

Re Latta

IN THE MATTER OF:

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

and

Marc Roger Latta

2014 IIROC 05

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

Heard: December 16, 2013, in Vancouver, BC
Written Decision: January 20, 2014

Hearing Panel:

Linda J. Murray (Chair), Brian Field, and Robert Travers

Appearances:

Mr. Tayen Godfrey, Enforcement Counsel, IIROC

Mr. Sean Boyle, counsel for Marc Roger Latta

DECISION ON SANCTION

Introduction

¶ 1 Pursuant to Investment Industry Regulatory Organization of Canada (IIROC) Dealer Member Rule 20.36, this Panel was constituted to consider whether to accept a settlement agreement (the “Settlement Agreement”) negotiated between IIROC's Enforcement Department and Marc Roger Latta under IIROC Dealer Member Rule 20.35.

¶ 2 At the conclusion of a settlement hearing held in Vancouver, British Columbia on December 16, 2013, and after considering submissions by the parties and the terms of the Settlement Agreement, we determined unanimously to accept the Settlement Agreement and we executed a copy of the Settlement Agreement. 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. Latta, and the agreed terms of settlement. The Settlement Agreement complies with Rule 14 of the IIROC Rules of Practice and Procedure.

¶ 4 Mr. Latta admitted to providing financial compensation to his client, A.V., for losses in the client's account, without the knowledge or approval of Mr. Latta's firm, contrary to IIROC Dealer Member Rule 29.1.

¶ 5 The parties agreed to settlement terms of a fine of \$10,000 and costs payable to IIROC of \$2,000. These terms are in addition to the other penalties assessed against Mr. Latta by his Dealer Member firm, being a fine of \$15,000, rewrite of the Conduct and Practice Handbook exam, and close supervision for six months.

Jurisdiction of the Panel

¶ 6 Mr. Godfrey referred us to the decision of the panel in *Re Milewski* [1999] IDACD No. 17 regarding the

role of the Panel in considering the Settlement Agreement. The *Milewski* decision has been referenced and applied in a number of subsequent hearing panel decisions. The panel in *Milewski* noted (page 11):

“... 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.”

¶ 7 Mr. Godfrey advised us that considerable time was spent negotiating the terms of the settlement and pointed out the public interest benefits of the settlement process. Mr. Latta was represented by experienced counsel. Mr. Godfrey submitted that the settlement negotiated was reasonable in the circumstances. Counsel jointly recommended that the Panel accept the Settlement Agreement as negotiated by the parties.

Submissions by Counsel

¶ 8 Mr. Godfrey referred us to the Dealer Member Disciplinary Sanction Guidelines, including Key Considerations When Determining Sanctions (section 3) and the specific guidelines regarding an attempt to settle a client claim for compensation (section 2.6). Mr. Godfrey acknowledged that any penalties should be crafted with the aim of general deterrence as well as specific deterrence. Mr. Godfrey made the following submissions regarding the application of the Guidelines to this case:

- a. This is a somewhat novel or unique case. The client was very sophisticated and well off financially. The client was well aware of his rights to file a complaint, to commence litigation, and to negotiate a settlement with the Dealer Member firm. In fact, the client did all of those things. The client was not vulnerable and Mr. Latta did not take advantage of the client in this case.
- b. IIROC has not alleged that the transactions effected by Mr. Latta in the client's account were unsuitable.
- c. This was an isolated incident. Mr. Latta has been registered since 1995 with no previous disciplinary history.
- d. Although it was not self-reported, Mr. Latta took responsibility when the complaint was filed and he co-operated with IIROC's investigation. Mr. Latta has also been punished by his Dealer Member firm.
- e. IIROC did not seek a period of suspension due to the unique circumstances of this case. Some of the criteria in the Guideline 2.6 did not apply to this case ie. harm to the client, vulnerability of the client, and the client's knowledge of his rights and remedies. With respect to the Guideline's General Principles, Mr. Godfrey emphasized the following in this case: there was no actual harm to the client, employer or securities market; Mr. Latta has no prior disciplinary record; Mr. Latta accepted responsibility, acknowledged the misconduct and expressed remorse; Mr. Latta co-operated with the investigation; the Dealer Member firm imposed upon Mr. Latta voluntary rehabilitative efforts; and the client was not vulnerable.
- f. However, Mr. Godfrey pointed out that Mr. Latta's conduct was still serious in that employees are not be allowed to compensate clients without the knowledge of the Dealer Member firm for the benefit of all parties, including the industry.
- g. Mr. Godfrey submitted that the penalties agreed to by the parties are reasonable in the circumstances of this case, given the Guidelines, caselaw, the sophisticated nature of the client, and the lack of concerns regarding suitability.

