

Re White

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rules

and

Michael Patrick White

2025 CIRO 04

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: October 28, 2024 in Toronto, Ontario via videoconference

Decision: January 23, 2025

Hearing Panel:

John A. Campion, Chair, Daniel Iggers and Peter Gribbin

Appearances:

Marie Abraham, Senior Enforcement Counsel

Charles Gibson and Lucas Cutler, for Michael Patrick White

Michael Patrick White (present)

DECISION ON PENALTY

PART I – Introduction

(i) Hearing on Penalty

[1] In its decision on the merits issued on August 12, 2024, this Panel found that the Respondent Michael Patrick White (“Mr. White” or the “Respondent”) failed to use due diligence to ensure certain investment recommendations were suitable for two clients, Mr. RJ and Mrs. FJ (the “Js”), contrary to Rule 1300.1(q) of the Dealer Member Rules (“Rules”) of the Investment Industry Regulatory Organization (“IIROC”), a predecessor of the Canadian Regulatory Organization (“CIRO”).

PART II – Facts

(i) Mr. White’s Admissions in Context

[2] The decision on the merits that Mr. White had acted contrary to Rule 1300.1(q) of the Rules was rendered in part based on an admission made by Mr. White at the outset of the hearing concerning allegations made by CIRO Enforcement regarding the Js.

[3] The actual admission made by Mr. White was that “... he failed to use due diligence to ensure the investment recommendations were suitable ...” for the Js. Counsel for Mr. White, in this penalty hearing, emphasized that this was a narrow admission in the context of the totality of the allegations made in the proceeding.

[4] The proceeding included allegations regarding the Js and separate allegations regarding a different client, MS. The hearing on the merits lasted fifteen days, from September 2023 to March 2024.

[5] Mr. White gave evidence that prior to the Js engaging him in January 2018, the Js had invested and were invested in four risky cannabis stocks. Prior to January 2018, the Js had achieved large

monetary gains in stock investments which had been chosen by RJ. RJ indicated to Mr. White that he was interested in continuing the large gains achieved in the market prior to January 2018, knowing these investments were high risk and speculative. While the Js gave evidence to the contrary, the Panel found that their overall evidence lacked plausibility regarding their investor status. The Js were not inexperienced investors seeking to avoid high risk investments.

[6] On the advice of Mr. White, the Js invested in private placement investments in different companies during their two-year tenure with Mr. White. Each of these investments required execution of subscription agreements that each contained warnings that each investment was “high risk” and declaring that the investor could lose all of their money. The Js were required and did initial each of the agreements in several different places indicating their understandings that the investments were high risk and related warnings. While the Js said that they did not read these warnings, this evidence is implausible and was rejected by the Panel.

[7] The admission made by Mr. White regarding the Js that he should have advised the Js that their overall strategy was not suitable was accepted by the Panel. The Panel has found that the Js did read and understand the warnings contained in the private placement subscription agreements. These factual findings are significant in assessing penalty and analyzing the rationale for general deterrence.

[8] The Panel has accepted that Mr. White carried out due diligence for each of the investments that he recommended to the Js and that Mr. White explained to the Js what the investments were and that they were consistent with the Js investment objectives.

[9] The Panel accepts the submissions made by Mr. White’s counsel that the admission was limited to a failure to consider the investments recommended by him through a global lens, namely that the Js were retired, had a relatively small investment portfolio and should not be investing in high risk, aggressive investments in their portfolio. That is the limit of Mr. White’s admission.

(ii) Context with MS Allegations – Costs of Defence and Prosecutorial Discretion

[10] As indicated above, the merits hearing consisted of numerous allegations concerning the Js and a separate complainant, MS.

[11] The evidence at the hearing seeking to establish breach of Rule 1300.1(q) based on the allegations regarding MS was the most extensive part of the hearing. Outside of the admission made by Mr. White, CIRO Enforcement Staff did not prove the other allegations against Mr. White.

