Re Austin

IN THE MATTER OF:

The Dealer Member Rules of the Investment Industry Regulatory Organization of Canada

and

Jeremy Nicholas Drew Austin

2017 IIROC 09

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

Heard: March 16, 2016 in Toronto, Ontario
Written Decision: January 24, 2017

Hearing Panel:
Julia Dublin, Chair, Zahra Bhutani and David Kerr
Appearances:
Elissa Sinha, Enforcement Counsel
Jeremy Austin, absent

REASONS FOR DECISION

BACKGROUND

¶ 1 The Respondent Austin first entered the securities industry in January 2009 as a registered representative of Edward Jones. He was previously employed as an assistant manager at Loblaws. Austin moved to Manulife Securities in May 2012 and transferred to Mandeville Private Client Inc. in April 2014. He left the industry in September 2014, dismissed from Mandeville for failure to meet performance targets. He was last known to be employed at Home Depot. Austin did not cooperate in the IIROC investigation and did not appear at the hearing.

¶ 2 After immigrating to Canada from Cyprus in the 1970s, clients AG and EG married. AG initially worked as an electrician. He and EG successfully opened, operated and sold a series of food service businesses: a pizzeria in Windsor, a pizzeria back in Cyprus, a doughnut shop, a hamburger stand, a bar and finally a family restaurant in London. Ontario. AG and EG first opened RRSPs while operating the pizzeria in Windsor. AG and EG sold their last family restaurant business in 2013, intending to use their investments to fund their retirement.

¶ 3 After contributing to a RRSP while studying accounting at the University of Windsor and working in the G's pizzeria, AG's sister IZ returned to Cyprus with them and for a time worked at their pizzeria there. AG exercised a power of attorney over IZ's RRSP account.

¶ 4 Dissatisfied with the performance of the family RRSPs, AG transferred all the G's RRSP accounts totalling about $282,000 from Scotia McLeod to Edward Jones in May 2009. Soon after opening, Edward Jones assigned the accounts to Austin who had just joined the firm. Austin was introduced to the Gs as their new

account representative at their London restaurant. He subsequently visited AG at the restaurant regularly, initially as often as every two days and monthly for a period thereafter according to AG's testimony. AG opened a $US margin account at Edward Jones for his investment holding company D. Ltd. in November 2009.

¶ 5 AG, EG, D Ltd. and IZ (collectively the "Gs") followed Austin each time he transferred to a new IIROC Dealer Member. In July and September 2015 AG and EG, while clients of Mandeville Private Client, complained to Edward Jones and Manulife Securities about unexpected past losses in the AG, EG, D Ltd. and IZ accounts (collectively, the "Gs' accounts").

¶ 6 IIROC Staff made the following allegations:

Count 1:

Between May 2009 and June 2013, Austin failed to use due diligence to ensure that recommendations were suitable for his clients AG, EG, IZ and D Ltd. (collectively, the "Clients"), contrary to Dealer member Rule 1300.1(q).

Count 2:

Between May 2009 to April 2012, Austin engaged in unauthorized trading in the account of EG, contrary to Dealer Member Rule 29.1

Count 3:

Commencing on or about August 26, 2015, Austin refused and failed to attend and give information in respect of an investigation being conducted by Staff, contrary to IIROC Dealer Member Rule 19.5.

SUFFICIENCY OF SERVICE

¶ 7 Under Rule 6.4 of the IIROC Rules of Practice, for a Standard Track disciplinary proceeding IIROC staff must serve a Notice of Hearing at least 45 days prior to the hearing. Under Rules 7.2 and 13.5 of the IIROC Rules of Practice if a respondent fails to serve a response or attend a hearing, the hearing panel may proceed with the hearing, accept facts as alleged by staff as proven and order penalties and costs accordingly. Austin did not respond to IIROC staff's attempts to serve him with the Notice of Hearing and did not attend the hearing.

¶ 8 Rule 5.2 of the IIROC Rules of Practice and Procedure requires that:

"A Notice of Hearing shall be served by one of the following methods:

(a) by personal service on the Respondent;

(b) by delivering a copy of the Notice of Hearing by registered mail to the Respondent's last known address as recorded in the Organization's Registration file; or

(c) where a Respondent is represented by counsel, by delivering a copy of the Notice of Hearing to the Respondent's counsel with the consent of counsel."