¶ 9 Mr. Godfrey referred us to the following cases regarding factors and range of penalties:

Re Bush, 2011 IIROC 52

Re Kwok, 2010 IIROC 38

¶ 10 Mr. Godfrey made the following submissions regarding the cases:

- a. The cases involved more serious circumstances than this case. The previous cases included other allegations such as unsuitability of investments, borrowing money from clients, attempts to settle claims of multiple clients, and/or failure to co-operate with IIROC, etc.
- b. The Panels in the *Kwok* and *Wong* cases expressed reservations as to whether a suspension was necessary in all cases regarding attempts to settle a client claim. Mr. Godfrey submitted that in the circumstances of this case, IIROC did not feel that a suspension was warranted. He submitted that the penalties were within the range as set by the Guidelines and were reasonable given the unique facts of this case.

¶ 11 With respect to the issues of specific and general deterrence, Mr. Godfrey made the following submissions:

- a. Mr. Latta has been the subject of a public notice and additional penalties were imposed upon Mr. Latta by his Dealer Member firm. IIROC staff is confident that the recommended penalties and participation in the regulatory process are likely to deter Mr. Latta from similar conduct in the future.
- b. The target group for general deterrence is other registrants who may attempt to settle client claims without the knowledge of the Dealer Member firms. The recommended penalties are likely to cause other registrants to take this type of situation seriously and enforce the message that registrants cannot settle client complaints without the knowledge of the Dealer Member firm.
- c. The Settlement Agreement as negotiated is reasonable, falls within the acceptable range, and takes into account the lack of harm and other mitigating factors while sending a message of general deterrence.

¶ 12 Mr. Boyle agreed generally with the submissions made by Mr. Godfrey. Mr. Boyle emphasized the following factors on behalf of Mr. Latta:

- a. Mr. Latta has been a long time registrant (since 1995) with no previous disciplinary history. Mr. Latta continues to be employed by the Dealer Member firm.
- b. Mr. Latta was remorseful, co-operated fully with IIROC's investigation, and readily accepted responsibility for his error in providing compensation to a client without the knowledge of his Dealer Member firm.
- c. This was a somewhat unique situation in that the client was "extremely" sophisticated and there were no suitability issues. The client was well aware of his rights and ultimately negotiated a compensation agreement with the Dealer Member firm in which the client will receive \$80,000. The \$100,000 loss in the value of the client account occurred between February 2006 and September 2012.
- d. The payment of \$5,000 by Mr. Latta was a goodwill gesture to the client and not an attempt to compensate the client for the \$100,000 loss or an attempt by Mr. Latta to take advantage of a vulnerable client.
- e. The client deposited the \$5,000 received from Mr. Latta into his bank account, then obtained a bank draft and deposited the draft to the client's account at the Dealer Member firm. The Dealer Member firm requested that the client complete a Declaration of Source of Funds Form a number of times over several months. The client refused to sign the form, engaged litigation counsel, and made a complaint regarding Mr. Latta's payment.
- f. Mr. Latta is unlikely to engage in similar conduct in the future.

¶ 13 Mr. Boyle confirmed that Mr. Latta complied with the penalties assessed by his Dealer Member firm and there were no outstanding issues.

¶ 14 Both counsel submitted that, given the facts of the case, the proposed penalties were within the range of reasonableness, and met the Guidelines and the principles of specific and general deterrence. Counsel both recommended that the Panel accept the Settlement Agreement.

Panel Reasons and Decision

¶ 15 We adopt the comments of the Panel in *Milewski* regarding our role when considering a negotiated settlement agreement. In particular, the Panel's role is to give serious condition to the settlement negotiated by the parties and not to reject the settlement unless there are good reasons for doing so or unless the settlement is unreasonable or contrary to the public interest. We are of the unanimous view that acceptance of this Settlement Agreement is consistent with the foregoing principles.

¶ 16 Mr. Latta admitted that he provided compensation to a client for losses in the client's account without the knowledge of his Dealer Member firm, as particularized in the Settlement Agreement. Mr. Latta admitted that his conduct breached IIROC Dealer Member Rule 29.1. The Panel accepts Mr. Latta's admission and we conclude that his conduct in this case amounts to a contravention of those requirements.

¶ 17 We acknowledge the assistance of counsel, who made helpful submissions regarding the application of the Guidelines in this case. We accept the submissions of counsel as summarized above.

¶ 18 The securities industry is a business of trust and confidence. Registrants must meet significant responsibilities and supervisors play an important role in protecting investors and maintaining the integrity of the capital markets. It is important for registrants and firms to appreciate that there will be significant penalties, including suspension and/or significant fines as a result of disciplinary action for failure to comply with regulatory requirements.