[12] Mr. White’s counsel informed the Panel that his clients’ legal costs to defend against the numerous allegations made on behalf of MS and the Js now amount to over \$100,000.00.

[13] As indicated above, the evidence led against Mr. White did not result in further negative findings against Mr. White.

[14] The Panel was urged by Mr. White’s counsel to take into account the lengthy and largely unsuccessful prosecution of Mr. White beyond his admission when assessing the appropriateness and quantum of the requested fine and order for disgorgement.

[15] The Panel was also asked to consider the fact that the prosecution made decisions to proceed against Mr. White after he had made his admission concerning the Js and after the allegations made by MS were compromised by the production of contemporaneous notes which corroborated Mr. White’s testimony and rendered the opposing testimony of MS not to be accepted by the Panel.

[16] The question is whether the length of the hearing and therefore the legal costs of the hearing to Mr. White should be taken into account when considering the decisions of the prosecution to proceed with the hearing after Mr. White’s admission and after the production of the notes made by Mr. White, which corroborated his testimony. Put differently, can the Panel consider how the prosecution exercised its discretion to proceed and how the hearing and evidence was to be developed by CIRO. As set out in our decision on the merits, the Panel rejects any review of prosecutorial discretion as a factor that can be considered regarding either liability or penalty. CIRO Enforcement Staff, its investigators and counsel must be free to prosecute the case without analysis of their discretion exercised in proceeding with a

matter.

(iii) Ability to Pay

[17] Mr. White's counsel led evidence on Mr. White's ability to pay the fine and order for disgorgement. He submitted that Mr. White does not have the ability to pay either the fine or the order for disgorgement sought by Enforcement Staff.

[18] Counsel for Mr. White led evidence that he had received payments under an insurance policy starting in 2020 and ending in October 2024 when Mr. White turned 65.

[19] Mr. White's counsel submitted that Mr. White will now only receive CPP and OAP benefits from the Federal government programmes in the amount of \$3,000.00 per month.

[20] While the Panel is informed that Mr. White will be free to apply for re-registration as an investment advisor, there is no evidence that he could be successful, and he has indicated that he will not re-apply.

[21] Mr. White filed a statutory declaration indicating that he has a negative net worth in spite of owning 50% of a residence in Ottawa with his wife. Counsel for CIRO submitted that there was a mismatch in the analysis of asset value and expenses. The asset value is 50% but the expenses were 100% of the total expenses incurred by the two owners, Mr. White and his wife. Without analyzing the statutory declaration in detail, the Panel observes that it is likely that Mr. White has some positive asset value in the family residence from which he could be able to pay the fine and disgorgement amounts sought by CIRO.

[22] The Panel however accepts that Mr. White has no real ability to pay the fine and disgorgement amounts from his expected income of \$3,000.00 per month.

(iv) Mitigating and Aggravating Factors

Enforcement Submissions

[23] CIRO Enforcement Staff accepts that Mr. White's admission on the first day of the liability hearing concerning the investment recommendations made to the Js creates a mitigating factor in favour of Mr. White.

[24] On the other hand, CIRO Enforcement Staff takes the position that the fact that the Js were retired and therefore have less time than other investors to recoup financial losses presents an aggravating factor against Mr. White.

[25] While the Panel rejects CIRO Enforcement Staff's position that the Js had only an average investment knowledge, it does accept the characterization of the mitigating and aggravating factors identified by CIRO Enforcement Staff above.

Respondent Submissions

[26] In making his submissions concerning mitigating factors affecting the fine and the request for disgorgement, counsel for Mr. White emphasized the following factors in favour of his submissions that no financial penalties should be imposed on Mr. White, as follows:

- (a) the liability decision was entirely favourable for Mr. White regarding the allegations regarding MS and the issues raised by the Js other than his early admission of liability;
- (b) the Js brought a high-risk portfolio to Mr. White and continued their request for high-risk investments and objectives during their two-year relationship with Mr. White;
- (c) Mr. White made his admission on the first day of the liability hearing potentially reducing the length and complexity of the case;
- (d) the entire prosecution has taken a huge toll on Mr. White's health. Counsel admitted that Mr. White's health issues had occurred as early as 2016 and recurred in January 2020. In any event, Mr. White has had his professional life on hold for four years.

