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

IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTION 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA

Re: Rouzbeh Vatanchi and Kitty Ho

Heard: June 29, 2015, in Toronto, Ontario
Reasons for Decision: August 4, 2015

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. Edward Saunders, Q.C.	Chair
Robert J. Guilday	Industry Representative
Guenther W.K. Kleberg	Industry Representative

Appearances:

Paul Blasiak	)	Counsel for the Mutual Fund Dealers Association of Canada
Rouzbeh Vatanchi and Kitty Ho	)	Not present nor represented by counsel

1. The Mutual Fund Dealers Association of Canada (the "MFDA") alleges the following violations by Rouzbeh Vatanchi ("Vatanchi") and Kitty Ho ("Ho") (the "Respondents"):

Allegation #1 – Between 2009 and 2011, the Respondents engaged in securities related business that was not carried on for the account and through the facilities of the Member by recommending, selling, referring or facilitating the sale of $175,000 of promissory notes to client MR and one other individual, NM, outside the Member, contrary to MFDA Rules 1.1.1, 2.4.2 and 2.1.1.

Allegation #2 – Between 2009 and 2011, the Respondents had and continued in another gainful occupation which was not disclosed to and approved by the Member by recommending, selling, referring or facilitating the sale of at least $175,000 of promissory notes outside the Member, contrary to MFDA Rules 1.2.1(d)[1] and 2.1.1.

Allegation #3 – Between about 2009 and 2011, the Respondents engaged in conduct unbecoming an Approved Person and contrary to client MR's interests by recommending, facilitating the purchase of promissory notes by NM and client MR outside the Member in circumstances where:

(a) they knew or ought to have known that they had not made any or sufficient inquiries to determine whether the promissory notes complied with Ontario securities law;

(b) they requested and received monies from the issuer of the promissory notes for their personal benefit shortly after the investments were made; and

(c) the Respondent, Rouzbeh Vatanchi (only) misled NM and client MR as to the reason why the Ontario Securities Commission contacted them about the promissory notes and counselled client MR to make a false statement to the Ontario Securities Commission, contrary to MFDA Rules 2.1.1. and 2.1.4.

[1] On December 3, 2010, MFDA Rule 1.2.1(d) was renumbered as MFDA Rule 1.2.1(c).

Allegation #4 - Commencing April 2013, the Respondents failed or refused to cooperate with an investigation conducted by Staff by failing or refusing to provide copies of bank account statements requested by Staff during the course of an investigation, contrary to s. 22.1 of MFDA By-law No. 1.

2. The Notice of Hearing in this matter dated October 14, 2014 was sent to the Respondents. They each provided a written reply to the Notice. The Respondent Vatanchi advised the MFDA by email on December 3, 2014 that he and the Respondent Ho had decided not to participate in the hearing and that they would not attend the first appearance scheduled for December 14, 2014. The first appearance was held and the Respondents did not attend. The Hearing on the Merits was held on June 29, 2015. The Respondents did not attend. The Panel was advised by counsel that the Respondents had been informed of the date and place of the hearing. The hearing proceeded in the absence of the Respondents. The Panel is therefore entitled to accept the facts alleged and conclusions drawn by the MFDA as proven and to impose any of the penalties and costs described in Section 24.1 and 24.2 respectively of the MFDA By-laws (MFDA Rules of Procedure 7.3).

3. Accordingly, the evidence at the hearing consists of the testimony of MFDA Senior Investigator Lucy Alfenore and the following documents:

- Notice of Hearing issued October 14, 2014[2];
- Affidavit of Lucy Alfenore, sworn June 24, 2015 with attached exhibits;
- Reply of Rouzbeh Vatanchi dated November 17, 2014;
- Reply of Kitty Ho dated November 26, 2014; and
- Email from Vatanchi to Marco Wynnyckyj dated December 3, 2014.

Readers of these reasons should have access to that testimony and those documents.

[2] With the modification that the misconduct described in Allegations #1, #2 and #3 of the Notice of Hearing occurred between 2009 and 2011, rather than between 2008 and 2011. This is confirmed in the Alfenore Affidavit.

4. The background of the allegations is as follows:

(a) At all material times the Respondents were registered in Ontario as mutual fund sales persons with WFG Securities of Canada Inc. ("WFG"), a member of the MFDA. The Respondents subsequently resigned from WFG and they are not currently registered in the securities industry in any capacity.

(b) 2196768 Ontario Ltd. carried on business as RARE ("RARE"). Ramadar Dookhie ("Dookhie"), Adil Sunderji ("Sunderji") and Evgueni Tudorov ("Tudorov") were shareholders, directors and officers of RARE (collectively referred to as the "RARE Principals"). Following an investigation and a hearing, the Ontario Securities Commission (the "OSC") found that the RARE Principals engaged in an investment scheme that involved the solicitation of funds from the public purportedly for the purpose of trading in foreign currencies for profit. In return for their investment, the investors received promissory notes that carried a monthly interest rate of approximately 1% to 3%.

