mr. Wang to ensure that he acted in compliance with his statutory obligations.¹⁰

[29] The Conduct and Practice's Handbook Course (the "**Handbook**") developed and published by the *Canadian Security Institute*, a specialized provider of securities training, has been pointed out by the Plaintiffs' expert to be a useful tool to analyse what the KYC rule entails.¹¹ It stipulates that a financial planner must use due diligence to:

- “• *learn the essential facts relative to every client and to every order or account accepted;*
- *ensure that the acceptance of any order for any account is within the bounds of good business practice; and*
- *ensure that recommendations made for any account are appropriate for the client and in keeping with their investment objectives.”¹²*

[30] It states that the five most important factors in assessing a client's situation are:

- “(i) **Age:** *this may give an indication of the client's time horizon and income needs;*
- (ii) **Income and net worth:** *these show the client's financial resources and income needs;*
- (iii) **Investment knowledge:** *this assists in determining the amount and type of information that the registrant must provide to the client when making recommendations. Over time, the client's knowledge of the various investments may increase. Failing to correctly update the client's KYC form to reflect the change may lead to problems as the ongoing investments may not be properly aligned with the documentation of record.*

⁸ *Supra* note 4 - **27.** Insurance representatives must personally gather the information that is necessary to assess a client's needs, in order to propose the insurance product that best meets those needs.

⁹ *Id.* - **51.** Securities representatives must, before offering a product, ensure that the product corresponds to the financial situation and investment objectives described by the client.

¹⁰ *Id.* - **85.** A firm and its executive officers shall oversee the conduct of the firm's representatives. They shall ensure that the representatives comply with this Act and the regulations.

86. The firm shall ensure that its executive officers and employees comply with this Act and the regulations.

¹¹ CSI Global Education Inc., *CSI Conduct and Practices Handbook Course*, 2005 – WWW.CSI.CA

¹² *Id.*, p. 93-94.

(iv) **Investment objectives:** *different combinations of safety, income and growth; and*

(v) **Risk tolerance:** *high, moderate or low.*¹³

4.2.3 The evidence

[31] Mr. Wang, Mr. Long and Mrs. Yang testified on a number of occasions about the initial get-to-know-you phase of their relationship.

A. Mr. Long

[32] Mr. Long was examined on three occasions.¹⁴ We also have his contemporaneous version of events set out in his letter to London Life of November 13, 2008.¹⁵

[33] He has forcefully and consistently told the same story throughout.

[34] He says that he received a CEGEP level education while a soldier in the Chinese army. During that period of time, he served as a bodyguard for several high ranking military officials. He left the army in 1995. Over the next decade, he developed and managed three entertainment complexes (hotel, restaurant, night club, spa) in the Kunming region of China.

[35] Having been selected as an immigrant investor to Canada in 2004, he sold all of his assets, except a 20% share in one of the complexes. He insists that he has no experience with investments and that he never before purchased shares on any stock market. His only previous experience with investments consisted of term deposit type savings with banks in China. Mr. Wang is his first investment advisor.

[36] After arriving in Montreal, he invested most of his money in a term deposit with the *Bank of Montreal*. He had some money left over in China and a 20% share of an entertainment complex.

[37] In March 2005, Mr. Long and Mrs. Yang saw an advertisement in a Montreal Chinese language newspaper that indicated that Mr. Wang was a member of the *Million Dollar Round Table Association* specialized in U.S. dollar investments. This caught their attention as their life savings were in that currency.

[38] They went to meet him at London Life's Montreal Metropolitan business centre in Ville Saint-Laurent. Their first meeting lasted some two hours. Mr. Long recalls that Mr.

¹³ *Id.*, p. 94.

¹⁴ a) on March 21, 2011 before the Defendants filed their defences;
b) in November 2013 in front of the discipline committee of the *Chambre de la sécurité financière*; and
c) over a period of three days during the trial.

¹⁵ Exhibit DLL-11.

Wang gave them a business card that identified him as a financial advisor with London Life. He explained that this was one of Canada's most important companies.

[39] He then showed them a presentation document about himself and London Life. They saw recent pictures of him on a trade mission in China.¹⁶ There were also pictures of him with Canada's Prime Minister, Mr. Jean Chrétien, Foreign Affairs Minister, Mr. Pierre Pettigrew, the Prime Minister of China in the far background, next to Asia's richest man, Mr. Li Ka-shing, both of them smiling, as well as with the President of London Life.

[40] After these rather impressive introductions, Mr. Wang took a pen and paper to obtain some information about them.

[41] Mr. Long relates that he explained to Mr. Wang their personal and financial information as described above. Mr. Wang told him that it would be an easy task to earn a 5% return that would provide them approximately \$10,000 per month for their living expenses. In fact, he thought that Mr. Long was not aggressive enough. He showed him two examples of mutual funds with a return of 11% per year. He says that Mr. Wang told him that London Life segregated funds were 100% guaranteed and that he undertook to personally assume responsibility if they ever suffered a loss.

B. Mrs. Yang

[42] Mrs. Yang testified about her initial meetings with Mr. Wang in both her examination before defence of March 21, 2011 and during the trial.

[43] She states that she has a high-school education and she was an airline stewardess before marrying Mr. Long and having children. She learned some elementary English in this job but she has no knowledge about investments. She normally defers to her husband with respect to financial matters.

[44] She confirms that the principal financial objectives they explained to Mr. Wang were to have a secure investment and a sufficient return on their capital to cover their living expenses of approximately \$10,000 per month. They also wanted to be able to recuperate their savings at any moment.

C. Mr. Wang

[45] Mr. Wang has a completely different recollection of his first meetings with them. He has also given his version of events on a number of occasions.¹⁷

¹⁶ 2005 discovery trip to China for eminent young overseas Chinese.

¹⁷ a) in a lengthy letter addressed to Mrs. Jocelyne Nolet of London Life on December 15, 2008;
b) in his examination after plea of March 23, 2012; and
c) over a period of two days during the trial.

[46] According to him, the clients were wealthy and experienced investors, with an appetite for risk whose primary goal was to make as much money as possible over a medium term horizon.

[47] This is what he said the first time he testified in his examination after plea of March 23, 2012:

“Q. [144] Now, let’s go back to March. Do you remember, in general, what was discussed at that meeting? What would my clients have told you at that meeting?”

A. The clients are investor immigrants. They have around four million (4,000,000) to invest in total. In May ... in March they have brought over two point one million in U.S. dollar (\$2.1 million U.S.). They wanted to do some investments and they don’t need the money for another ... six (6) to ten (10) years, so they can, they want do some investments, and they are investor immigrants, yes, for over four million (4,000,000) money, cash available, so they don’t ... they are very, very, like ... like wealthy clients.

Q. [145] Very what?

A. Wealthy, like rich.

Q. [146] Wealthy?

A. Rich, yes. And also the clients are doing business in China for many, many years. He has, like a night club, and many, many years in business. And also, clients buy like stocks in Hong Kong for the IPO, Initial Public Offer.

Q. [147] So you say that they had invested in stocks prior to coming to you?

A. That’s right.

Q. [148] In China?

A. In ... in China, in Hong Kong.

Q. [149] So these are, in general, what you remember from this meeting?

A. That’s right.

Q. [150] From what they told you?

A. That’s right.

Q. [151] What would you have told them?

A. As a standard business process, I ask their financial situation and their financial objective. And we discussed, like investment products, and discussed, like ... like investment plans.

Q. [152] I'm guessing that you would have had those conversations in Chinese?

A. That's right.

Q. [153] Do you know how well does the Plaintiffs speak, read, can understand English and/or French?

Me MARC CHAMPAGNE:

Are you referring to two thousand and five (2005) or ...

Me MAGALI FOURNIER:

Two thousand and five (2005).

A. The husband speak a little English, the wife speak good English.

Q. [154] And do you know if they can read?

Me JULIE-MARTINE LORANGER:

French and English?

Me MAGALI FOURNIER:

Q. [155] French and English.

A. Yes.

Q. [156] They can?

A. Yes.

Q. [157] and do they can in English and French or ...?

A. Since I don't ... have little knowledge about the French, I don't know whether they speak French.

Q. [158] Do you remember ... and do you remember what were the objectives that the Plaintiffs gave you at that meeting? What were their objectives?

A. They want make more money, more profit, and also pay less tax.

Q. [159] What about security?

[...]

Q. [161] Were there some discussion about the risk?

A. Yes.

Q. [162] And because of the fact that their ... their plan was a long plan investment, you concluded that they can take some risk?

A. No, that's the clients told me.

Q. [163] So the clients told you that because there were a long-term investment plan they can take some risk?

A. Yes, they can take some risk, and to get a better return."

[integral text]

[48] Mr. Wang recalls that they reacted well to his investment advice. They were getting along well having enjoyed meeting and lunching together. They learned that they had much in common.

[49] He explained to them how to open an account. He also told them how he could provide other useful services that they could not obtain with a bank. For example, his firm did not charge a commission to transfer U.S. funds into Canadian dollars.

[50] The clients were impressed with Mr. Wang's financial knowledge and connections. He had given them several tips on how to make and save money, including tax advice. They asked to set up another meeting. The feelings were mutual. Mr. Wang could see that there was a friendship and money to be made with these new clients.

[51] They met again the following week, on March 17th, at London Life's offices. Mr. Long recalls that Mr. Wang began this second meeting by showing them a picture of himself with Prime Minister Chrétien taken on a recent holiday in Mexico. He explained to them various funds in which their money could be invested, such as real estate, dividend, government bond, and small and large publicly traded company funds.

[52] That settled it! They opened an account.

D. The documentary evidence

[53] We will now examine the documents and forms that Mr. Wang drafted to reflect the current status and investment objectives of the clients. There are four series of papers:

- a) The handwritten notes he took during their initial meetings;

- b) the Quadrus KYC forms for each of Mr. Long and Mrs. Yang;
- c) the London Life "*Investment Voyager*" form; and
- d) the insurance needs analysis forms.

(i) Mr. Wang's handwritten notes

[54] Mr. Wang's Chinese handwritten notes of the first two meetings of March 11th and 17th have been translated into French.¹⁸ They consist of some eight or nine pages that are particularly useful as they provide the clearest window we have to see what was discussed.

[55] On the first page, Mr. Wang noted that they had immigrated in November 2004 with their young son and that they had \$2M in the bank earning 2.85% interest per year. One can also see that Mr. Wang explained to them that this was a small return that was fully taxable. If they invested with London Life, they would certainly get a higher return on their capital. Treated as a capital gain, they would be taxable on only 50% of the gain. Further, if they could split the gains between the two of them, they could save even more taxes.

[56] There is a certain beauty about the second page in its simplicity. Mr. Wang records the following financial objectives. He circles the numbers:

- 1. secure
- 2. make lots of money
- 3. pay little taxes

[57] Following this, in the middle of the page, capital preservation is emphasized as the words "*preserve the value*" and "*increase the value*" are noted. Immediately below this, the investment objectives are once again noted. This time, they appear as follows:

- 1. secure
- 2. preserve the capital
- 3. high returns

[58] On page 3, an income fund and some tax planning are explained.

[59] On page 4, there is an explosion of information that relates to the buying of units of a fund invested in various Canadian banks.¹⁹ One can see that Mr. Wang gave them, as an example, the wise investment of his acquaintance, Mr. Li Ka-shing. He

¹⁸ Exhibit DVW-32.

¹⁹ The *Royal Bank of Canada*, *Toronto-Dominion Bank* and the *Bank of Montreal* are listed.

purchased shares of the *Canadian Imperial Bank of Commerce* that he subsequently sold for a profit of \$7B (H.K.). He made large charitable donations with a portion of his profits.

[60] On page 5, there are a number of notes and a graph. The words secure, high return and cashable at any time (twice), appear next to a pie shaped circle, cut in five portions of 20% each.

[61] Page 6 is divided in two. On the top portion, one can see information about opening an account. On the bottom half, London Life segregated funds are explained. Their three principal advantages are listed: (i) protection against creditors, (ii) principal 100% guaranteed, and (iii) in case of death, the sum invested will be transferred directly to the beneficiary without falling into the succession.

[62] Page 7 describes an additional service that can be provided: the conversion of U.S. dollars into Canadian dollars without commission. It shows that \$2.1M U.S. was worth \$2.64M Canadian at the time.

[63] Page 8 consists of a series of hand drawn graphs of different government bonds, large cap company and small cap company funds. There is a pie shaped graph that suggests a portfolio of funds composed of 80% bonds and 20% shares. The words “*preserve the value*” and “*increase the value*” are repeated.

(ii) The KYC form of Mr. Long

[64] At the conclusion of the March 17th meeting, Mr. Wang filled in a Quadrus KYC form for each of Mr. Long²⁰ and Mrs. Yang²¹.

[65] We will carefully examine these and the testimonial evidence about how they were filled in as the information contained therein are to be the guide posts of the financial planning advice that will follow.

[66] The context is explained by Mr. Long and Mrs. Yang. As they did not understand the forms submitted to them in English, they were entirely reliant on Mr. Wang to fill in the information. They simply signed wherever he circled an “X”.

