

Re D'Souza

IN THE MATTER OF:

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

and

Rajesh D'Souza

2014 IIROC 53

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

Heard: October 22, 2014 in Toronto, Ontario

Decision: October 29, 2014

Hearing Panel:

Terrance Sweeney, Chair, Donald Lawson and Hugh McNabney

Appearances:

Kathryn Andrews, Senior Enforcement Counsel, IIROC

Ron Palleschi, Counsel for the Respondent, Rajesh D'Souza

DECISION OF THE HEARING PANEL

¶ 1 Counsel for the parties entered into a Settlement Agreement which they submitted to this Hearing Panel for approval or rejection. The Hearing Panel considered the material filed and the submissions by Counsel for the Respondent and IIROC signed and thereby accepted the Settlement Agreement. The reasons for our decision follow.

THE CONTRAVENTIONS

¶ 2 The contraventions are detailed in the Settlement Agreement and were admitted by the Respondent. They are summarized as follows:

- a. The Respondent was a Registered Representative ("RR") with CIBC during 2010 to 2013. He accepted about \$1 million from four clients which he deposited in his bank account. He invested in second mortgages and construction projects without telling his employer.
- b. The Respondent earned income from the investments, part of which he paid to his clients.

TERMS OF SETTLEMENT

- ¶ 3
- a. The Respondent shall pay a fine of \$20,000.00;
 - b. The Respondent shall be suspended from registration in any capacity for one year;
 - c. The Respondent shall be closely supervised for twelve months upon any re-registration;
 - d. The Respondent shall rewrite the Conduct and Practices Handbook course within six months upon any re-registration.
 - e. The Respondent has agreed to pay IIROC \$1,500.00 by way of costs.

DEALER MEMBER RULE 29.1

¶ 4 This rule proscribes the very activity in which the Respondent engaged and egregiously so. A registrant must not engage in personal business dealings with a client as to do so puts him in a conflict of interest where the registrant's interest could conflict with those of the client.

- ¶ 5 The Hearing Panel noted, in particular, the following aggravating factors in the Respondent's conduct:
- a. The investments totaled nearly \$1,000,000.00.
 - b. The Respondent dealt with four clients over a period of four years.
 - c. The Respondent earned income from the investments only some of which he remitted to his clients.
 - d. The Respondent concealed his activities from his employer.

¶ 6 The Hearing Panel did note that he did not have any previous disciplinary history with IIROC. He also cooperated with Staff.

DUTY OF THE HEARING PANEL

¶ 7 The Hearing Panel is only able to accept or reject the Settlement Agreement. The test governing the Hearing Panel in this regard is well established: the Hearing Panel will only reject a settlement when it finds that it does not fall within a range of reasonableness.¹

CONSIDERATIONS OF THE HEARING PANEL

¶ 8 The Hearing Panel considered the submissions of Counsel and the relevant case law. The settlement in this case strikes a reasonable balance between the need specifically to deter the Respondent from offending again and generally to deter others in the industry who might be inclined to engage in such behaviour.

DECISION

¶ 9 The Hearing Panel unanimously approved the settlement as a reasonable one and accepted it.

Dated at Toronto, Ontario this 29th day of October 2014.

Terrance A. Sweeney,

Chair

Donald Lawson,

Panel Member

Hugh McNabney,

Panel Member

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff ("Staff") and the Respondent Rajesh D'Souza (the "Respondent"), 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") into the Respondent's conduct.

¹ *Winkler J., Gilbert v. CIBC*, [2004] O.J. 4260

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 contravention of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

Count 1: Between January 2010 and July 2013, Rajesh D’Souza engaged in personal financial dealings with clients, which conduct was unbecoming or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1.

6. Staff and the Respondent agree to the following terms of settlement:
 - a) Payment of a fine in the amount of \$20,000;
 - b) A suspension from registration in any capacity for one year;
 - c) Close supervision for 12 months upon any re registration; and,
 - d) To rewrite the CPH within 6 months upon any re registration.
7. The Respondent agrees to pay costs to IIROC in the sum of \$1,500.

