Re Trueman

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Jack Jason Trueman

2016 IIROC 29

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

Heard: July 22, 2016
Decision: July 22, 2016
Reasons: August 17, 2016

Hearing Panel:
Paul M. Moore, Q.C., Chair, David E. Lang, Debbie Archer
Appearances:
Elissa Sinha, Senior Enforcement Counsel, Sally Kwon, Enforcement Counsel
In attendance:
Jack Jason Trueman

REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT

The following is an edited version of the oral reasons that were delivered at the settlement hearing. It forms the written reasons for the decision.

THE CHAIR:

Acceptance of settlement agreement

¶ 1 The panel accepts the settlement agreement between the staff of IIROC and Jack Jason Trueman, the respondent, dated June 13, 2016. A copy of the settlement agreement will be attached to these reasons. The agreed facts are set out in part 3 of it.

Contraventions

¶ 2 The respondent admits to the following contraventions of IIROC Dealer Member Rules:

A) Between January 2014 and February 2015, the respondent engaged in outside business activities without disclosure to, or approval from, his Dealer Member firm, contrary to Dealer Member Rule 18.14.

B) The respondent accepted remuneration from persons other than his Dealer Member firm in regards to securities-related activities that he performed for those persons in 2014, contrary to Dealer Member Rule 18.15.

Agreed penalties

¶ 3 The agreed penalties are a global fine of $25,000, and that the respondent must successfully complete

the Chief Compliance Officer qualifying examination by January 31, 2017.

¶ 4 In addition, the respondent agrees to pay costs to IIROC of $2500.

Issues considered by the panel

¶ 5 The panel determined that it had to be satisfied regarding three considerations before it could accept the settlement agreement. First, the agreed penalties had to be within an acceptable range, taking into account similar cases. Secondly, the agreed penalties had to be fair and reasonable, that is, proportional to the seriousness of the contraventions taking into consideration other relevant circumstances, and should appear to be so to members of the public and industry. Thirdly, the agreed penalties should serve as a deterrent for the respondent and industry.

¶ 6 To be satisfied on these three considerations requires an understanding of the particular facts of the case, the circumstances of the respondent and the impact on him of the agreed penalties.

Two Questions

¶ 7 The panel had two questions.

Why the CCO and not the CPH course?

¶ 8 Why the requirement to complete the Chief Compliance Officer's qualifying examination instead of the Conduct and Practices Handbook course?

¶ 9 Staff advised us that they had originally suggested in the settlement negotiations that the respondent be required to complete the CPH course. However, it appeared that he had already completed the CPH course. The CCO qualifying examination was something that he had been wanting to do and was working towards. Staff concluded that in the circumstances it made more sense for him to improve his qualifications that way.

¶ 10 Staff believes that the respondent now understands that what happened in this case is not permitted from a regulatory perspective and won't be happening anymore. Since part of the regulatory concern about outside business activity is supervision and the inability of the firm to supervise, the CCO qualifying examination and more awareness of the compliance process would probably be useful for him.

¶ 11 We agreed with staff and the respondent that in these circumstances the CCO qualifying examination requirement was appropriate and that, since the respondent had completed the CPH course, there should not be a requirement that he retake that course.

Was there any dishonest intent?

¶ 12 Was there was any dishonest intent on the part of the respondent in answering his compliance questionnaire as to no outside business activity that he gave to his Member firm as part of its compliance process?

¶ 13 The respondent told us that he did not intend to mislead or be untruthful in answering the questionnaire. He told us that he did not own the outside firm nor did he have any beneficial interest in any of the client accounts and that is why he did not view it as an outside business activity. He believed at the time that he was honestly answering the questionnaire correctly. He realizes now that he was not answering it correctly, but that was because he didn't understand, as opposed to deliberately lying.

¶ 14 Staff advised us that there was no suggestion from staff' with respect to the questionnaire of any moral turpitude or fraud or intention to mislead. Perhaps there was some carelessness or failure to appreciate the significance of the questions on the part of the respondent in filling out the compliance questionnaire.

