

Re Elue

IN THE MATTER OF:

**The Dealer Member Rules of the Investment Industry Regulatory
Organization of Canada (“IIROC”)**

and

Afam Elue

2014 IIROC 39

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

Heard: July 15, 2014
Decision: July 15, 2014

Hearing Panel:

Mr. Frederick Webber (chair), Mr. Selwyn Kossuth and Mr. Nick Savona

Appearances:

Ms. Natalija Popovic, Enforcement Counsel.

Mr. Joseph Sereda (by teleconference), Counsel for the Respondent

DECISION AND REASONS

Settlement Agreement

¶ 1 As a result of a Settlement Agreement between IIROC and the Respondent dated June 17, 2014, which is attached to these reasons, a Settlement Hearing was conducted on July 15, 2014 in Toronto pursuant to the IROC Dealer Member Rules. This Panel was advised that a previous hearing panel had rejected a prior settlement agreement between the parties. In accordance with Rule 20.38, the decision and reasons of the previous panel were made available to this Panel and were considered by this Panel in arriving at its decision.

¶ 2 In addition, the Hearing Panel received and considered oral submissions from IIROC counsel and Respondent’s counsel with reference to the IIROC Settlement Brief (entered as Exhibit 1 at the hearing) containing the Settlement Agreement, the IIROC Dealer Member Disciplinary Sanction Guidelines, and relevant decisions of previous hearing panels. Respondent’s counsel advised the Panel that he agreed in substance with the IIROC submissions.

Contravention and Sanctions

¶ 3 The contraventions alleged by IIROC and admitted by the Respondent are, as set out in the Settlement Agreement:

Count 1 From or about December 2011 to September 2012, the Respondent engaged in business conduct unbecoming a registrant or detrimental to the public interest in that he altered and re-used client account documents and thereby made misrepresentations to his Dealer Member firm contrary to IIROC Dealer Member Rule 29.1.

Count 2 From on or about July to August 2012, the Respondent effected trades in the account of a client based on the instructions of a third party without a duly executed trading authorization, contrary to Rule 200.1(i)(3).

¶ 4 IIROC and the Respondent agreed to the following terms of settlement as set out in the Settlement Agreement :

- a. A global fine of \$20,000;
- b. In the event of re-registration, the Respondent will be subject to strict supervision for 6 months and will be required to re-write the CPH exam;
- c. The Respondent agreed to pay costs to IIROC in the sum of \$2500.

Facts

¶ 5 The salient facts are set out in the Settlement Agreement and need not be repeated in these reasons. In summary:

The Respondent made misrepresentations to his Dealer Member firm when he altered and re-used transfer forms that several of his clients had previously signed. The Respondent changed the information on the originally executed forms and submitted them to his Dealer Member firm for the purpose of transferring assets into his clients' accounts.

In the case of one client, The Respondent also executed at least three trades in the client's account on the instructions of a third party, but failed to have a duly executed authorization in order to do so.

Acceptance of Settlement Agreement

¶ 6 Under IIROC Rule 20.36, at the conclusion of a settlement hearing, the Panel may either accept or reject the recommended sanctions. As set out in numerous prior decisions, several of which were in the IIROC Settlement Brief, the settlement should be accepted provided that it falls within 'a reasonable range of appropriateness'. As stated in *Re Milewski*, [1999] I.D.A.C.D. No. 17, contained in IIROC's Settlement Book:

"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....the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements."

Determining the Reasonable Range

¶ 7 This Panel agrees with the principles from these cases and has followed them in this case. The "reasonable range" is generally informed by reference to the Disciplinary Sanction Guidelines ("the Guidelines"), precedent cases and what the panel views as the public interest.

¶ 8 The parties have agreed that the proposed settlement and sanctions included therein fall within the reasonable range of appropriateness, are in the public interest and achieve the objectives of specific and general deterrence.

The Reasonable Range-the Guidelines

¶ 9 The Panel considered the general principles set out in the Guidelines, the need to address both general and specific deterrence and the key considerations outlined in the Guidelines as applicable to this case in determining whether the proposed sanctions are appropriate.

¶ 10 The panel agrees that the proposed penalties are consistent with the Guidelines which are published by IIROC to reflect industry understandings and expectations.

Mitigating Factors

¶ 11 There are several mitigating factors set out in the Settlement Brief, as follows:

- the Respondent has no disciplinary history with IIROC;
- the Respondent made several admissions to IIROC;

- the Respondent’s employment was terminated in November 2012 as a result of the conduct herein and he has been out of the industry since then;
- other than one client, none of the other six clients complained about the Respondent’s conduct and the evidence indicates that those clients wanted the transfers to be effected;
- none of the clients suffered a financial loss as a result of the conduct as the commissions earned were refunded to the clients by the firm which in turn collected these amounts from the Respondent;
- the Respondent understood that his actions were for the convenience of his clients.

The Reasonable Range-Cases

¶ 12 The IIROC Settlement Brief referred the Panel to a number of cases for guidance in determining the appropriate sanctions in this case. While none of these cases is directly comparable to this case, the Panel has reviewed each of these cases from the standpoint of the specific conduct and the penalties imposed and has concluded that the sanctions agreed to in this case fall within a reasonable range of possible sanctions.

Conclusion and Order

¶ 13 It is this Panel’s decision that the sanctions proposed in the Settlement Agreement fall within a reasonable range of possible sanctions. Accordingly the Panel accepted the settlement proposed and signed the requested order at the conclusion of the hearing.

Dated as of the 15th day of July, 2014.

