

# Re Nagy

IN THE MATTER OF:

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

**and**

**Troy Robert Nagy**

2018 IIROC 51

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

Heard: November 14, 2018

Decision: November 14, 2018

Written Decision: January 10, 2019

**Hearing Panel:**

Michael Radcliffe Q.C., Chair, Bruce Henderson and Eric Wray

**Appearance:**

David McLellan, Enforcement Council, IIROC

Troy Robert Nagy, in person

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## DECISION

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### Introduction

¶ 1 The undersigned panel was struck to conduct a settlement hearing pursuant to Section 8428 of the Consolidated Enforcement Examination & Approval Rules of IIROC, to consider whether or not to accept a Settlement Agreement reached between the parties (Settlement Agreement) by way of an Amended Notice of Application for Settlement Hearing dated November 08, 2018.

¶ 2 At the conclusion of a Settlement Hearing held in Saskatoon SK on November 14, 2018, and after considering the submissions of council for IIROC, the Respondent Troy Robert Nagy, agreeing to same, and considering the terms of the Settlement Agreement, we unanimously determine to accept the Settlement Agreement and we executed a copy of the Settlement Agreement on the said date. We advised the parties that our written reasons would follow. These are our reasons.

### SETTLEMENT AGREEMENT TERMS:

¶ 3 The Settlement Agreement, a copy of which is annexed to this decision, contains a summary of the facts of this case, the contraventions admitted by Mr. Nagy, and the agreed terms of settlement. The Settlement Agreement complies with Rules 8214, 8215, and 8428 of the Consolidated Enforcement Examination and Approval Rules of IIROC.

¶ 4 Mr. Nagy admitted that he failed to use due diligence to ensure that recommendations he made were suitable for the two groups of his clients contrary to Dealer Member Rule 1300.1(q), and that he, Mr. Nagy,

engaged in personal financial dealings with a client contrary to Dealer Member Rule 29.1, without the knowledge or approval of his firm.

¶ 5 The parties agreed to settlement terms of a fine of \$30,000., costs payable to IIROC of \$5,000., and prohibition of approval in any capacity with IIROC for two months.

¶ 6 Mr. McLellan advised the Panel that considerable time was spent negotiating the terms of the settlement and pointed out the public interest benefits of the settlement process. Mr. Nagy confirmed that he understood the terms of the agreement and agreed to same. Mr. McLellan submitted that the settlement negotiated was reasonable in the circumstances and both parties recommended the Panel accept the settlement agreement as negotiated by the parties.

¶ 7 Council pointed out the ratio contained in *Re Melewski* [1999] I.D.A.C.D. NO. 17, which reads in part...  
“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. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.”

¶ 8 The Panel was also referred to Rule 8215, para. 5, which reads as follows:

“After a settlement hearing, a hearing panel may accept or reject a settlement agreement.

¶ 9 The Settlement Agreement summarized the facts in this matter. The Respondent placed two of his clients, MH, and FM/KM into an alternative investment product, which was high-risk when he did not fully understand the nature of the investment. This is contrary to Member Rule 1300.1(q). The clients (MH) lost \$163,000 or 38.7% of his portfolio and (FM/KM) \$806,000 or 34.1% of their portfolio.

¶ 10 The Respondent engaged in personal financial dealings with his clients JS/LS without the knowledge of his dealer member, contrary to Member Rule 29.1. The sum involved was \$52,000.

¶ 11 Counsel for IIROC Staff, Mr. McLellan, submitted a number of decisions for the attention of the panel. The first topic concerned the importance of the financial advisor to know and understand the nature and complexity of the investment.

*Re Beechey* 2011 IIROC No.80

*Re Dyck* 2012 LN IIROC No.31

*Re Beechey* resulted in a settlement agreement and *Re Dyck* resulted in an unopposed hearing with joint submissions of counsel.