¶ 15 We determined that in assessing the appropriateness of the agreed penalties it would be unwarranted for us to conclude on the agreed facts and the statements of staff and the respondent at the hearing that there were any reasonable grounds for imputing moral turpitude on the part of the respondent in this matter.

Seriousness of the contraventions

¶ 16 The contraventions are serious because they deprived the Member of the opportunity of supervising the respondent and the outside business activities. Although the clients in this case appeared not to suffer any harm, they were not protected by the securities regulatory system of regulation and supervision that they would have benefited from had the outside business activities been under the supervision and control of a Member firm. Mr. Lang in his remarks will expand upon this.

Mitigating factors

¶ 17 Without taking away from the seriousness of the contraventions, based on the agreed facts the respondent appears to have done most things well:

a) he provided proper documentation to the clients;

b) he seems to have serviced the clients well and tried to act in their best interest;

c) there was no moral turpitude in his actions;

d) there was no evidence of client harm;

e) there was no client complaint;

f) there was no gouging of clients or evidence of improper trading. Indeed, the fees he charged for the outside business activities were rather modest compared to the value of the assets under administration; and

g) the fees that were charged have been repaid to the clients.

¶ 18 The clients of the outside business activity appear to have been friends and family.

¶ 19 The respondent's Member firm has a rule relating to the minimum value of assets under administration before a client could be taken on by the firm. It was because of that rule that the clients of the respondent's outside business activities were not qualified to be clients of the Member firm.

¶ 20 The Member firm has since waived that rule with respect to these clients and they are now clients of the firm. The respondent continues to service them as a representative of the Member firm.

¶ 21 The respondent has not had prior disciplinary problems with IIROC.

¶ 22 The respondent cooperated fully with IIROC.

¶ 23 He cooperated fully with his Member firm. He and his firm have arrived at a solution to allow him to bring his outside book of business onto the firm's book and he continues as a representative of the firm.

No suspension

¶ 24 There is no suspension provided for in the agreed penalties. Some of the precedent cases provide for a suspension; but in our view, having no suspension is acceptable in the situation before us and is within the range of reasonable outcomes.

¶ 25 One of the problems with a suspension for any period of time is that it not only is detrimental to, and may destroy, a respondent's book of business, but it can be inconvenient to clients as well.

¶ 26 In the absence of moral turpitude in this case, and in view of the mitigating factors, a suspension would not serve any useful purpose.

Precedents

¶ 27 We considered comparable case precedents presented to us in staff's book of authorities.

¶ 28 It is an art and not a science to decide what the range of appropriateness for penalties is because of the differing facts and circumstances of the various cases. However, we were satisfied that the agreed penalties before us fall within the reasonable range of appropriateness.

Deterrence

¶ 29 The fine of $25,000 and costs of $2,500 are significant and send a message to the respondent and others in the capital markets with regard to the seriousness of the misconduct at issue in this proceeding.

Fair and reasonable

¶ 30 Although the respondent was not represented by counsel at this hearing, he was represented by counsel throughout the negotiations.

¶ 31 Whether agreed penalties are fair and reasonable will depend to a large degree on the particular facts and circumstances of a matter. Where agreed penalties are within an acceptable range based on precedents, and they serve as a specific and general deterrent, and the parties are represented by counsel and have the means to undergo a contested hearing but have reached a settlement, it is unlikely that a panel would ever conclude that the agreed penalties were unfair and not reasonable.

Costs

¶ 32 Costs of $2500 appear reasonable in the circumstances.

Conclusion

¶ 33 In conclusion, we determined that the agreed penalties were within an acceptable range based on precedents, would serve as a specific and general deterrent, and were fair and reasonable. We concluded, therefore, that the settlement agreement was in the public interest and, consequently, we accepted it.

MR. LANG (Concurring):

¶ 1 I want to take the opportunity to amplify a couple of the points that have been put forth by the Chair and emphasize that this panel did not come to this decision lightly.

¶ 2 Disclosure of outside business activities is one of the fundamental principles of the securities regulatory framework. It allows a firm on a Tier 1 basis [Tier 1 is at the business supervisor level at the firm] to look at all the activities that a sales person is undertaking and to make sure that they are in the client's best interests and that issues such as conflicts of interest and potential for client confusion are identified and addressed. It also allows that activity to be monitored at the Tier 2 level [an independent compliance review].

