Re Reyes

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

John Manuel Reyes

2018 IIROC 47

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

Heard: November 28, 2018 in Calgary, Alberta
Decision: November 28, 2018
Reasons: December 11, 2018

Hearing Panel:
Eric Spink, QC, John Wells and David Johnson
Appearance:
David McLellan, Senior Enforcement Counsel for IIROC staff
Alyssa Duke and Renee Reichelt, for John Manuel Reyes
In attendance:
John Manuel Reyes

REASONS FOR ACCEPTANCE OF SETTLEMENT

¶ 1 The panel accepted a Settlement Agreement between IIROC and John Manuel Reyes (the "Respondent"), dated November 9, 2018, which is attached to these reasons as Appendix 1.

¶ 2 In the Settlement Agreement, the Respondent admitted the following contraventions:

a) Between November, 2012 and September, 2016, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to two clients contrary to Dealer Member Rule 1300.1(a);

b) Between November, 2012 and September, 2016, the Respondent failed to use due diligence to ensure that investment recommendations were suitable for two clients contrary to Dealer Member Rule 1300.1(q); and

c) Between June, 2013 and November, 2014, the Respondent provided personal funds to a client in order to trade securities through the client's account, contrary to Dealer Member Rule 29.1.

¶ 3 The Respondent agreed to the following sanctions and costs:

a. A two (2) month suspension from registration in any capacity;

b. A fine in the total amount of $107,500, consisting of a global fine of $67,500 and disgorgement

of $40,000 arising from the contravention of Dealer Member Rule 29.1;

c. 12 months close supervision;

d. Successful rewrite of the Conduct and Practices Handbook Examination within 90 days;

e. Costs in the amount of $2,500.

¶ 4 IIROC's Rules of Practice and Procedure make it clear that the panel's role is limited to either accepting or rejecting the settlement agreement [Rule 8215(5)]. We are also limited to the facts contained in the settlement agreement [Rule 8428(6)]. As described in Re Milewski [1999] I.D.A.C.D. No. 17, the panel is asked "to 'accept', rather than approve, a settlement agreement" and our considerations must "reflect the public interest benefits of the settlement process". The ultimate question is whether the proposed settlement falls within "a reasonable range of appropriateness", having regard to the particular facts, the IIROC Sanction Guidelines, and other decisions involving comparable misconduct.

¶ 5 Counsel emphasized that they were making a joint submission in support of the Settlement Agreement. They reviewed the facts in detail, and analyzed how the principles and key factors described in the IIROC Sanction Guidelines apply to the particular facts of this case. They also referred to thirteen previous decisions dealing with sanctions for more or less similar contraventions.

¶ 6 The contraventions in this case arose from two separate situations. The first situation involved the Respondent's failure to know his clients and his recommendation of unsuitable investments. The clients were a married couple nearing retirement. The clients were somewhat vulnerable and relied upon the Respondent's expertise over a period of several years. As a result of excessively risky and concentrated investments recommended by the Respondent, the clients sustained losses of almost $300,000.

¶ 7 The second situation involved the Respondent investing approximately $70,000 of his own money through a client's account. The purpose of this arrangement was to enable the Respondent to participate, indirectly, in private placements that were not otherwise available to him. The Respondent entered into several transactions over a period of 18 months, and realized a taxable gain of just over $80,000. The Respondent's firm later discovered the transactions and, after an internal investigation, fined the Respondent $40,000.

¶ 8 Counsel acknowledged that both these situations involved serious contraventions. The second situation was particularly serious because the Respondent's actions were deliberate, deceptive and self-interested. Counsel noted that the cumulative effect of the separate contraventions warranted significant sanctions, including a period of suspension.

¶ 9 Counsel also noted some mitigating factors. The Respondent has no prior disciplinary history, and he cooperated with the investigations. Although the know-your-client/suitability contraventions are serious, they were isolated to these two clients and not part of a pattern. The Respondent has already paid $40,000 to his firm and the agreed-upon sanctions include disgorgement of another $40,000 as part of the total fine of $107,500. The Respondent still has the support of his firm, which is willing to deal with his two-month suspension and 12 months of close supervision. Counsel submitted that the Respondent is taking this matter seriously, and has learned his lesson.

¶ 10 The panel also considered the many cases referred to us. Every case is unique, so the process of comparing sanctions and attempting to adjust for the unique facts and circumstances in each case "is an art, not a science", Re Donnelly 2016 LNIIROC 23, para. 28. In this case, the panel was satisfied that the two-month suspension is a significant sanction for the Respondent because he continues to work in the industry. We were also satisfied that the fine constitutes a substantial financial penalty, in addition to disgorgement. The panel concluded that the agreed-upon sanctions are significant enough to prevent and discourage future misconduct by the Respondent (specific deterrence), and to deter others from engaging in similar misconduct (general

deterrence). Having found the proposed settlement to be fair and reasonable, the panel accepted and executed the original Settlement Agreement on November 28, 2018.

