

# Re Roy

IN THE MATTER OF:

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

**and**

**Duncan Roy**

2018 IIROC 11

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

Heard: April 4, 2018

Decision: April 4, 2018

Written Reasons: April 20, 2018

**Hearing Panel:**

Christopher Portner, Chair, Charles Macfarlane and Randee Pavalow

**Appearances:**

Elissa Sinha, Enforcement Counsel

Ian S. Epstein, Counsel for the Respondent

**In Attendance:**

Duncan Roy

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## REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT

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*Settlement Agreement*

¶ 1 On April 4, 2018, Enforcement Counsel for the Investment Industry Regulatory Organization of Canada (“IIROC”) and counsel for Duncan Roy (the “Respondent”) submitted a Settlement Agreement between IIROC and the Respondent dated February 15, 2018 (the “Settlement Agreement”) to the Hearing Panel for acceptance or rejection pursuant to Section 8215 of IIROC’s Consolidated Enforcement, Examination and Approval Rules (the “Consolidated Rules”). Following a hearing at IIROC’s offices, the Hearing Panel accepted the Settlement Agreement and these are our Reasons for such acceptance. The agreed facts are set out in Part III of the Settlement Agreement, a copy of which is attached.

*Contravention*

¶ 2 The Respondent admitted that, between January 2014 and December 2015, he failed to ensure that the recommendations he made for his client were suitable, contrary to Dealer Member Rule subsection 1300.1(q).

*Agreed Penalty*

¶ 3 The Respondent has agreed to (i) pay a fine of \$22,500, including the disgorgement of commissions; (ii) re-write the Conduct and Practices Handbook Examination within 90 days; and (iii) pay costs of \$2,500.

*Prior Contravention*

¶ 4 In 1999, the Respondent entered into a settlement agreement in which he admitted that he failed to ensure that recommendations made for two clients were appropriate and in keeping with their investment

objectives. The Respondent has not been subject to disciplinary proceedings since that time.

### *The Role of the Hearing Panel*

¶ 5 Pursuant to subsection 8215(5) of the Consolidated Rules, the Hearing Panel may only accept or reject the Settlement Agreement. Enforcement Counsel referred the Hearing Panel to *Milewski*<sup>1</sup> in which the District Council stated that:

A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.<sup>2</sup>

¶ 6 In determining whether to accept the Settlement Agreement, the Hearing Panel should also be satisfied with respect to the following three considerations described in *Donnelly*<sup>3</sup> and cited with approval in *Price*<sup>4</sup>, each of which we address below under the heading *Issues*:

- (a) The agreed penalties must be fair and reasonable, that is, proportional to the seriousness of the contravention, and considering all relevant circumstances;
- (b) the agreed penalties must be within an acceptable range, taking into account similar cases; and
- (c) the agreed penalties should serve as a deterrent to the Respondent and to industry.

### *Issues*

¶ 7 In considering whether the agreed penalties are fair and reasonable, we have taken into account the mitigating factors described in the Settlement Agreement including the fact that the Respondent's employer imposed a fine of \$5,000 on the Respondent and subjected him to strict supervision for six months. In addition, the Respondent was attentive to his client and genuinely believed that his recommendations would generate growth in his client's capital and the Respondent's employer compensated the Respondent's client for her losses and for part of the commissions which she had paid.

¶ 8 We have also considered the aggravating factor identified in the Settlement Agreement and described in paragraph 4 of these Reasons. We note the submission of the parties in the Settlement Agreement and at the hearing that, other than the present matter, the Respondent has had no disciplinary proceedings since 1999, and IIROC's Sanction Guidelines state that a "prior disciplinary record generally becomes less relevant as it becomes more dated."<sup>5</sup>

¶ 9 As to whether the agreed penalties are within an acceptable range, we have considered the six cases submitted to us by the parties detailing circumstances generally similar to those described in the Settlement Agreement. In particular, we have considered the aggregate amount of fines to be paid by the Respondent and the other penalties imposed on him as well as the compensation of his client by his employer. In our view, although the penalties are at the low end of the acceptable range, they are fair and reasonable.

¶ 10 IIROC's Sanction Guidelines state that the purpose of sanctions in regulatory proceedings is to protect the public interest by restraining future conduct that may harm the capital markets. Accordingly, sanctions should be significant enough to prevent and discourage future misconduct by the respondent and deter others from engaging in similar misconduct.<sup>6</sup>

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<sup>1</sup> [1999] I.D.A.C.D. No. 17.