PART III – Sanctions Sought

[27] Enforcement Staff sought the following sanctions under Section 8210 of the Investment Dealer and Partially Consolidated Rules (“IDPC Rules”) against Mr. White: (i) an order for disgorgement in the amount of \$10,493.52, and (ii) a fine of \$15,000.

[28] Enforcement Staff did not seek prohibition or suspension of Mr. White’s approval for registration, and did not seek their costs of prosecution.

PART IV – Submissions on Sanctions

Enforcement Submissions

(i) IDPC Rules and Guidelines

[29] CIRO Enforcement Counsel submitted and the Panel accepts that the goals in assessing sanctions are to protect investors and foster a fair and efficient capital market in which the public can have confidence.

[30] Sanctions imposed must be proportionate and reasonable in all of the circumstances.

[31] The Panel’s power to impose sanctions are derived from Section 8210 of the IDPC Rules:

8210. Sanctions for Regulated Persons other than Dealer Members

If after a hearing, a hearing panel finds that an Approved Person, a non-Dealer Member user or subscriber of a Marketplace for which the Corporation is the regulation services provider or an employee, partner, director or officer of such a user or subscriber has contravened Corporation requirements, securities laws, or other requirement relating to trading or advising in respect of securities, futures contracts, or derivatives, the hearing panel may impose on such person one or more of the following sanctions:

- (i) a reprimand,
- (ii) disgorgement of any amount obtained, including any loss avoided, directly or indirectly, as a result of the contravention,
- (iii) a fine not exceeding the greater of:
 - (a) \$5,000,000 for each contravention, and
 - (b) an amount equal to three times the profit made or loss avoided by the person, directly or indirectly, as a result of the contravention,
- (iv) suspension of the person’s approval or any right or privilege associated with such approval, including access to a Marketplace, for any period of time and on any terms and conditions,
- (v) imposition of any terms or conditions on the person’s continued approval or continued access to a Marketplace,
- (vi) prohibition of approval in any capacity, for any period of time, including access to a Marketplace,
- (vii) revocation of approval,
- (viii) a permanent bar to approval in any capacity or to access to a Marketplace,
- (ix) a permanent bar to employment in any capacity by a Regulated Person, and

(x) any other sanction determined to be appropriate under the circumstances.

[32] Additionally, CIRO Enforcement set out Sanction Guidelines that are instructive to panels when assessing sanctions. Principle 1 of the Sanction Guidelines states as follows:

1. Sanctions are preventative in nature and should protect the public, strengthen market integrity and improve business standards

The purpose of sanctions in a regulatory proceeding is to protect the public interest by deterring future conduct that may harm the capital markets. In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence) and to discourage others from engaging in similar misconduct (general deterrence).

When considering specific and general deterrence in the imposition of sanctions, consideration should be given to ensuring that the sanctions are proportionate, bearing in mind the extent and seriousness of the misconduct and the impact that the sanctions will have on the respondent. Consideration should be given to the size of the Dealer Member including the firm's financial resources, nature of the firm's business and the number of individuals associated with the firm. Similarly, with respect to an individual respondent, consideration may be given to a bona fide inability to pay when imposing a fine (see General Principle No. 5).

Deterrence can be achieved if a sanction strikes an appropriate balance by addressing a Regulated Person's specific misconduct but is also in line with industry expectations. Any sanction should be similar to sanctions imposed on respondents for similar contraventions in similar circumstances. The sanction should be reduced or increased depending on the relevant mitigating and aggravating factors.