¶ 9 Austin resisted most of IIROC staff's attempts to communicate with him in 2015 and 2016. He did not collect any of the registered letters sent to his last known NRD address. No one answered the door at that address to process servers. He did not respond to phone calls to his last known number. An email sent to his encrypted email address expired without collection. However, Austin was well aware that an IIROC investigation into his conduct had been opened. In July 2015, he accepted personal service at his NRD address of a package of previously uncollected IIROC letters advising him of the investigation and requiring him to attend an interview relating to his conduct at Edward Jones. He was subsequently advised by email and regular mail that the investigation included his conduct at Manulife Securities Inc.

¶ 10 Austin spoke to IIROC staff on his cell phone on August 17, 2015 regarding his upcoming compelled interview and by email sought additional time to review whatever documents IIROC had and to prepare for the

interview. He did not review the documents or attend the scheduled interview. Austin did not communicate further with IIROC staff or accept service of any further material. The Notice of the Hearing was provided to him by delivery to his NRD address by regular mail, and attempted delivery by registered mail and personal service. The Notice of Hearing was published on the IIROC website.

¶ 11 The Panel considered the Respondent had adequate notice of these proceedings. However, in fairness to Austin, we chose to hear the evidence of IIROC staff and the client witnesses rather than simply accept the facts alleged as proven. We applied a test of proof on the balance of probabilities.

FACTS

¶ 12 The IIROC staff investigator (the "staff witness"), AG and EG testified at the hearing and responded to the Panel's questions. AG and EG both testified about their backgrounds, the Gs' accounts and their relationship with Austin which lasted essentially four years from 2008 to 2013. The facts are somewhat complex as they involve trading in four different accounts for three individuals at two different IIROC member firms.

1. The Gs' Profiles

AG

¶ 13 AG was effectively the family contact with Austin regarding the Gs' accounts. AG's formal education ended in Grade 9. His first language is not English. As a business owner, AG had knowledge of financial matters as they related to running a restaurant. He had bought and sold food service businesses, managed the businesses, kept the books and instructed the tax accountants. AG testified he drew $24,000 a year as salary out of the restaurant business. He held family RRSP accounts and investments in the UK overseen by his accountant in Cyprus. However, AG was not knowledgeable or experienced with trading equities and composing portfolios. He did not follow the market and only occasionally read the financial press. Having instructed Austin that his objectives for all the accounts were to keep the family savings safe while making money, AG relied on Austin as the expert. AG was not aware that Austin was new to the industry nor that the Gs' accounts comprised a major component of Austin's client base and commission revenue. AG did not understand how Austin was remunerated for the sale of a DSC mutual fund, nor the penalty for early redemption.

¶ 14 Through frequent contacts, including visits to the restaurant, Austin actively encouraged AG to rely on their personal relationship for all account information and advice and to ignore the Edward Jones account statements. Not surprisingly given their complexity, AG paid little attention to the account statements and KYC verification correspondence from Edward Jones and Manulife Securities, which he did not understand very well, if at all. As a result, AG did not test Austin's assurances that the Gs' accounts were doing well against the information in the account statements.

¶ 15 AG did not understand the concept of risk as it applied to the Gs' accounts. Austin did not discuss the subject with him. AG was unaware he could suffer significant losses with the strategies Austin recommended. AG understood from Austin simply that margin borrowing would allow him to make more money on trades. He did not appreciate that it also increased his risk of losses. AG did understand that in order to make money on an individual trade the proceeds had to exceed the commission payable plus the cost of borrowed funds, and he rejected a trade on one occasion, as it did not represent his view of an adequate net profit.

EG

¶ 16 EG's formal education ended in Grade 6. Her first language is not English. She has spent most of her working life in the front lines at the G's restaurants. She did not draw a salary but did charge household expenses on a restaurant credit card. In her testimony EG demonstrated that she was unable to read or understand the risk formulations in the Edward Jones standard form correspondence that was sent to clients confirming and explaining changes to KYC information. AG had no formal trading authority or power of

attorney over EG's RRSP account. EG was passive in the management of her account, relying entirely on AG and his relationship with Austin. Austin took trading instructions on the account directly from AG.

Dial Ltd.

¶ 17 This entity was incorporated by AG as sole officer, director and shareholder to transfer his UK investment account from the UK to Edward Jones. The KYC information was necessarily the same as for AG as an individual.

IZ

¶ 18 AG's sister IZ studied accounting at the University of Windsor in Canada while working in the Gs' family pizzeria. While there, she set up an RRSP account. AG operated IZ's RRSP account under a power of attorney. IZ primarily resides in Cyprus. She does not practice accounting. She was actively involved in the pizzeria business which the Gs operated and sold to her in Cyprus. She had no contact with Austin or AG regarding her RRSP account, relying on AG's power of attorney. IZ first took an interest in the Gs' accounts in 2015, after Austin was no longer in the industry, questioned the losses and assisted AG and EG in drafting complaint letters to Edward Jones and Manulife Securities.

