

Re Mendelman

IN THE MATTER OF:

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

and

Allen Samuel Mendelman

2016 IIROC 14

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

Heard: March 29, 2016
Decision: March 29, 2016
Reasons: April 18, 2016

Hearing Panel:

Eric Spink, QC, Chair, David R. Johnson, William Welton

Appearances:

Tayen Godfrey, Enforcement Counsel for IIROC

Tom O'Leary, Counsel for Allen Samuel Mendelman

REASONS FOR ACCEPTANCE OF SETTLEMENT

¶ 1 This Settlement Hearing considered a Settlement Agreement agreed to by Alan Samuel Mendelman (the Respondent) on February 4, 2016, attached as Appendix 1.

¶ 2 The Hearing Panel heard submissions from both counsel and, after a brief adjournment, the panel accepted the Settlement Agreement with reasons to follow. These are our reasons.

¶ 3 The Settlement Agreement sets out the admitted facts and violations of IIROC Dealer Member Rule 29.1. There were three separate violations, all aggravated by the surrounding circumstances, which may be summarized as follows.

¶ 4 In 2001, the Respondent was convicted of income tax evasion and fined \$255,000. As a result, the Respondent was subject to heightened supervision conditions between 2001 and 2011. In 2013, his employer discovered that the Respondent had borrowed approximately \$125,000 from a client in 2001 or 2002 in order to pay the fine. The Respondent knew that personal financial dealings with clients were contrary to the firm's internal policies, and had annually signed a confirmation that he was aware of these requirements and was in compliance with them.

¶ 5 This led to the discovery that, between February and April of 2013, the Respondent had engaged in outside business activities by facilitating off-book investments by his clients, for which the Respondent was paid \$57,225. The Respondent was aware that such off-book dealings were prohibited by the firm's internal policies.

¶ 6 Also, in November 2013 the Respondent shared non-public, material information about an upcoming prospectus offering, by forwarding to eleven of his clients an email he had received containing details of the offering. None of the clients traded in the security or benefited financially from the information.

¶ 7 Both counsel agreed, pursuant to Rule 15.3 of IIROC's Rules of Practice and Procedure, to disclose to the panel the following additional facts not contained in the Settlement Agreement: the Respondent is now 69 years of age and has expressed his intention to retire from the industry.

¶ 8 The Settlement Agreement provides for the following penalties and costs:

- a) a \$100,000 fine;
- b) a suspension for a period of 18 months;
- c) successfully rewrite the Conduct and Practices Handbook examination before a return to the industry after the suspension;
- d) a six-month period of close supervision upon a return to the industry; and
- e) costs of \$5,000.

¶ 9 The panel's role in a settlement hearing is to determine whether the proposed settlement falls within "a reasonable range of appropriateness" (Re Milewski [1999] I.D.A.C.D. No. 17), bearing in mind the facts of the case, the IIROC Sanction Guidelines, and other decisions involving similar misconduct. Milewski observes that the panel is asked "to 'accept', rather than approve, a settlement agreement", and that the panel's consideration of specific settlements must "reflect the public interest benefits of the settlement process".

¶ 10 IIROC's counsel reviewed the Sanction Guidelines in the context of the somewhat unusual facts in this case. He noted that, although the Respondent had no disciplinary record with IIROC, he had been subject to heightened supervision conditions for an extended period as a result of his conviction for tax evasion. The first violation (the loan) occurred shortly after that conviction and the Respondent repeatedly failed to disclose it. The other two violations occurred shortly after the heightened supervision of the Respondent ended. All the violations could fairly be described as being in pursuit of the Respondent's own financial gain, and none were self-reported.

¶ 11 After reviewing the aggravating factors above, IIROC's counsel noted the significant fact that no harm to the Respondent's clients had resulted from these violations. That fact was also emphasized by Respondent's counsel, who described the circumstances as a mixture of aggravating and mitigating factors.

¶ 12 IIROC's counsel reviewed several previous decisions, all of which involved settlement agreements. Of these, the one most comparable to the present circumstances was Re Lee 2013 IIROC 10. That case involved a respondent who engaged in outside business activities and borrowed money from a client without the knowledge of his firm. That respondent agreed to a fine of \$75,000 and a 6-month prohibition on registration.

¶ 13 We were referred to Re Blackmore 2014 IIROC 43, which involved off-book transactions in relation to an outside investment in which the respondent had a personal financial interest. That respondent agreed to a fine of \$30,000 and a 45-day suspension of registration. IIROC's counsel also referred to Re Gunderson 2012 IIROC 66, which involved borrowing money from clients and included the aggravating factor of not being forthright when IIROC investigated the matter. That respondent agreed to a \$25,000 fine and one-month suspension.

¶ 14 The panel was advised that there are no IIROC decisions dealing with the dissemination of non-public information similar to what occurred here, so we were referred to three settlement agreements entered into by the Alberta Securities Commission: Re Twanow 2012 ABASC 217; Re Trip 2008 ABASC 718; and Re Theal 2009 ABASC 176). Those cases involved violations of section 147(3) of the Securities Act, which prohibits anyone in a special relationship with an issuer from disclosing material information before that information has

been generally disclosed. Because these cases reflect a different regulatory context, it is not necessary to analyze their particular circumstances or the agreed-upon penalties in detail – it is sufficient to recognize that these cases affirm that the dissemination of non-public information is always a significant regulatory concern.