[67] Mr. Wang began Mr. Long’s KYC form by writing down that he was a business owner. He explains why he indicated this instead of inscribing that Mr. Long was retired:

“Q. **[169]** *Did you know, or did you ask, what the clients were going to do in Canada?*”

²⁰ Exhibit P-3, Schedule 10.

²¹ Exhibit P-3, Schedule 11.

A. Yes. [...] *The ... client are very rich people. They have ... they bring ... they will bring couple million to [...] to Canada, and they don't ... they don't really have to work.*

Q. **[171]** *So basically they were retired people?*

A. *I ... I'm not saying retired, I saying wealthy people. If they like, they can do like investments or open a business. That's their choice, but they have [...] the freedom to do anything they want.*

Q. **[172]** *But their objective was not to do back go work, was it?*

A. *Their personal plan, when we discussed it we ... we focus on the financial parts. Basically how to manage the money and their future plan, whether they will [...] do something in Canada, open business, that's their choice.*

Q. **[173]** *And you didn't think it was interesting to know whether or not they intended to go back to work or not?*

A. *For the ... at least for the ... for the period, for the next couple years, they [...] don't need to work. They say they don't have to work. They don't need to work since they already have enough income, enough assets."*

[68] On another occasion, he was asked why he wrote on a different document, the "Investment Voyager" form, apparently filled out on the same day that they would retire in 15 years. Had he discussed this with them? Here is what he said:

"Q. **[192]** *And they told you that they were going to work between now and fifteen (15) years?*

A. *There are different kinds of work. They don't have to be like employee of [...] a ... a company. They have their own business in China still.*

Q. **[193]** *They don't ... they have that ...*

A. *They ... they have their business in China.*

Q. **[194]** *Business?*

A. *In China.*

Q. **[195]** *They ... they still had at that point their business?*

A. *That's right.*

Q. **[196]** *Do you know what was their plan with that business in China?*

A. *I don't know.*

Q. **[197]** *Did you ask?*

A. *I ask, they say they are ... they are maybe ... since the business is good, they may ... they may keep it for long time or they may move the money to China to sell the business. That's in the next couple of years they will make a decision.*

Q. **[198]** *Do you know what type of a business they had in China?*

A. *They have one (1) night club."*

[69] The next item on the KYC form required Mr. Wang to indicate an approximate breakdown of the applicant's current existing overall asset allocation. He filled in 100% balance. He justifies this by stating that he presumed their investments were comprised of shares in China and a term deposit with the Bank of Montreal. He interpreted this to signify 100% balanced.

[70] One notes, however, that on another occasion, Mr. Wang admitted that the clients did not tell him what type of investments they had in China:

"Q. [214] And did they tell you in what other types of investment would they have invest their money in China?

A. They ... the discussion is focus on their plans in Canada. For their investment in China, they did not disclose much, and is not the topic for the meeting between me and the clients. No, is ... is not at the centre. The centre question is that they want ... they have over two point one million (\$2.1M), how to manage this money, this ... this amount of money."

[71] The next block of questions on the KYC form concerns financial information. Firstly, Mr. Wang indicated that Mr. Long's approximate annual income to be between \$30,000 and \$60,000 and that his net worth was over \$200,000. He then skipped over the questions dealing with Mr. Long's investment knowledge or the number of his dependants.

[72] With respect to Mr. Long's financial objectives, Mr. Wang had to choose between one of the following:

- a) preservation (ie. money market);
- b) income (ie. fixed income/bonds);
- c) income and growth (ie. balanced funds/equity and fixed income); or
- d) growth (ie. equities).

He chose: c) income and growth.

[73] The time horizon of the investment selected was 6 to 10 years. This is how Mr. Wang explains this:

“Q. [289] “Time horizon,” can you please just explain to me what it means?”

A. Time horizon means like how many years they want ... they wanted to do investments.

Q. [290] And so basically within six (6) to ten (10) years the plan might have been that they would retrieve everything?

A. It's possible.

Q. [291] It's possible. The plan was not to invest for the rest of their life?

A. If they want, they can always keep.

Q. [292] But that was ... that wasn't the plan?

A. When ... when client open the plan they want to keep the plan for long, long time.

Q. [293] I'm just looking because here you say six (6) to ten (10) years, but there's also the possibility of over ten (10) years?

A. Yes, always possible.

Q. [294] Is there a reason why you've crossed six (6) to ten (10) instead of over ten (10)?

A. For this particular plan, since it is ... since the client is – how to say – client will ... will start to ... to do six (6) to ten (10) years. After, if they feel happy, if the return is good, they will continue. If is not good, they will cancel.

Q. [295] So it's because it's a new client and ...

A. That's right.”

[74] For his part, Mr. Long remembers the issue of investment timelines differently. He insists that he wanted to be able to retrieve his savings at all times. Here is what he recalls:

”Me Fournier : Quelles sont été les discussions concernant la durée prévue de l'investissement?

Mr. Long : M. Wang disait si on investi à sa compagnie, il faut choisir au moins 6 ans. Mais au fond, vous pouvez changer, ça n'affecte pas, c'était seulement un choix.

MeF : Qu'est-ce que ça n'affectait pas?

Mr.L : Ça n'affecte pas la période de 6 à 10 ans.

MeF : Le fait qu'on puisse changer n'importe quand?

Mr.L : Oui, on peut récupérer notre argent à tout moment parce que on ne savait pas si M. Wang gérait bien le fond et on ne savait pas non plus, si on aurait besoin de l'argent pour la vie.

[...]

Mr.L : Nous avons dit à M. Wang que nous voulions récupérer l'argent à tout moment. Mais M. Wang nous a dit que pour compléter le formulaire, il fallait choisir une période pour soumettre le formulaire à la compagnie. Donc, M. Wang a choisi 6 ans.

[...]

Mr.L : C'est M. Wang qui a choisi et pour nous nous avons dès notre 1ère rencontre avec M. Wang que nous voudrions récupérer à tout moment mais M. Wang a dit que c'était tout simplement pour compléter la formalité."

[75] Finally, to conclude the KYC form Mr. Wang declared Mr. Long's tolerance for risk to be "moderate" as opposed to high or low.

(iii) The KYC form of Mrs. Yang

[76] Mr. Wang then completed a Quadrus KYC form for Mrs. Yang that he had her sign in the areas where an "X" was circled. He did so in the same manner as Mr. Long's form, including the fact that she was a business owner (which she clearly is not). The only exception is that he declared that her investment knowledge was good.

[77] Asked to clarify why he indicated Mrs. Yang's investment knowledge to be good, he replied as follows:

"Q. [326] Do you know what were her investment knowledge?

A. Is very good.

Q. [327] Same as Mr. Long?

A. Yes.

Q. [328] She had the knowledge of what were GICs, IPOs ...

Me JULIE-MARTINE LORANGER:

Mutual funds.

Me MAGALI FOURNIER:

Q. [329] ... *mutual funds, all of that, she knew all of that?*

A. Yes.

Q. [330] *Do you know how [...] they learn all of those investment terms for the ... for the Canadian market?*

A. *Canadian market is similar to any financial market in the world. In ... in China, in Canada, in U.S., in Europe, in any country, you have the GIC, you have stocks, you have stock exchange, you have ... you mention the funds, mutual funds, any country, in China. China now is very advanced.*

Q. [331] *"Very advanced," you say?*

A. Yes. [...]

Q. [333] *And so basically their knowledge was coming from China?*

A. *That's correct."*

(iv) The Investment Voyager

[78] Mr. Wang's version of events is that on March 17, 2005, he filled out an English and Chinese language London Life document titled "*Investment Voyager*" for both clients. It is not dated or signed.²² He said that he completed it by asking the clients questions and transcribing their answers. He did this to validate their investment objectives and their tolerance for risk.

[79] Mr. Long and Mrs. Yang say that they were not asked those questions. They explain that the first time they saw the document was in the fall of 2008 after they asked Mr. Wang if he had filled one out because they had learned from another investment advisor that this was a necessary standard practice. They allege that the document he produced is a forgery given that the responses to the various questions do not in any way reflect their investment profiles.

[80] Mr. Long was asked how he found out about it:

" *Me Fournier : Comment connaissiez-vous l'existence de ce document-là (Annexe 16)*

²² Exhibit P-3, schedule 16.

Mr. Long : C'est parce que en 2008, il y avait un problème de notre investissement. Il fallait une évaluation sur la tolérance aux risques. Alors, nous avons demandé à M. Wang si on avait fait cette évaluation, M. Wang disait qu'il ne se rappelait pas très bien, mais je ne sais pas pour quelle raison qu'à la fin octobre 2008, il nous a donné ce document.

MeF : Le document contient les questions en mandarin (ou en chinois), est-ce que vous avez déjà répondu à ces questions auprès de M. Wang.

Mr.L : Non.”²³

[81] Mrs. Yang testified in a similar manner:

”Me Fournier : Avez-vous répondu aux questions qui sont posées là [formulaire]?”

Mrs.Y : Non. Alors, en 2008 on s'est renseigné auprès des amis. Les amis nous disent, pour faire l'investissement, il faut d'abord faire une évaluation de tolérance aux risques. Suite à ces informations, j'ai appelé plusieurs fois M. Wang pour demander si on avait fait cette évaluation? La réponse de M. Wang était des fois, oui, non, jamais claire. Et puis, M. Wang dit oui on l'a fait et M. Wang m'a donné ce document.”

[82] In any event, this is what the Investment Voyager form reveals about Mr. Long and Mrs. Yang:

- a) the purpose of their investment is retirement savings/income;
- b) they expect to retire in 15 years or more;
- c) they intend to spend less than 30% of their income in the next five years;
- d) they expect to need the money invested in 11 to 19 years;
- e) they describe their current situation as having invested their long term savings in investment funds;
- f) the statement that most accurately describes their overall view of investing money is that they can tolerate moderate ups and downs in the growth of their investments to achieve potentially higher long term returns;
- g) they are not comfortable with accepting more fluctuations in the value of their investments in order to receive potentially higher return;
- h) they strongly agree that day-to-day changes in the value of their investments do not bother them;

²³ Testimony of Mr. Long, January 7, 2014.

- i) they are not sure whether they are willing to hold onto an investment even when the value suddenly drops;
- j) they want a balance of interest and dividend income along with growth;
- k) between 26% to 50% of their current investments consist of stocks or investment funds containing primarily stocks;
- l) one of the primary reason they choose investments is to minimize personal income taxes.

[83] The total of those responses translated into a score of 171 points. This placed them in the group of “*advanced*” investors, that is the second highest of five risk categories. Thus characterized, they were profiled for London Life and Quadrus as seeking long term growth (over capital preservation) and being comfortable with considerable fluctuations in the value of their investments.

(v) The needs analysis for the insurance policies

[84] In May 2005, Mr. Wang convinced both Mr. Long and Mrs. Yang to each purchase a life insurance policy of \$488,888 (“8” being a lucky number as it represents good fortune). He explained that the monthly premiums of \$1,296.23 for Mr. Long and \$1,077.11 for Mrs. Yang would be paid from the gains generated from their investments.

[85] Pursuant to Section 28 of the DFPS Act, a financial planner must describe the proposed insurance product to a client in relation to the needs identified before making an insurance contract.²⁴

[86] Mr. Long says that Mr. Wang did not do a needs’ analysis for the policies. He recalls that Mr. Wang explained to them that many recent immigrants purchased such policies and that the payment of premiums would accumulate tax free gains. His family members and girlfriend each had one. The policies would be fully paid in 20 years. He recalls that Mr. Wang told him that it would be worth some \$3M when they were 75 years old.

[87] Mr. Wang remembers a different version of events. He says he had numerous discussions with the clients about their life insurance needs. He did not, however, keep any written notes of those discussions. Instead, he shows the needs’ analysis he prepared for each policy. These can be found in the *Policy Illustrations* portion of the policies signed by the clients.²⁵

²⁴ *Supra* note 4 – **28.** Insurance representatives must, before making an insurance contract, describe the proposed product to the client in relation to the needs identified and specify the nature of the coverage offered.

Insurance representatives must also indicate clearly to the client any particular exclusion of coverage, if any, having regard to the needs identified and provide the client with the required explanations regarding such exclusions.

²⁵ Exhibits DVW-34 and DVW-35.

[88] We will examine these more closely. There are two aspects to point out.

[89] Firstly, London Life recommends therein that clients should consider different factors when assessing their insurance needs. Here is how it is explained:

“• A life insurance analysis should ensure that when a death occurs in your family, there is sufficient income and capital to cover the cash flow needs for the surviving family members over the entire planning period.

• Ask yourself what expenses would change if either you or your spouse died tomorrow.

• Review group coverage at work. You may not want to rely only on group policies, in case you change jobs, or your employer changes to another insurer where you may no longer be eligible. The amount of coverage may also be inadequate.

• Review your coverage periodically to ensure it continues to meet your family's changing needs.

It is also important to consider continued savings to fund other financial goals.”

[90] Secondly, we see that the questionnaire filled in by Mr. Wang for each of them indicates that their heirs would require \$726,134 in the event of their death. From this total, the needs analysis form requires that one subtract the current capital and any other life insurance held by the client. Mr. Wang declared \$0 as current capital. He then meticulously deducted \$2,500 for the death benefit paid by the Province of Quebec. This created, in bold upper case numbers, a capital deficit of \$723,634 in the event of death.