2. KYC Information Recorded at Edward Jones

¶ 19 Between May 2008 and October 2009, a period of 18 months, a total of 35 Know Your Client (KYC) updates were made to the New Client Application Forms (NAAFs) for the AG, EG, IZ and D Ltd. accounts at Edward Jones. The changes were not initiated by the Gs. The clients were advised of all the KYC updates in verification letters stated to be sent from the Edward Jones Account Verification Department at the behest of Austin. The letters relied on a negative option, such that the new account information set out would stand unless AG, EG, D Ltd. or IZ returned amendments, .AG and EG testified that they did not pay attention to this correspondence or even open some of it.

¶ 20 The frequency of these letters is remarkable. For example, in 2009 alone AG received KYC updates from Edward Jones once in June, twice in July, twice in August and once in September and December. EG received updates once in June, twice in July, and once in August and September. D Ltd. received updates twice in July (the month the account opened) twice in September and once in December. IZ received updates twice in July, once in August and once in September. These changes over time stated increasingly ambitious investment objectives, adjusted the Gs' risk tolerance towards ever-higher risk, and adjusted each of their investment knowledge and experience ratings to higher levels. The Gs' did not testify to any changes in their personal circumstances or expressed intentions that would justify or explain any of the KYC changes. There was no evidence that AG or EG ever understood or accepted any of these changing metrics.

¶ 21 The following charts summarising the KYC information as of selected key dates illustrate some of the ambiguities and inconsistencies in the recorded KYC information both within and across the Gs' accounts. As noted, this information also deviates from the actual circumstances and expectations of the Gs as described in their testimony. It is not always clear to what extent there is double counting in entries for separate accounts i.e. whether "net worth" is intended to represent consolidated family sums for net worth or individualised values, or which individual's information is actually being recorded, e.g. IZ's versus AG's. Even allowing for double counting these figures seem inflated. For example, AG denied that his or D. Ltd.'s net worth was ever close to $4.5M.

Gs' Account Opening at Edward Jones

May 2008	**AG**	**EG**	**IZ (AG POA)**
occupation	Business owner self-employed	Business owner self-employed	Other
knowledge	limited	limited	limited

May 2008		**AG**	**EG**	**IZ (AG POA)**
annual income		30K	30 K	30K
net liquid assets		87K	100K	87K
net worth		750K	750k	750K
risk tolerance				
	medium	100%	100%	40%
	High			60%
account objectives	Income			
	Growth & income	70%	70%	10%
	Growth	30&	30%	30%
	Aggressive			60%

After UK account transferred via D. Ltd. account

July 10 2009		**AG RRSP**	**EG RRSP**	**IZ (AG POA) RRSP**	**D Ltd (AG alter ego) $US Margin**
occupation		Business owner self-employed	Business owner self-employed	Other	NA
knowledge		limited	limited	limited	moderate
annual income		30K	30 K	30K	120K
net liquid assets			100K	87K	250K
net worth		750K	750k	750K	1.2M
risk tolerance	low	55%			
	medium	65%	100%		60%
	high	25%			40%
account objectives	Cash	45%	65%	10%	
	Income	10%		21%	
	Growth & income	6%	10%	36%	10%
	Growth		20%	10%	50%
	Aggressive	39%		23%	40%

After Cyprus sale proceeds transferred to D Ltd.

Jan – Feb 2010	**AG RRSP (Feb 10)**	**EG RRSP (Jan 28)**	**IZ (AG POA) RRSP (Oct 09)**	**D Ltd (AG alter ego) $US Margin**
occupation	Business owner self-employed	Business owner self-employed	Other	NA

Jan – Feb 2010		**AG RRSP (Feb 10)**	**EG RRSP (Jan 28)**	**IZ (AG POA) RRSP (Oct 09)**	**D Ltd (AG alter ego) $US Margin**
knowledge		Moderate	Moderate	limited	Extensive
annual income		100K	30K	30K	120K
net liquid assets		1.2M	87K	87K	120K
net worth		400K	750K	750K	500K
risk tolerance	low	15%			8%
	medium				17%
	high	85%	100%		75%
account objectives	Cash	15%			8%
	Income			10%	
	Growth & income				7%
	Growth			10%	10%
	Aggressive	85%	100%	60%	75%