Dealer Members and regulated individuals who breach their regulatory obligations should expect that they will be held accountable through enforcement action. Without effective deterrence, inappropriate conduct may continue and public confidence in the securities industry and the fairness of the capital markets may be seriously damaged. An appropriate sanction should achieve both specific and general deterrence and thereby strengthen market integrity and improve overall business standards and practices in the securities industry.

[CIRO Sanction Guidelines, Part I, Principle 1](#)

[33] Principle 1 of the Sanction Guidelines states that the purpose of the sanctions is to impose specific deterrence and general deterrence. Principle 1 indicates that when imposing sanctions, the panel should "bear in mind the extent and seriousness of the misconduct and the impact that the sanctions will have on the respondent" and "with respect to an individual respondent, consideration may be given to a *bona fide* inability to pay when imposing a fine". Principle 1 emphasizes that "the sanction should be reduced or increased depending on the relevant mitigating and aggravating factors".

[CIRO Sanction Guidelines, Part I, Principles 1 and 5](#)

[34] Enforcement Staff brought the decision in *Re Mauro* to the Panel's attention and noted the proposition that "the sanction should be proportionate to the respondent's misconduct, similar to sanctions imposed for similar contraventions in similar circumstances and adjusted for relevant mitigating and aggravating factors".

Re Mauro 2023 CIRO 11 at para 24

[35] With regard to an order for disgorgement, Enforcement Staff brought Principle 2 of the Sanction Guidelines to the Panel's attention noting that "*the purpose of disgorgement is to deter persons from contravening CIRO requirements by removing any incentive to engage in misconduct or non-compliance*".

[CIRO Sanction Guidelines, Part I, Principle 2](#)

Respondent Submissions

[36] Counsel for Mr. White also drew the Panel's attention to CIRO Sanction Guidelines for assessing sanctions.

[37] Counsel for Mr. White noted that the Sanction Guidelines state: "The determination of the appropriate action is discretionary and depends on the facts of the particular case." The Sanction Guidelines are not binding and hearing panels retain discretion to make appropriate sanctions. The Sanction Guidelines are intended to provide a summary of the principles and key factors upon which that discretion may be exercised consistently and fairly.

Re Cartaway Resources Corp. 2004 SCC 26

[38] In *Re Giroux-Garneau*, an IIROC panel stated at paragraph 22 that every hearing panel "must use its own discretion to impose a sanction, to give proportional weight to the goal of general deterrence by ensuring that, in aggregate, the imposed disciplinary measures remain reasonable".

Re Giroux-Garneau 2016 IIROC 46 at para 22

[39] Counsel referred this Panel to a decision in *Re Husebye* in which the panel stated at paragraph 12:

Deterrence. It is clear that deterrence is a factor in setting an appropriate penalty [...]. But a tribunal - whether a securities commissioner or an IIROC hearing panel - has to be careful that it does not give deterrence undue weight. As the Supreme Court of Canada stated in *Cartaway* (at para. 64):

"The weight given to general deterrence will vary from case to case and is a matter within the discretion of the Commission. Protecting the public interest will require a different remedial emphasis according to the circumstances. Courts should review the order globally to determine whether it is reasonable. No one factor should be considered in isolation because to do so would skew the textured and nuanced evaluation conducted by the Commission in crafting an order in the public interest. Nevertheless, unreasonable weight given to a particular factor, including general deterrence, will render the order itself unreasonable."

Re Husebye 2016 IIROC 21 at para 12

[40] Counsel for Mr. White drew attention to the decision in *Re Sutton*, which states at paragraphs 26 and 27:

We do not believe that it is appropriate to impose a permanent ban when the only remaining basis upon which it is sought is general deterrence. We are in some doubt whether such a penalty would ever be appropriate when the purpose is only to deter others. The excerpt from Justice LeBell's judgment in *Cartaway* quoted in paragraph 7 above seems to suggest that to rely on a single factor, such as general deterrence, would render the sanction order unreasonable. However, we do not have to base our decision on that point as all the facts and circumstances in this case, taken together, simply do not support a permanent ban at all.