[91] Mr. Long and Mrs. Yang point out the evident truth that if Mr. Wang had written on the form that they had \$2M in capital, the mathematics would lead one to conclude that the clients did not need insurance.

[92] Mr. Wang says he did not declare any capital on the form deliberately as the objective of the clients was to keep their wealth intact in the event of death by making cash available to cover any possible capital gains.

E. The expert evidence

(i) Mtre. Jean Turcotte

[93] The Defendants mandated Mtre. Jean Turcotte to furnish an expertise on the quality of Mr. Wang's investment advice.²⁶

²⁶ Exhibit DLL-15 - Mtre. Turcotte is a member of the Quebec Bar with an expertise in taxation, investment, estate planning and life insurance. He has held senior positions as a lawyer and a financial advisor with several investment firms and insurance companies. He has extensive hands on experience managing portfolios and financial advisors.

[94] In his report, he begins by pointing out that the KYC rule is the foundation upon which an investment plan is built. He explains that the obligation to know a client is not limited to completing forms and questionnaires. He is convinced from the whole process, that Mr. Wang took the necessary measures to know his clients well.²⁷

[95] During his testimony, he states: “*Il faut regarder l’ensemble de ces démarches.*” He says that Mr. Wang took all necessary means to “*bien cerner les besoins des clients*”. He carried out a complex and detailed analysis over several long meetings. He took fulsome notes: “*extrêmement complètes*”. In his view, Mr. Wang’s thoroughness goes well beyond the normal standard of the industry.²⁸

[96] In cross-examination, he says that if he found out that the KYC forms had not been documented correctly, his opinion might not be the same. He admits that he based it on Mr. Wang’s version of the facts, including the authenticity of the Investment Voyager form. He also acknowledges that he did not: (i) see the report of Mrs. Nolet of London Life; (ii) speak to the clients; and (iii) know there were two versions of events about what occurred during the initial meetings of March 2005.

(ii) Mrs. Jocelyne Marquis

[97] The expert mandated by the Plaintiffs, Mrs. Jocelyne Marquis, reaches an opposite conclusion.²⁹

[98] Having determined that the conservative investment objectives of Mr. Long and Mrs. Yang are the ones hereinabove expressed by them and having reviewed the various KYC forms, the Investment Voyager form and the handwritten notes of Mr. Wang, Mrs. Marquis concludes that he did not fulfill his regulatory obligation to properly identify the needs of his clients.³⁰

[99] She opines that he failed to adequately assess their situation, objectives and tolerance for risk and that he should have completed an Investment Voyager for each client:

“Nous sommes d’avis que deux questionnaires auraient dû être remplis et ce au tout début du mandat, un pour monsieur Long, un pour madame Yang, afin de bien identifier leur profile d’investisseur respectif. Leur représentant Victor Wang avait la responsabilité de s’assurer de la convenance des placements de monsieur Long et de madame Yang en vérifiant que ces derniers comprenaient bien la portée des réponses à ce questionnaire.”³¹

²⁷ Exhibits DQ-2.1 and DLL-15, p. 12.

²⁸ Testimony of Mtre. Jean Turcotte, January 17, 2014.

²⁹ Exhibit P-3, schedule 25 - She has extensive experience as a portfolio manager for institutional clients and mutual funds.

³⁰ *Id.*

³¹ *Id.*

[100] She is in complete disagreement with his analysis of the clients reflected in the Investment Voyager form:

“Nous ne sommes pas en accord avec le résultat de ce questionnaire qui ne reflète pas les objectifs formulés par monsieur Long et madame Yang au tout début du mandat. [...] Nous sommes d’avis que les objectifs de placements appropriés pour tous les comptes de ce dernier auraient dû plutôt être établis en fonction de sa situation personnelle, de sa tolérance au risque ainsi que de sa connaissance des placements.”³²

4.4 Analysis

[101] The Court concludes that Mr. Wang did not fulfill his statutory obligation to properly assess Mr. Long’s and Mrs. Yang’s situation, for several reasons.

[102] To begin, there is the nagging issue of who is telling the truth as there are two versions of the clients’ investor profiles.

[103] The Court considers that Mr. Wang’s version of events is not credible. His initial portrayal of Mr. Long and Mrs. Yang as advanced, experienced and informed investors is simply not supported by the evidence.

[104] The clients’ limited investment knowledge is reflected in his own handwritten notes. The information he gave them is very basic. Such particulars are not necessary for advanced investors. Further, the constant and regular meetings necessary to educate them show that they were not informed.

[105] Mr. Long and Mrs. Yang’s testimony has been obtained with the assistance of French-Mandarin translators. It is not always easy in such circumstances to get a proper sense of a witness’ sincerity and credibility. In this case, however, they have spoken forcefully, without hesitation and in a consistent manner throughout about their situation and their initial meetings with Mr. Wang.

[106] This leads the Court to conclude that in 2005 they were essentially unilingual Chinese speaking with little investment knowledge. As they could not read the English language forms and documents submitted to them, they were almost entirely dependent on Mr. Wang as their bridge with the English language investment world of London Life and Quadrus. In such circumstances, Mr. Wang had a high duty of care.

[107] Secondly, the Court concludes that Mr. Wang failed his professional obligation to make a diligent effort to properly document the financial and personal circumstances of the clients. As we have seen above, the KYC forms completed by Mr. Wang do not objectively reflect all material information about their status and situation.

³² *Id.*

[108] Although Mr. Wang spent a lot of time with them and he took many notes during his first meetings, as he did on a flip board when he testified during the trial³³, the Court concludes that the information he transcribed on the KYC forms and the insurance needs analysis document is flagrantly defective. The KYC forms and the Investment Voyager do not match the more candid and spontaneous information found in Mr. Wang's handwritten notes where it is emphasized on several occasions, that the clients' primary investment objectives was the security of their capital. They also clearly expressed that their investments should be cashable at any time.

[109] After having reviewed and explained his handwritten notes during the hearing, Mr. Wang concluded that the three principal objectives of the clients were the following:

- a) to make a lot of money;
- b) to pay the less taxes possible; and
- c) to obtain the security of their investments.

[110] The Court considers that he is mistaken. He has the clients' priorities in the wrong order. The handwritten notes reflect first and foremost that capital preservation is of great importance. The clients appear therein to be conservative: seeking income with maximum capital preservation over the short term.

[111] The Court is convinced that the KYC documents of March 2005 are a fictional description of Mr. Long and Mrs. Yang. They are missing important information and contain flaws and contradictions. Nowhere is it identified that the primary objective is to preserve the clients' capital or that they are retirees hoping to live off their savings. They are wrongly qualified in two documents as 6 to 10 (KYC) and 11 to 19 (Investment Voyager) year investors. In fact, they were not long term investors as they wanted the ability to cash in their investments at all times.

[112] Thirdly, the Court is left with serious questions about the authenticity of the undated and unsigned Investment Voyager form. Is it a forgery? It is a pure invention drafted by Mr. Wang in the fall of 2008 when he was asked to produce one by the clients? One observes the notable coincidence that the profile of investors depicted therein matches the portfolio in place in October 2008. It even correctly identifies that they are not sure they would be willing to hold on if its value dropped suddenly.

[113] In any event, the advanced investor's assessment established in the document is incorrect. It is so uncharacteristic of their profiles that it is jarring. During her testimony, Mrs. Marquis convincingly showed that at least, seven answers (nos. 2, 5, 6, 11, 12, 14 and 16) are not representative of them.³⁴ To be an "*advanced*" investor, one needs an exceptionally strong stomach and nerves of steel. This was plainly not Mr. Long's and Mrs. Yang's profile.

³³ Exhibit D-45.

³⁴ Exhibit P-3, schedule 16.

[114] The only advanced investor in Mr. Wang's office on March 17, 2005 when he met with the clients was Mr. Wang himself. To contend that the clients were such investors in 2005 is defending the non-defendable.

[115] Both experts agree that the correct investor profile for Mr. Long and Mrs. Yang should have been balanced investors. As such, they should have invested their savings in a mixture of equity and fixed income given their moderate tolerance to risk. As we will see hereinafter, the initial mix of investments selected by Mr. Wang reflected such a moderate tolerance to risk.

[116] Fourthly, there is something important missing in Mr. Wang's handwritten notes. Everything is so positive that it is euphoric. There is no balance at all. There is no explanation or warning that the clients' stated objectives could not be realized or respected. Nowhere is the Chinese word for risk noted. On the contrary, with London Life products, security is 100% guaranteed. Nor is the inevitable danger of losing one's capital with the various funds referred to. Nowhere is it indicated that the past performance of the funds examined are not a guarantee or a reliable indicator of future results or that all investments contain risk and may lose value.

[117] There is no discussion of fees. Rather, the words "*no commission*" are once indicated. No load, front end or back loaded redemption fees are not explained.

[118] Finally, the Court concludes that if the objective of the life insurance policies was to keep the clients' capital intact, then Mr. Wang should have documented those objectives in a thorough manner in writing that justified the purchase of such policies. Instead, he submitted a needs analysis form to his supervisors at London Life that did not reflect an accurate picture of who the clients were.

5. DID MR. WANG AND HIS FIRM, WANG INC., PROVIDE THE CLIENTS WITH COMPETENT INVESTMENT ADVICE?

[119] Was the investment plan put into execution by Mr. Wang over the term of his mandate appropriate and in keeping with the clients' objectives?

5.1 Position of the parties

5.1.1 The Plaintiffs

[120] Mr. Long and Mrs. Yang argue that Mr. Wang was negligent in fulfilling his mandate. They allege that:

- a) he selected investments that were not suitable for their objectives. As the portfolio evolved over the years, it became concentrated in high risk investments without their knowledge; and
- b) he did not tell them about the nature, the costs and the risks associated with selected investments.

[121] They state that because they fully trusted Mr. Wang and they were in China during most of his mandate, they spent little time examining what he was doing. They explain that he lied to them about the risk of their portfolio and they were confused by his complex plan. They did not realize what he had done until it was too late.

5.1.2 Mr. Wang

[122] Mr. Wang responds that he executed his mandate according to their profile and financial situation. He says that he gave them relevant information throughout. He insists that they ratified his investment decisions and he transformed their portfolio with their consent and understanding. They had the final say at all times.

5.2 The evidence

5.2.1 Mr. Wang, Mr. Long and Mrs. Yang

[123] The following are the facts the Court considers necessary for the purposes hereof from the testimony of Mr. Wang, Mr. Long and Mrs Yang.

[124] Mr. Wang, who advertised his expertise in U.S. currency investments, proposed an initial plan during the first meeting with them on March 11, 2005. He suggested that they gradually convert their U.S. dollars into Canadian dollars as their living expenses would be in Canadian currency and he anticipated that the value of the U.S. dollar was going to drop. Further, the Canadian stock market had been tremendously out performing the U.S. stock market for a number of years.

[125] He, therefore, suggested that they invest in a U.S. dollar money market fund. This could then be transferred into a Canadian dollar fund, without the usual commission charged by banks.

[126] On March 17th, they decided to invest \$300,000 U.S. to test the waters. On the 24th, the sum was split evenly and deposited in an account for each of Mr. Long and Mrs. Yang.³⁵

[127] Between March and July, the parties' relationship grew socially and professionally. They met to discuss investments weekly, usually followed by a friendly lunch. They invited Mr. Wang to their home and they were introduced to his girlfriend. They got along well.

[128] At the beginning of May, Mr. Long and Mrs. Yang made a decision to return to China in July for three years in order to solidify their son's Chinese education. They met Mr. Wang to let him know that during their absence, they would not need any withdrawals to cover their living expenses. They were glad to learn that their initial investment had already earned some \$2,000 in a few weeks. They decided to invest another \$1.8M U.S.

³⁵ Exhibit DVW-27.

[129] On May 18th, they had a two hour discussion about how to invest it at Mr. Wang's London Life offices. This meeting is reflected in a series of Chinese handwritten notes taken by Mr. Wang. One can see that several London Life segregated funds were discussed and explained.³⁶ The plan illustrated was to invest these sums into three London Life's segregated funds: 80% bonds, 10% large cap companies and 10% small cap companies.

[130] Mr. Long recalls that Mr. Wang told him not to worry. An investment with London Life was guaranteed and solid. They would be as secure as if their money had been placed in a bank term deposit.

[131] The sum was invested in two *Franklin Templeton* U.S. money market funds sold under the Quadrus license. Mr. Wang was to convert them to Canadian money funds when he determined that the exchange rate was favourable for them.

[132] It was also agreed that 20% of the London Life accounts would be withdrawn each year on a monthly basis and deposited in their bank account. These sums would be used to pay the insurance policy premiums and fund fixed weekly pre-authorized contributions (PAC) to purchase Quadrus mutual funds. This is what Mr. Wang calls his dollar cost averaging strategy that has the advantage of buying when the market is up and down. Mr. Wang explains that as the clients' Investment Voyager profile was "advanced", his plan was to gradually over time invest 80% of the portfolio into equity funds. He considered this to be a much safer strategy than buying all equities in one shot and risk losing it if the market fell.³⁷

[133] In June, Mr. Wang sold them the London Life insurance policies he highly recommended.³⁸

[134] Some of their U.S. funds were transferred to two London Life segregated funds (growth plans) on June 8th and 10th.

