

Re Soliterman

IN THE MATTER OF:

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

and

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

Ilya Soliterman

2012 IIROC 32

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

Heard: February 6, 2012 in Calgary, Alberta
Decision: May 30, 2012

Hearing Panel:

John D. James (Chair), Kathleen Jost, Peter McWilliams

Appearance:

David McLellan, Enforcement Counsel
James Heelan, Q. C. for Ilya Soliterman

Reasons for Decision

Introduction

¶ 1 Pursuant to a settlement agreement (the “Settlement Agreement”) the Respondent Ilya Soliterman (“Soliterman”) admitted that he had breached IIROC Rule 1300 as follows:

- a. From May, 2005 to October, 2008, while a Registered Representative at CIBC World Markets Inc., with respect to client L.K., he:
 - i. failed to use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted contrary to IIROC Rule 1300.1(a)
 - ii. failed to use due diligence to ensure that the acceptance of any order from a customer is suitable for such customer contrary to IIROC Rule 1300.1(p)
- b. From January, 2004 to October, 2008, while a Registered Representative at CIBC World Markets Inc., with respect to client J.K., he:
 - i. failed to use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted contrary to IIROC Rule 1300.1(a)
 - ii. failed to use due diligence to ensure that the acceptance of any order from a customer is suitable for such customer contrary to IIROC Rule 1300.1(p)

¶ 2 Rule 1300.1 provides in part:

Identity and Creditworthiness

(a) Each Dealer Member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted.

....

(p) Subject to Rule 1300.1(r) and 1300.1(s), each Dealer Member shall use due diligence to ensure the acceptance of any order from a customer is suitable for such customer based on factors including the customer's financial situation, investment knowledge, investment objectives and risk tolerance.

Joint Settlement Agreement

¶ 3 Staff and Soliterman jointly recommended the imposition of the following sanctions:

a. The Respondent agrees to pay a fine to IIROC in the sum of fifty-five thousand dollars (\$55,000.00):

b. The Respondent agrees to pay costs to IIROC in the sum of five thousand dollars (\$5,000.00).

¶ 4 The admitted facts are contained in the Settlement Agreement which is attached as schedule "A" to this decision. In summary, the admitted facts disclosed that the Respondent accepted trading instructions from two individuals in relation to options contracts. The Respondent was approved to trade in options and had received specialized training in options trading strategies. The two individuals whose accounts and trades were involved in the violations were previously husband and wife, although not at any time material to the trading activity complained of.

¶ 5 During all of 2007 and the first half of 2008 the Respondent accepted a large number of option orders from both clients. Both clients orders often involved selling uncovered put options. As a result, each client was very significantly exposed to substantial losses should the underlying securities decline in value. This of course is exactly what happened during the second half of 2008. The result is that both clients lost very significant sums of money in their trading accounts. In the case of LK the value of his trading account went from \$715,000.00 in May 2008 to negative \$90,000.00 in October 2008. In the case of JK the value of her account dropped from \$646,000.00 to negative \$8,000.00 between May and October 2008.

¶ 6 Both LK and JK had NCAFs that disclosed limited income, although both disclosed significant sophistication in terms of investment knowledge, in particular LK who prepared his own spreadsheets reflecting his own analysis of possible securities and options trades. He was actively involved in the management of his accounts and regularly discussed strategies with the Respondent. It was clear to the Respondent through the NCAFs that both LK and JK were dependant on the income streams from their investments to support themselves. Despite this, and without inquiring into the sources of funds that the two clients were at times, the Respondent allowed both clients to accumulate very large, highly speculative positions that did not reflect the investment objectives in the NACFs. The Respondent failed to make any inquiries as to the source of the large deposits into both accounts and was unaware that both had been borrowing from home owners' secured lines of credit. The results were catastrophic.

¶ 7 It must be noted however, that both clients, particularly LK, were completely involved in the management of their accounts and many of the trades LK made, although executed by the Respondent, were made contrary to the Respondent's advice.

¶ 8 The client LK has received compensation from CIBC in the amount of \$463,000.00 and the Respondent is in the process of repaying this full amount to CIBC.