[...] Mr. Sutton had made an honest mistake. An honest mistake alone does not justify a suspension and, in our review, it does not alone create a need for a general deterrent.

Re Sutton 2018 IIROC 03 at paras 26 and 27

[41] Counsel for Mr. White further urged that the Respondent had no effective means to pay any sanction. Counsel brought the decision in *Re Newbury* to the Panel's attention, which indicates that monetary penalties tend to be significantly reduced or waived when respondents are impecunious. The decision in that case noted that an inability to pay is not an overriding and predominant factor in assessing financial penalties, but it should be taken into consideration.

Re Newbury 2019 IIROC 07 at para 18

[42] Counsel for Mr. White urged that the significant physical, mental and monetary hardships suffered by Mr. White to date are sufficient to satisfy the principles of general and specific deterrence.

[43] Counsel for Mr. White brought the decision in *Re Heakes* to the Panel's attention noting that the panel in that case concluded that challenging personal circumstances may be considered and that the IIROC Sanction Guidelines specifically provided that inability to pay is a relevant consideration in determining the appropriate financial sanction to be imposed upon a respondent. In the case cited, the respondent presented evidence relating to his health concerns and present financial circumstances, leading to a lower than normal settlement of the penalties.

Re Heakes 2019 IIROC 9 at para 10

[44] Counsel for Mr. White produced a full and final release entered into between Mr. White's brokerage firm, Echelon Wealth Partners Inc. and the Js executed on June 9, 2021. The release indicates that all issues regarding losses made by the Js be released. While the losses suffered by the Js were argued by CIRO to be \$207,000.00, the negotiated amount paid to the Js by Echelon was \$77,560.00. The Panel recognizes that the settlement amount was a negotiated figure which took into account the strengths and weaknesses of both parties' case regarding the overall losses suffered by the Js.

[45] The question is whether the payment made by Echelon affects the amount of losses suffered by the Js due to Mr. White's advice or not and whether these losses as repaid should be a mitigating factor in the fixing of sanctions.

[46] Counsel for CIRO urges that the payment of losses by Echelon should have no impact on the sanctions analysis for Mr. White. Counsel urges the losses were in the amount of \$207,000.

[47] Counsel for Mr. White urges that the payment by Echelon should be taken into account in assessing the sanctions sought against Mr. White.

[48] Counsel for Mr. White further urges that the sanction against Mr. White should be a three-month suspension of his approval for registration and that this suspension should satisfy the obligation to protect the public by the regulator. Based on this request, Mr. White's counsel submits that no monetary penalty should be imposed.

[49] As set out above, counsel for Mr. White also urges that CIRO's lack of success in proving the contested allegations against Mr. White, carrying with it the high cost of defence of over \$100,000 after a fifteen-day hearing should be taken into consideration when considering financial penalties. Counsel for Mr. White urges that any financial penalty would be punitive for Mr. White, particularly after he completely cooperated with CIRO's investigation and made an admission at the outset of the hearing. Finally, Mr. White's counsel noted that if this were a non-regulatory civil proceeding, Mr. White would have been entitled to legal costs having regard to his substantial success in the hearing.

[50] Finally, and in addition to the mitigating factors, Mr. White's counsel reminded the Panel that Mr. White has faced no prior disciplinary proceedings or complaints in over 34 years as a Registered Representative.

Part V – Inability to Pay

[51] When determining the sanction(s) to be imposed, CIRO Enforcement Counsel drew Principle 5 of the Sanction Guidelines to the attention of the Panel. Principle 5 of the Guidelines which state that:

5. A respondent's ability to pay may be a relevant consideration when imposing a monetary sanction or costs

Inability to pay is a relevant consideration in determining the appropriate financial sanctions to be imposed on a respondent. It should not be considered a predominant or determining factor, but it may be relevant depending on the circumstances and nature of the misconduct, and consideration of other applicable factors such as general and specific deterrence and the need to ensure public confidence in the disciplinary process.

