



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

**IN THE MATTER OF A SETTLEMENT HEARING  
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Kenneth Rattenbury**

Heard: October 17, 2012 in Edmonton, Alberta  
Reasons for Decision: November 27, 2012

**REASONS FOR DECISION**

Hearing Panel of the Prairie Regional Council:

Garrett Wilson, Q.C.	)	Chair
Patricia M. Kloepfer	)	Industry Representative
Greg Wiebe	)	Industry Representative

Appearances:

Shari L. Boyd	)	For the Mutual Fund Dealers Association of
	)	Canada
Kenneth Rattenbury	)	In Person
	)	

1. The Hearing Panel of the Prairie Regional Council convened on October 17, 2012 in Edmonton, Alberta, for the purpose of considering a Settlement Agreement between the Mutual Fund Dealers Association of Canada (“MFDA”) and Kenneth Rattenbury pursuant to section 24.4 of MFDA By-law No. 1. Both Ms. Boyd for the MFDA and Mr. Rattenbury in person agreed that the Panel was properly appointed and constituted and possessed full authority to carry out its function.

2. The Hearing Panel had met on August 17, 2012, minus Mr. Kloepfer who was unable to participate that date, by teleconference as authorized by MFDA By-laws, with appearances by Ms. Boyd and Mr. Rattenbury. On that first occasion also it was agreed that the Panel was properly constituted and authorized. The Notice of Hearing with Proof of Service were received in evidence, as was the Reply, completed and filed by Mr. Rattenbury in accordance with MFDA By-laws. By consent of the Parties, the Hearing was adjourned to October 17, 2012, in Edmonton, Alberta.

3. At the continued Hearing on October 17, 2012, the Panel received in evidence the Notice of Settlement Hearing and its Order of August 17, 2012 both fixing October 17, 2012 at Edmonton, Alberta, as the date and place of consideration of the Settlement Agreement.

4. As the original Notice of Hearing contained an extraneous sentence in paragraph 4, upon motion by Ms. Boyd, consented to by Mr. Rattenbury, the Panel directed that the Notice of Hearing be amended by removal of the last sentence of said paragraph 4.

5. At the outset of the continued Hearing, upon motion by Ms. Boyd, again consented to by Mr. Rattenbury, the Panel directed that the proceedings be conducted *in camera* and so ordered. The Panel then received in evidence the Settlement Agreement entered into between the MFDA and Mr. Rattenbury on September 15, 2012, which contained the following statement of agreed facts.

#### **Agreed Facts**

6. At all material times, the Respondent was the President and a shareholder of Rattenbury

Financial Management Inc. (“RFM”), a Member of the MFDA located in Edmonton, Alberta.

7. The Respondent was registered in Alberta as an Officer (Trading) of RFM from March 14, 2003, and as the Ultimate Designated Person, Chief Compliance Officer and a Director of RFM from September 28, 2009 until October 28, 2011.

8. RFM became a Member of the MFDA on February 8, 2002 and was registered in Alberta and British Columbia. RFM resigned its membership in the MFDA effective October 28, 2011.

9. Since November 1, 2011, following the resignation of RFM, the Respondent has been registered as a mutual fund salesperson with FundEX Investments Inc., a Member of the MFDA.

### **MFDA Compliance Examination 2010**

10. Between November 22, 2010 and December 1, 2010, MFDA Compliance Staff attended at RFM’s head office in Edmonton and a sub-branch located in Grande Prairie, Alberta to conduct a compliance examination.

11. During the on-site examination of RFM, MFDA Compliance Staff found a total of 63 pre-signed trade instruction forms in the files for the accounts of 10 clients serviced by the Respondent. The pre-signed forms were photocopies of original blank trade instruction forms that had been signed by the clients.

12. The pre-signed forms consisted of Investment Order forms, which included a section to allow for the updating of a client’s Know-Your-Client (“KYC”) information, and the Redemption Request forms.

13. MFDA Compliance Staff found evidence that the Respondent had used the photocopies of the pre-signed forms to execute trades in the clients’ accounts.

14. MFDA Compliance Staff found email correspondence dated May 10, 2010 from the Respondent to clients NH and PH requesting that the clients sign blank trade instruction forms that the Respondent could use to process trades in their accounts at a later date.

15. On October 12, 2011, the Respondent was interviewed by MFDA Staff Investigators. The Respondent admitted that he had used the photocopies of the blank pre-signed forms to execute trades in the clients' accounts. The Respondent stated that all of the trades were processed pursuant to the clients' instructions following discussions with the clients. In some instances, the Respondent was able to produce copies of emails from the clients authorizing the trades in their accounts that the Respondent had subsequently carried out using the pre-signed forms.

16. None of the clients have filed a complaint concerning the pre-signed forms or indicated to MFDA Staff that trades were processed in their accounts without their knowledge or instructions. MFDA Staff did not find any evidence of unauthorized or discretionary trading in the clients' accounts.

17. By engaging in the conduct described above, the Respondent failed to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1(b).

### **Mitigating Factors**

18. The Respondent has not previously been subject to MFDA disciplinary proceedings.

19. The Respondent has cooperated with MFDA Staff's investigation into his conduct.

### **The Allegation**

20. Between August 26, 2004 and November 18, 2010, the Respondent maintained and used 63 photocopies of trade instruction form signed by clients in blank to process trades in the accounts of 10 clients, thereby failing to observe high standards of ethics and conduct in the transaction of business, contrary to MDA Rule 2.1.1(b).

21. In response, Mr. Rattenbury admitted that he maintained the pre-signed forms and that it was wrong for him to do so, but explained that he did so only as a convenience to his clients themselves. This is confirmed by the fact that MFDA Staff did not discover any unauthorized

trades or client complaints.

