

Re Jones

IN THE MATTER OF:

**The Dealer Member Rules of the
Investment Industry Regulatory Organization of Canada**

and

Catherine Deborah Jones

2014 IIROC 15

Investment Industry Regulatory Organization of Canada
Hearing Panel (Pacific District)

Heard: February 25, 2014

Decision: March 31, 2014

Hearing Panel:

The Honourable Thomas R. Braidwood, Mr. Chris Lay and Ms. Barbara Fraser

Appearances:

Mr. Paul Smith, Counsel for IIROC

Mr. R. Howarth, Counsel for Respondent, Catherine Deborah Jones

PENALTY

¶ 1 In our Decision and Reasons of December 16, 2013, we found that Catherine Deborah Jones (“Ms. Jones”) had violated four provisions of the IIROC Dealer Members Rules. They are as follows:

- (a) between March 2009 and March 2010, Ms. Jones engaged in discretionary trading in client SW’s accounts without first having the accounts approved and accepted as discretionary accounts, contrary to IIROC Dealer Member Rule 1300.4 and 1300.5;
- (b) between March 2009 and July 2010, Ms. Jones failed to ensure that the use of margin in client SW’s account was suitable for SW and in keeping with SW’s investment objectives and personal circumstances; contrary to IIROC Dealer Member Rule 1300.1(q);
- (c) between January 2009 and May 2010, Ms. Jones misrepresented the nature of certain solicited order by marking them as unsolicited; contrary to IIROC Dealer Member Rule 29.1; and
- (d) between September and November 2009, Ms. Jones breached her firm’s internal policy by communicating with SW regarding her account by way of an email address not approved by the firm, contrary to IIROC Dealer Member Rule 29.1.

¶ 2 Ms. Jones was also charged with a fifth provision having regard to providing misleading information to the Staff during the investigation, but that allegation was not proven.

¶ 3 The IIROC Staff has relied on IIROC’s Dealer Member Disciplinary Sanction Guidelines as providing guidance for determining the appropriate sanction in these circumstances. The Hearing Panel is not bound by the guidelines, but they form a useful analysis to consider the appropriate factors in order to reach the determination in the circumstances of this case.

MAIN CONCERNS WHEN DETERMINING AN APPROPRIATE PENALTY

¶ 4 As set out in *Re Derivative Services Inc.*, [2000] I.D.A.C.D. No. 26, at page 3, a Hearing Panel's main concerns in determining an appropriate penalty are:

- “1. protection of the investing public;
2. protection of the Investment Industry's Regulator Organization's membership
3. protection of the integrity of the Investment Industry's Regulator Organization's process;
4. protection of the integrity of the securities markets, and
5. prevention of a repetition of conduct of the type under consideration.”

¶ 5 The penalty imposed in a specific proceeding should reflect the Hearing Panel's assessment of the measures necessary in the specific case to accomplish these goals, ranging from a reprimand to an absolute bar, and may take into account the seriousness of the respondent's conduct with respect to specific and general deterrence.

CIRCUMSTANCES

¶ 6 The circumstances of course are set out in full in our Decision and Reasons of December 16, 2013, but a brief summary here may be useful.

Count One

¶ 7 This refers to discretionary trading and in a few words, Ms. Jones from a period of June 1 to July 31, 2009, engaged in unauthorized trades while her client was engaged in an acting course in New York. Then from a period of August 14 to December 30, 2009, while her client was travelling abroad in Ireland, China and India, Ms. Jones made unauthorized trades again during her client's absence.

Count Two

¶ 8 Here Ms. Jones failed to ensure that the use of a margin account was suitable for the client's investment objectives and personal circumstances.

¶ 9 In our Decision, in paragraphs 52 and 53, we wrote as follows:

“52. We are further of the opinion that Ms. Jones knew that she was exceeding the permissible limits in the use of margin accounts by reason of various factors disclosed in a series of emails. Without analysing each of these emails separately, the compliance department from time to time would indicate to Ms. Jones that the accounts were under-margined. Notwithstanding this need for compliance on behalf of Ms. Jones, there was no evidence in any of the emails that there was a need to cover margin. SW testified that there was never a mention to her by Ms. Jones of the need for more cash to cover a margin.