<sup>2</sup> *Supra*, at page 10.

<sup>3</sup> 2016 IIROC 23.

<sup>4</sup> 2017 IIROC 54 at page 2.

<sup>5</sup> IIROC Sanction Guidelines February 2, 2015 at paragraph 2 of Part I.

<sup>6</sup> IIROCs Sanction Guidelines February 2, 2015 at paragraph 1 of Part I.

¶ 11 IIROC's Sanction Guidelines and *Price* both cite the case of *Mills*<sup>7</sup> in which the Hearing Panel stated that industry expectations are of particular relevance to general deterrence and that excessive penalties may reduce respect for the process, thereby diminishing their deterrent effect.

¶ 12 As the Respondent has been subjected to penalties which are proportionate to his contravention of IIROC's Dealer Member Rules, we are satisfied that the penalties will act as a specific deterrent to the Respondent and provide a general deterrent to the industry.

### *Conclusions*

¶ 13 For the foregoing reasons, we have concluded that the terms of the Settlement Agreement are fair and reasonable, are within an acceptable range and should serve as a deterrent to the Respondent and the industry. As a result, the Hearing Panel has concluded that the Settlement Agreement is in the public interest and, accordingly, is accepted.

Dated this 20<sup>th</sup> day of April, 2018.

Christopher Portner, Chair

Charles Macfarlane

Randee Pavalow

## **SETTLEMENT AGREEMENT**

### **PART I – INTRODUCTION**

1. The Investment Industry Regulatory Organization of Canada ("IIROC") will issue a Notice of Application to announce that it will hold a settlement hearing to consider whether, pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, a hearing panel ("Hearing Panel") should accept the settlement agreement ("Settlement Agreement") entered into between the staff of IIROC ("Staff") and Duncan Roy ("Respondent").

### **PART II – JOINT SETTLEMENT RECOMMENDATION**

2. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

### **PART III – AGREED FACTS**

3. For the purposes of this Settlement Agreement, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

### **Overview**

4. The Respondent recommended and implemented trading for an elderly client that was unsuitable because it exceeded the client's risk tolerance and increased her costs. The client suffered losses, for which she has been compensated by the Respondent's firm.

### **The Respondent**

5. The Respondent, Duncan Roy, has been registered with IIROC or its predecessor organizations for approximately 30 years. In December 2012, the Respondent became registered with MGI Securities Inc. When that firm was acquired by Industrial Alliance Securities Inc. ("IAS") in April 2014, the Respondent's employment and registration was transferred to IAS.

### **The Client**

6. The Respondent began to advise the client and her late husband in 2012 when their previous advisor

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<sup>7</sup> [2001] I.D.A.C.D. No. 7 at page 3.

retired. When the client’s husband died in October 2013, the Respondent updated her New Client Application Form (“NCAF”) to reflect the following circumstances, risk tolerance and objectives:

- a) born in 1924;
  - b) retired;
  - c) total net worth of \$500,000, all liquid;
  - d) “good” investment knowledge;
  - e) risk tolerance of 30% low, 60% medium and 10% high; and
  - f) investment objectives of 30% safety, 25% income, 35% growth, and 10% speculative.
7. The client’s net worth was overstated on her NCAF. As of December 2013, the client’s portfolio was only valued at approximately \$226,000 and the client had no other assets of significance. The Respondent told Staff that he believed the client had other assets, but could not identify them.
8. Virtually all of the client’s net worth was invested with the Respondent. The client withdrew approximately \$3,000-\$3,500 every month to pay for her living expenses. This amount was made up partly of income generated by her portfolio and partly from her investment capital.

**Unsuitable Recommendations**

9. The Respondent recommended that the client engage in active trading of equities and corporate bonds, particularly in energy and resources. Although the Respondent recommended and purchased low and medium risk securities for the client, her high risk tolerance of 10% was consistently exceeded and there were insufficient low risk investments to meet her stated objectives.