[135] At the beginning of July 2005, Mr. Long and Mrs. Yang terminated their lease agreement as they prepared to leave for China at the end of the month. As they would not return until the following summer, Mr. Wang asked them to sign numerous London Life and Quadrus blank forms to facilitate transactions in their absence. He also agreed to receive their mail from London Life and Quadrus. Mr. Long and Mrs. Yang explain that they did this because they had full confidence in him.

[136] On July 12th, Mr. Wang completed another Quadrus KYC form for Mr. Long. In this document it is indicated that Mr. Long's tolerance for risk was low (as opposed to moderate four months previously) and that his investment knowledge was limited.

³⁶ Exhibit DVW-32, starting on page 9.

³⁷ Exhibit DLL-20, p. 3.

³⁸ He explained that it was an advantageous investment because the premiums paid were tax free investments that would pay themselves from the profits generated from their London Life segregated funds.

[137] Today, with hindsight, one can see that this created a free for all situation that was not picked up at the time. The clients' file now contained four different investor profiles of Mr. Long: "*conservative*" (in the handwritten notes), "*moderate*" (March KYC forms), "*advanced*" (the Investment Voyager form) and "*low risk*" tolerance (in the July KYC form).

[138] Mr. Wang, always desiring to keep his clients happy, did a number of friendly services free of charge while they were in China. Among others, he took care of a few accounts, ensured that their furniture was stored at a friend's home and allowed them to leave their car in his parking space at work. When this was no longer possible, he kept the car in the garage of his apartment building, making sure to start it from time to time.

[139] While the clients were in China, the parties communicated every few months by Internet exchanging social greetings and information about their investments.³⁹ For example, on October 17th, Mr. Wang sent them an email in which he wrote that "*true friends are a lifetime treasure*". He proclaimed he was doing his best for them. He reminded them of his plan of making weekly withdrawals from their bank account to fund their investment account.⁴⁰

[140] In September, Mr. Wang visited them in Kunming for four days. He reported that their investments were performing well. He urged them not to worry. Following that visit, Mr. Wang wrote to thank them for their hospitality and to reassure them that "*our investment principal will be security*."⁴¹

[141] Throughout this period they had access through the Internet to their *Franklin Templeton* and London Life accounts. At the beginning, they would monitor them on a weekly basis but as time went on, they looked at them approximately once a month. Given that the information provided to them was in English, they state that they concentrated on the Chinese explanations written by Mr. Wang of the total sums invested and the returns reported. They could see that their investments were blossoming.

[142] Then, on October 21st, Mr. Long wrote Mr. Wang expressing some concerns about the volatility of his portfolio:

*"Today, I checked my investments on the Internet. I found that my investments dropped a lot recently. My US\$ account even had negative return. I don't know if there is a particular reason for that, please pay more attention."*⁴²

[integral text]

³⁹ Exhibit DVW-33.

⁴⁰ *Id.*, p. 14.

⁴¹ *Id.*, p. 9.

⁴² *Id.*, p. 15.

[143] Mr. Wang replied on the same day to reassure him:

“For investments, during the past 2 weeks, the market was very volatile. Toronto Stock Exchange index dropped from 11000 to 10200, or 900 points in 3 weeks, it’s a period of adjustment. Our investments were also affected by the market fluctuation. The impact was small in general.

Market decline is also a good investment opportunity. Next week, when the market turns lower, I will transfer C\$100,000 into dividend fund and Mid-Cap fund (medium size companies). In this way, your overall return will be better.

I’ll pay close attention to the investment situation, please rest assured.”⁴³

[integral text]

[144] On January 5, 2006, Mr. Wang sent them an email with this catchy heading: “\$\$\$\$\$”.⁴⁴ He wished them a Happy New Year and reported that they had generated a profit of some \$170,000 on their investments.

[145] On May 23rd, in a rare email exchange, while Mr. Long was recovering from some ailment, it was Mrs. Yang’s turn to express concerns about the volatility of their investments. A portion of the email with the heading “*huge ups and downs*” reads as follows:

“Today, I went on Internet and checked our investment accounts. I found that the fluctuation of our accounts is huge, maybe it’s because of the Canada stock market fluctuation, please pay more attention.”⁴⁵

[integral text]

[146] Mr. Wang replied on the same day by making a personalized half page investment summary of their portfolio that showed they had approximately \$160,000 of profits without stating a word on the volatility issue.⁴⁶

[147] The next email from Mr. Wang was sent on July 13th. It is entitled “*Welcome to Canada*”. He offered to pick them up at the airport and to make reservations at a hotel if they wished. He was looking forward to seeing them: “*I’ll for sure keep company with you and make sure that you have a good time here.*”⁴⁷

[148] During Mr. Long’s and Mrs. Yang’s five week stay, they saw each other two to three times a week. Things were going well with their investments. They were happy.

⁴³ *Id.*, p. 16.

⁴⁴ *Id.*, p. 19.

⁴⁵ *Id.*, p. 24.

⁴⁶ *Id.*, p. 43.

⁴⁷ *Id.*, p. 44.

[149] At one point, Mr. Long told Mr. Wang that someone at his Bank of Montreal branch had told him that there were so many deposits and withdrawals from their bank account during their absence in China that it concerned him. It was as if they were operating a convenience store. Mr. Wang replied that the Bank of Montreal officer did not understand their investment plan. In any event, it would be best that they open a separate bank account: "*Ce serait mieux de ne pas laisser savoir leurs investissements par quelqu'un d'autre.*"⁴⁸

[150] Thus, Mr. Wang went with them to open a bank account at the Toronto-Dominion Bank situated on Côte-Vertu Boulevard close to London Life's business centre.

[151] On August 6th, the clients visited Mr. Wang at his offices. They looked at a printout of all of their accounts. They saw that in a little over a year, they had generated a paper profit of some \$400,000.⁴⁹ Mr. Wang's investment plan was working brilliantly.

[152] Sometime later, they explained to him that they had brought with them \$670,000 from China to purchase a residence. As they were not ready to settle permanently in Canada for at least another two years, they decided to let him invest it for them.

[153] A new London Life segregated fund account was opened in order to track this investment separately from the other sums invested to date. It was signed by the clients and the bank draft was remitted on August 23rd. Mr. Wang waited until September 6th to deposit it after they had returned to China. Mr. Christophe Armentier, Regional Manager Compliance with Quadrus, testified that Quadrus requires that one process all investments within two days of receipt.⁵⁰ Mr. Wang explains his delay to do so on the fact that he was trying to find the best investment timing possible. He was waiting for the market to drop a bit. He acknowledges that he should have acted differently.

[154] Sometimes during the month of August, Mr. Long asked Mr. Wang to stop the automatic withdrawals of funds funding the purchase of Quadrus mutual funds.

[155] Before returning to China, Mr. Long and Mrs. Yang signed a change of address form so that from now on all of their mail would be sent to Mr. Wang and be monitored by him. Again, in order to "*faciliter*" things, Mr. Wang asked them to sign London Life and Quadrus blank forms as well as some 25 Toronto-Dominion Bank cheques so he could withdraw funds on their behalf from their accounts, make transfers of funds and pay a series of invoices for them as they became due.

[156] In mid-September, Mr. Wang was their guest in Kunming for four days again. During this visit, he recommended they convert the balance of their U.S. investments into Canadian funds. It was done on September 21, 2006. Back in Montreal, Mr. Wang

⁴⁸ Examination of Mr. Long before the *Comité de discipline de la chambre de la sécurité financière*, November 14, 2013, p. 35.

⁴⁹ Exhibit DVW-24.1.

⁵⁰ Testimony of Mr. Christophe Armentier, January 13, 2014.

wrote them to express his gratitude for their hospitality and gifts. He remarked on the beauty of Kunming and how it was most pleasant to spend time with good friends.⁵¹

[157] In November and December, Mr. Wang sent them a summary of their investments.⁵² All was going well.

[158] In November, Mr. Wang opened a new no load plan (with no withdrawal fees) that was funded with money from the clients' bank account that originated from sums being withdrawn monthly from their London Life segregated funds (20% annually) and no longer being used to fund the Quadrus accounts. This plan received approximately \$1M between November 2006 and October 30, 2008.⁵³

[159] Mr. Long and Mrs. Yang returned to Canada in January 2007 so Mrs. Yang could give birth to their second child in Montreal. As Mr. Wang served on the board of directors of the Chinese Hospital Foundation, he was able to introduce her to her obstetrician, Dr. Andrew Mok.

[160] In June, a friend, Mrs. Shong Fen Wu, a financial planner with *Manulife*, came to their home to see the new baby. She looked at their portfolio and pointed out that it contained some risk.

[161] In August, they returned to China with the baby.

[162] In October, Mr. Long and Mrs. Yang noted that there had been a sharp drop in the value of their portfolio from a high of \$4M in August to a low of \$3.7M. They asked Mr. Wang to explain why there was such a fluctuation. He told them not to worry. They still had an overall profit of \$500,000. He did a review of their portfolio with them and explained that he had purchased secure funds and that small fluctuations were normal.

[163] From then on, Mr. Long kept an eye on his accounts on the Internet on a weekly, sometimes daily basis. He says he noted fluctuations up and down varying from \$20,000 to \$30,000 per day.

[164] Mrs. Yang came back to Montreal for a week in late December to renew her medical insurance card. Instead of staying at a hotel, she accepted Mr. Wang's invitation to stay at his home with his spouse and baby for a week. They celebrated Chinese New Year together.

[165] In August 2008, Mr. Long wrote to Mr. Wang to ask him to start his car as they were returning to live in Montreal shortly.⁵⁴ Late one night, when they arrived, Mr. Wang was at the airport to greet them and to bring them to their hotel. He explains that he enjoys doing such favours as it is in his nature to help others.

⁵¹ Exhibit DVW-33, p. 63.

⁵² *Id.*, November 13, 2006 and December 5, 2006.

⁵³ Exhibit DQ-1, p. 145.

⁵⁴ Exhibit DVW-33, p. 111.

[166] They found that their friendship was as strong as ever:

- a) on August 16th, Mr. Wang invited them for lunch. He gave them the mail he had received for them while in China;
- b) on August 20th, Mr. Long asked him to act as guarantor for the lease of an apartment. Mr. Wang says he does not normally do this but he agreed to do so given their close friendship;
- c) on August 26th, Mr. Wang invited Mr. Long and Dr. Andrew Mok, to play golf at the *Montreal Chinese Hospital* golf tournament. He recalls that they had a good time; and
- d) on September 1st, Mr. Wang invited them for dinner at his home. According to him, they were “*very happy*”.

[167] On September 10th, they sat down together at Mr. Wang's office for a review of their portfolio. Mr. Long recalls that before this meeting he had been looking at his portfolio every day. He was getting nervous as he finally realized the high degree of risk associated with their holdings. He remembers that as of that day, his investments had shrunk considerably as he only had a profit of about \$100,000 left.⁵⁵ Having paid some \$80,000 of income taxes, he felt that they were almost even. He asked Mr. Wang what had been purchased that would create such fluctuations? Mr. Wang insisted that the funds he had selected were very secure.

[168] He recalls asking Mr. Wang whether he should sell everything while they were still ahead. Mr. Wang suggested that they not do so. He assured them that their funds would be gaining value between now and the following winter as taxpayers would be making their RRSP contributions.

[169] Mr. Wang remembers that he paid for the lunch after the meeting. He explains that the clients were happy with his advice (they still had a profit):

*“If the client ask me to do a transfer and I didn't do it, the clients will make a complaint instead of having lunch together. For Chinese people, only when we like each other and we have a great relationship, we go to lunch together.”*⁵⁶

[170] That may be so. What we know for sure, however, is that the unfolding financial crisis would shatter that friendship.

[171] Mr. Long continued to monitor his portfolio every day. Within a week, the \$100,000 profit disappeared. His confidence deeply shaken, he called another financial planner with London Life that he had seen advertised in a Chinese language newspaper, Mr. Zhou Wende. He spoke to him about his situation.

⁵⁵ Exhibit DVW-31 – According to Mr. Wang, they, in fact, had a profit of \$79,783.78 on September 10, 2008.

⁵⁶ Exhibit DLL-20, p. 23.

[172] In the middle of September, the large American investment bank, *Lehman Brothers*, filed for bankruptcy and Merrill Lynch, having announced a \$55B loss, sold itself to Bank of America. Stock markets fell sharply and the big picture became so unstable that the small picture was incoherent. These events triggered a world-wide crisis and the virtual collapse of the financial system. U.S. money market funds were nearly frozen.

[173] On September 29, 2008, Mr. Long went to Mr. Wang's office alone. He asked him to sell everything and to place his capital in a safe place, such as the money market (as had been suggested to him by Mr. Zhou).

[174] Mr. Wang remembers that Mr. Long was nervous. According to his calculations, the clients had an overall profit of \$67,370.67 on September 29, 2008.⁵⁷ He said he did his best to calm him but no-one in the market was calm. He momentarily convinced him not to panic. He told him that if he sold now he would lock in his situation. Should the market recover, he would not recoup the profits he had lost. He also explained to him that the *American Federal Reserve* and the *Treasury* were doing their best to calm investors. The U.S. government was on the verge of voting a \$700B package to bolster financial markets. He explained that if this raised the stock market by 1%, it would provoke a gain of tens of thousands of dollars for him.