53. We agree with the submission of Mr. Smith, counsel for IIROC, where he argued as follows:

"So notwithstanding that we had all those e-mails between Ms. Jones and her compliance department, talking about the account being overmargined, about margin calls, about having to sell securities to get cash into the account, while that entire dialogue was going on there was also separate dialogue going on between Ms. Jones and the client, and it was never mentioned to her – never mentioned to her – which supports SW's evidence that margin was never explained to her and confirms our submission that she didn't know that "margin" meant leveraging money to buy more investments. And I would suggest that nowhere is that more the case than in those e-mails that SW sent to Ms. Jones in the spring of 2010 when she's doing her taxes and she asks, what does this mean, "interest paid by you"? She ask that twice and she never gets a response.""

Count Three

¶ 10 This count refers to misrepresenting the nature of certain solicited orders by marking them as unsolicited. With reference to this in our Decision at paragraph 68, we wrote as follows:

“68. Mr. Chan produced for the assistance of the tribunal, a document listing some 68 trades, commencing on January 7, 2009 through to June 24, 2010 which were marked unsolicited. Mr. Smith relies on approximately 50 of these trades in order to show that at least on 50 occasions, trades were marked incorrectly by the designation unsolicited when indeed they were solicited by Ms. Jones. Various examples were discussed by counsel in his submission, one of which was a trade on September 16, which was marked unsolicited. There are emails at the time in order to communicate with SW and it is apparent from the emails that there was no mention whatsoever of the trade that took place on September 16. As described above, during these trades, SW was overseas.”

Count Four

¶ 11 This count referred to breaching Ms. Jones’ firm internal policy by communicating with her client regarding her account by way of an email address not approved by the firm.

¶ 12 With reference to this count, in our Decision at paragraphs 73 and 74, we wrote as follows:

“73. Ms. Jones admitted to us that she had breached corporate policy with reference to the emails mentioned in Count Four. However, in the submission she mentioned (1) that she never did it again and further (2) that business was not actually discussed in the emails.

74. Both of these statements are untrue. Three weeks before leaving the firm in September 2010, other such emails were sent to SW. Further, in her email of October 29, 2009 to SW, she enclosed certain pro-formas with the email she sent concerning profit and loss statements.”

KEY CONSIDERATIONS WHEN DETERMINING SANCTIONS

Harm To Clients, Employer and/or the Securities Market

¶ 13 It can be said that there was financial harm to the client, however the client was compensated by the firm. There was certainly emotional stress to the client. The harm to the firm resulted from the compensation provided to the client due to the wrongdoing of Ms. Jones. There was no direct harm to the Market other than the client is unlikely to make much of a foray into the securities end of the Market in the future.

Blameworthiness

¶ 14 We agree that a certain amount of responsibility should be accepted by the client as she had ample availability of outside assistance such as her business/life coach, husband, and other investment brokers as well as having substantial real estate investments, however that does not negate the conduct of Ms. Jones and therefore we concur that she primarily is to blame.

Degree of Participation

¶ 15 There being no other party involved, and the client being unsophisticated, Ms. Jones was the only participant in the misconduct.

Extent to which the Respondent was Enriched by the Misconduct

¶ 16 Ms. Jones would have received her regular portion of the commission charged to the client, however we do not have an amount, nor was this a factor raised by either counsel.

Prior Disciplinary Record

¶ 17 It was contended that we should consider a prior determination that Ms. Jones had in the past been guilty of improper conduct resulting in a Settlement Agreement. This involved two allegations, (1) that in November 2007, she offered to guarantee an initial investment made by her client; and (2) that in March 2008 and June 2008, she affected discretionary orders for the account of a client without having prior written authorization.

¶ 18 We are mindful that these circumstances do not amount to what is called a prior conviction because the Notice of Hearing in that case was dated October 7, 2011, and the penalty was not imposed until December 9, 2011.

¶ 19 The conduct here under consideration took place in the years 2009 and 2011. Accordingly, it cannot be said that the prior case constitutes a prior penalty such that it can be said that Ms. Jones was not deterred by that prior determination.