Adjudication

¶ 9 This Hearing Panel adopts the principle, well established in these matters, that unless the sanctions proposed in the Settlement Agreement fall clearly outside of the range of penalties appropriate to the

contravention(s) we should adopt and impose the settlement. The policy reasons for this are well known and need not be repeated here. We therefore need only concern ourselves with whether the proposed sanctions fall within the range of appropriateness.

¶ 10 We note that the fine proposed, \$55,000.00, is significantly above the suggested minimum of \$10,000.00 in the IIROC Dealer Member Disciplinary Sanction Guidelines respecting contraventions of Rule 1300.1. Given the very large losses associated with the contraventions we consider the financial penalty (fine) to be well above the minimum suggested and not so large as to be unduly onerous. It falls well within the appropriate range. We also consider the imposition of a cost order in the amount of \$5,000 to be reasonable. The Respondent acknowledged his responsibility and there is nothing to indicate that he was anything but cooperative throughout the investigative process. The acceptance of responsibility by the Respondent is highly mitigating and negates any requirement of a more onerous fine or cost award.

¶ 11 The absence of any provision in the Settlement Agreement that the Respondent disgorge profits, rewrite the CPH, be subject to a period of supervision or a period of suspension is not viewed by the Panel as a shortcoming of the proposed Settlement Agreement. While there is a significant aggravating factor to the Respondent's actions the very significant losses to the two clients, the mitigating factors present lead us to conclude that the absence of any of the sanctions listed above does not make the Settlement Agreement proposal inappropriate. We have already spoken of the acceptance of responsibility and cooperation of the Respondent. Additionally, we accept as mitigating that he has no prior discipline history but more importantly, that the actions of the Respondent did not display any degree of moral culpability and the two clients involved were certainly not vulnerable, unsophisticated "victims". It is also noteworthy that the Respondent is repaying several hundred thousand dollars to his employer as a result of his negligence.

Penalties Imposed

¶ 12 In the result we consider the sanctions proposed in the Settlement Agreement as being will within the reasonable range and we give full effect to the Settlement Agreement.

¶ 13 The penalties proposed in the Settlement Agreement and which we impose are as follows:

- a. A fine of fifty five thousand dollars (\$55,000.00) payable to IIROC, and
- b. Costs in the sum of five thousand dollars (\$5,000.00) payable to IIROC

Dated at Calgary in the Province of Alberta 30th of May, 2012

Per: John D. James (Chair)

Per: Kathleen Jost (Panel Member)

Per: Peter McWilliams (Panel Member)

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent, Ilya Soliterman, consent and agree to the settlement of this matter by way of this settlement agreement ("the Settlement Agreement").
2. The Enforcement Department of IIROC has conducted an investigation ("the Investigation") into the conduct of Ilya Soliterman.
3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.

4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. 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

6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
7. The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:
 - a) From May, 2005 to October, 2008, while a Registered Representative at CIBC World Markets Inc., with respect to client LK, he:
 - i. failed to use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted contrary to IIROC Rule 1300.1(a);
 - ii. failed to use due diligence to ensure that the acceptance of any order from a customer is suitable for such customer contrary to IIROC Rule 1300.1(p).
 - b) From January, 2004 to October, 2008, while a Registered Representative at CIBC World Markets Inc., with respect to client JK, he:
 - i. failed to use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted contrary to IIROC Rule 1300.1(a);
 - ii. failed to use due diligence to ensure that the acceptance of any order from a customer is suitable for such customer contrary to IIROC Rule 1300.1(p).
8. Staff and the Respondent agree to the following terms of settlement:
 - a) The Respondent agrees to pay a fine to IIROC in the sum of fifty five thousand dollars (\$55,000.00);
 - b) The Respondent agrees to pay costs to IIROC in the sum of five thousand dollars (\$5,000.00).

III. STATEMENT OF FACTS

(i) Acknowledgment

9. For the purposes of this Settlement Agreement only, 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

Overview

10. LK and JK, both clients of the Respondent, were knowledgeable and experienced investors who were actively involved in the management of their accounts. They held high risk options positions and suffered significant losses when the market declined between June and October, 2008.
11. The Respondent, Ilya Soliterman, continued to accept orders and permitted the clients to accumulate an extremely large contingent liability position which was not suitable.
12. The Respondent also failed to use due diligence to learn the essential facts relative to these clients.