¶ 3 When a person undertakes activity outside the auspices of the firm, that fundamental protection provided for in securities regulation is unable to occur.

¶ 4 In this particular case there are a series of compelling mitigating factors: for example, there is no client harm; there are no losses; there is continuing sponsorship by the firm, both of these clients and of the respondent’s continued employment.

¶ 5 However, I think it is important to note that absent those compelling mitigating factors, this could have been a very, very different situation, both for the clients and for the result in this hearing.

¶ 6 One should never forget the fundamental principle of outside business activity and disclosure. For the respondent and anybody else who might read these reasons in the future, it should be very clear that these are fundamental protections in the securities regulatory framework and we cannot tolerate people who do not adhere to them.

This edited version of the oral reasons is approved and dated at Toronto this 17th day of August, 2016.

Paul M. Moore

David E. Lang

Debbie Archer

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff ("Staff") and the Respondent, Jack Jason Trueman (the "Respondent" and "Trueman"), 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 Trueman.

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:

   a) Between January 2014 and February 2015, Trueman engaged in outside business activities, without disclosure to or approval from his Dealer Member firm, contrary to Dealer Member Rule 18.14.

   b) Trueman accepted remuneration from persons other than his Dealer Member firm in regards to securities-related activities that he performed for those persons in 2014, contrary to IIROC Dealer Member Rule 18.15.

6. Staff and the Respondent agree to the following terms of settlement:

   a) A global fine of $25,000; and

   b) The Respondent must successfully complete the Chief Compliance Officer's Qualifying Examination by January 31, 2017.

7. The Respondent agrees to pay costs to IIROC in the sum of $2,500.

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. Between January 2014 and February 2015, Trueman provided portfolio management services to 31 clients (the "Clients") through True Growth Private Wealth Management ("True Growth"). The Clients were family members and friends of Trueman's who were unable to become clients of his Dealer Member firm since they did not meet its minimum asset requirement.

10. In 2014, Trueman, directly and through True Growth, collected approximately $6037 from nine (9) of the Clients in connection with the securities-related activities, that he provided to them in 2014.

11. Trueman did not disclose his outside business activities to his Dealer Member Firm.

B. The Respondent

12. Since January 2014, Trueman has been an IIROC Registrant and a Portfolio Manager with Cumberland Wealth Management Inc. ("Cumberland"), an IIROC Dealer Member Firm.

C. Outside Investment Management Services and Investment Advice

13. Between January 2014 and February 2015, Trueman provided portfolio management services to the Clients.

14. Trueman prepared detailed Investment Policy Statements, Client Profiles, Risk Tolerance Assessments and other documentation which contained Know-Your-Client information such as risk tolerance, investment objectives, employment information and personal information. Trueman also prepared invoices, receipts, and dividend income statements.

15. The True Growth documentation is comprehensive and indicates that Trueman made a genuine attempt to know the Clients, assess their financial circumstances, risk tolerance, and objectives, and to act in their best interests.

16. Trueman requested and received access credentials from his Clients for their discount brokerage accounts. With the Clients' knowledge and permission, Trueman used these access credentials to place trades for the Clients on a discretionary basis.

17. In Investment Policy Statements that Trueman prepared for several of the Clients he described his services as follows:

> **"Fees & Costs**
>
> True Growth is focused on investing your assets. We rely on the discount broker of your choice to provide the processing of transactions, report generation, record keeping and tax slips. Your discount broker is your Custodian. At no point does True Growth Private Wealth Management ever receive your funds. Your purchase and sell confirmations, monthly statements and annual tax reporting slips will come directly from your discount broker. True Growth does not assume any liability for errors created by your discount broker. True Growth will be able to assist you wherever possible. Most discount brokers in Canada are owned by the major banks and are very adept at providing accurate and timely information. In addition to your fee paid to True Growth Private Wealth Management your discount broker will charge you for the purchases and sales of investments within your portfolio (i.e. $10 per trade), foreign currency conversions, reprinting of lost statements and other costs as laid out in the account opening documents you completed with them. True Growth will always consider these additional costs and the potential negative impact on total returns when making discretionary decisions on your behalf.
>
> Based on your current family assets of approximately $[…] … invested with True Growth your annual fee is $[…].
>
> **Services Providedby (sic) True Growth Wealth Management**
>
> - A thorough discussion to identify your investment goals and risk tolerance.
> - A personally tailored Investment Policy Statement (this document).
> - One year of discretionary investment management of your investment portfolios.
> - Ongoing investment advice throughout the year including at least two thorough discussions about your investment performance, updated investment goals and risk tolerance."