The burden is on the respondent to raise the issue and provide evidence of financial hardship. Evidence of financial hardship should be in the form of sworn affidavits or declarations, along with standard or commonly accepted documents, such as tax returns, bank, and investment account statements, audited financial statements, or other externally verified financial statements.

[CIRO Sanction Guidelines, Part I, Principle 5](#)

Part VI – Disgorgement

Enforcement Submissions

[52] CIRO Enforcement Counsel brought Principle 2 of the Guidelines regarding disgorgement to the attention of the Panel. Principle 2 of the Guidelines states:

2. Sanctions should ensure that a respondent does not financially benefit as a result of the misconduct

As a general principle, wrong-doers should not benefit from their wrongdoing. Accordingly, in cases where the respondent benefitted financially as a result of the misconduct, the sanction should require disgorgement of some or all of any amounts obtained, including any losses avoided, directly or indirectly, as a result of the contravention. The purpose of disgorgement is to deter persons from contravening CIRO requirements by removing any incentive to engage in misconduct or non-compliance. Where applicable, disgorgement should be ordered in addition to any fine.

[CIRO Sanction Guidelines, Part I, Principle 2](#)

[53] CIRO Enforcement Counsel submitted that disgorgement should not be affected by the ability to pay and that the fact that the Js recovered what counsel submit was “partial compensation” does not reduce or eliminate a disgorgement order. In *Re Shields* the Panel held:

The purpose of disgorgement is specifically to deter a respondent and generally to deter others from engaging in similar contraventions by ensuring that such misconduct, once detected, cannot be profitable. Although its purpose is thus preventive, and not compensatory, if the respondent returns improperly obtained funds or compensates clients for losses caused by the contravention, the amounts so paid necessarily reduce the benefits obtained and may fairly be reflected in a lesser or no disgorgement order. But when a person other than the respondent compensates the clients, a reduction is not appropriate, as the benefit obtained by the respondent has not been reduced.

Re Shields 2021 IIROC 31 at para 32

[54] In *Re Sampson*, Enforcement Counsel drew the Panel’s attention to the proposition that the Registered Representative should retain none of the financial benefit obtained despite ability to pay.

Re Sampson 2020 IIROC 25

Respondent Submissions

[55] As set out above, counsel for Mr. White urged that there should be a strong recognition that Mr. White has limited if any ability to pay a fine or disgorgement and that in lieu of such monetary penalties, Mr. White’s registration should be suspended for three months.

Part VII – Fine

Enforcement Submissions

Re White 2025 CIRO 04

(i) Amount of the Fine

[56] Enforcement Counsel submitted that a fine in the amount of \$15,000 be imposed, submitting that “the quantum of the fine sought is made with appropriate regard to the late admission of the Respondent’s liability on the first day of the hearing. The quantum is also made having due regard to the Respondent’s age, that he has remained on disability (since post-January 2020) and has not been registered in the securities industry since January 2020”.

[57] The applicable rule to be considered in assessing and imposing a fine as part of the sanctions is IDPC Rule 8210(1) that sets the maximum fine:

(iii) a fine not exceeding the greater of:

- a) \$5,000,000 for each contravention, and
- b) an amount equal to three times the profit made or loss avoided by the person, directly or indirectly, as a result of the contravention.

[58] A fine is sought for the Respondent’s misconduct in that he did not exercise the required due diligence in making suitable investment recommendations to his retired clients, the Js.

[59] The Respondent’s lack of due diligence had a significant financial impact on the Js, especially when considering their inability to recoup the losses due to their age.

[60] If the Hearing Panel does not order a fine in addition to a disgorgement order, the principles of general and specific deterrence are not met. If the only sanction on an investment advisor is to return the financial benefit made in commissions and fees, the misconduct becomes the mere “*cost of doing business*”.

[61] To protect the public interest in having safe and efficient capital markets, imposing a fine is protective and preventative. General deterrence is an appropriate consideration to prevent other investment advisors from recommending investments unsuitable to their clients.