Registration History

13. The Respondent was a Registered Representative (“RR”) with CIBC World Markets Inc. (“CIBC”) in Calgary.
14. He has been an RR since 1989 and has no disciplinary history.

15. The Respondent is also approved to trade options, and he has received specialized training in options trading strategies. He frequently employs options trading strategies in certain client portfolios.

Client LK

16. The Respondent has known LK since 1979, and considered him a friend.
17. LK first opened an account with the Respondent in 1992, and started options trading with the Respondent in or about 1995. In 2001, LK closed that account.
18. In May, 2005, LK returned to the Respondent as a client and opened an option account and a registered account.
19. His NCAF (for both the margin account and the registered account) states that he is 58 years old, retired, with investment knowledge described as excellent. Under business and position, it states “Oil and Gas” and “V.P. - Accounting”.
20. LK says that his title while employed was in fact “Director of Commerce”, and the NCAF was in error.
21. It also states that he had a net worth of \$850,000 and an income of \$35,000. His investment objectives were 10% income/30% short term/30% medium term/30% long term and his risk tolerance was 10% low/70% medium/20% high. LK relied on his investments for income.
22. LK was an experienced investor with a high degree of knowledge and understanding of the investment markets, and more specifically, options contracts. He prepared spreadsheets reflecting his own analysis of possible securities and options trades, and shared these with the Respondent. He was actively involved in the management of his accounts, and regularly discussed possible trades and strategies with the Respondent.
23. The Respondent says that often LK did not follow his suggested strategies, but rather he would take parts of his strategies and request trades that were contrary to his advice.
24. LK frequently engaged in the selling of uncovered put options, an activity referred to as “premium selling”. This high risk strategy was based on the premise that the market, or individual securities, would remain relatively flat or move higher. As long as this was the case, LK would receive premium payments from the contracts as income.
25. During all of 2007 and the first half of 2008, the Respondent accepted a large number of option orders from his client, LK. As of June, 2008, he held approximately 131 short option positions (921 contracts) comprised of 34 short call positions (199 contracts) and 97 short put positions (722 contracts). This created a very large contingent liability which could result in substantial losses if the underlying securities declined significantly in value.
26. Despite the extremely high risk nature of these options positions, the Respondent continued to accept orders from LK.
27. In June, 2008, the markets began to decline culminating in a dramatic drop in September, 2008. As a result, the uncovered put options contracts sold short by LK increased in price and LK was forced to cover his short positions at a loss.
28. LK frequently received margin calls and was required to satisfy the margin calls in order to maintain the options positions in his accounts. He would satisfy the margin calls by depositing new funds into his accounts, and in some cases, de-registering funds from his RRSP.
29. The Respondent says that he believed LK was using funds from other undisclosed business interests and liquid assets as the primary source of these deposits. However, he did not inquire into the nature or value of these other business interests and assets.
30. The Respondent says that he later learned that the deposit funds did not come from other assets, but rather that LK had been borrowing from his homeowner’s secured line of credit to deposit funds into the

accounts.

31. In October, 2008, CIBC liquidated all of the positions held in LK's accounts.
32. Between June and October, 2008, the value of LK's trading account dropped from \$715,000 to negative \$90,000. The value of his registered account dropped from \$429,000 in May 2008 to \$124,000 in October, 2008.
33. After factoring in deposits and withdrawals, in the 40 months of its existence LK's margin account declined \$773,110 while his registered account gained \$23,606.
34. The Respondent should not have allowed a retired client with limited stated income to build highly speculative options positions which were not suitable for LK based on his age, financial situation, investment objectives and risk tolerance.
35. The Respondent believed that each individual option trade was suitable for LK. However, he failed to look at the extremely high degree of concentrated risk exposure to LK in the overall portfolio.
36. The Respondent failed to use due diligence to learn the essential facts relative to his client. He did not ask LK about the source of deposits used to satisfy margin calls, and therefore he failed to account for the risk to LK. He also failed to adequately consider that LK was retired and was relying on his investments for income.

