

Re Matthews

IN THE MATTER OF:

The By-laws of the Investment Dealers Association of Canada

and

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

and

Grant Patrick Matthews

2015 IIROC 02

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

Heard: December 11, 2014 in Calgary, Alberta
Decision: January 5, 2015

Hearing Panel:

Eric Spink, QC, Chair, Martin Davies and Don Milligan

Appearances:

David McLellan, Enforcement Counsel

No one appearing for Grant Patrick Matthews

DECISION ON PENALTY

INTRODUCTION

¶ 1 In its Reasons For Decision issued on November 21, 2014, this panel found that the following contraventions alleged in the Notice of Hearing dated February 27, 2014 were proven:

Between approximately January 2009 and May 2012, Mr. Matthews (the Respondent) failed to use due diligence to ensure that recommendations were suitable for four (4) clients, based on factors including the client's financial situation, investment knowledge, investment objectives and risk tolerance contrary to IIROC Dealer Member Rule 1300.1(q);

Between approximately June 2009 and May 2012, the Respondent engaged in discretionary trading with respect to the accounts of two (2) clients, without being authorized and approved as having discretionary authority contrary to Dealer Member Rule 1300.4; and

From January 2009 and March 2011, the Respondent engaged in improper practices by excessively trading in (churning) the accounts of three (3) clients, for the sole purpose of generating additional commissions contrary to Dealer Member Rules 1300.1(o) and 29.1.

¶ 2 The panel directed that a penalty hearing be scheduled. The penalty hearing was held on December 11, 2014. The Respondent had notice of the proceedings but did not appear at the hearing into the merits nor at the penalty hearing.

SUMMARY OF EVIDENCE AND FINDINGS

¶ 3 The contraventions relate to four of the Respondent's clients. The panel did not find that the Respondent failed to know any of the clients because we agreed with IIROC's counsel's submission that this "wasn't so much a know-your-client as an ignore-your-client situation". In summary, we found that: the Respondent knew all four clients; each client reposed their trust and confidence in the Respondent, enabling him to exercise control over their accounts; the Respondent used that control to execute a trading strategy involving frequent trading in high-risk securities including leveraged and inverse exchange-traded funds (ETFs), which was unsuitable for all four clients; some of the trading was not authorized by the clients; and the trading was so excessive as to constitute churning in the accounts of three customers.

¶ 4 Client EF is a retired widow. After her husband's death in 2010, over a period of just less than 2 years, the Respondent executed 112 trades in EF's account without her authorization. The trading was unsuitable, being too risky and aggressive for EF, resulting in losses of approximately 8%. The panel found that EF explicitly reposed her trust and confidence in the Respondent, who used the opportunity to exercise complete control over the account to execute his own strategy, brushing off her concerns, and ignoring EF's interests to such an extent that the Respondent's actions were an egregious breach of his fiduciary and regulatory obligations.

¶ 5 Client LZ, a semi-retired oilfield consultant, reposed his trust and confidence in the Respondent by authorizing all the trades recommended by the Respondent. The Respondent recommended trades that were unsuitable for LZ (too risky and aggressive) and so excessive as to constitute churning. From January 2009 to June/July 2010, there were 519 trades in LZ's accounts, which sustained losses of approximately 30% comprised of trading losses of \$14,379 and commissions of \$67,384. Those commissions were about 37% of the Respondent's total commissions for 2009 and 2010 even though LZ's accounts represented only about 6% of total customer assets. The turnover rate was 14.74 (assets in LZ's account were turned over 14.74 times per year); the commission-to-equity ratio was 16.56% (trading profits of 16.56% were needed to break even); and the commission-to-profit ratio was 52.96 (on profitable trades, 52.96% of profit went to commissions).