[175] Mr. Long agreed not to sell. The following day, he saw that he had lost about \$100,000. He remembers telling Mrs. Yang that it was absolutely necessary to sell. He contacted Mr. Wang and they agreed to meet on October 1st.

[176] Mr. Wang remembers the turbulence and stress caused by the financial crisis of those days. He received more phone calls from his clients than at any other time in his career. He reveals that he nearly had a heart attack and that he felt deeply sorry for the clients' losses.

[177] On October 1st, Mr. Long and Mrs. Yang went to Mr. Wang's office with the objective of having Mr. Wang sell all of their investments. Mr. Long recalls being very angry given the loss of some of his capital that he thought was guaranteed. He says that Mr. Wang told him to calm down as there was little correlation between their segregated and mutual funds and the stock market. He showed them that the Toronto stock exchange had lost 14.67% while they had lost less than 1% of their initial capital investment.⁵⁸

[178] Mr. Wang recalls telling them that if they sold now, they would do so in the midst of the worst financial crisis of a generation. He asked them to give him a few more days to recover their losses. They agreed to stay put for the time being. They would sell as soon as they recouped their losses.

⁵⁷ Exhibit DVW-31.

⁵⁸ Exhibit P-25.

[179] During the following week, Mr. Long looked at his investments every day. He frequently phoned Mr. Wang to share his concerns as the financial markets kept falling.

[180] By October 8th, they had lost approximately \$200,000 of their capital. He called Mr. Wang and ordered him to sell everything and to transfer their funds into a money market fund. The discussion lasted some 30 minutes. Mr. Wang tried to convince him not to do so. Mr. Long told him that he was no longer interested in his stories. He felt that he had been ill-advised from the beginning.

[181] At 4:30 p.m., Mr. Wang phoned him to tell him that he had done as he was asked. He said he would come by their house later that night to discuss it. That evening, Mr. Wang went to their home with his wife. While the two women talked in another room, Mr. Wang showed Mr. Long a summary of his investments.

[182] He explained that they had just been through one of those rare market corrections that occurs every 100 years or so, one that had not been seen since the crash of 1929.

[183] He further explained that instead of purchasing money market funds, he had invested all of their money in a London Life real estate fund. He showed them that this fund had withstood the recent market changes having gained 3.58% during the past six months while the S&P composite index had lost 10.78% over the same period.⁵⁹ Mr. Wang went on to explain the benefits of the fund and the fact that it was extremely secure with low volatility.

[184] Mr. Long recalls that he lost his temper and he hit the table when he heard this. He asked him why had he not put their money in this fund from the beginning? Mr. Wang explained that he had not done so because he wanted them to make more profits than the ones posted by this fund.

[185] As an aside, the Court notes that Mr. Long's reaction illustrates his lack of knowledge and sophistication. A reasonably wise investor will normally understand that it is not a good idea to invest all of his savings in one fund.

[186] There is no good way to deal with losing a friend's money. As the old saying goes, "*a friend remains a friend up to his pocket only*". Mr. Wang offered to give Mr. Long \$60,000 to compensate him for his losses. Mr. Long replied that he wanted much more as he considered his losses to be in the \$200,000 to \$300,000 range. They agreed to disagree and to take a few days off to reflect.

[187] The following day, Mr. Wang sent his spouse to their house. She asked them to give Mr. Wang a chance to recuperate their losses.

⁵⁹ Exhibit P-24.

[188] Two or three days later, in mid- October, they met again. Mr. Long insisted that Mr. Wang respect his word and that he cover their losses that he estimated to be in the \$300,000 range. Mr. Wang offered \$80,000. As they could not reach an agreement, they decided to meet again a few days later.

[189] On October 20th, they met at Mr. Wang's office. The discussions concerned the size of the loss which varied according to them between \$200,000 and \$300,000. Finally, Mr. Wang offered to share the estimated \$250,000 loss evenly. He would pay \$125,000 over a period 10 years. Ultimately, they agreed on a proposal made by Mr. Wang whereby he would pay them \$20,000 per year over a period of 10 years as a salary to be split evenly between Mr. Long and Mrs. Yang. They signed a handwritten document prepared by Mr. Wang that reflected this.

[190] A few days later, Mr. Wang came back to them in order to fine tune what had been agreed. He would honour the agreement to pay them if he could continue to manage their investments with full authority (*en gestion fermée*) for three years. Mr. Long remembers that he reacted angrily. He no longer wanted to be compensated. Instead, he wanted to meet Mr. Wang's superior. Further, he told him that he wanted to withdraw all of his money the following day. He recalls being taken by surprise when Mr. Wang told him that he could only withdraw 20% of two of his three London Life accounts without incurring withdrawal fees. This is how he recalls the conversation he had with Mr. Wang:

"[...] je lui ai dit que [...] demain je vais retirer tout mon argent.

Et il m'a répondu tout de suite que je ne peux pas les retirer, sinon il y aura de la pénalité et j'ai été vraiment surpris. Et il a dit que je pourrais en retirer une partie, le premier compte, je pourrais en retirer 20%, deuxième aussi 20%, et troisième je pourrais tout retirer.

Donc, je lui ai posé la question, il avait dit que pendant les trois ans où nous étions en Chine, on pourrait avoir accès, retirer les montants à tout moment. Mais pourquoi il me dit maintenant qu'on ne pourrait pas les retirer au total.

Il a dit que j'ai pensé que vous avez une grande somme d'argent et donc vous n'avez pas besoin d'utiliser tout de suite, donc j'ai fait ce plan d'investissement à long terme. »⁶⁰

[191] On October 23rd, Mr. Long told Mr. Wang that he was considering taking legal measures to recover damages.

⁶⁰ Testimony of Mr. Long before the *Chambre de la sécurité financière*, November 13, 2013, p. 58.

[192] The parties met for a last time on October 29th. Mr. Long and Mrs. Yang withdrew the maximum amount possible without incurring a penalty.⁶¹ They asked Mr. Wang to make a copy of their file. He gave them only a few documents. He told them that he did not have anything else and that he would have to ask London Life's head office to see if they had something else. A few days later, he called them to say that London Life wanted them to sign a letter requesting the missing documents.

[193] In early November, Mrs. Yang telephoned London Life to tell them they no longer wanted to be serviced by Mr. Wang.

[194] On November 12th, Mr. Zhou made them sign a document addressed to London Life to advise that they wanted him to be their new servicing advisor.⁶²

[195] The next day, they signed a complaint (written by Mr. Zhou) addressed to the ombudsman of London Life. They raised serious and tangible allegations of impropriety against Mr. Wang (discretionary trading, blank forms signed, forged documents, improper advice, etc.).⁶³ They claimed to have suffered a loss of \$1M in their London Life and Quadrus portfolios. This sum included the paper profits that had evaporated and their capital loss. They asked London Life to initiate a thorough review and to be repaid for their losses.

[196] Mixing business with friendship is fraught with pitfalls. Mr. Wang was deeply hurt by this turn of events. He relates that he treated them as his best friends: "*I spent more time with them than with any other people*".⁶⁴ Here is how he explains his quandary to London Life:

"If there is one thing I can do to help other people, I'll do it. I can sacrifice my life but I'll never harm other people.

*If I were blamed or punished for helping a friend, nobody will help other people again. What kind of a world it would be? There is no word [that] can express how deeply I was hurt by this complaint."*⁶⁵

[197] On November 23rd, Mr. Zhou made them each fill out an Investment Voyager form. As he read and explained the questions, they chose the replies. The answers given by Mr. Long totalled 97 points that reflects a conservative investment profile.⁶⁶ The total for Mrs. Yang was an even more conservative 80 points.⁶⁷

⁶¹ Exhibit P-28 - London Life shows that the withdrawal fees for the balance of their funds would have been approximately \$42,000 (Exhibit DLL-33).

⁶² Exhibit DQ-3.

⁶³ Exhibit DLL-11

⁶⁴ Exhibit DLL-20, p. 24.

⁶⁵ *Id.*, p. 19.

⁶⁶ Exhibit P-31

⁶⁷ Exhibit P-32.

[198] On the basis of these profiles, Mr. Zhou recommended a conservative plan. His proposal was ignored as they remained invested in the real estate fund. In mid-December, Mr. Zhou saw that it had dropped 10%. Luck was on their side the day they transferred into a money market fund because the following day, London Life suspended withdrawals given a lack of liquidity. The real estate fund would remain frozen some two years until March 21, 2011.⁶⁸

[199] Their complaint was investigated by Mrs. Nolet of London Life who reviewed the conduct of Mr. Wang and their representative, Wang Inc.

[200] In May and June 2009, they transferred the sum of approximately \$490,000 that they had remaining with London Life money market funds into Canadian resources equity funds and Canadian equity funds.⁶⁹ To do so, they signed an asset allocation refusal form as these investments did not fit their conservative profile.⁷⁰

[201] In August, some nine months after their complaint was lodged, London Life concluded that there was no evidence of fault on the part of Mr. Wang and his firm.

[202] In October, the clients, now represented by attorneys, wrote to London Life to reiterate their position and to ask it to reconsider its earlier decision.⁷¹

[203] That month, they filled a complaint against Mr. Wang with the AMF.⁷² They asked to be indemnified by the *Fonds d'indemnisation des services financiers* because they believed they had been defrauded by Mr. Wang.

[204] London Life answered their complaint in December by explaining why they did not accept liability.⁷³ Quadrus replied in a similar manner on March 1, 2010.⁷⁴

[205] In December 2010, Mr. Long and Mrs. Yang instituted their Motion against the Defendants. As per their re-re-amended Motion, they seek compensatory damages of \$840,000 and punitive damages of \$100,000.

5.2.2 Mrs. Jocelyne Nolet

[206] Mrs. Jocelyne Nolet, Director of client relations with London Life, was examined after defence on December 20, 2011. She was charged by the company to examine their complaint against Mr. Wang.

[207] Her review of the clients' portfolio makes her conclude that the funds evolved over time from fairly secure investments into riskier ones. She said that she did not

⁶⁸ Exhibit P-10.

⁶⁹ Exhibit DLL-28.

⁷⁰ Exhibit DQ-16.

⁷¹ Exhibit DLL-13.

⁷² Exhibit DVW-41.

⁷³ Exhibit DLL-14.

⁷⁴ Exhibit DQ-11.

check to see whether this change respected the investment profiles of the clients: "*c'est la responsabilité de M. Wang de s'assurer de cela*".⁷⁵

5.2.3 The expert evidence

A. Mtre. Jean Turcotte

[208] The Defendants mandated Mtre. Jean Turcotte to assess the quality of the investment advice of Mr. Wang. His expertise covers the period of March 2005 to December 2008.

[209] He opines that the clients' investment objectives were unrealistic. It is impossible to have one's capital guaranteed, a 5% return and to be cashable at all times. This is unattainable: no such investment product exists. A choice between the various objectives had to be made. The selected course of action is reflected in the KYC forms of March 2005. He believes that the clients' objectives were invented by them with the benefit of hindsight as they are not reflected in the documents they signed upon the opening of their accounts.

[210] He takes for granted that the investment timeline of the clients was between 6 and 10 years, as reflected in their KYC forms. He believes that it should have been much longer.

[211] He states that investors have to accept that financial markets are volatile. Markets are bi-polar and will always move up and down and annual returns will fluctuate. If you gain some years, you will have losses in others. He shows with a graph that volatility is diminished on a five year horizon and relates that if Mr. Long and Mrs. Yang had respected the investment timeline indicated, they would certainly have minimized their losses.⁷⁶

[212] He further opines that the clients were predisposed to accept a certain level of risk if they wanted a 5% return on their investments. His view is confirmed by the fact that they invested in even riskier funds after they fired Mr. Wang. He believes that those investments are inconsistent with their allegations against him.

[213] His analysis is that during the years 2005 and 2006, the clients' portfolio was invested in a balanced manner. He acknowledges that it evolved during 2007 and 2008 and that it became more risky and volatile and points out that the portfolio performed well in 2005, 2006 and 2007. He says that it was the financial crisis of 2008 that upset the apple cart. It was this unforeseeable event that caused the loss suffered by Mr. Long and Mrs. Yang.

[214] He reminds us that one should not sell in such exceptional circumstances. He opines that it was the clients' decision to liquidate their portfolio at the worst possible

⁷⁵ Examination after defence of Mrs. Jocelyne Nolet, December 20, 2011, p. 55.

⁷⁶ Exhibit DQ-2.1, p. 19.

time despite Mr. Wang's sage advice and the previously agreed 6 to 10 year timeline that turned a paper loss into a real one.⁷⁷ He explains that if they had maintained the funds of October 2008 intact, they would have recouped their losses in nine months. On January 1, 2013, they would be enjoying a profit of about \$1M.⁷⁸

[215] Finally, he is convinced from the many communications and meetings between Mr. Wang and the clients, that he kept them fully informed on a regular basis of the characteristics, risks and advantages of each product that he selected for them.