¶ 12 Counsel for IIROC Staff further referenced four cases touching on the issue of personal dealings with a client. These cases were:

*Re Bush* 2011 LN IIROC No.52

*Re Latta* 2014 LN IIROC No.5

*Re Gunderson* 2012 LN IIROC No.66

*Re Kwok* 2010 LN IIROC No.38

These four cases all involved settlement agreements. Counsel introduced two further cases at the hearing:

*Re Lavoie* 2013 IIROC No.51

*Re Lambert* 2013 IIROC No.16

These latter two cases involved hearings. These decisions were helpful in the present matter under

consideration.

¶ 13 Mr. Nagy, had no prior infractions. The Respondent entered into the settlement agreement with IIROC, agreeing to the facts presented by IIROC Staff. This agreement saved costs of a hearing and the stress on the clients who did not need to proceed with a hearing. The Respondent took responsibility for his actions and also repaid a significant amount of the losses incurred.

¶ 14 The Panel considered the fact that a joint submission was presented by Counsel, a settlement agreement was concluded, the facts of the case were agreed upon, and the Panel considered the law or precedents reviewed, and the Sanction Principles 1- 9 contained at tab 5 in the Settlement Hearing Book Taking all of these factors into account, the Panel concluded that the terms of the agreement:

- A) Were reasonable given the conduct of the Respondent;
- B) The issues of specific and general deterrence were satisfied;
- C) The penalties imposed will prevent the type of conduct occurring in the future;
- D) Investors will be protected in the future;
- E) Confidence in the integrity of the capital markets, IIROC oversight, and the regulatory process will be maintained.

¶ 15 Consequently, the Hearing Panel accepts the settlement agreement herein, which includes:

- A) A fine in the amount of \$30,000;
- B) Costs payable to IIROC of \$5,000;
- C) Prohibition of approval of Troy Robert Nagy in any capacity with IIROC for a period of two months from the date of the pronouncement and execution of this agreement by all the parties hereto.

DATED this 10 day of January 2019.

Michael Radcliffe

Bruce Henderson

Eric Wray

## **SETTLEMENT AGREEMENT**

### **PART I – INTRODUCTION**

1. The Investment Industry Regulatory Organization of Canada (“IIROC”) will issue a Notice of Application to announce that it will hold a settlement hearing to consider whether, pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, a hearing panel (“Hearing Panel”) should accept the settlement agreement (“Settlement Agreement”) entered into between the staff of IIROC (“Staff”) and Troy Robert Nagy (“Respondent”).

### **PART II – JOINT SETTLEMENT RECOMMENDATION**

2. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

### **PART III – AGREED FACTS**

3. For the purposes of this Settlement Agreement, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement

## Overview

4. The Respondent, Troy Robert Nagy (“Nagy”) was a Registered Representative (“RR”) responsible for the accounts of clients MH, and FM/KM (the “Clients”).
5. He failed to use due diligence to ensure that his recommendations were suitable for the Clients when he recommended concentrated positions in an alternative investment product that he did not fully understand.
6. Over a 5 year period, MH lost \$163,000 (38.7%) and FM/KM lost \$806,000 (34.1%).
7. Nagy also engaged in personal financial dealings when, without the knowledge or consent of his Dealer Member, he deposited funds totaling \$52,200 in an outside bank account held by clients JS/LS.

## Registration History

8. Nagy was employed in a branch of CIBC World Markets Inc. (“CIBC”) in Saskatoon, Saskatchewan from October, 1999 until July, 2016, when his employment was terminated.
9. He is not currently registered with an IIROC Dealer Member.