Dated at Calgary, Alberta this 11th day of December, 2018.

Eric Spink

John Wells

David Johnson

APPENDIX 1

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 John Manuel Reyes ("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, John Manuel Reyes ("Reyes") is a Registered Representative ("RR") with Richardson GMP Limited ("RGMP") in Calgary, Alberta.

5. Contrary to Dealer Member Rule 1300(1)(a), Reyes failed to know his clients, KB, who had moderate investment experience, and DE, who was an inexperienced investor, (the "Clients"). The Clients relied upon Reyes for his investment expertise.

6. In addition, contrary to Dealer Member Rule 1300(1)(q), Reyes failed to use due diligence to ensure that all of his investment recommendations were suitable for the Clients when he recommended an increasingly high risk investment strategy which involved concentrated positions in speculative energy sector securities. Some of the investments were private placements in thinly traded or illiquid securities.

7. IIROC has calculated that KB and DE suffered losses in their accounts of 37.4% and 21.9% over the period of time of January 2014 to September 2016.

8. In addition, Reyes engaged in conduct unbecoming when he invested personal funds to participate in three separate private placements through a client's account.

Registration History

9. Reyes first became an RR in 2005. He has been with RGMP since November 1, 2013 and was with its predecessor, Macquarie Private Wealth Inc. ("Macquarie"), since July, 2012.

10. Reyes operated within RGMP under the team name Woodward Asset Management ("WAM").

11. Reyes managed his own clients and the allegations herein relate to Reyes' handling of the accounts of his own clients KB and DE, as well as conduct arising with respect to another Reyes client, DB.

12. Reyes is currently a registrant with RGMP in Calgary and has operated under the team name Reyes Wealth since May, 2016. Reyes has no prior disciplinary history.

Clients – KB/DE

13. KB and DE live in Calgary. KB worked as an administrative assistant for 27 years before unexpectedly retiring, after being on leave, in January, 2015. DE worked as a service technician and anticipated working for another couple of years but he retired in January, 2016 with a retirement package. They were formally married in 2015.

14. KB owned six rental properties, which generated income. She also received some income from a family farm. DE had limited assets, following a divorce from his previous partner.

15. KB handled the financial affairs of the household, and had a reasonable level of investment knowledge. She had a business management certificate from a technical college and had taken one investment related course through the City of Calgary. She regularly monitored her own and DE's accounts. DE had more limited investment knowledge.

16. KB was unhappy with her existing investments. KB and DE were referred to Reyes by a manager at KB's place of employment.

17. On September 6, 2012, Reyes met with KB and DE at their home to consider retaining him as their investment advisor. At that time, KB was 52, DE was 56 and both were employed. In a follow up email to KB on September 7, 2012, and in a continued attempt to secure their business, Reyes wrote that he saw KB's situation as pretty straight forward. He noted the retirement horizon in the near future, and that if they decided to work together they would line up an investment strategy that would start to address the growth side of KB's portfolio.

18. In November 2012, KB became a client of Reyes, and in January 2013, DE became a client of Reyes. KB had informed Reyes that she still had funds invested with a bank owned Dealer Member but would transfer in some of those funds to open accounts with Reyes.

Client – KB

(i) Failure to Know Your Client

19. Between November, 2012 and September, 2016, KB held four accounts with Reyes, the particulars of which were as follows:

Account Type	KYC Date	Age	Net Worth	Income	Investment Objectives				Risk Tolerance			Investment Knowledge			
					Income	Gain – Short Term	Gain – Mid Term	Gain – Long Term	Low	Medium	High	Minimal	Fair	Good	Excellent
CASH	11/21/2012	52	$1,868,000	$148,000		100%				60%	40%			X	
RRSP/TFSA	5/21/2013	52	$1,868,000	$148,000		100%				60%	40%			X	
CASH	8/27/2013	53	$1,868,000	$200,000		100%				60%	40%			X	
CASH/TFSA/RRSP	6/10/2014	53	$1,868,000	$200,000		100%				20%	80%			X	
RRSP/RIF	1/27/2015	54	$2,490,000	$200,000		100%					100%			X	

20. The stated income included gross rental income (excluding mortgage and other expenses) on rental

properties.