(c) 7023375 Canada Corp. ("702") was incorporated in 2008 with the Respondents indicated as directors. The existence of 702 was never disclosed to WFG. 702 was dissolved on October 31, 2012.

(d) An individual, VH, referred NM to the Respondent, Vatanchi, for investment advice. NM was not a mutual fund client of WFG but had purchased at least one insurance product from an affiliate of WFG through the Respondent Vatanchi whom she knew and was familiar with. In about mid-2009, the Respondent Vatanchi informed NM about the investment opportunity through RARE.

(e) On or about July 8, 2009, NM met the Respondents, Doohkie and Sunderji at the Yorkgate Mall. At that time, Doohkie opened a bank account in the name of RARE at a branch of the Bank of Montreal (the "BMO Account"). The Respondents signed the account opening documents for the BMO Account and NM deposited $120,000 in the BMO Account.

(f) The account opening documents for the BMO Account identified four authorized signatories on the account: Doohkie (as President of RARE), Sunderji (as Treasurer of RARE), the Respondent Vatanchi (as General Manager of RARE); and the Respondent Ho (as Secretary of RARE).

(g) RARE subsequently issued a promissory note dated July 13, 2009 to NM in respect of her $120,000 investment in RARE. The promissory note was signed by NM as the "lender" and by Doohkie, Sunderji and Tudorov as the Principals of RARE. The promissory note contained a witness signature purporting to be the Respondent Vatanchi's (Vatanchi denied signing the document and claims his signature was a forgery). The promissory note did not specify a monthly interest rate but stated it was for a term of one year and that interest be paid monthly to NM by 702.

(h) RARE also issued an assignment of GIC to NM which purportedly assigned to her the right to redeem a $120,000 GIC purportedly held with the Bank of Montreal when the promissory note matured.

(i) RARE paid VH, $8,400 as a referral fee in respect of the investment of NM.

(j) From August 2009 to December 2010, NM received monthly interest payments of $1,500. There is no evidence that any further interest was paid. In the spring of 2010, NM withdrew $10,000 of her investment. The balance of the principal ($110,000) was not paid on the due date and has never been paid. The MFDA alleges that the interest payments were delivered by the Respondent Vatanchi but he denies this in his response.

(k) About the same time as the NM transaction, the Respondent Vatanchi recommended to a WFG client, MR, that she invest in RARE. He described RARE as a "no risk" investment. MR signed an unsigned RARE note as "lender" and furnished the bank draft in the amount of $55,000 which was deposited in the BMO Account. The Respondent Vatanchi subsequently provided MR with the promissory note signed by Dookhie and Tudorov on behalf of RARE.

(l) Again, monthly interest of $550 was paid from August 2009 to December 2010. There is no evidence of further interest payments. The principal amount of $55,000 was not paid on the due date and has never been paid. It is alleged that the Respondent Vatanchi delivered the payments of interest but this is denied by him.

(m) It is noted that there was no evidence drawn to our attention of any involvement by the Respondent Ho in the MR transaction.

(n) The deposits of $120,000 by NM and the $55,000 by MR were the only two deposits ever made in the BMO Account. The $175,000 was transferred to another bank account held by RARE and used to purchase two one year term GIC's with the Bank of Montreal in the name of RARE. During the OSC hearing, Dookhie admitted that he had used the GIC's to pay down the overdraft of the main operating account of RARE with the bank.

(o) The promissory notes were not investment products that were known to or approved by WFG. Neither transaction was processed through the facilities of WFG or otherwise brought to the attention of WFG by the Respondents.

(p) On August 7, 2009, the Respondents received $70,000 from RARE and a further amount of $5,712.50, both of which were paid to 702. The Respondents say that these were interest free loans that were repaid. They claimed they were used to finance a residence they were purchasing in Markham, Ontario. There is no evidence to support the claim that the payments were interest free loans, that the proceeds were used as claimed or that the amounts were repaid. The Respondents had other financial transactions with RARE and its principals.

(q) In about August 2010, the OSC contacted NM and MR regarding their investment in RARE. The Respondent Vatanchi had informed them that RARE was unable to repay the principal because it was restructuring. He told MR that she would continue to receive monthly interest payments. When she heard from the OSC, MR contacted the Respondent Vatanchi. He informed her that the OSC conducts

random checks on investments and that she should inform the OSC that she was confident in the investment in RARE and not inform the OSC that RARE had failed to repay the principal amount of the promissory note. When NM questioned the Respondent Vatanchi about the call from OSC, Vatanchi informed her that the OSC had contacted her for tax purposes.

(r) In December 2010, Vatanchi arranged for a meeting between MR and Dookhie to discuss the status of MR's investment in RARE. During the meeting, Dookhie advised MR that her investment in RARE had been accidentally renewed for a further one year term and he was working to resolve the situation.