## ROI Private Placement Pooled Funds

10. Return on Innovation Management Ltd. and its affiliate Return on Innovation Capital Ltd. (together “ROI Capital”) promoted and sold certain investment products known as the ROI Private Placement Pooled Funds.
11. The ROI Private Placement Pooled Funds were particularized in an Offering Memorandum (“OM”), filed in April, 2010 (later updated in August, 2011) with the Ontario Securities Commission. ROI offered units in four different open-ended investment funds through private placement, and were not listed or quoted on any exchange.
12. The OM stated, in bold lettering, on the top of page 1:

.... There is no market for these securities, so that it may be difficult or even impossible for Investors to sell them.
13. The OM also stated that an investment involved “significant risks”. More specifically, it provided as follows:

There is no guarantee that an investment in a Fund will earn a positive return in the short or long term. An investment in the Funds is appropriate only for investors who have the capacity to absorb a loss of some or all of their investment and can withstand the effect of distributions not being paid or redemptions being suspended.
14. In early 2010, Nagy learned of the ROI products through a sales presentation at his Dealer Member.
15. One of the funds, the ROI Private Placement Fund (“ROI PPF”), was of particular interest to Nagy. According to the OM, the ROI PPF had an investment objective to “provide exposure to a portfolio of investments which consist primarily of senior private placements of capital in debt obligations and/or equity securities issued by businesses seeking non-bank financing.”
16. The ROI products were not covered by the CIBC research department, nor was Nagy aware of any third party research coverage. He conducted his own research concerning ROI PPF by discussing it with other investment advisors, and reviewing financial information, investment holdings, and historical rates of return.
17. Nagy believed that the ROI PPF was a lower risk fixed income product, which held first priority mortgages against established commercial properties in Canada, and that it was similar to a mortgage fund. As this product had provided daily liquidity in the past, Nagy believed that the ROI PPF units would continue to

provide daily liquidity.

18. As a result, he recommended the ROI PPF investment to clients MH, and FM/KM (further particularized below) as a private fixed income security with lower risk and volatility, and an attractive yield.
19. In March, 2012, ROI suspended all redemptions of ROI PPF units. Shortly thereafter, ROI began a restructuring, and as a result, ROI PPF was converted into a closed-end investment fund named ROI Canadian Mortgage Income Fund, a reporting issuer on the TSX. Unfortunately, the units traded at a discount to the price paid by investors who purchased the ROI PPF units in 2010.
20. In July, 2014, the ROI Canadian Mortgage Income Fund was reorganized, and Dream Asset Management Corporation (“Dream”), a reporting issuer on the TSX, acquired the right to manage the various ROI funds. As part of the reorganization, ROI Canadian Mortgage Income Fund unitholders were given new units in Dream along with cash distributions in exchange for the cancellation of their units.
21. Although Nagy believed that the ROI PPF investment was a lower risk, fixed income investment with liquidity, in reality the ROI PPF was an alternative investment product which was high risk, and could be illiquid. If Nagy had conducted the necessary due diligence, the risk level and lack of liquidity of the ROI PPF investment would have been, or ought to have been, apparent.

#### **Client – MH**

##### Suitability

22. MH and his spouse are in their mid 40’s, and own and operate a farm in Alberta. They first became clients of Nagy in 2005.
23. They had limited investment knowledge and were relying on Nagy for his investment advice and expertise.
24. In July, 2009, MH, through a holding company, opened a margin account with Nagy. The new client account form (“NCAF”) contained investment objectives of 100% long term, and risk tolerance parameters of 40% low; 30% medium; and 30% high. It listed net worth of \$400,000 and investment knowledge as “novice”.
25. In early 2010, Nagy introduced MH to a possible investment in the ROI PPF. He presented it to him as a fixed income investment with a lower risk profile. MH agreed to follow Nagy’s recommendation and invest in ROI PPF.
26. MH was not told about a potential lack of liquidity with the ROI PPF.
27. On February 5, 2010, the NCAF was updated with a new Know Your Client (“KYC”) update form. The only update was that investment knowledge was changed from “novice” to “good”.
28. Between May, 2010 and November, 2011, MH invested a total of \$594,000 in ROI PPF.
29. Between May, 2010, and January, 2016, approximately 84% of his total portfolio was invested in the ROI PPF (and its reorganized successors). The high level of concentration significantly increased the risk level in the portfolio.
30. At numerous times, MH wished to sell his ROI PPF (and its reorganized successor) units. However, Nagy was not able to sell the units due to the lack of liquidity, lower price and the 2012 suspension of all redemptions. In addition, when the units became free trading, they traded at a lower price than Nagy expected. Nagy recommended continuing to hold in order to wait for the market price to improve. Nagy repeatedly assured MH that he would ultimately receive a full return on his investment
31. Between May, 2013, and July, 2014, MH was able to redeem some units for total proceeds at net asset value of approximately \$161,000.