¶ 6 Clients JS and DS are a married couple who established accounts with the Respondent in 2004 at about the time DS took early retirement. In December of 2008, DS experienced a severe medical emergency which disabled him completely for a period of time and left him with significantly diminished capacity to deal with the accounts. The Respondent executed 31 trades in one of DS' account during December 2008, while DS was in hospital, and the panel found those trades were unauthorized. The panel found that clients JS and DS reposed their trust and confidence in the Respondent by authorizing all other trades recommended by the Respondent. From January 2009 until March/April 2011 there were 593 trades in JS/DS' accounts, which were unsuitable for JS/DS (too risky and aggressive) and so excessive as to constitute churning. JS/DS' accounts sustained losses of 28.11% (calculated using the net gain/loss ratio) or losses of 44.5 % (calculated using the average equity method). The Respondent charged over \$71,000 in commissions to JS/DS' accounts, roughly 37% of the Respondent's total commissions for 2009 and 2010 even though JS/DS' accounts represented only about 4% of total customer assets. The turnover rate was 14.99 (assets were turned over 14.99 times per year); the commission-to-equity ratio was 17.38% (trading profits of 17.38% were needed to break even); and the commission-to-profit ratio was 53.99 (on profitable trades, 53.99% of profit went to commissions).

SUBMISSIONS

¶ 7 IIROC's counsel suggested the following global penalty for all the contraventions:

- a fine of \$200,000;
- suspension of membership in any capacity for a period of five years; and
- payment of \$20,000 costs.

¶ 8 IIROC's counsel did not seek an order for disgorgement and advised that this was because of the complexity in this case of calculating the Respondent's actual profit with respect to commissions. The panel therefore did not consider disgorgement.

¶ 9 Evidence was introduced showing that IIROC's actual costs in this matter exceed \$141,000.

¶ 10 The Respondent is currently 50 years of age. He has been a Registered Representative since 1997 and employed with Leede Financial Markets Inc. in Calgary since 1999. A Notice of Termination filed on the National Registration Database October 2, 2014 showed that the Respondent voluntarily resigned his employment with Leede Financial Markets Inc., and the panel was advised that the Respondent is not currently working.

¶ 11 IIROC's counsel referred to IIROC's Disciplinary Sanction Guidelines and to the following decisions: *Re Biduk* 2013 IIROC 47; *Re Gareau* 2011 IIROC 72; *Re Wilson* 2011 IIROC 47; *Re Phillips* 2011 IIROC 60; *Re Jones* 2012 IIROC 48; *Re Floyd* 2013 IIROC 27; *Re Malley* 2014 IIROC 29; *Re Harding* 2011 IIROC 65; *Re Lann* 2013 IIROC 9; *Re Budnik* 2011 IIROC 55; and *Re Newman* 2012 IIROC 55.

¶ 12 The main thrust of IIROC's submission was that the violations in this case constituted a breach of trust requiring significant sanctions. IIROC's counsel emphasized the vulnerability of the clients in this case, the substantial losses they incurred, and the extraordinary level of churning by the Respondent in this case.

¶ 13 IIROC's counsel submitted that the Respondent deserved no credit for cooperation, and that his denial of responsibility and failure to appear at these hearings are aggravating factors.

¶ 14 IIROC's counsel submitted that the only mitigating factor in this case is the fact that the Respondent has no prior disciplinary record.

ANALYSIS

¶ 15 The panel considered the General Principles in IIROC's Disciplinary Sanction Guidelines as well as the specific Guidelines for Unsuitable Recommendations, Discretionary Trading and Churning. These Guidelines are in no way binding on the panel but they do describe the principles to be applied and illustrate how case-specific factors must be considered in determining what sanctions are appropriate to the particular circumstances.

¶ 16 The panel agrees with the following statement in *Re Wilson* at para. 26:

... the main concerns when determining an appropriate penalty are protection of the investing public, the IIROC membership, the integrity of the IIROC process, the integrity of the securities markets and prevention of a repetition of conduct of the type under consideration. As stated in the Guidelines, sanctions should be based on the particular misconduct of the respondent with an aim of general deterrence which will be achieved if a sanction strikes an appropriate balance by addressing a registrant's specific misconduct, but also being in line with industry expectations.

¶ 17 The panel considered all the decisions cited to us. The decisions are helpful illustrations of how the principles set out in IIROC's Disciplinary Sanction Guidelines have been applied in other situations which bear some similarity to the case at hand. The decisions also demonstrate how much circumstances can differ among cases involving contraventions of the same rule(s). The panel found that none of the decisions dealt with facts sufficiently comparable to the case at hand to provide more than general guidance on how the principles should be applied in this case.