Acceptance of Responsibilities, Acknowledgement of Misconduct and Remorse

¶ 20 Counsel for Ms. Jones indicated that she is very remorseful. She admitted to one of the allegations in the Notice of Hearing. It is difficult to determine the extent of these factors in a contested Hearing. As Ms. Jones did not testify, did not call any practical witnesses, nor provide much in the way of documentation, we are unsure of the extent of her remorse and acknowledgement.

Credit For Cooperation

¶ 21 Ms. Jones cooperated with requests for interviews and documents, and attended the Hearing and Penalty Hearing.

Voluntary Rehabilitative Efforts

¶ 22 There do not appear to be any voluntary efforts over and above the terms directed by the last discipline which was a period of close supervision and the successful completion of the Conduct and Practices Handbook course. Ms. Jones has had no further complaints in the past 3 years and remains under supervision at her firm.

Reliance on the Expertise of Others

¶ 23 Ms. Jones did not rely on any expertise in this matter.

Planning and Organization

¶ 24 There does not appear to be any pre-planning when the client opened the account, but infractions occurred as it went along and the client was absent for extended periods. There would have had to be some planning and organization to accomplish the trades and defer compliance concerns as to the margin shortfalls.

Multiple Incidents of Misconduct Over An Extended Period of Time

¶ 25 Counsel for Ms. Jones argued that this was an isolated instance and was only a single client. Although we have not accepted the previous discipline as a prior offence, the conduct that is disclosed in that circumstance is relevant, and with reference to the discretionary trading aspect, it involved three trades while the client was away in Costa Rica and a further four trades in June 2008 that were unauthorized.

¶ 26 The circumstances of the case however did disclose that the client did not complain nor was dissatisfied with the fact that there were these unauthorized trades by reason of the fact that she was under the impression that the results were guaranteed.

¶ 27 We conclude therefore that this was not a totally isolated instance.

Vulnerability of Victim

¶ 28 The vulnerability of the client weighs lightly in this matter. The client was not elderly, did not have all her funds/investments with Ms. Jones, had a husband employed in a professional career, had many decades of employable time in her future, had advice from a business/life coach, ran her own dental practice for a number of years and admitted that although she did not understand her accounts, she was just not that interested.

Failure to Cooperate with the Investigation

¶ 29 There was some dispute as to whether Ms. Jones was cooperative. One of the allegations in the Notice of Hearing suggested that she attempted to mislead Staff. That allegation for the most part constituted a single note and the date of that note. We found that allegation unproven. Ms. Jones did suggest as per her email issue that she never conducted business through her personal email, yet according to the documents, she did so. She did admit to violation of the policy of her firm by using a personal email not approved.

Significant Economic Loss to the Client and/or Dealer Member Firm

¶ 30 The client agreed to a financial settlement from the firm. Although this amount may be considered by the client to be a goodly sum, it would have not been a significant loss to the firm.

DISCUSSION

¶ 31 There has been cited to us a number of cases. It is not our purpose to list them all, but they include:

- (i) Shamseer (Re), 2011 IIROC 5;
- (ii) Re Chang, 2014 IIROC 04;
- (iii) Re Gareau, 2011 IIROC 72;
- (iv) Re Floyd & McDonald, 2013 IIROC 27;
- (v) Re Philips, 2011 IIROC 60;
- (vi) Re Beck, 2012 IIROC 41;
- (vii) Re Dirani, 2014 IIROC 09; and
- (viii) Re Ducharme , [2010], IIROC No. 54.

¶ 32 The study of such cases of course is quite helpful, but the circumstances of each differ.

¶ 33 The suggested penalty here by the Staff of IIROC is:

- (a) a 10-month suspension;
- (b) a 12-month term of close supervision;
- (c) an \$85,000.00 fine; and
- (d) costs in the sum of \$15,000.00.

¶ 34 The argument for penalty by counsel for Ms. Jones is:

- (a) no suspension, and if there is that it should be minimal with time (60 days) to arrange for client care;
- (b) a 12-month term of close supervision;
- (c) a \$25,000.00 to \$35,000.00 fine with a payment arrangement of two (2) years; and
- (d) two-thirds of costs in the sum of \$10,000.00.