32. Between May, 2010 and January, 2016, MH sustained a loss of \$163,000, or 38.7%, of his portfolio. During the same time period, the S&P TSX Composite Index increased by 11.3%, and the DEX Universe Bond Index increased by 28.6%.
33. Nagy failed to perform the necessary due diligence with respect to the ROI PPF prior to recommending it to clients. As a result of his failure to understand the investment product, Nagy was not in a position to recommend it to MH, or to ensure that it was a suitable investment for him.
34. In addition, the high level of individual security and sector concentration in a high risk security, in combination with the lack of liquidity, resulted in a high level of risk which was not suitable for this client in light of his true circumstances, investment knowledge and experience.
35. MH received compensation from the Dealer Member in the amount of approximately \$160,000.

## **Clients – FM/KM**

### Suitability

36. FM and his spouse, KM, live in British Columbia. They were in their late 50's when they first opened accounts with Nagy in 2009.
37. They had previously sold their business for approximately \$5,000,000. Although they had been small business owners, they had limited investment knowledge and were relying on Nagy for his investment advice and expertise.
38. They initially opened a total of 7 accounts with Nagy, two of which were through holding companies and included segregated managed accounts.
39. The July, 2009 NCAFs for their personal accounts stated that they had a net worth of approximately \$5,500,000, which included the value in the holding companies. Their stated annual income was \$100,000. Investment objectives were 100% income, and stated risk tolerance was 80% low, 20% medium and 0% high.
40. The July, 2009 NCAFs for the holding company accounts stated net worth was \$5,000,000, with investment objectives of 45% income, 25% gain short term, 40% gain long term. Stated risk tolerance was 45% low, 30% medium, 25% high.
41. Between 2010 and 2014, there were a number of KYC updates. The combined stated net worth was as high as \$6,200,000. The stated investment objectives were generally weighted toward income and long term objectives. The stated risk tolerance parameters are also variable, with these weightings generally as low and medium risk until 2013 and 2014, when stated risk tolerance parameters in most of the accounts ranged between 75% and 100% high risk.
42. The stated investment knowledge on the NCAFs and updates also varied between “novice”, “fair”, “good”.
43. In mid 2010, Nagy introduced FM/KM to a possible investment in the ROI PPF. He presented it to them as a fixed income investment with a lower risk profile. FM/KM agreed to follow Nagy's recommendation and invest in ROI PPF.
44. They were not told about a potential lack of liquidity with the ROI PPF.
45. Between May, 2010 and March, 2012, FM/KM invested a total of approximately \$1,623,000 in ROI PPF.
46. Between October, 2010, and January, 2016, approximately 82% of FM's total portfolio, 90% of KM's total portfolio, and 47% of their holding company's total portfolio was invested in the ROI PPF (and its reorganized successors). The high level of concentration significantly increased the risk level in the portfolio.

47. At numerous times, FM/KM wished to sell their ROI PPF (and its reorganized successor) units. However, Nagy was not able to sell the units due to the lack of liquidity, lower price and the 2012 suspension of all redemptions. In addition, when the units became free trading, they traded at a lower price than Nagy expected. Nagy recommended continuing to hold in order to wait for the market price to improve. Nagy repeatedly assured FM/KM that they would ultimately receive a full return on their investment.
48. Between December, 2013 and July, 2014, FM/KM were able to redeem some units at net asset value for total proceeds of approximately \$305,000.
49. Between October, 2010 and January, 2016, FM and KM sustained a total loss of \$806,000, or 34.1%, of their portfolio. During the same time period, the S&P TSX Composite Index increased by 1.75%, and the DEX Universe Bond Index increased by 22.8%.
50. Nagy failed to perform the necessary due diligence with respect to the ROI PPF prior to recommending it to FM/KM. As a result of his failure to understand the investment, Nagy was not in a position to recommend it to these clients, or to ensure that it was a suitable investment for them.
51. In addition, the high level of individual security and sector concentration in a high risk security, in combination with the lack of liquidity, resulted in a high level of risk which was not suitable for these clients in light of their true circumstances, investment knowledge and experience.
52. FM/KM received compensation from the Dealer Member in the amount of approximately \$535,000.