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

Overview

9. During 2010 to 2013, four clients gave the Respondent funds totaling approximately one million dollars from their bank accounts and asked him to invest these funds outside of his firm in second mortgages and in construction projects. These investments paid interest to the Respondent and he in turn paid a lesser rate of interest to the clients.
10. According to the Respondent, the clients consented to this arrangement and have received all or some of their principal back. The Respondent did not tell his firm employer CIBC Investor Services Inc. (“CIBC ISI”) about these investments.

Background

11. The Respondent was a Registered Representative employed by CIBC ISI from July 2006 onwards, most recently at a branch located in Etobicoke, Ontario. He had also worked for CIBC as a bank employee since September 2003.
12. The Respondent’s employment was terminated by CIBC ISI in July 2013.

The Clients

13. The Respondent engaged in personal financial dealings with four clients: TS, OA, PK and KS (collectively the “Clients”).
14. According to the Respondent, PK and KS were good friends who lived together. He met them in 2010.
15. TS became the Respondent’s client in 2008.
16. OA became the Respondent’s client in approximately 2010.

The Respondent’s Actions

17. The Respondent told Staff that beginning in 2010, the Clients asked him about his personal investments. He told the Clients that he was investing in properties by purchasing second mortgages or by investing in construction projects, all located within Canada.
18. The Respondent said the Clients asked him to put some of their personal funds into the same investments. The Respondent deposited the Clients' funds into his bank account and then made the investments in his own name.
19. The Respondent was not able to provide Staff with details about the investments. According to him, there was no written contract between himself and the Clients. The arrangement was that the Respondent invested the Clients' funds in his own name, he earned approximately 8 to 12% interest on the investments, and in turn the Clients were paid 7 or 8% interest on the investments.
20. The Respondent maintains that the Clients knew that he was investing their funds outside of CIBC ISI, although he admitted that the Clients did not know the exact name or nature of the investments.
21. The Respondent states that he made either monthly or quarterly interest payments to the Clients.

Amounts invested

22. PK and KS invested approximately \$100,000 each in a lump sum payment drawn from a bank account. The Respondent maintains that he paid them interest and ultimately returned their principal. He does not recall when this occurred.
23. TS invested a total of approximately \$750,000 with the Respondent, who deposited TS' cheques into his own bank account. The Respondent told Staff that he paid interest to TS but has not returned the full amount of the principal, as TS wants to keep it invested.
24. Client OA invested \$75,000 to \$100,000 in a lump sum payment to the Respondent, which was drawn from OA's bank account.

Not disclosed to CIBC ISI

25. The Respondent admits that he did not tell CIBC ISI about these financial dealings with his clients.

Other

26. According to the Respondent, none of the Clients' funds came from their CIBC investment accounts. None of the Clients have complained to IIROC.

Mitigating Factors

27. The Respondent does not have any previous disciplinary history with IIROC.
28. The Respondent co-operated with Staff's Investigation and this prosecution.

IV. TERMS OF SETTLEMENT

29. 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.
30. The Settlement Agreement is subject to acceptance by the Hearing Panel.
31. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
32. 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.
33. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his rights under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
34. 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.

35. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
36. 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.
37. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
38. 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 Ontario, this 12th day of September, 2014.

"WITNESS"

"RAJESH D'SOUZA"

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this "17th" day of "September", 2014.

"WITNESS"

"KATHRYN ANDREWS"

Senior 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 "22nd" day of "October", 2014, by the following Hearing Panel:

Per: "Terrance Sweeney"

Panel Chair

Per: "Hugh McNabney"

Panel Member

Per: "Donald Lawson"

Panel Member

Copyright © 2014 Investment Industry Regulatory Organization of Canada. All Rights Reserved.