¶ 19 The Panel considered a number of factors in determining whether to accept the Settlement Agreement including whether the terms of the settlement:

- a. were reasonable, given the conduct of Mr. Latta;
- b. addressed both specific and general deterrence;
- c. will prevent the type of conduct described from occurring in the future;
- d. will protect investors as a result of the proposed penalty; and
- e. will foster confidence in the integrity of the capital markets, IIROC, and the regulatory process.

¶ 20 The Panel considered the IIROC Dealer Member Disciplinary Sanction Guidelines. The Guidelines, while not mandatory, provide an indication to members of expectations and suggest ranges of penalties that might be appropriate to particular types of cases. A client who complains about the conduct of a registrant is entitled to a fair and unbiased determination of the validity of the complaint. Where the registrant attempts to settle a client's claim for compensation without the knowledge of the Dealer Member firm, the registrant deprives the client of the opportunity for fair review of the complaint and of dispute resolution and compensation avenues. As a result, the registrant prefers his interest to that of the client. As noted in *Kwok* (para 37), there is also a concern that clients might be harmed, not make informed decisions, or be coerced to accept settlements.

¶ 21 The Guidelines list other potential factors to consider including: attempts to conceal the activity from the firm; the extent of harm to the client; whether the client was advised and appreciated that the activity was prohibited; and whether the client was coerced to accept the proposed settlement. The Guidelines recommend sanctions including: (1) a minimum fine of \$10,000; (2) a period of suspension or, in egregious cases, a permanent prohibition on approval in any capacity; (3) successful completion of required industry programs within six months; and (4) close supervision for 12 to 24 months.

¶ 22 As noted by counsel, there are few cases directly on point with this case. The previous cases referred to

us by counsel involved more serious circumstances than this case and included other allegations such as unsuitability of investments, borrowing money from clients, attempts to settle claims of multiple clients, and/or failure to co-operate with IIROC. As noted by the panel in *Kwok* (para 40), given the manner in which settlement agreements are negotiated, past cases involving settlement agreements are somewhat limited for use as a comparison for future cases and the parties should be given deference by the Panel in considering settlement agreements.

¶ 23 The Panels in the *Kwok* and *Wong* cases expressed reservations as to whether a suspension was necessary in all cases regarding attempts to settle a client claim. Counsel advised us in their submissions that they had similar reservations, which they took into account in negotiating Mr. Latta's settlement agreement. We share these reservations in this case.

¶ 24 As noted by the panel in *Wong* (para 42), if the motivation for the payment was other than to prevent the client from complaining, "other criteria" should be used to determine the appropriate penalty. As noted by the panel in *Kwok* (para 38), there are cases where the facts may warrant a sanction less than the minimum set out in the Guidelines. We believe that this is such a case and that a suspension would not be warranted due to the following factors:

- a. Mr. Latta intended the one-time payment of \$5,000 to be a goodwill gesture and not an attempt to settle the \$100,000 loss in the account, which was incurred over more than a six year period, or to prevent the client from complaining.
- b. There is no allegation of unsuitability regarding the investments in the client's account.
- c. The client was "very" or "extremely" sophisticated, was aware of his right to make a complaint and his right to commence litigation, which he did. Mr. Latta did not attempt to take advantage of a vulnerable client.
- d. The client deposited Mr. Latta's cheque to his bank account, obtained a bank draft for \$5,000, and then deposited the bank draft to his account with Mr. Latta. The client did not file a complaint for some time and only did so after the Dealer Member firm asked the client to identify the source of the \$5,000 deposited by the client to his account. The client and the Dealer Member firm subsequently reached a settlement where the client will be paid \$80,000.
- e. There is no evidence that Mr. Latta was dishonest or deceitful, that Mr. Latta attempted to conceal the payment from his Dealer Member firm, or that Mr. Latta was enriched or benefited from his actions.
- f. Mr. Latta has been a registrant since 1995 and has no previous disciplinary history. He continues to be employed by the same Dealer Member Firm.
- g. Mr. Latta was subject to internal disciplinary measures by his Dealer Member firm including a fine of \$15,000, re-write of the Conduct and Practices Handbook exam, and a period of close supervision for six months. Mr. Latta has successfully complied with those measures and there were no other issues noted.
- h. Mr. Latta immediately accepted responsibility once the matter was brought to his attention, was remorseful, and co-operated with IIROC's investigation.

¶ 25 We are satisfied that Mr. Latta is unlikely to engage in similar conduct in the future and that the penalties in this case will deter others from engaging in similar misconduct. We are also satisfied that the settlement will improve compliance by industry participants and foster confidence in the industry and the regulatory process.