## **Personal Financial Dealings**

### **Clients - JS/LS**

53. JS/LS were in their mid to late 70's and were Nagy's clients from approximately 2000 until January, 2014. They lived in Saskatoon and had very limited investment knowledge.
54. Between December 2010, and December 2013, Nagy made 29 monthly deposits of \$1,800 totaling \$52,200 into a credit union account held by JS/LS. These transactions were conducted by Nagy through individual monthly bank drafts from his personal bank account, and physically deposited into their account by Nagy.
55. During this time, although the account balance was less than \$1,500, JS/LS were listed as active clients of Nagy, and the transactions were made without the knowledge or approval of his firm. As such, they constituted personal financial dealings with clients and conduct unbecoming contrary to Dealer Member Rule 29.1.

### **Compensation**

56. Of the \$695,000 in compensation paid by CIBC to MH, and FM/KM, Nagy has repaid approximately \$663,000 through payroll deductions and deferred compensation share forfeitures.

## **PART IV – CONTRAVENTIONS**

57. By engaging in the conduct described above, the Respondent committed the following contraventions of IIROC's Rules:

### **Contravention 1**

Between May, 2010 and January, 2016, the Respondent failed to use due diligence to ensure that recommendations were suitable for two clients, contrary to Dealer Member Rule 1300.1(q); and

### **Contravention 2**

Between December, 2010 and December, 2013, the Respondent engaged in personal financial dealings with a client contrary to Dealer Member Rule 29.1.

## **PART V – TERMS OF SETTLEMENT**

58. The Respondent agrees to the following sanctions and costs:
- a. A fine in the amount of \$30,000;
  - b. Costs in the amount of \$5,000; and
  - c. Prohibition of approval in any capacity with IIROC for two months.
59. If this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and the Respondent.

## **PART VI – STAFF COMMITMENT**

60. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against the Respondent in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of the paragraph below.
61. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out Part III of this Settlement Agreement.

## **PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT**

62. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
63. This Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing in accordance with the procedures described in Sections 8215 and 8428, in addition to any other procedures that may be agreed upon between the parties.
64. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.
65. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights under the IIROC Rules and any applicable legislation to any further hearing, appeal and review.
66. 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 based on the same or related allegations.
67. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
68. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full of copy of this Settlement Agreement on the IIROC website. IIROC will also publish a summary of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement.
69. If this Settlement Agreement is accepted, the Respondent agrees that neither he nor anyone on his behalf, will make a public statement inconsistent with this Settlement Agreement.
70. The Settlement Agreement is effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

**PART VIII – EXECUTION OF SETTLEMENT AGREEMENT**

- 71. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.
- 72. A fax or electronic copy of any signature will be treated as an original signature.

**DATED** this 12 day of October, 2018.

“Witness” \_\_\_\_\_

**Witness**

“Troy Robert Nagy” \_\_\_\_\_

**Troy Robert Nagy**

“Witness” \_\_\_\_\_

**Witness**

“David McLellan” \_\_\_\_\_

**David McLellan**

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

The Settlement Agreement is hereby accepted this 14 day of November 2018 by the following Hearing Panel:

Per: **“Michael Radcliffe”** \_\_\_\_\_

Panel Chair

Per: **“Eric Wray”** \_\_\_\_\_

Panel Member

Per: **“Bruce Henderson”** \_\_\_\_\_

Panel Member

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