Client JK

37. In January, 2004, JK opened a margin account with the Respondent on the advice of her ex-husband, LK. In order to facilitate the account opening, the Respondent sent a letter to CIBC compliance in which he stated that JK had completed her education as a lawyer and was in the process of securing employment.
38. The 2004 NCAF for JK states that she was 31 years old, unemployed and had "good" investment knowledge. She had a net worth of \$350,000 and an income of \$20,000. Her investment objectives were 20% income/30% short term/30% medium term/20% long term and her risk tolerance was 10% low/60% medium/30% high.
39. In a 2007 NCAF update, JK is still listed as unemployed with "good" investment knowledge. Her investment objectives and risk tolerance parameters had not changed, however her net worth had increased to \$800,000 and her net income to \$30,000.
40. JK was trained as a lawyer, but during the period in question worked only briefly in short term employment contracts. Her investment portfolio was her major source of income.
41. Although not as experienced and knowledgeable as LK, JK had a good knowledge and understanding of the investment markets, including options contracts. She was actively involved in the management of her account, and regularly discussed possible trades and strategies with the Respondent.
42. The Respondent says that often JK did not follow his suggested strategies, but like LK, she would take parts of his strategies and request trades that were contrary to his advice.
43. JK traded options soon after she opened her account in 2004, and she continued to hold options contracts until October, 2008.
44. Between 2004 and 2008, JK made several large deposits to, and withdrawals from, her account. The Respondent says that he did not inquire into the source of these deposits. The Respondent says that he later learned that JK had been borrowing from her homeowner's secured line of credit to finance her investment account.
45. Her requests for unsolicited orders were very similar to those of LK, although they contacted the Respondent independently. Like LK, she frequently sold uncovered put options.
46. During all of 2007 and the first half of 2008, the Respondent accepted a large number of option orders

from his client, JK. As of June, 2008, he held approximately 40 short option positions (297 contracts) comprised of 8 short call positions (33 contracts) and 32 short put positions (264 contracts). This created a very large contingent liability which could result in substantial losses if the underlying securities declined significantly in value.

47. Despite the extremely high risk nature of these options positions, the Respondent continued to accept orders from JK.
48. In June, 2008, the markets began to decline culminating in a dramatic drop in September, 2008. As a result, the uncovered put options contracts sold short by JK increased in price and JK was forced to cover her short positions at a loss.
49. In August, 2008 the Respondent urged JK to close out a number of her short options positions but she refused to do so.
50. In October, 2008, CIBC liquidated all of the positions held in JK's account.
51. Between May and October, 2008, the value of JK's account dropped from approximately \$646,000 to approximately negative \$8,000.
52. After factoring in deposits and withdrawals, in the 56 months of its existence JK's margin account declined \$261,702.
53. The Respondent should not have allowed a client with limited stated income to build highly speculative options positions which were not suitable for JK based on her employment status, financial situation, investment objectives and risk tolerance.
54. The Respondent believed that each individual option trade was suitable for JK. However, he failed to look at the extremely high degree of concentrated risk exposure to JK in the overall portfolio.
55. The Respondent failed to use due diligence to learn the essential facts relative to his client. He did not ask JK about the source of deposits made to her account, and therefore he failed to account for the risk to JK. He also failed to adequately consider that JK was unemployed and was relying on his investments for income.
56. LK has received compensation in the total amount of \$463,866.00 with respect to his losses. This has been paid to LK by CIBC, and the Respondent is in the process of repaying the full amount back to CIBC.

IV. TERMS OF SETTLEMENT

57. 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.
58. The Settlement Agreement is subject to acceptance by the Hearing Panel.
59. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
60. 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.
61. 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.
62. 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.
63. The Settlement Agreement will become available to the public upon its acceptance by the Hearing

Panel.

64. 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.
65. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
66. 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 Calgary, in the Province of Alberta, this 13th day of January, 2012.

“Witness signature”

“Ilya Soliterman”

WITNESS

RESPONDENT

AGREED TO by Staff at the City of Calgary in the Province of Alberta, this 20th day of January, 2012.

“Witness signature”

“David McLellan”

WITNESS

DAVID MCLELLAN

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

ACCEPTED at the City of Calgary in the Province of Alberta, this 6th day of February, 2012, by the following Hearing Panel:

Per: “John James”

Panel Chair

Per: “Peter McWilliams”

Panel Member

Per: “Kathleen Jost”

Panel Member