22. On behalf of the MFDA, Ms. Boyd submitted that the terms of the Settlement Agreement, particularly with respect to liability and penalty, were reasonable and appropriate to the conduct and circumstances outlined. Mr. Rattenbury advised the Panel that he accepted the submission as made, took no issue with any portion of it, and wished to make no further submission on his own behalf. The Panel then retired to consider the Settlement Agreement as required by section 24.4 of MFDA By-law No. 1.

23. Upon reconvening, the Panel advised that it had accepted the Settlement Agreement as provided in section 24.4.3(a) of MFDA By-law No. 1. Thereupon, upon motion by Ms. Boyd and consented to by Mr. Rattenbury, it was ordered that the *in camera* direction be now set aside, that the proceedings be continued in public, and that the Settlement Agreement be entered in evidence as a full exhibit with the effect that it become available to the public.

24. It is the usually governing principle that a settlement entered into by competing litigants will seldom fail to be approved by a presiding tribunal. It is almost universally accepted that such litigants are far more able to identify and protect their respective interests than a third party. Usually, however, the litigants are represented by counsel and the tribunal can have confidence that they were well advised and truly cognizant of the issues and thus need concern itself only with the public interest.

25. Here Mr. Rattenbury was without counsel which limits the application of the foregoing principle. The Panel was careful to query Mr. Rattenbury whether he to any degree felt he had been disadvantaged by the lack of counsel or had any concern that in his negotiations with counsel for the MFDA his interests might have received less than due consideration. He assured us that he had no such concerns, fully believed that he had been treated fairly and equitably by counsel to the MFDA, and that he was entirely satisfied with the terms of the Settlement Agreement. As Mr. Rattenbury is an experienced and sophisticated businessman and had been an Approved Person of MFDA Members for some many years, the Panel accepted his position.

26. The Settlement Agreement provides the following terms by way of penalty:

The Respondent agrees to the following terms of settlement:

(a) the Respondent shall pay a fine in the amount of \$6,250, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

(b) the Respondent shall write or re-write and pass an appropriate industry course acceptable by MFDA Staff within 6 months of the date of the Order in this matter, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

(c) the Respondent shall pay costs in the amount of \$2,500, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

(d) the Respondent shall in the future comply with all MFDA By-laws, Rules and Policies and all applicable securities legislation and regulations made thereunder, including MFDA Rule 2.1.1; and

(e) the Respondent will attend in person on the date set for the Settlement Hearing

27. Ms. Boyd for the MFDA referred us to a number of criteria which have been employed in testing the appropriateness of the penalty terms of settlement agreements:

(a) the seriousness of the allegations proved against the Respondent;

(b) the Respondent's past conduct, including proper sanctions;

(c) the Respondent's experience and level of activity in the capital markets;

(d) whether the Respondent recognizes the seriousness of the improper activity;

(e) the harm suffered by investors as a result of the Respondent's activities;

(f) the benefits received by the Respondent as a result of the improper activity;

(g) the risk to investors and the capital markets in the jurisdiction were the Respondent to continue to operate in the capital markets in the jurisdiction;

(h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;

(i) the need to deter not only those involved in the case being considered but also any others who participate in the capital markets from engaging in similar improper activity;

(j) the need to alert others to consequences of inappropriate activities to those who are permitted to participate in capital markets; and

(k) previous decisions made in similar circumstances.

28. These criteria are similar to and, in this case at least, not materially different from criteria somewhat differently phrased and also recognized by Hearing Panels considering settlement agreements. We have no hesitation in adopting the criteria submitted to us as appropriate to the Settlement Agreement before us and declaring that we find the said Agreement as meeting the principles enunciated.

29. The Panel was also referred to the MFDA Penalty Guidelines, a compilation of penalty terms taken from the decisions of earlier Hearing Panels. The Guidelines carry no official sanction but are useful in identifying the type and range of penalties that have been found to be appropriate in other cases. The Panel notes that the penalties set out in the Settlement Agreement are well within the range disclosed by the Guidelines and also that they provide some assurance that Mr. Rattenbury, although unrepresented by counsel, has received fair and equitable treatment in the circumstances.

30. The Panel noted that no client had suffered loss as a result of Mr. Rattenbury's misconduct, or had complained, and that no particular financial benefit had been taken therefrom. Also, Mr. Rattenbury had truly cooperated with the MFDA investigation, had admitted his transgression, and was entirely contrite. Accordingly, the Panel concluded that the Settlement Agreement is fair, reasonable and appropriate, and we accepted it.

31. At the conclusion of our hearing on October 17, 2012, we issued the following order:

**ORDER**

**WHEREAS** on September 26, 2012, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Kenneth Rattenbury (the “Respondent”):

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated September 15, 2012, (the “Settlement Agreement”), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

**AND WHEREAS** the Hearing Panel is of the opinion that between August 26, 2004 and November 18, 2010, the Respondent maintained and used 63 photocopies of trade instruction forms signed by clients in blank to process trades in the accounts of 10 clients, thereby failing to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1(b);

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

1. If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*;
2. The Respondent shall pay a fine in the amount of \$6,250 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

3. The Respondent shall write or re-write and pass an appropriate industry course acceptable to MFDA Staff within 6 months of the date of the Order in this matter, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
4. The Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
5. The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies and all applicable securities, legislation and regulations made thereunder, including MFDA Rule 2.1.1.

**DATED** this 27<sup>th</sup> day of November, 2012.

“Garrett Wilson”

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Garrett Wilson, Q.C.,  
Chair

“Patricia M. Kloepfer”

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Patricia M. Kloepfer,  
Industry Representative

“Greg Wiebe”

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Greg Wiebe,  
Industry Representative