[216] During the trial, he explained that the investment advice given by Mr. Wang was excellent: "*intelligents et bien ficelés*". The plan chosen was complicated but it was a smart strategy. He called it ingenious. He says that Mr. Wang: "*s'est donné beaucoup de trouble*" and he had to work hard to implement it without additional remuneration.

[217] During his cross-examination, he admits that starting in 2007 the portfolio evolved with time and became concentrated in equities. He affirms, however, that given all the information they received, the clients surely accepted the risk and volatility of those funds.

B. Mrs. Jocelyne Marquis

[218] The Plaintiffs' expert, Mrs. Jocelyne Marquis, paints a far different picture. Her mandate was to study the investment recommendations made by Mr. Wang, starting in June 2005 (when U.S. money market investments began to be converted into London Life segregated funds) until December 31, 2008.

[219] She concludes that:

- a) on October 1, 2008, the clients' portfolio was not balanced;
- b) the October 8, 2008 transfer of 100% of their investments into the London Life real estate fund was not wise;
- c) the constant movement of cash flow from London Life funds to the clients bank account and the weekly purchases of Quadrus funds was illogical, inefficient and disadvantageous for the clients. In other words, Mr. Wang was investing with money already invested. She suspects that this was done to generate commissions;
- d) the expensive withdrawals fees built into the portfolio were inconceivable given the clients' expressed desire to be able to withdraw their funds at any time;
- e) the life insurance policies were not a priority given the clients' existing capital and the fact that they were not yet permanent residents of Canada; and

⁷⁷ *Id.*, p. 39.

⁷⁸ *Id.*, p. 41.

f) the systematic withdrawal of 20% of their London Life segregated funds was unnecessary given that they were largely absent from Canada from 2005 to 2008, without any need of revenues for their current expenses.

[220] She explains that the volatility of a portfolio can be calculated over time. She compared the risk and returns of the clients' portfolio with the risk and returns of a reference portfolio that corresponded to the needs and objectives of the clients as follows:

June 2005 to December 2008⁷⁹

Portfolios of Mr. Long and Mrs. Yang	Annual return	Annualized standard deviation
A) Yanping Long (global)	-3.16%	10.24%
B) Jianli Yang (global)	-6.81%	12.77%
C) Reference portfolio	3.36%	7.20%

[221] She concludes that the level of risk of Mr. Long's portfolio (10.24%) was 42% higher than the reference portfolio (7.2%). As for Mrs. Yang, her portfolio's level of risk was 77% higher. She also shows that the annual return of their portfolios was significantly lower than the reference portfolio.

[222] During her testimony she explained that when the first investment was made, the clients' portfolio was properly balanced and that over time, the asset mix evolved. It no longer reflected their investment objectives. She points out that at the end of September 2008, the combined accounts of the clients were composed of funds containing 8.6% cash, 2% bonds, 76.6% Canadian company shares, 12.6% foreign company shares and 2% real estate. With some 92% of the portfolio invested in growth funds, she is convinced that this was too volatile for the clients' balanced risk profile.

[223] She finds the transfers of funds in and out of the various accounts to be complex and confusing and that such hyperactive management is not a customary practice. She opines that the consequences of the unanticipated stock market crash of 2008 on the value of their portfolio are an illustration that it was not properly balanced. She can see nothing in the documentation examined in the clients' file that justifies the change of strategy made by Mr. Wang in 2007 and 2008.

[224] In cross-examination, she agrees that the handwritten notes of Mr. Wang during the early meetings with his clients reflected many priorities. She highlights the fact, however, that they are incomplete as no conclusion is reached. She concedes that when there is a severe market correction, like the one of 2008, a client should react patiently ("*stay put*") if the portfolio reflects his long term objectives.

⁷⁹ Exhibit P-33 – *Complément d'expertise*, prepared by Mrs. Marquis, October 1, 2013.

5.3 Analysis

[225] The Court concludes that Mr. Wang did not provide competent investment advice for several reasons.

[226] Firstly, the record reveals that Mr. Wang has lax ethical values. He committed a number of improprieties that are contrary to London Life's Code of Ethics. Among others:

- a) he had the clients sign blank London Life and Quadrus' forms and Toronto-Dominion Bank cheques;⁸⁰
- b) he engaged in discretionary trading;⁸¹ and
- c) he did not have a good record retention practice of the clients' file.⁸²

[227] In addition, the Court considers questionable that he allowed London Life and Quadrus' statements and documentation to be sent to his home or to other addresses controlled by him and he was involved in the opening of a separate Toronto-Dominion Bank account.

[228] This misconduct was not done merely to accommodate the clients' absences. It also permitted Mr. Wang to invest in a discretionary manner without the benefit of full

⁸⁰ **14. Signing documents** – [...] *A Representative who forges a signature, or who signs as a witness to a signature not actually witnessed or to a forged signature, or who obtains a client signature on a blank or uncompleted application or form, will face serious consequences, including the possibility of termination of his or her appointment and criminal prosecution.*

[our underlining]

20. Discretionary trading – [...].

Examples of this prohibited practice are:

[...]

- Obtaining a client's signature on blank investment forms for purchase or redemption requests in order to facilitate the action when the Representative believes the time is right.

⁸¹ **20. Discretionary trading** – The practice of discretionary trading is prohibited. Representatives must not engage in facilitating transactions to move a client's investments without obtaining, at the time of request, direct instruction from the client or without obtaining the actual approval of the client for a transaction [...].

Examples of this prohibited practice are:

- Representing the clients that the Representative will monitor the client's investments and "when the time is right" make decisions to move those investments to other funds/products.

[...]

⁸² **12. Client files** – Representatives must maintain accurate, up-to-date, reliable records of their business dealings and transactions with clients, including proposed transactions and advice given to clients, sufficient to meet both the Representative's and London Life's legal obligations. Representatives must retain sufficient information in a client file to demonstrate the appropriateness of a transaction, proposed transaction or advice given.

[...]

13. Records retention – [...]

Representatives must not conceal, destroy or alter any London Life records that are relevant to any pending, threatened or anticipated regulatory investigation or legal proceedings. [...]

disclosure to the clients and to his supervisor(s) at London Life and Quadrus. The evidence clearly shows that numerous transactions were made without the clients' prior authorization and understanding. If and when he notified them, it was generally after the fact. This allowed him to quietly increase the risk of the portfolio without the clients' knowledge.

[229] Secondly, the initial balanced asset mix of investments, that is 60% income fund and 40% real estate fund selected in the presence of the clients in the spring of 2005 did not last. Over time, Mr. Wang transformed their portfolio from low-moderate to high risk. Yet, the clients' low risk investment objectives had been clearly stated at the beginning of the relationship.

[230] The Court considers that Mr. Wang either wrongly assessed their needs, objectives and profiles as advanced investors in March 2005 or he lacked the discipline to respect the boundaries imposed by their conservative profiles. He invested their savings in a manner that was inconsistent with their moderate needs and objectives.

[231] Certainly, no one can fault Mr. Wang for his friendly relationship with the clients and the fact that it is in his nature to help people. He clearly went well beyond his duty when he provided friendly services such as storing their car and guaranteeing their lease agreement.

[232] Notwithstanding his goodness, he was clearly imprudent and undisciplined. His primary goal should have been to protect his clients' money. He had no business making bets with their savings or in trying to persuade them to make those bets by creating an improperly balanced portfolio with higher than average volatility. The specific funds selected may have been wholly adequate but they were not sufficiently balanced between fixed income/bonds and equities.

[233] As a financial planner and a close family friend entrusted with his clients' life savings, Mr. Wang had a nearly sacred trust and fiduciary obligation to establish a portfolio with a suitable asset mix aligned with the level of returns and tolerance for risk best suited for them

[234] It is troubling to see that he even invested the money set aside to purchase the family residence in equity funds when a reasonably prudent planner would have selected a lower risk strategy.

[235] The market momentum caused by a bull market can temporarily reward those who take risks during such periods. Mr. Wang seems to have forgotten how downward market forces can quickly punish excessive risk when it suddenly corrects. He sabotaged his initial balanced investment plan. Successful investing is a long term process. Letting time do its work is one of the most important ingredients of a successful investment plan.

[236] One is reminded of the old adage that defines investing as gambling with odds in your favour. There is indeed, in this case, a thin artificial line between gambling and

investing. The use of the multiple number 8 of the insurance policies is but one example of this. Mr. Wang's focus on a prospective price change when contemplating a purchase or the conversion of currency is a form of speculation. The expressed desire of having a few days to recoup losses is another example. This is Casino investing.

5.3.1 Did the clients ratify Mr. Wang's investment plan?

[237] Having stated this, the Defendants, nevertheless, raise interesting questions. Did Mr. Long and Mrs. Yang ratify Mr. Wang's riskier investment plan? Did they get greedy and pressure Mr. Wang to obtain better results? Did they act like ostriches ignoring the volatility of their investments?

[238] The Court concludes that they did not do so, even in the face of evidence that shows that they expressed consistent concerns with the volatility of their investments since the fall of 2005.

[239] In the case at hand, they were the targets of a skilled salesperson who pushed an inappropriately hazardous strategy. All that was clear for them before the fall of 2008 was that Mr. Wang's investment plan was generating profits. They were quite happy with that. They often asked questions about the evident volatility for their portfolio but were reassured by their confident friend.

[240] Human emotions can be powerful drivers behind investment decisions. Trusting others too much is the ruin of many. As unsuspecting and inexperienced investors, Mr. Long and Mrs. Yang were ensnared by Mr. Wang's affable euphoria and friendship. He had connections and an impressive scope of knowledge in an area unfamiliar to them. They trusted him fully. He was one of the cornerstones of their integration in Montreal.

[241] The Court is convinced that Mr. Wang did not fully disclose the risks associated with the "*very secure*" funds he said he selected for them and the fees associated with them. It believes the testimony of Mr. Long and Mrs. Yang to the effect that:

- a) they believed that the strategy selected by Mr. Wang was to secure their capital;
- b) they were not aware of the redemption fees associated with their segregated funds, given their stated intent that the investments be cashable at any time; and
- c) they did not know they were nearly wholly invested in equities until they had lost all the profits they had made and then some. Here is how they described it to London Life in their letter to the ombudsman of November 2008:

“After we saw many losses, we kept asking him whether he put our money in equity funds. He admitted that he did, but he told us that he had “just put a little money in equity funds”. In fact, he had already put 100% of our money in equity funds then.”⁸³

[integral text]

[242] This explains their angry reaction in October 2008 when they saw that they had lost less than 1% of their capital and their surprise to learn of the redemption fees to be paid if they withdrew all of their funds.

[243] Further, the Court does not consider that the investments made by the clients in May and June 2009, of some \$490,000, from the money market fund to the *Canadian Resources Equity Fund* and the *Canadian Equity Fund*, to be contrary to their conservative investor profile or proof that they were willing to accept more risk than they would like us to believe, given that this sum is only a small portion of their overall capital.

[244] In closing, the Court notes that there is no proof of any financial misappropriation by Mr. Wang or that the objective behind his hyperactive management was to generate commissions even though there is evidence that shows that Mr. Wang generated some \$115,000 in commissions from the clients during his mandate.⁸⁴ Were his services worth every penny? Certainly not. There is, however, no direct proof that these fees were generated by the multiple transactions made by him.

[245] Finally, the Court considers that Wang Inc. is liable for the faults of Mr. Wang. There is no proof that it was able to supervise him. He signed the annual Code of Ethics compliance declarations on behalf of the firm, knowing full well that he was not respecting London Life's Code of Ethics.

6. IS LONDON LIFE RESPONSIBLE FOR THE ACTS OF MR. WANG AND WANG INC.?

6.1 Position of the parties

6.1.1 Mr. Long and Mrs. Yang

[246] The Plaintiffs hold London Life responsible for the losses they incurred. They submit that it failed to adequately supervise Mr. Wang when he opened their accounts. They insist that Mr. Wang never completed an Investment Voyager form. The document submitted should normally be dated and signed by both of them. They believe that London Life should have noted that.

⁸³ Exhibit DQ-10, p. 1.

⁸⁴ Exhibits P-29, P-30 and DQ-18.

[247] They argue that their limited investment knowledge is clearly reflected in Mr. Wang's handwritten notes taken during his first meetings with the clients that show basic information not normally necessary for an "*advanced*" investor. The March KYC forms in the client's file are missing the knowledge profile of Mr. Long. A subsequent updated KYC form in April 2007, completed by Mr. Wang, confirms Mr. Long's investment knowledge as being "*limited*". The needs analysis for the insurance is incomplete. London Life's lack of adequate supervision permitted Mr. Wang to commit several improprieties and to overlook the faulty assessment of their objectives.

[248] They argue that even after Mr. Wang's incorporation of Wang Inc. and his resignation from London Life in November 2005, there was an apparent mandate in place. Nothing changed for them except Mr. Wang's business card. Mr. Wang continued to service them from London Life offices adorned with the *Freedom 55* logo. Neither Mr. Wang nor London Life notified them in writing of his change of status.

6.1.2 London Life

[249] London Life argues that following Mr. Wang's resignation from London Life in November 2005, Mr. Wang became an attached representative to Wang Inc., a firm separate and independent from London Life for the sale and service of insurance products.