10. The following table states the average risk held in the client’s account in 2014 and 2015, relative to her stated risk tolerance:

Year	Low (30%)	Medium (60%)	High (10%)
2014	22.64%	55.78%	21.58%
2015	4.02%	59.97%	36.01%

11. In 2014 the client’s account was turned over 1.72 times and in 2015, it was turned over 2.22 times. During those two years there was not a single month where the Respondent did not buy or sell securities for the client.
12. Overall, the risk associated with the securities purchased for the client and active trading recommended and implemented by the Respondent was not suitable for the client, having regard to her personal and financial circumstances, moderate risk tolerance and objectives focused on safety and income.
13. The active trading was particularly unsuitable since the client’s account was transaction-based and she was charged a commission each time the Respondent bought or sold securities for her. The Respondent told Staff that the client had asked for a commission-based structure because she wanted him to be well-compensated, however when the client was interviewed by Staff she was not aware of how the Respondent was paid or what her account fees were.
14. In 2014, the client paid commissions in the amount of \$11,355 and in 2015 she paid \$5,358. In both years, the commissions paid represented approximately 5% of the client’s average portfolio value. The commissions paid by the client were shared between IAS and the Respondent who personally earned approximately \$8,000 from the client’s account during the relevant period.

**Losses**

15. During the two-year period, the client incurred losses of approximately \$39,000, net of withdrawals. IAS has compensated the client for her losses, and part of the commissions she paid.

## **Mitigating Factors**

16. The Respondent was subject to internal discipline by IAS pursuant to which he paid a fine in the amount of \$5,000 and was under strict supervision for six months. If not for the internal discipline, the recommended penalty would have been higher.
17. The Respondent was attentive to the client, they met several times a year and he and his staff spoke regularly with her on the telephone. The client appeared to the Respondent to be engaged and interested in her investments and she accepted his recommendations.
18. The client had expressed an interest in growth and there was a tension between the client's expenses and limited capital that the Respondent was attempting to address with recommendations that he genuinely believed would generate growth for his client.

## **Aggravating Factor**

19. In 1999 the Respondent was disciplined by the Investment Dealer's Association. He entered into a Settlement Agreement in which he admitted that he failed to ensure that recommendations made for two clients were appropriate and in keeping with their investment objectives. The underlying conduct dates back to 1993 and the Respondent has had a clear disciplinary for the intervening two decades.

### **PART IV – CONTRAVENTION**

20. By engaging in the conduct described above, the Respondent committed the following contravention of IIROC's Rules:

Between January 2014 and December 2015, the Respondent failed to ensure that the recommendations he made for his client were suitable, contrary to Dealer Member Rule subsection 1300.1(q).

### **PART V – TERMS OF SETTLEMENT**

21. The Respondent agrees to the following sanctions and costs:
  - a) A fine of \$22,500, including disgorgement of commissions;
  - b) Re-write the Conduct and Practices Handbook Examination within 90 days; and
  - c) Costs of \$2,500.
22. If this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and the Respondent.

### **PART VI – STAFF COMMITMENT**

23. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against the Respondent in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of the paragraph below.
24. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out Part III of this Settlement Agreement.

### **PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT**

25. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
26. This Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing in accordance with the procedures described in Sections 8215 and 8428, in addition to any other procedures that may be agreed upon between the parties.
27. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will

be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.

28. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights under the IIROC Rules and any applicable legislation to any further hearing, appeal and review.
29. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement or Staff may proceed to a disciplinary hearing based on the same or related allegations.
30. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
31. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full of copy of this Settlement Agreement on the IIROC website. IIROC will also publish a summary of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement.
32. If this Settlement Agreement is accepted, the Respondent agrees that neither he nor anyone on his behalf, will make a public statement inconsistent with this Settlement Agreement.
33. The Settlement Agreement is effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

#### **PART VIII – EXECUTION OF SETTLEMENT AGREEMENT**

34. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.
35. A fax or electronic copy of any signature will be treated as an original signature.

**DATED** this “15” day of February, 2018.

“Witness” \_\_\_\_\_

Witness

“Michelle Keen” \_\_\_\_\_

Witness

“Duncan Roy” \_\_\_\_\_

**DUNCAN ROY**

“Elissa Sinha” \_\_\_\_\_

**Elissa Sinha**

Enforcement Counsel on behalf of Enforcement  
Staff of the Investment Industry Regulatory  
Organization of Canada

The Settlement Agreement is hereby accepted this “4<sup>th</sup>” day of “April”, 2018 by the following Hearing Panel:

Per: “Christopher Portner” \_\_\_\_\_

Panel Chair

Per: “Ranee Pavalow” \_\_\_\_\_

Panel Member

Per: “Charles Macfarlane” \_\_\_\_\_

Panel Member