¶ 35 The subject of rehabilitation has been discussed in the Dealer Member Disciplinary Sanction Guidelines under section 3.8 Voluntary Rehabilitative Efforts. Two of the paragraphs read as follows:

“Remediation efforts prior to (or even subsequent to) detection or intervention by the Corporation should be taken into consideration as mitigating the seriousness of misconduct.

...

Other rehabilitative or remedial actions that can be taken into account include:

- (i) Whether a Dealer Member firm voluntarily employed subsequent corrective measures, prior to detection or intervention by the Corporation, to revise general and/or specific procedures to avoid recurrence of misconduct.”

¶ 36 In the case of Carolann Steinhoff, 2013 BCSECCOM 308, the question of rehabilitation and the appropriateness of a license suspension was considered. The case was a case on appeal and on February 2012, the IIROC Panel issued a penalty decision which included: suspension for one year subject to strict supervision for another year and a close supervision for a further year; prohibition from acting as a director or senior officer of an IIROC member for five years; a fine of \$100,000, and costs of \$20,000, and indeed some other sanctions.

¶ 37 The allegation is set out in paragraphs 19 and 20 of that decision and reads as follows:

“19. In its liability decision, the IIROC panel found that Steinhoff invested the funds without proper authorization (Count 3), that the investments she chose, and the use of margin were unsuitable (Counts 4 & 5), and that her recommendation in late August to stay invested was also an unsuitable recommendation (Count 6).

20. The panel also found that Steinhoff made a false statement to her employer, Wellington West, in one of her responses to its questions relating to a complaint made by CK (Count 7).”

¶ 38 We are mindful of the discussion in that case concerning the suspension in paragraphs 90 and 91:

“90. Suspension of any length beyond the range of a normal vacation is, for a registered representative, an extremely serious matter. A suspension of one year, what the IIROC panel ordered here, is tantamount to the termination of the registrant’s career. At a minimum, it requires the registrant to build a book from scratch, a process that takes years and enormous effort. That assumes a clean slate. A person in their mid-fifties, like Steinhoff, attempting to the task following the expiry of a mandated suspension, even a person with Steinhoff’s apparent energy, is likely to find it impossible to build much more than a shadow of their former career.

91. Steinhoff made a serious mistake. Does the public interest demand that she lose her career over it? She has been in the business now for 25 years. She has no previous regulatory sanctions. There is no basis to conclude that she acted dishonestly or for an improper motive, or has ever done so. Although her mistake unquestionably harmed the Ks, there is no evidence that she represents any ongoing threat to her clients, to potential new clients, to the reputation of the securities markets or of IIROC or its members. Although a significant sanction is appropriate given Steinhoff’s contravention of the suitability requirement, the parties should address whether a suspension in these circumstances would be appropriate.”

¶ 39 Included in the circumstances before us, is the fact that over the past three years Ms. Jones has been under close supervision by her current employer.

¶ 40 We are of the opinion that that circumstance is educational and indeed a punishment because of the inconvenience nature of close supervision.

¶ 41 We also note that except for the briefest period of time, Ms. Jones appeared before us over the approximate 2-week hearing representing herself, being prepared to fully engage in the proceedings including conducting cross examination and making detailed submissions at the end of the proceeding. This too is an educational process and is also in the nature of a punishment by reason of the tension that would obviously be involved. We are mindful that other persons that have been charged in circumstances like this would find it stressful. But here the distinguishing factor is her participation without counsel.

¶ 42 Taking these factors into consideration, we do not think that the penalty should be so strident as to from a practical point of view cause Ms. Jones not to be able to practice her profession again.

¶ 43 Accordingly, balancing all of these factors including deterrence to others and to her, protection of the public, and the integrity of the profession and the market place, we order the penalty to be as follows:

PENALTY

- (a) a suspension for three months to commence 30 days from the date of this decision;
- (b) a fine of \$48,000.00 with minimum payments of \$2,000.00 per month to be paid at the beginning of each month, commencing on the month following the date of this decision, and with the prospect of immediate suspension at the discretion of IIROC Staff should any payment be in default;
- (c) strict supervision for one year; and
- (d) \$15,000.00 in costs to be paid in one year from the date of this decision.

Dated: March 31, 2014

Thomas R. Braidwood, Q.C.

Chris Lay

Barbara Fraser

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