Frederick Webber- Chair

Selwyn Kossuth-Member

Nick Savona- Member

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff (“Staff”) and the Respondent, Afam Elue, consent and agree to the settlement of this matter by way of this agreement (the “Settlement Agreement”).
2. The Enforcement Department of IIROC has conducted an investigation (“the Investigation”) in the conduct of Afam Elue.
3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (the “Hearing Panel”).

II. JOINT SETTLEMENT RECOMMENDATION

4. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. The Respondent admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

Count 1 From or about December 2011 to September 2012, the Respondent engaged in business conduct unbecoming a registrant or detrimental to the public interest in that he altered and re-used client account related documents and thereby made misrepresentations to his Dealer Member firm contrary to IIROC Dealer Member Rule 29.1.

Count 2 From or about July to August 2012, the Respondent effected trades in the account of a client based on the instructions of a third party without a duly executed trading authorization, contrary to Rule

200.1(i)(3).

6. Staff and the Respondent agree to the following terms of settlement:
 - a. Global fine of \$20,000
 - b. In the event of re-registration, the Respondent will be subject to strict supervision for 6 months and will be required to re-write the CPH exam
7. The Respondent agrees to pay costs to IIROC in the sum of \$2500.

III. STATEMENT OF FACTS

(i) Acknowledgment

8. Staff and the Respondent agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

(ii) Factual Background

A. Overview

9. The Respondent made misrepresentations to his Dealer Member firm when he altered and re-used transfer forms that several of his clients had previously signed. The Respondent changed the information on the originally executed forms and submitted them to his Dealer Member firm for the purposes of transferring assets into his clients' accounts.
10. In the case of one client, the Respondent also executed at least three trades in the client's account on the instructions of a third party, but failed to have a duly executed trading authorization in order to do so.

B. Registration History

11. Elue started work at Edward Jones ("EJ"), an IIROC Dealer Member, in September 2008. In March 2009 he became licensed as a Registered Representative and remained at EJ until November 2012 when he was terminated by the firm for matters related to the issues herein.

C. Alteration and Re-use of Documents

12. The Respondent made various admissions to IIROC Staff relating to the use of previously signed forms.
13. The Respondent admitted that he altered and re-used transfer forms that had been originally executed by at least seven of his clients in relation to various client accounts, including RSP accounts. In some cases original transfer forms were altered and re-used for a different purpose than originally intended; in at least one case one original transfer form was partially completed and then re-used for a series of other transfers.
14. The Respondent further admitted that in all cases he altered information, including details about the account type and account number, on the originally executed transfer forms. He altered these documents to reflect information that was required to transfers the clients' assets from various financial institutions to the accounts held at EJ.
15. He then submitted the altered transfer forms to his Dealer Member firm to effect the transfer of assets for these clients' accounts.
16. In the case of one of the seven clients, XYZ, the Respondent opened an RSP account for her in May 2012. On or about May 24, 2012, she executed a transfer form to authorize the Respondent to transfer assets into her RSP account from another financial institution.
17. In or about July 2012 the Respondent opened a spousal RSP ("SP-RSP") account for this client. The Respondent failed, however, to obtain a duly executed application form and transfer form in order to properly open this account and to have her assets transferred into this account.
18. Instead, the Respondent re-used the transfer form originally executed by this client for the RSP account

and altered the information to reflect the SP-RSP information. His alterations included details relating to the account type and account number. He then submitted the altered SP-RSP transfer form to his firm to effect the transfer of assets for the SP-RSP account.

19. Accordingly, the Respondent altered and re-used client account related documents and thereby made misrepresentations to his Dealer Member firm.

D. Trades on Third Party Instructions

20. Subsequent to the transfer in of assets into XYZ's SP-RSP account, on or about July 30 and August 1, 2012, the Respondent completed three trades in the account.
21. Specifically, the Respondent sold all units of the mutual fund transferred in and completed two purchases; one purchase of a different mutual fund and one purchase of a GIC. However, he did so on the instructions of XYZ's spouse even though he did not have a duly executed trading authorization from XYZ to do so.

E. Mitigating Factors

22. There are several mitigating factors that are relevant to this matter, as follows:
 - Elue has no discipline history with IIROC
 - Elue made several admissions to Staff of IIROC
 - Elue's employment was terminated in November 2012 as result of the conduct herein and he has been out of the industry since that time
 - Other than client XYZ, none of the other six clients complained about Elue's conduct; and in the case of those clients the evidence indicates that they in fact wanted the transfers to be effected
 - None of the clients suffered a financial loss as a result of the conduct as any commissions earned were refunded to clients by the firm which in turn collected these amounts from Elue
 - Elue understood that his actions were for the convenience of his clients

IV. TERMS OF SETTLEMENT

23. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
24. The Settlement Agreement is subject to acceptance by the Hearing Panel.
25. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
26. The Settlement Agreement will be presented to the Hearing Panel at a hearing ("the Settlement Hearing") for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.
27. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
28. 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 in relation to the matters disclosed in the Investigation.
29. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
30. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.

31. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
32. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at the City of Toronto in the Province of Ontario, this 11th day of June, 2014.

Not Legible

Witness

“Afam Elue”

AFAM ELUE

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 17th day of June, 2014.

“Frank Scali”

Witness

“Natalija Popovic”

NATALIJA POPOVIC

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

ACCEPTED at the City of Toronto in the Province of Ontario, this 15th day of July, 2014, by the following Hearing Panel:

Per: “Fred Webber”

Mr. Fred Webber, Panel Chair

Per: “Selwyn Kossuth”

Mr. Selwyn Kossuth, Panel Member

Per: “Nick Savona”

Mr. Nick Savona, Panel Member

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