Conclusion

¶ 26 The Panel, after careful consideration, concluded that the Settlement Agreement terms:

- a. are reasonable and within the appropriate range for sanctions, given the facts and circumstances set

out in the Settlement Agreement, the submissions of counsel, and the authorities cited; and

- b. meet IIROC's *Dealer Member Disciplinary Sanction Guidelines* and the principles of specific and general deterrence.

¶ 27 For the reasons set out above, the Panel unanimously accepts the Settlement Agreement. In accordance with the terms of the Settlement Agreement, the Panel orders, effective on the date of the Settlement Hearing, being December 16, 2013, that Mr. Latta:

- a. pay a fine in the amount of \$10,000; and
- b. pay costs to IIROC of \$2,000.

Dated as of January 20, 2014

Linda J. Murray, Chair

Brian Field, Member

Robert Travers, Member

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent, Marc Roger Latta ("Latta"), 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 the Respondent.
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 Dealer Member Rules, Guidelines, IDA By-Laws, Regulations or Policies:
 - a) Latta has admitted to providing financial compensation to his client A.V. for losses in his account, without the knowledge or approval of his firm contrary to Dealer Member Rule 29.1
8. Staff and the Respondent agree to the following terms of settlement:
 - a) A fine in the amount of \$10,000.00; and
 - b) Costs payable to IIROC in the amount of \$2,000.00.

III. STATEMENT OF FACTS

(i) Acknowledgment

9. 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. This matter arises from the conduct of Marc Latta, a Registered Representative with Raymond James Ltd. (“Raymond James”). Latta has admitted to providing financial compensation to his client A.V. (the “Client”) for losses in the Client’s account, without the knowledge or approval of his firm.

Registration History

11. On June 1, 2008, the Respondent became a regulated person of IIROC.
12. Latta is currently a Registered Representative with Raymond James Ltd. His registration history is as follows:

October 2005 – present	Raymond James, Vancouver	Registered Representative Securities, retail
April 2004 – October 2005	Berkshire Securities International, Vancouver	Registered Representative Securities, retail
May 1999 – April 2004	TWC Securities Inc., Vancouver	Registered Representative Securities, retail
August 1995 – May 1999	Manulife Securities Incorporated, Vancouver	Registered Representative retail

13. Latta does not have a disciplinary history with IIROC.

Details

14. In March of 2012, IIROC received a notice from Raymond James which indicated that a customer complaint had been filed against Latta. In a letter dated March 12, 2012 lawyers for the Client alleged that Latta had:
- exposed the Client’s investments to a greater degree of risk than the Client had agreed to accept; and
 - Latta had offered to personally repay money that had been lost in the account as a result.
15. Between February of 2006, and September of 2012, the Client’s account had lost roughly \$100,000.00 in value.
16. Latta acknowledged that he had provided \$5,000.00 to the Client in compensation for losses in his account, without Raymond James’ knowledge.
17. The Client deposited the \$5,000 received from Latta into his bank account. The Client then obtained a bank draft from his bank and deposited the funds into his account at Raymond James. Subsequently, the Client refused to complete a Declaration of Source of Funds Form requested by Raymond James numerous times over a period of months. The Client then engaged litigation counsel and initiated a complaint against Latta.
18. Latta was not attempting to take advantage of a vulnerable client. The Client is a sophisticated and financially well-off professional. The Client was aware of his ability to:
- make a complaint to IIROC;
 - seek compensation from Raymond James; and
 - seek compensation from Latta.

19. In January of 2013, Latta and Raymond James entered into a compensation agreement in connection with Latta's handling of the account, in which the Client is to receive \$80,000.00.
20. Latta is aware that providing compensation to a client without his firm's knowledge constitutes misconduct. In a letter to IIROC, Latta immediately accepted responsibility for his actions, expressed remorse for his conduct and actively cooperated with IIROC throughout.
21. Latta has already received the following disciplinary action from Raymond James:
 - a) A fine of \$15,000.00;
 - b) A rewrite of the Conduct and Practices Handbook exam; and
 - c) A period of close supervision for 6 months.

IV. TERMS OF SETTLEMENT

22. 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.
23. The Settlement Agreement is subject to acceptance by the Hearing Panel.
24. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
25. 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.
26. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
27. 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.
28. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
29. 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.
30. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
31. 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 Vancouver in the Province of British Columbia, this 16th day of December, 2013.

Sean Boyle

Witness

Marc Latta

Respondent

AGREED TO by the Respondent at the City of Vancouver in the Province of British Columbia, this 16th day of December, 2013.

Young Row

Witness

Tayen Godfrey

ACCEPTED at the City of Vancouver in the Province of British Columbia, this 16th day of December, 2013 , by
the following Hearing Panel:

Per: Linda Murray

Panel Chair

Per: Robert Travers

Panel Member

Per: Brian Field

Panel Member

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