[250] It points out that the supervisory role of London Life as a manufacturer of insurance products is limited to transacting with a firm and its attached representative and to communicate to that firm the expectations set out in its Code of Ethics. It shows that it made sure that Mr. Wang and his firm signed off annually to confirm their understanding and compliance with the Code of Ethics.⁸⁵ It insists that it did a thorough review of the clients' complaint and that it has concluded that Mr. Wang is not liable.

[251] In the event, however, that Mr. Wang is found to have committed a fault, it is Wang Inc., the firm responsible for him that would be liable for any injury caused to the clients and not London Life.

6.2 The law

[252] Section 80 of the DFPS Act stipulates that a firm is responsible for the injury caused to a client by the fault of one of its representatives in the performance of his functions.⁸⁶

[253] It is worth noting that there is a parallel between this Section and Article 1463 of the *Civil Code of Quebec* ("**C.C.Q.**") that is drafted in a similar manner. Pursuant to the

⁸⁵ Exhibit DLL-10.

⁸⁶ *Supra* note 4 - **80**. *A firm is responsible for any injury caused to a client by the fault of one of its representatives in the performance of the representative's functions. However, the firm retains the remedies available to it against the representative concerned.*

latter, an employer is liable for the fault of his employee in the performance of his duties.⁸⁷

[254] Section 80 of the DFPS Act and Article 1463 C.C.Q. make both an employer and a responsible firm liable for the totality of the prejudice caused by their agents and servants in the performance of their duties, without regard to the employer or firm's fault, such as a lack of supervision.

6.3 Analysis

[255] London Life is responsible as an employer firm for any injury that the clients may have suffered because of any fault of Mr. Wang prior to November 5, 2005. On that day, the clients were in China having invested \$2.1M U.S. with London Life and Quadrus and had purchased two London Life insurance policies.

[256] What about after that day? The question that needs to be assessed is whether London Life is liable for the faults of Mr. Wang following his resignation as an employee? Was there an apparent mandate in place?

[257] Article 2163 C.C.Q. stipulates that an apparent mandate exists when a person allows a good faith third party to believe that a mandate exists.⁸⁸

[258] The jurisprudence⁸⁹ teaches that an apparent mandate will exist when four conditions are in place:

- a) there exists no formal mandate;
- b) the third party must be in good faith;
- c) the circumstances must have created the appearance of a mandate; and
- d) there are no appropriate measures that were taken to prevent the error.

[259] In the present circumstances, the Court considers that there was an apparent mandate in place. As such, London Life remained liable for the faults of Mr. Wang after November 2005.

[260] There was no formal mandate once Mr. Wang resigned as an employee of London Life. The good faith of the clients is presumed⁹⁰ and it has not been challenged by the Defendants. It is noted that Mr. Wang's change of status and London Life's release of responsibility were not properly notified or explained to the clients.

⁸⁷ **1463.** *The principal is bound to make reparation for injury caused by the fault of his agents and servants in the performance of their duties; nevertheless, he retains his remedies against them.*

⁸⁸ **2163.** *person who has allowed it to be believed that a person was his mandatary is liable, as if he were his mandatary, to the third person who has contracted in good faith with the latter, unless, in circumstances in which the error was foreseeable, he has taken appropriate measures to prevent it.*

⁸⁹ *Deslauriers v. Les Coopérants*, [1993] R.R.A. 874 (C.A.).

⁹⁰ **2805.** *Good faith is always presumed, unless the law expressly requires that it be proved.*

[261] They were told by Mr. Wang that nothing would change for them. He recalls that he told them that he had incorporated his own company and that they had rejoiced over his growing success. He concedes that he did not send them a letter containing the sample wording that had been suggested by London Life to explain that he was no longer an attached representative with London Life.⁹¹ He admits as well that he did not explain to them that he would no longer be supervised by London Life or that the change could have an impact on their account.

[262] Mr. Long remembers that throughout Mr. Wang's three years' mandate, he spoke to him about the fact that London Life was one of the most important financial firms in Canada. He often referred to it as "*our company*". He recalls that in 2007 Mr. Wang had written to notify them of his success within the company: he was the number 10 representative of London Life in Canada, number 4 in Quebec and number 1 in Montreal. Throughout the mandate, Mr. Wang used email addresses that contained London Life's "*Freedom 55*" logo: "@F55.com"⁹² and: "@freedom55financial.com".⁹³

[263] On December 5, 2011, Mrs. Michèle Hélie, who was responsible for London Life's regulatory compliance team testified after plea. She admitted that London Life did not send the clients a notice to advise them of Mr. Wang's change of status in November 2005. She explained that this is normally left to the representative who has the interest of doing so from a marketing point of view.⁹⁴ Instead, she pointed out that the change in status of the account is identified on the semi-annual statements sent to them where one can see that Wang Inc. (not London Life) is the supervisor and servicer of the account.

[264] She related that in December 2005, she audited Mr. Wang's practice and she noted that he had not yet changed his business card to reflect his change of status. When he was re-inspected in August 2006, she noted that he had now done so. She recalled as well that Wang Inc.'s draft letter to the clients was examined by her in December 2005. She advised him that it was missing a paragraph. She did not, however, follow up to ensure that it was sent to clients.

[265] Mrs. Hélie stated that there were several audits of Wang Inc. and ongoing training of Mr. Wang following the incorporation of the company. A document submitted lists nine professional development courses London Life offered between May 2006 and August 2011. We can see that Mr. Wang attended five of them. It also lists the audits conducted during the years 2004, 2005, 2006 and 2007.⁹⁵ She explained that the audits done after November 2005 were part of London Life's process of verifying that newly formed corporate representatives received training, education and consultation necessary to ensure that they knew how to respect their regulatory compliance obligations.

⁹¹ Exhibit P-7.

⁹² Exhibit P-2.

⁹³ Exhibit DVW-33, p. 68.

⁹⁴ Examination after Plea of Mrs. Michèle Hélie by Mtre. Magali Fournier, December 5, 2011, p. 22.

⁹⁵ Exhibit DLL-34.

[266] She acknowledged that even though Mr. Wang's office was in London Life's business centre, that had a manager in charge of the office, it was Wang Inc. (that is, Mr. Wang himself) who was solely responsible to supervise Mr. Wang.

[267] As stated, the evidence submitted indicates that there were several compliance audits carried out by London Life. There are, however, only two of them in the record.

[268] In the first one, it was noted in November 2004, that London Life had some concerns about Mr. Wang's maintenance of his files. Among other things reported, it was recommended that Mr. Wang:

- a) should keep notes of all communications with clients;
- b) copies of all transaction forms should be in the clients' file;
- c) clients should be provided with copies of all forms;

because this had not been satisfactorily done.⁹⁶

[269] The second audit in evidence, dated November 23, 2007⁹⁷, is particularly interesting because it specifically concerns a review of Mr. Long's client file. With the benefit of hindsight and in light of what we know, we can see that this audit was cursory and inadequate. It gives the impression of having been simulated. The only brief written record is that there is insufficient documentation of the contacts with the client and that this should be completed. The manager stated that no follow-up was required. Most of the items to be verified are not filled in or checked off.

[270] There is little evidence that was submitted about the supervision of Mr. Wang by London Life and Quadrus between March and November 2005 at a time when he was rather novice as a financial security advisor with only four years of work experience. The evidence thereafter is also threadbare.

[271] From the audit of 2004, London Life knew that Mr. Wang was sloppy with file documentation. This should have raised a red flag and required a closer follow up. The Court is left with many unanswered questions:

- a) did London Life have a way of understanding Mr. Wang's handwritten Chinese notes of his meetings with his clients?
- b) how did it not pick up that the KYC forms were missing relevant information and that there were certain contradictions in the answers given and the proof submitted of four different profiles in the clients' files?

⁹⁶ Exhibit P-14.

⁹⁷ Exhibit P-13.

- c) how could the right hand not have noted the absence of capital on the insurance analysis forms when the left hand held some \$2M U.S. in investments?
- d) why did no one notice or raise an issue about the \$670,000 that was deposited some two weeks after the bank draft for same?
- e) how were the signed blank documents and cheques missed?

7. IS QUADRUS RESPONSIBLE FOR THE FAULTS OF MR. WANG?

7.1 Position of the parties

7.1.2 Mr. Long and Mrs. Yang

[272] The Plaintiffs point out that Mr. Wang was a representative of Quadrus throughout his mandate with them. As a firm responsible for his supervision, it is responsible for any injury they suffered.

7.1.2 Quadrus

[273] Quadrus states that it fulfilled its responsibility to oversee the conduct of Mr. Wang. It points out that the clients received all the information required about their Quadrus investments:

- a) they received the prospectus and financial statements of the funds purchased given that they placed their initials on the Quadrus forms on which they acknowledged receiving same. They also acknowledged on the document that investments in mutual funds were not guaranteed;
- b) they received a prospectus and a confirmation of purchase each time a mutual fund was purchased and the by-annual summaries of their Quadrus accounts.

[274] It says that there was never any complaint from the clients during Mr. Wang's mandate.

7.2 Analysis

[275] Pursuant to Section 80 of the DFPS Act, Quadrus is responsible for the faults of Mr. Wang in the present case.

[276] Furthermore, Quadrus does not appear to have adequately supervised Mr. Wang's sale of *Franklin Templeton* and Quadrus mutual funds to the clients. No evidence has been submitted that Mr. Wang was supervised by a Quadrus manager other than the appearance of initials on KYC forms and purchase orders.

8. WAS THE FAULT OF MR. WANG THE CAUSE OF THE PLAINTIFFS LOSSES?

8.1 Position of the parties

8.1.1 Mr. Long and Mrs. Yang

[277] The Plaintiffs argue that Mr. Wang's faulty management of their investments caused them substantial damages. Not only did they lose an important portion of their capital, they also lost the benefit of the gains they would have realized had they been correctly invested in products that suited their investment objectives and profiles.

8.1.2 The Defendants

[278] The Defendants raise two arguments to show that they did not cause the damages being claimed. They argue that the losses:

- a) were provoked by the financial market crisis of 2008; and
- b) were self-inflicted by the clients as they became crystallized when they sold their investments at the worst possible time and against Mr. Wang's best advice.

[279] They submit the following interrelated arguments:

- a) the clients did not respect the 6 to 10 year investment timeline they had selected. Mr. Wang's plan was not given the chance to prove itself because the clients removed their marbles from play too early. Had they kept the investments of October 8, 2008 intact, they would have had a gain of \$955,156 on January 1, 2013,⁹⁸
- b) there is no casual relationship between the faults Mr. Wang may have committed and the losses that they suffered; and
- c) even the most conservative portfolios suffered losses in 2008. They cannot be held responsible for the sudden and unexpected world financial crisis of 2008.

8.2 Analysis

[280] Are Mr. Long and Mrs. Yang the authors of their own misfortune? Did they sell prematurely?

[281] Certainly, it is well known that it is not the time to sell when there is blood on Wall Street or Bay Street. Ten days after they sold their funds on October 17, 2008, the *New York Times* published a letter written by Mr. Warren Buffett. He is one of the world's

⁹⁸ Exhibit DLL-41.

richest men and most famous investors. He is trusted for his common sense and admired for his investment results by many wise long term investors. He wrote that it was the time to buy shares of sound American companies. Mr. Buffet explained that a simple rule dictates his purchase of investments: "*Be fearful when others are greedy, and be greedy when others are fearful.*"⁹⁹

[282] It indeed takes a lot of courage not to get emotional and panic, that is, to keep your head on when markets tumble. History teaches us that Mr. Buffett is a courageous investor because the S&P 500 index dropped another 30% between October 1, 2008 and March 31, 2009. It has since recovered spectacularly allowing him to maintain his hero status. The do not call him the "*Oracle of Omaha*" for nothing.

[283] In this instance, however, the Court finds that Mr. Long and Mrs. Yang did not have to exercise the necessary qualities of patience, perseverance and economic forethought for several reasons.

[284] Firstly, the preconditions of staying put were not in place. They had lost complete confidence in Mr. Wang who they believed had deceived them. Mr. Wang's relationship with his clients had become emotional and stressful as they had lost faith in their close friend. Things were highly charged because their relationship with him was based on something very important to them: their life savings.

[285] Secondly , their portfolio on October 8, 2008 did not meet their objectives and needs of security of capital as it was not balanced having been invested nearly all in equities. It is unreasonable to conclude that in such circumstances they should have kept their holdings intact with Mr. Wang or with any other financial planner.

[286] Finally, the Court considers that the financial crisis of 2008 does not constitute an autonomous fact that is independent of the fault of Mr. Wang. It is not a stand-alone cause of the losses they suffered. Nor does it create a breach in the causality that links the faults of Mr. Wang and the losses suffered by the Plaintiffs.

9. WHAT ARE THE DAMAGES TO BE AWARDED?

9.1 The experts' advice

[287] The Court has the benefit of two expert reports with respect to the damages claimed by the Plaintiffs.

[288] In addition, it has the working documents of Mrs. Jocelyne Nolet, Director, relations with clients of London Life, who handled the clients' complaint letter. Her rough estimate of the loss suffered by them is approximately \$550,000.¹⁰⁰

⁹⁹ Warren E. BUFFET, *Buy American. I am.*, The New York Times (nytimes.com), October 17, 2008.