(s) On February 7, 2011, MR received a letter from lawyers representing RARE and its principals advising that RARE had suspended interest payments and would be unable to redeem MR's investment for an indefinite period of time.

(t) MR subsequently became aware that the OSC had issued a statement of allegations dated November 22, 2011 in respect of RARE and its principals. The Respondent Vatanchi arranged for another meeting between MR and Dookhie. Both Dookhie and Vatanchi assured MR that there was no truth in the statement of allegations and the matter would be resolved shortly.

(u) The MFDA on repeated occasions has requested each Respondent for copies of account statements for any bank accounts in which they had any interest or signing authority and specifically accounts maintained by 702. Those requests have either been ignored or refused. Counsel for the Respondents wrote a letter to the MFDA confirming the refusal and stating that "until and unless there is some credible evidence that payments were in fact made by 702 to party/parties alleging such payment". The MFDA has had no access to the account statements of 702.

5. Allegation #1 - The Promissory Notes were not investment products that were known or approved by the WFG. There was no evidence of any referral agreements and it would appear that Rule 2.4.2 has no application to these proceedings.

6. The NM and MR transactions were not processed on the books of WFG. The participation of the Respondents in the NM transaction by recommending and facilitating the NM investment was contrary to the MFDA rules 1.1.1 and 2.1.1.

7. The same can be said of the participation of the Respondent Vatanchi in the MR transaction. We are unable to find that the Respondent Ho was involved in any way in that transaction.

8. Allegation #2 - It is agreed that if Allegation #1 resulted in a finding of misconduct, it would be unnecessary to consider Allegation #2.

9. Allegation #3 - There is no evidence one way or the other that was drawn to our attention as to the inquiries made by the Respondents as to whether the promissory notes complied with Ontario securities law.

10. There is no evidence that the amounts received by 702 in August and November 2009 as alleged interest free loans were connected to the NM or MR transactions in any way other than they were received from RARE about the same time as those transactions. In our view, that is insufficient to constitute misconduct under Rule 2.1.1 or conflict of interest under Rule 2.1.4.

11. The Respondent Vatanchi did mislead NM and MR as to the reason for the contact by the OSC and counselled MR to make a false statement to the OSC contrary to Rule 2.1.1.

12. Allegation #4 - It is undisputed that both Respondents refused to supply bank statements for 702. This was a serious act of misconduct. It severely limited the ability of the MFDA to determine the full nature and extent of the Respondents' activities in relation to RARE. The refusal may have been based on the advice of counsel but that does not matter. They were clearly required to produce the information requested.

13. At the hearing, the Panel made an order finding with respect to misconduct subject to the furnishing of these reasons.

14. Penalty - The MFDA seeks penalties against the Respondent Vatanchi as follows:

(i) Permanent prohibition on the authority of Vatanchi to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member, pursuant to s. 24.1.1(e) of the MFDA By-law No. 1;
(ii) Global fine in the amount of $125,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
(iii) Costs attributable to conducting the investigation and hearing of this matter in the amount of $7,500, pursuant to s. 24.2 of MFDA By-law No. 1.

15. The MFDA seeks penalties against the Respondent Ho as follows:

(i) Permanent prohibition on the authority of Ho to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member, pursuant to s. 24.1.1(e) of the MFDA By-law No. 1;
(ii) Global fine in the amount of $75,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
(iii) Costs attributable to conducting the investigation and hearing of this matter in the amount of $7,500, pursuant to s. 24.2 of MFDA By-law No. 1.

16. In our view, the most serious allegation against the Respondents was the failure to cooperate. Members of a self-regulating profession have a high obligation to cooperate with their governing body. As submitted by counsel, their failure to do so renders them ungovernable. In this case, their failure to cooperate severely limited the ability of the MFDA to assess their involvement with RARE.

17. In our view, the penalties proposed by the MFDA were reasonable in the circumstances. The involvement of the Respondent Ho in the two transactions was minimal compared to that of the Respondent Vatanchi but she took the position to refuse to provide the MFDA with the information it required to assess the claim against her. The MFDA guidelines provide for a minimum $50,000 fine for non-cooperation. Non-cooperation can take many forms but in this

case it was vital to the MFDA investigation. The fine of $75,000 imposed on the Respondent Ho was reasonable for her non-cooperation alone.

18. The Respondent Vatanchi was much more involved in the two transactions. For this reason, the fine of $125,000 is reasonable in the circumstances.

19. Because of their conduct, both Respondents deserve to be permanently prohibited from conducting securities related business in any capacity while in employ or in association with any MFDA Member.

20. At the hearing, we made an order imposing on the Respondents the penalties proposed by the MFDA.

DATED this 4th day of August, 2015.

"Edward Saunders"

The Hon. Edward Saunders, Q.C.
Chair

"Robert J. Guilday"

Robert J. Guilday
Industry Representative

"Guenther W. K. Kleberg"

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