18. Trueman placed trades in the Clients' accounts from the computer assigned to him at the office of his Dealer Member Firm and used that computer to create and store documents related to the True Growth business. Trueman conducted the True Growth business during business hours, as well as during his personal time.

19. In February 2015, Trueman was providing portfolio management services outside of his Dealer Member Firm to 30 Clients who held 54 accounts at discount brokerages. One additional Client to whom Trueman also provided such services had recently transferred his assets to Trueman's Dealer Member Firm.

20. The Clients were family members and friends of Trueman's. No Clients complained to IIROC and there is no evidence of client harm. All of the Clients have transferred their assets to Trueman's Dealer Member Firm and remain his clients.

21. The Clients did not qualify to be clients of Trueman's Dealer Member Firm due to a minimum asset requirement and therefore Trueman was not competing with his firm. Trueman advised Staff that his intention was to grow his Clients' portfolios so that they could meet the minimum asset requirement for his Dealer Member firm. When Trueman's activities came to light, his Dealer Member Firm permitted him to open accounts for the Clients even though they did not meet the minimum asset requirement.

22. On January 30, 2014, Trueman completed and signed a Compliance Manual Acknowledgement form for Cumberland in which he agreed to adhere to the guidelines and rules outlined in the Compliance Manual. The Compliance Manual specifically prohibited participation of any "outside activity" without prior approval and required that any "pro accounts", including accounts over which Trueman had power of attorney or trading authorization be maintained at Cumberland.

23. On January 30, 2014 and February 10, 2015, Trueman executed Cumberland's Annual Employee Disclosure Forms (the "Disclosure Forms") in which he was required to disclose any business activity other than that of the Dealer Member Firm and any "pro" accounts.

24. Trueman did not disclose his outside business activities to his Dealer Member Firm. As a result, Trueman's outside business activities were not disclosed to IIROC in the National Registration Database.

25. By providing portfolio management services outside of his Dealer Member Firm and by maintaining undisclosed trading authorizations, Trueman acted contrary to IIROC Dealer Member Rule 18.14(c).

D. Trueman Accepted Remuneration for Securities Related Activity from Client

26. For 2014, Trueman accepted remuneration from nine (9) Clients in the amount of approximately $6037 for securities-related activities contrary to IIROC Dealer Member Rule 18.15.

27. The fees that Trueman accepted from his Clients were modest in comparison to the total assets under management by True Growth, as well as the compensation Trueman received from his Dealer Member Firm.

28. Trueman voluntarily repaid the Clients fees collected upon being aware that his activities were contrary to IIROC Dealer Member Rules 18.15.

29. Trueman fully cooperated with the investigations by IIROC and his Dealer Member Firm.

30. Trueman has no previous disciplinary history.

IV. TERMS OF SETTLEMENT

31. 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. The Settlement Agreement is subject to acceptance by the Hearing Panel.

32. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

33. 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.

34. 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.

35. 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.

36. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

37. 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.

38. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

39. 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 _Ont__, this __13_ day of June, 2016.

"Witness" **"Jack Trueman"**

Witness **JACK JASON TRUEMAN**

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this __21_____ day of April, 2016.

"Witness" **"Elissa Sinha"**

Witness **ELISSA SINHA**

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 ___22_____ day of ___July_____ , 2016, by the following Hearing Panel:

Per: "Paul Moore"_____
Panel Chair

Per: "David Lang"_____

Panel Member

Per: "Debbie Archer"_____

Panel Member