21. Throughout this period of time, the accounts contained investment objectives of 100% “Capital Gains: Short-Term”.

22. In June, 2014, Reyes updated three accounts to risk tolerance of 80% high, with the same investment objectives.

23. In October, 2014, KB took a leave of absence from work. In January, 2015, she retired from work and advised Reyes accordingly.

24. Despite her retirement, in January, 2015, Reyes changed her investment objectives to 100% high risk tolerance, with the same investment objectives of 100% “Capital Gains: Short-Term”.

25. In addition to the funds she initially invested with Reyes when the accounts were opened KB, commencing in February, 2013 and up to January, 2016, periodically made RRSP contributions and other deposits to her accounts with Reyes. A portion of these deposited funds had been borrowed by KB on her initiative and secured against one of KB’s rental properties.

26. For the period of November, 2012 to September, 2016, the stated investment objectives of her accounts were too aggressive for KB, who was nearing, and reaching, retirement. Reyes failed to learn and remain informed of the essential facts relative to KB, as the stated investment objectives in her accounts were inconsistent with her actual financial situation, investment knowledge, investment objectives, and risk tolerance.

(ii) Suitability

27. KB had moderate investment knowledge but was inexperienced with private placements. She relied on Reyes for investment advice and recommendations. She had regular contact via telephone and email with Reyes concerning her investments and tracked the investments in a detailed spreadsheet.

28. Although KB was accepting of some level of risk, Reyes pursued a speculative investment strategy in her accounts which involved a high degree of risk.

29. Most of Reyes’ recommendations were speculative and highly concentrated in Alberta energy sector securities. Many of these investments were private placements in thinly traded or illiquid securities in small oil and gas sector companies. The collapse in the price of oil beginning in mid 2014 had a significant impact on Alberta sector companies, including many of her investments.

30. By early 2016, two investments Reyes had recommended went to zero value when the issuers in questioned declared insolvency and, her accounts had lost further value.

31. IIROC has calculated that between January 2014 and September 2016, approximately 91% of KB’s holdings were in high risk securities. 81% of these securities were in the energy sector, and IIROC classifies approximately 83% of the energy sector securities as junior companies.

32. IIROC has calculated that between January 2014 and September 2016, KB experienced a loss of $249,000, or 37.4% of her portfolio. During the same time period, the S&P TSX Composite Index increased by 7.35%.

33. In between January 2012 and September 2016, KB paid total gross commissions of $49,422 to RGMP and Macquarie.

34. Many of the holdings in her accounts were speculative, and in combination with the very high level of energy sector concentration, presented a high level of risk. As such, these recommendations were not suitable for KB in light of her age, employment status, investment knowledge and experience.

Client – DE

(i) Failure to Know Your Client

35. Between January, 2013 and September, 2016, DE held two accounts with Reyes, the particulars of which were as follows:

Account Type	KYC Date	Age	Net Worth	Income	Investment Objectives				Risk Tolerance			Investment Knowledge			
					Income	Gain – Short Term	Gain – Mid Term	Gain – Long Term	Low	Medium	High	Minimal	Fair	Good	Excellent
RRSP/TFSA	1/31/2013	56	$90,000	$82,000		100%				60%	40%			X	
RRSP	2/11/2014	58	$90,000	$82,000		100%					100%			X	
TFSA	2/11/2014	58	$90,000	$82,000		100%				30%	70%			X	
RRSP/TFSA	1/27/2015	58	$90,000	$100,000		100%					100%			X	

36. Throughout this period of time, the accounts contained investment objectives of 100% "Capital Gains: Short-Term".

37. In February, 2014, the TFSA account was updated to risk tolerance of 70% high, with the same investment objectives.

38. In January, 2015, the accounts were updated to risk tolerance parameters of 100% high risk, with the same investment objectives of 100% "Capital Gains: Short-Term".

39. In January, 2016, DE was forced into retirement as a result of a corporate restructuring. DE was provided with a retirement package. The stated investment objectives and risk tolerance parameters in his accounts were not updated subsequent to his retirement, and he transferred his accounts in September, 2016.

40. For the period of January, 2013 to September, 2016, the stated investment objectives of his accounts were too aggressive for DE, who had limited investment knowledge, and was nearing, and reaching, retirement. Reyes failed to learn and remain informed of the essential facts relative to DE, as the stated investment objectives in his accounts were inconsistent with his actual financial situation, investment objectives and risk tolerances.

(ii) Suitability

41. DE was an inexperienced investor who relied on Reyes for investment advice and recommendations. KB was Reyes' primary point of contact for both KB and DE accounts.

42. Reyes pursued a speculative investment strategy in his accounts which involved a high degree of risk.

43. Most of Reyes' recommendations were speculative and highly concentrated in Alberta energy sector securities. Many of these investments were private placements in thinly traded or illiquid securities in small oil and gas sector companies. The collapse in the price of oil beginning in mid 2014 had a significant impact on Alberta energy sector companies, including many of his investments.