¶ 18 The panel agreed with the global approach suggested by IIROC's Counsel. We did not attempt to consider the multiple violations in this case individually but considered what global sanctions were appropriate to the cumulative misconduct.

¶ 19 The panel finds the most salient factors in this case to be the following (listed under headings from the Guidelines).

Vulnerability of Victims

All four clients were vulnerable. EF had practically no investment experience or knowledge, but she considered the Respondent a family friend and trusted him to "handle everything" with respect to her accounts after her husband's death. JS also had practically no investment

experience or knowledge and, although DS had some investment experience and knowledge, his capacity was significantly diminished by health issues after December 2008. JS/DS reposed their trust and confidence in the Respondent by authorizing every trade recommended by the Respondent. Although LZ had some investment experience and knowledge, he was vulnerable for the same reason – he trusted the Respondent enough to authorize every trade recommended by the Respondent. The panel found that, with respect to all four clients, the Respondent took advantage of their trust to commit the violations described above. The panel considers that the Respondent’s breach of his clients’ trust is the overarching aggravating factor in this case, which must be considered in combination with the other factors described below.

Blameworthiness; Degree of Participation; Planning and Organization; Multiple Incidents

The Respondent was the direct perpetrator here. His conduct was deliberate, calculated, organized, repeated, systematic and pervasive, involving 1255 trades over a period of roughly two years. The Respondent knew his clients but wilfully ignored their interests by exposing them to unsuitable risks (including risks relating to LETFs that the Respondent failed to understand). The churning violations are relatively extreme examples, and show that the Respondent was motivated by personal gain. These are all significant aggravating factors.

Harm To Clients, Employer and/or the Securities Market; Significant Economic Loss to the Client

In this case, each client sustained economic loss. Although EF’s loss was relatively modest, she could ill-afford such loss. The losses of LZ, JS and DS were significant. JS and DS have been forced to come out of retirement and take part-time jobs in order to support themselves – a deplorable consequence illustrating how economic loss is merely one dimension of the harm caused to clients by the Respondent’s conduct. In their testimony, EF and JS each expressed profound disappointment that the Respondent would betray their trust as he did. LZ’s email to the Respondent dated July 5, 2010 said he felt “like nothing more than a cash cow”. The panel finds that the Respondent’s conduct negatively impacts the reputation of his employer and the securities industry as a whole.

Acceptance of Responsibilities, Acknowledgement of Misconduct and Remorse; Voluntary Rehabilitative Efforts

These may be mitigating factors to the extent that they demonstrate recognition of misconduct and a willingness to take responsibility. The refusal to accept responsibility or to acknowledge misconduct, as demonstrated by the Respondent in this case, is an aggravating factor.

Here the Respondent filed a Response to Notice of Hearing which denied all the alleged violations and generally contradicted the Notice of Hearing, Particulars, and most of the evidence presented at the hearing. The Respondent failed to attend at the hearing to present any evidence supporting his version of the facts or to challenge the evidence presented at the hearing. The panel found the Respondent’s version of events, as reflected in his Response and in the transcripts of his interviews with IIROC, to be not credible and, in some instances, preposterous.

Respondents have the right not to appear at hearings. By choosing not to appear at either hearing in this case, the Respondent leaves the panel with no alternative but to conclude that the Respondent continues to stand by the positions he took throughout the proceedings – which deny any responsibility or wrongdoing and show no remorse for the misconduct nor any attempt to remedy it.

¶ 20 The Respondent is not entitled to any credit for cooperation. The Respondent cooperated with the investigation as he was obligated to but there was nothing resembling self-reporting or self-correcting.

¶ 21 The Respondent has no prior disciplinary record. This is normally a mitigating factor. In this case, however, the panel finds that the Respondent’s misconduct, considered in totality as described above, is so

egregious that it nullifies the mitigating effect of the Respondent having no prior disciplinary record.

ORDER

¶ 22 We order that the Respondent:

- a) pay a fine of \$200,000;
- b) pay costs of \$20,000; and
- c) be prohibited from approval by IIROC in any capacity for a period of 5 years.

Dated at Calgary, Alberta this 6th day of January, 2015.

Eric Spink, QC, Chair

Martin Davies

Don Milligan

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