Re Sammy 2016 IIROC 16

[62] Inability to pay is a relevant consideration in determining the appropriate financial sanctions to be imposed on a respondent. It should not be considered a predominant or determining factor, but it may be relevant depending on the circumstances and nature of the misconduct, and consideration of other applicable factors such as general and specific deterrence and the need to ensure public confidence in the disciplinary process.

[63] The burden is on the respondent to raise the issue and provide evidence of financial hardship. Evidence of financial hardship should be in the form of sworn affidavits or declarations, along with standard or commonly accepted documents, such as tax returns, bank, and investment account statements, audited financial statements, or other externally verified financial statements.

[64] Evidence of inability to pay could result in the reduction or waiver of a fine, and/or in the imposition of an installment payment plan. In cases in which a hearing panel reduces or waives a fine based on a bona fide inability to pay, the written decision should indicate the basis for doing this.

[CIRO Sanction Guidelines, Part I, Principle 5](#)

[65] Enforcement Counsel draws the Panel’s attention to the reasons for decision in *Re Suppal*:

As regards the imposition of a fine, IIROC Counsel has recommended a global fine of \$150,000. The Respondent has submitted that he has no income to pay any fine. While the Respondent’s income may make it difficult to pay a fine, an equally relevant factor is whether the Respondent has assets to pay a fine. No information was provided by the Respondent on that issue. We note that a fine is deductible as a business expense and that the Guidelines provide monetary fines serve to express general condemnation of the specific misconduct and generally should increase with the severity of the specific misconduct.

[66] Enforcement Counsel raised concerns about the quality of the evidence raised by Mr. White regarding ability to pay. The Panel found the evidence adequate.

Respondent Submissions

[67] Counsel for Mr. White made general submissions, summarized in paragraphs 36 to 50 above, which are relevant to the analysis of both the fine and disgorgement.

(ii) Mitigating or Aggravating Factors

Enforcement Submissions

[68] Enforcement Counsel agreed that Mr. White's admission of liability made regarding the investment advice to the Js on the first day of the liability hearing was a mitigating factor.

[69] Enforcement Counsel emphasized that an aggravating factor was the fact that the Js were retired with less time to recoup the losses.

Respondent Submissions

[70] Counsel for Mr. White made general submissions, summarized in paragraphs 36 to 50 above, which are relevant to the analysis of both the fine and disgorgement.

PART VIII – Conclusions Regarding Sanctions

[71] For the purposes of assessing the penalty against Mr. White on the facts of the matter before us, we note three things: Enforcement Staff seek (i) a fine in the amount of \$15,000, (ii) disgorgement in the amount of \$10,493.52, (iii) no order as to costs, and (iv) no prohibition or suspension of approval.

[72] The Panel notes the following relevant principles drawn from the IDPC Rules and Sanction Guidelines, and the case law discussed above:

- (a) Section 8210 of the IDPC Rules lists ten penalties that might be imposed including disgorgement and a fine;
- (b) under the Sanction Guidelines, Principle 1, the sanctions are: (i) preventative in nature and should protect the public, strengthen market integrity and improve business standards; (ii) specific and general deterrents should be considered when imposing sanctions; (iii) deterrence can be achieved if a sanction strikes an appropriate balance by addressing a Regulated Person's specific conduct but also in line with industry expectations; (iv) consideration may be given to a *bona fide* inability to pay when imposing a fine; (v) a sanction may be reduced or increased depending on relevant mitigating and aggravating circumstances;
- (c) the determination of an appropriate sanction is discretionary and depends on the facts of a particular case;
- (d) the Sanction Guidelines are intended to provide a summary of the principles and key factors upon which a discretion may be exercised consistently and fairly;
- (e) in considering general deterrence, the imposition of this disciplinary measure must remain reasonable. The weight given to general deterrence will vary from case to case and is within the discretion of the panel. Protecting the public interest will require a different remedial emphasis according to the circumstances.