44. By early 2016, two investments Reyes had recommended went to zero value when the issuers in questioned declared insolvency, and DE's accounts had lost further value.

45. IIROC has calculated that between January, 2014 and September, 2016, approximately 80% of DE's holdings were in high risk securities and that 73% of these securities were in the energy sector, and IIROC classifies approximately 49% of the energy sector securities as junior companies.

46. IIROC has calculated that between January, 2014 and September, 2016, DE experienced a loss of $47,500, or a 21.9% of his portfolio. During the same time period, the S&P TSX Composite Index

increased by 7.35%.

47. Between January, 2012 and September, 2016, DE paid total gross commissions of $7,081 to RGMP and Macquarie.

48. Many holdings in his accounts were speculative, and in combination with the high level of energy sector concentration, presented a high level of risk. As such, certain of these recommendations were not suitable for DE in light of his age, employment status, investment knowledge and experience.

Use of Personal Funds to Purchase Private Placements

49. DB lives in Calgary, works in the oil and gas industry, and was a client of Reyes.

50. In mid-2013, DB was invited to participate in certain private placement financings of several small oil and gas companies as a member of the "President's List".

51. DB approached Reyes and they entered into an agreement whereby Reyes would provide his own personal funds to DB by cheque in order for Reyes to personally participate in certain President's Club allocations in his client's account.

52. The terms of the arrangement were reflected in three separate written agreements executed by DB and Reyes dated June 13, 2013; October 11, 2013; and June 9, 2014.

53. Between June, 2013 and November, 2014, Reyes provided funds totaling approximately $70,000 to DB in order to purchase securities in three separate private placements involving two different issuers – described herein as C Ltd. and R LP. The particulars of the transactions were as follows:

Date	Activity	Description	Quantity	Price /share	Amount
June 13, 2013	BUY	C Ltd.	20,000	$1	($20,000)
October 11, 2013	BUY	R LP	930	$21.5	($19,995)
June 9, 2014	BUY	C Ltd.	10,000	$3	($30,000)
June 19, 2014	SELL	R LP	930	$34	$31,620
November 14, 2014	SELL	C Ltd.	30,000	$4	$120,000
				Total realized gain:	**$81,615**

54. Reyes achieved a total realized gain from these transactions of approximately $81,615. Reyes has stated that he reported the gains to the Canada Revenue Agency and paid taxes thereon.

55. These securities were bought and sold in DB's account for Reyes' benefit, without the knowledge or consent of his Dealer Member firm.

56. In April and May, 2016, following an internal investigation, which Reyes fully cooperated in, RGMP issued an internal warning letter to Reyes and imposed a sanction consisting of a $40,000 fine, and a requirement to re-read the Conduct and Practice Handbook within 30 days.

57. The trading of his own funds in a client account amounted to conduct unbecoming contrary to IIROC Dealer Member Rule 29.1.

PART IV – CONTRAVENTIONS

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

Contravention 1

a) Between November, 2012 and September, 2016, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to two clients contrary to Dealer Member Rule 1300.1(a);

Contravention 2

b) Between November, 2012 and September, 2016, the Respondent failed to use due diligence to ensure that investment recommendations were suitable for two clients contrary to Dealer Member Rule 1300.1(q); and

Contravention 3

c) Between June, 2013 and November, 2014, the Respondent provided personal funds to a client in order to trade securities through the client's account, contrary to Dealer Member Rule 29.1.

PART V – TERMS OF SETTLEMENT

59. The Respondent agrees to the following sanctions and costs:

a. A two (2) month suspension from registration in any capacity;

b. A fine in the total amount of $107,500, consisting of a global fine of $67,500 and disgorgement of $40,000 arising from Contravention 3;

c. 12 months close supervision;

d. Successful rewrite of the Conduct and Practices Handbook Examination within 90 days;

e. Costs in the amount of $2,500.

60. 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

61. 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.

62. 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

63. This Settlement Agreement is conditional on acceptance by the Hearing Panel.

64. 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.

65. 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.

66. 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.

67. 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.

68. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.

69. 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.

70. 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.

71. 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

72. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

73. A fax or electronic copy of any signature will be treated as an original signature.

DATED this 9 day of November, 2018.

"Witness"
Witness

"John Manuel Reyes"
John Manuel Reyes

"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 28 day of November 2018 by the following Hearing Panel:

Per: "Eric Spink"
Panel Chair

Per: "John Wells"
Panel Member

Per: "David R. Johnson"
Panel Member