¹⁰⁰ Exhibit P-12.

A. Mrs. Jocelyne Marquis

[289] Mrs. Marquis opines that the fault of Mr. Wang to do a thorough analysis of the clients' needs and his subsequent imprudent advice caused the Plaintiffs \$840,000 in damages. Here is how she calculated it:

- a) she compared the value of the clients' portfolio on a monthly basis with a reference portfolio having the characteristics that would be appropriate for the clients: 60% bonds and 40% shares;
- b) she deducted from her calculation what she characterized as "*non-authorized*" transfers (the 20% withdrawals); and
- c) she considered that the period of time during which the portfolio is to be compared is from June 30, 2005 (when London Life funds were purchased) and December 30, 2008 (to include a three months transition period).

B. Mtre. Jean Turcotte

[290] Mtre. Turcotte criticizes Mrs. Marquis' approach. He says that she portrays an inadequate picture of the losses for a number of reasons. He suggests that:

- a) the reference portfolio should be composed of 50% shares (35% Canadian shares, 10% American shares, 5% international shares) and 50% bonds;
- b) what she characterized as "*non-authorized transfers*" should not have been deducted in an arbitrary way;
- c) the investments made by Mr. Wang between March to June 2005 in the *Franklin Templeton* U.S. funds should be taken into consideration given that they generated gains; and
- d) the three month transition after the end of the mandate is not necessary as the portfolio was all in one fund.

[291] In his report, he opines the damages to be in the range of \$175,000.

[292] When he testified, he proposed three other methods of calculating the clients' losses that varied between \$140,000 and \$205,000.¹⁰¹

9.2 Analysis

[293] The Court concludes that Mr. Long and Mrs. Yang sustained damages to be established on the basis of the investment returns they would have achieved if their capital had been correctly invested to reflect their conservative profile.

¹⁰¹ Exhibit DLL-40 – letter of July 15, 2013.

[294] The Court considers that the appropriate manner of calculating the damages is as follows:

- a) the reference index to be used should be composed of funds having a mix of 60% fixed income/bonds and 40% shares. This somewhat resembles the initial mix selected in May 2005 and it corresponds to the clients appetite for a low risk portfolio;
- b) the period of time to be considered is between March 12, 2005 and November 12, 2008, the date Mr. Zhou was appointed their new advisor after a period of consultation. This provides a full picture of the amounts earned and lost during the mandate. There is no need for a three month transition period given that all of their investments were in a single real estate fund on that date; and
- c) what Mrs. Marquis's qualified as "*non-authorized transactions*", should not have been excluded given that the 20% withdrawal and re-investment plan was well known and agreed to by the clients from day one.

[295] Pursuant to a request from the Court, the parties were asked to submit their expert advice on how to calculate the damages with the abovementioned parameters. The following is the expertises that were provided:

A. Mtre. Jean Turcotte

[296] Mtre. Turcotte submitted an analysis of the damages dated May 6, 2014 and a critique of Mrs. Marquis' analysis of May 7th, dated May 15th. He used a referenced model consisting of 60% fixed revenues, 30% Canadian shares (S&P/TSX Index), 5% U.S. shares (S&P 500 Index) and 5% international shares (S&P Global 1200 Index). He then compared the value of the clients' portfolio from March 2005 to November 12, 2008 with the reference model. He then deducted from the accumulated losses the profits generated by the *Franklin Templeton* funds.

[297] Having done so, he concludes that the losses suffered by the clients to be \$309,719.

B. Mrs. Jocelyne Marquis

[298] Mrs. Marquis used a different method to calculate the damages of the clients. In her letters of May 7th and 29, 2014, she proceeded by using a reference model composed of 60% Canadian bonds (DEX Universe Index) and 40% Canadian shares (S&P/TSX Index). Instead of deducting the profits generated from the *Franklin Templeton* funds, she analyzed what the sums invested in *Franklin Templeton* funds would have generated had they been invested correctly from the beginning as per the reference model (60% Canadian bonds and 40% Canadian shares). She calculates the gains that would have been obtained with those funds until November 12, 2008.

[299] She concludes that the losses suffered by the clients total \$641,017.30.

9.2.1 Conclusion

[300] The Court considers the analysis proposed by Mrs. Marquis to be the most transparent, thorough and convincing. It agrees with her that Mtre. Turcotte undervalues the damages by deducting the gains realized in the *Franklin Templeton* funds without taking into consideration the losses suffered because they were not invested in accordance with the reference model.

[301] It will, therefore, order the Defendants to pay the Plaintiffs the sum of \$641,017.30.

10. ARE PUNITIVE DAMAGES APPROPRIATE IN THIS CASE?

10.1 Position of the parties

[302] Mr. Long and Mrs. Yang seek punitive damages in the amount of \$100,000.

[303] They argue that the Defendants' conduct amounted to a blatant disregard of their property rights. Such gross negligence may be assimilated to a wilful disregard of their fundamental rights.

[304] The Defendants insist that punitive damages are not appropriate in the circumstances.

10.2 The law

[305] Article 1621 C.C.Q. stipulates that punitive damages can be awarded when it is provided for by law.¹⁰² Articles 6 and 49 the *Charter of Human Rights and Freedoms*¹⁰³ gives the Court the discretion to award punitive damages when a person's peaceful enjoyment of his property has been breached. The Supreme Court of Canada case of *Whiten v. Pilot Insurance Company*¹⁰⁴ sets out the underlying principles to be applied in such circumstances:

¹⁰² "1621. Where the awarding of punitive damages is provided for by law, the amount of such damages may not exceed what is sufficient to fulfill their preventive purpose.

Punitive damages are assessed in the light of all the appropriate circumstances, in particular the gravity of the debtor's fault, his patrimonial situation, the extent of the reparation for which he is already liable to the creditor and, where such is the case, the fact that the payment of the damages is wholly or partly assumed by a third person."

¹⁰³ CQLR c.C-12 – "6. Every person has a right to the peaceful enjoyment and free disposition of his property, except to the extent provided by law."

"49. Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.

In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages."

¹⁰⁴ [2002] 1 S.C.R. 595; see also *Stevac inc. v. Sochaczewski*, 2010 QCCS 2172.

"[94] To this end, not only should the pleadings of punitive damages be more rigorous in the future than in the past [...], but it would be helpful if the trial judge's charge to the jury included words to convey an understanding of the following points, even at the risk of some repetition for emphasis:

- (1) Punitive damages are very much the exception rather than the rule,*
- (2) imposed only if there has been high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour.*
- (3) Where they are awarded, punitive damages should be assessed in an amount reasonably proportionate to such factors as the harm caused, the degree of the misconduct, the relative vulnerability of the plaintiff and any advantage or profit gained by the defendant,*
- (4) having regard to any other fines or penalties suffered by the defendant for the misconduct in question.*
- (5) Punitive damages are generally given only where the misconduct would otherwise be unpunished or where other penalties are or are likely to be inadequate to achieve the objectives of retribution, deterrence and denunciation.*
- (6) Their purpose is not to compensate the plaintiff, but*
- (7) to give a defendant his or her just dessert (retribution), to deter the defendant and others from similar misconduct in the future (deterrence), and to mark the community's collective condemnation (denunciation) of what has happened.*
- (8) Punitive damages are awarded only where compensatory damages, which to some extent are punitive, are insufficient to accomplish these objectives, and*
- (9) they are given in an amount that is no greater than necessary to rationally accomplish their purpose.*
- (10) While normally the state would be the recipient of any fine or penalty for misconduct, the plaintiff will keep punitive damages as a "windfall" in addition to compensatory damages.*
- (11) Judges and juries in our system have usually found that moderate awards of punitive damages, which inevitably carry a stigma in the broader community, are generally sufficient.*

[95] These particular expressions are not, of course, obligatory. What is essential in a particular case will be a function of its particular circumstances, the need to emphasize the nature, scope and exceptional nature of the remedy, and fairness to both sides."

[306] Although this case originates in a common law jurisdiction, it can be applied in Quebec where the considerations are not significantly different.

10.3 Analysis

[307] The Court concludes that this is not one of those exceptional circumstances that merits the award of punitive damages.

[308] Having assessed the abovementioned criteria in light of the facts herein set out, the Court is of the view that the conduct of Mr. Wang does not amount to *"high-handed, malicious, arbitrary or highly reprehensible misconduct that departs from ordinary standards of decent behaviour"*. Rather, Mr. Wang was undisciplined, imprudent and ethically lax. Friendly, as he was, he was not malicious.

[309] The special nature of the remedy is not appropriate in this case.

11. CONCLUSION

[310] Quadrus and London Life have pleaded that they should not be held solidarily liable. For one, Quadrus states that it should not be held liable for the losses in the London Life segregated funds and vice versa. Further, it points out that only 11% of the clients' portfolio was invested in Quadrus mutual funds. Finally, it states that the *Franklin Templeton* and Quadrus mutual funds sold by Mr. Wang under the Quadrus license generated an overall profit when they were disposed.

[311] With respect, the Court considers that in the present circumstances the solidary condemnation of the Defendants is appropriate.

[312] Firstly, it is noted that:

- a) Mr. Wang and Wang Inc. operated out of London Life offices;
- b) Quadrus is a subsidiary of London Life; and
- c) the damages established are on the basis of the investment returns they would have achieved if Mr. Wang had correctly invested their savings with both London Life and Quadrus.

[313] According to certain jurisprudence, the solidarity foreseen by Article 1463 C.C.Q. has its foundations in the *in solidum* obligation. The authors, Didier Lluellas and Benoît Moore, explain it as follows:

“2604. Cette modeste « solidarité qui ne peut dire son nom » qu’est l’obligation *in solidum* semble promise à un large développement en droit québécois, tant est grande la réceptivité de la jurisprudence à son égard. Ainsi, il ne serait pas illégitime de voir une solidarité imparfaite dans le cas des codébiteurs d’une obligation quasi contractuelle. De même, devrait être considérée comme étant *in solidum* l’obligation de l’assureur de responsabilité civile et de son assuré d’indemniser le tiers victime pour la faute de l’assuré. Comme le propre de l’obligation *in solidum* est d’imposer à chaque débiteur le « montant entier de la dette », le tiers victime pourrait donc obtenir de l’assureur le plein montant de ses dommages, au-delà même du montant d’assurance, le codébiteur assureur pouvant disposer d’un récursoire contre l’assuré pour le trop-payé. [...] Finalement, certain auteurs suggèrent une requalification dans le cas de la responsabilité du maître et de ses préposés (cf. art. 1463), jugée solidaire par une certaine jurisprudence, mais qui, à leur avis, mériterait plutôt le label d’obligation *in solidum* : en effet, les responsabilités du commettant et du maître reposent sur des fautes véritablement distinctes.”¹⁰⁵

[our underlining]

[314] If the responsibility of an employer for the fault of its employee (Art. 1463 C.C.Q.) can be considered an “*in solidum*” obligation, one can conclude that the same reasoning will apply to the responsibility of a firm for its representative (Section 80 DFPS Act).

[315] Hence, there exists solidarity between Mr. Wang, Wang Inc. and London Life with respect to the losses suffered with the London Life segregated funds. There is also solidarity between Mr. Wang, Wang Inc. and Quadrus in respect to losses suffered with respect to the *Franklin Templeton* funds and Quadrus mutual funds.

[316] Is there solidarity between London Life and Quadrus?

[317] The Court concludes that there is solidarity pursuant to Article 1480 C.C.Q.¹⁰⁶

[318] Although London Life and Quadrus are separate corporate entities, there is no evidence that Mr. Wang was adequately supervised by either of them. The investments made by Mr. Wang for Mr. Long and Mrs. Yang have to be seen as a single and global portfolio consisting of various different products. The first investment was a *Franklin Templeton* fund. This was followed with London Life segregated funds and insurance policies. 20% of the London Life funds are then withdrawn and invested in Quadrus funds. We see the movement of funds back and forth and in and out like musical chairs. Where they ended up is almost accidental and not reflective of the respective faults committed by the Defendants.

¹⁰⁵ Didier LLUELLES and Benoît MOORE, *Droit des obligations*, 2nd ed., Montreal, Thémis, 2012, par. 2064.

¹⁰⁶ **1480.** *Where several persons have jointly participated in a wrongful act which has resulted in injury or have committed separate faults each of which may have caused the injury, and where it is impossible to determine, in either case, which of them actually caused the injury, they are solidarily bound to make reparation thereof.*

FOR THESE REASONS, THE COURT:

[319] **MAINTAINS** Mr. Yanping Long's and Mrs. Jianli Yang's re-re-amended Introductory Motion, in part;

[320] **CONDEMNS** Mr. Dun (Victor) Wang, Victor Wang Investments and Wealth Management Inc., London Life Insurance Company and Quadrus Investments Services Ltd. to solidarily pay \$641,017.30 to Mr. Yanping Long and Mrs. Jianli Yang, the whole with interest at the legal rate as well as the additional indemnity provided by Article 1619 of the *Civil Code of Quebec* from December 10, 2010;

[321] **WITH COSTS**, including the expert fees of Mrs. Jocelyne Marquis.

PAUL MAYER, J.S.C.

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