[73] In applying the above stated principles and directions contained in the IDPC Rules, the Sanction Guidelines and the case law on the facts of this case, the Panel notes as follows:

- (a) the requests made by CIRO Enforcement Staff are broadly reasonable but require the exercise of some discretion having regard to the particular circumstances of Mr. White;
- (b) Mr. White does not have an ability to pay the fine or disgorgement amounts from his

- expected income of \$3,000 per month;
- (c) while there is some asset value in Mr. White's 50% ownership of the family residence, the Panel does not regard a payment from this asset to pay a fine or disgorgement a reasonable requirement;
 - (d) at the outset of the hearing, Mr. White made an admission concerning his advice to the Js. This led to the only finding of liability. The Panel decided that there was no other liability based on the complaints made on behalf of the Js and that there was no liability based on the allegations involving MS. Mr. White's counsel represented to the Panel that Mr. White's legal costs to defend the allegations now amount to over \$100,000. The legal costs add to the burden of Mr. White's ability to pay a fine or disgorgement. The legal costs in the unusual facts of this case are one of many factors to be considered in fixing the appropriate amount of a penalty;
 - (e) regarding the admission by Mr. White of some of the allegations regarding the Js, the essence of the admission is that he was not strong enough in his investment recommendations to avoid high-risk investments in the circumstances of their age and retirement status. The mitigating factor is that the Js brought a high-risk portfolio to Mr. White at the beginning of their two-year relationship and expressed a continuing interest in these high-risk stocks;
 - (f) dealing with the request for an amount for disgorgement in the amount of \$10,493.52, it is noted that the firm by which Mr. White was employed when he advised the Js, Echelon Wealth Partners Inc., negotiated a settlement with the Js in the amount of \$77,560, ameliorating or eliminating the actual losses suffered by the Js (as opposed to the actual losses indicated at \$207,421);
 - (g) Enforcement Staff sought a fine of \$15,000 in its application regarding penalty, submitting that the quantum of the fine is appropriate because of the late admission by Mr. White on the first day of the liability hearing, the age of Mr. White at 65, the fact that he has health issues and has not been registered in the securities industry since January 2020;
 - (h) counsel for Mr. White asked that in lieu of a fine or disgorgement, Mr. White's registration should be suspended for three months.

[74] In deciding the amount of the fine and disgorgement requested, the Panel emphasizes the following factors: (a) the present inability of Mr. White to pay these amounts and his highly limited future income prospects; (b) his age at 65 and low likelihood that he will return to the investment industry in which he spent his working life; (c) the admission made by Mr. White at the outset of the liability hearing and the success he achieved on the other allegations at the hearing; (d) the costs of defending himself and the settlement amount received by the Js were two of the several factors in the unusual circumstances of this prosecution in fixing the amounts of the fine and disgorgement; (f) the specific deterrence is satisfied by the heavy legal fees that Mr. White had to pay to defend himself against the allegations ; and (g) the goal of general deterrence is met by the same high cost of defence and the fact that the liability is based solely upon his admission made at the outset of the hearing.

[75] The Panel is mindful of the sensitivity of protecting the public, enforcing specific deterrents, enforcing general deterrents, and insisting upon a reasonable disgorgement amount in all the circumstances mentioned above. The Panel has concluded that all these important interests have been met in the order set out below.

[76] The Panel orders that Mr. White pay a fine of \$5,000 and a disgorgement amount of \$3,000.00.

[77] This has been a demanding hearing for all participants. The Panel wishes to express its appreciation for the outstanding and sympathetic work of Senior Enforcement Counsel, Staff Investigator, and counsel for Mr. White. Counsel and the Investigator conducted themselves in the highest tradition of the Profession to the larger benefit of their clients and the public.

DATED at Toronto, Ontario this 23rd day of January 2025.

“John A. Champion”

John A. Champion, Chair

“Daniel Iggers”

Daniel Iggers, Panel Member

“Peter Gribbin”

Peter Gribbin, Panel Member

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