¶ 15 Both counsel submitted that the penalties in the proposed Settlement Agreement were towards the higher end of the range of what might be considered reasonable in these circumstances. The panel views the Respondent’s violations in this matter as serious and we note that the actual impact of the penalties may be diminished if the Respondent actually does retire from the industry. After considering all the facts and submissions, the panel determined that the agreed-upon penalties in this case are fair and reasonable. We therefore accepted and executed the original Settlement Agreement on March 29, 2016.

Dated at Calgary, Alberta this 18th day of April, 2016.

Eric Spink

David R. Johnson

William Welton

APPENDIX 1

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff (“Staff”) and the Respondent, Allen Samuel Mendelman, 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 Allen Samuel Mendelman.
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

Between 2002 and September 2013, the Respondent engaged in personal financial dealings with a client, without the knowledge or consent of his firm, contrary to IIROC Dealer Member Rule 29.1 (Investment Dealer Association by-law 29.1 prior to June 1, 2008);

Count 2

Between February and April of 2013, the Respondent engaged in outside business activities by facilitating off-book investments by his clients, without the knowledge of his firm, contrary to IIROC Dealer Member Rule 29.1; and

Count 3

On or about November of 2013, the Respondent shared non-public, material information concerning a publicly-traded company with 11 of his clients, contrary to IIROC Dealer Member Rule 29.1

6. Staff and the Respondent agree to the following terms of settlement:
 - a) a fine in the sum of \$100,000.00;
 - b) a suspension for a period of 18 months;
 - c) successfully rewrite the Conduct and Practices Handbook examination before a return to the industry after the suspension; and
 - d) a six month period of close supervision upon a return to the industry.
7. The Respondent agrees to pay costs to IIROC in the sum of \$5,000.00.

III. STATEMENT OF FACTS

(i) Acknowledgment

8. Staff and the Respondent agree with the facts set out in this Section III for the purpose of this Settlement Agreement only and that this agreement is without prejudice to the Respondent in any other proceeding.

(ii) Factual Background

Overview

9. The Respondent was in contravention of his firm's policies and IIROC rules by failing to disclose an outstanding loan from one of his clients, as well as by receiving compensation for transactions that were not carried out on his firm's books. He also disseminated non-public and material information relating to a potential public offering to a number of his clients.

Registration History

10. The Respondent has worked as a retail Investment Advisor since 1968 and is currently working as a Registered Representative at Integral Wealth Securities Ltd. ("Integral").
11. The alleged conduct occurred while the Respondent was employed at Canaccord Genuity Corp. ("Canaccord"). The Respondent was employed at Canaccord (or one of its predecessor firms) between October 1999 and September 2013.
12. The Respondent was subject to heightened supervision conditions between 2001 and 2011.
13. While the Respondent does not have a history of regulatory violations, in 2001 he was convicted of income tax evasion and received a fine of \$255,000.00.

Details of Violations

Personal Financial Dealings

14. While an employee with Canaccord the Respondent borrowed approximately \$125,000.00 from his client JH. The loan was obtained in either 2001 or 2002 in order to pay a Canada Revenue Agency fine. As of the date of the Notice, the loan had not been repaid.
15. Canaccord did not become aware of the loan until September of 2013, after discovering an email between the Respondent and the client in which the Respondent appeared to be negotiating the terms of a loan.
16. The Respondent was aware that personal financial dealings with clients were against Canaccord's internal policies. The Respondent repeatedly completed an annual sign-off confirming that he was aware of these requirements and was in compliance with them.
17. The Client was a longstanding personal friend of the Respondent.

Unauthorized Outside Business Dealings

18. After reviewing the Respondent's emails, Canaccord became aware that he had received commissions that had not been disclosed to Canaccord.
19. In February of 2013 Canaccord worked on a financing involving Fortress Energy Inc. (later named Alvopetro Inc.). However, Canaccord did not complete the financing. The CEO of Alvopetro Inc. is a personal friend of the Respondent and approached him directly to help Alvopetro Inc. raise money.
20. Between February and April of 2013 the Respondent solicited investments in a private placement for Alvopetro Inc. The company paid the Respondent an agency fee of \$57,225.00 for his involvement in the financing.
21. These transactions were conducted outside of Canaccord's books and records, and without their knowledge or consent. The Respondent was aware that such off-book dealings were prohibited by Canaccord's internal policies.

Dissemination of Non-Public Information

22. In November of 2013 the Respondent shared non-public, material information about an upcoming prospectus offering in Amarak Energy Inc. with a number of clients, and solicited their interest in investing in that offering.
23. The Respondent received an email from a member of the Corporate Finance Department of the firm that was acting as the lead underwriter for the offering. The email included specific details about the offering's timing, pricing, and size. The Respondent then forwarded that email to eleven of his clients.
24. None of the clients traded in the security or benefited financially from this information.

IV. TERMS OF SETTLEMENT

25. 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.
26. The Settlement Agreement is subject to acceptance by the Hearing Panel.
27. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
28. 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.
29. 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.
30. 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.
31. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
32. 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.
33. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

34. 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 4 day of February, 2016.

“Witness”

Witness

“Allen Mendelman”

Allen Mendelman

AGREED TO by Staff at the City of Calgary, in the Province of Alberta, this 9 day of February, 2016.

“Witness”

Witness

“Tayen Godfrey”

Tayen Godfrey

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 29 day of March, 2016, by the following Hearing Panel:

Per: “Eric Spink”

Panel Chair

Per: “David Johnson”

Panel Member

Per: “William Welton”

Panel Member

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