Gs' last Statements at Edward Jones

March 2012		**AG RRSP June 10**	**EG RRSP**	**IZ (AG POA) RRSP**	**D Ltd (AG alter ego) $US Margin**
occupation		Business owner self-employed	Business owner self-employed	Other	NA
knowledge		extensive	moderate	limited	extensive
annual income		100K	30K	30K	120K
net liquid assets		560K	100K	87K	500K
net worth		1.2M	750K	750K	4.5M
risk tolerance	low				
	medium			40%	
	high	100%	100%	60%	100%
account objectives	Cash	5%			
	Income			10%	
	Growth & income				
	Growth			30%	
	Aggressive	95%	100%	60%	100%

Account Opening at Manulife – G's sell restaurant and retire in Dec 2012

Sept 2012		AG RRSP (NAAF + SAA) [1]	EG RRSP	IZ (AG POA) RRSP	D Ltd (AG alter ego) $US Margin
use		NA	NA	NA	Retirement planning
knowledge		Sophisticated	Sophisticated	Sophisticated	Sophisticated
Time horizon		1-3y	1-3y	1-3y	1-3y
Income			100K	35K	110K
Fixed assets		?	750K	125K	0
liquid assets		?	700K	365K	800K
Total assets (+spouse)		?	1.45M	490K	800K
risk tolerance	low				
	Medium - high	50%	30%		35%
	high	50%	70%	30%	65%
	Speculative			70%	
account objectives	short term capital gains	100%	100%	100%	100%
	Medium term				
	Long term				

3. Trading in the Gs' Accounts

¶ 22 Austin was not available to explain the rationale for any of the trading in the accounts. The clients were unable to explain it, testifying that they relied on Austin's advice. We relied on the evidence of the staff witness and the Gs' account documentation and correspondence.

a. Edward Jones

EG RRSP Account 723-12

¶ 23 On transfer to Edward Jones from Scotia McLeod in May 2009, the portfolio consisted of large cap equities, an income mutual fund and a balanced mutual fund. The opening value of the account was $93,098. The closing value was $99,754. The value of the account fluctuated during the intervening period, generally above the opening value to a maximum of $139, 861 in January 2011. The original portfolio was turned over and replaced during this period, with 130 trades accounting for a net profit of $16,000 and generating fees and commissions of $35,095. The staff witness testified that there was an excessive concentration in equities related to the steel industry. EG testified that she did not authorise these trades herself nor discuss her account with

[1] NAAF not available. NAAF data complied from Subsequent Account Application (SAA) and Manulife Complaints Officer letter to AG, October 9, 2015.

Austin.

IZ RRSP Account 8702-16

¶ 24 Austin took instructions from AG who had a power of attorney for IZ. On transfer from Edward Jones to Scotia McLeod, the portfolio consisted of large cap equities and a mutual fund, similar to the EG account. That portfolio was turned over and replaced with equities concentrated in the steel sector and an index fund. The opening value of the account in May 2009 was $107,189, the closing value in Feb 2012 was $97,485. The value of the account fluctuated somewhat above and below the opening value. The biggest loss was accounted for by Research in Motion shares. During the account period, there were 111 trades accounting for a net loss of $9,707 and generating $26,731 in fees and commissions.

AG RRSP Account 7221-1-0

¶ 25 On transfer to Edward Jones from Scotia McLeod in June 2009, the portfolio consisted of mutual funds, bank stock and a corporate debenture generating 7.2% annually. Most of the portfolio was turned over and replaced by industrial equities related to the steel sector. The opening value of the account as of June 2009 was $77,525. The closing value as of March 31, 2012, was $40,299. The account consisted of a single steel company. The value of the account fluctuated slightly, generally maintaining its value until July 2011 when it declined sharply never to recover. During this period, there were 86 trades for a net trading loss of $13,285 generating fees and commission of $21,106.

D Ltd. $US Margin Account 7608-1-1

¶ 26 Austin encouraged AG to transfer his offshore investments to Edward Jones, promising a better return. The initial KYC for D Ltd. showed that this entity had net liquid assets of $1.5 M, a net worth of $4.5M and an annual income of $120,000. There is no apparent basis in either AG himself or the entity for these entries.

¶ 27 After two payments were received at Edward Jones, AG met with Austin at his office to discuss how the funds would be invested. Austin advised borrowing to top up the account to $1M as this would increase the available opportunities. As of December, 2010 the market value of the D Ltd. account value was $930,877. This represented three contributions in August 2009, November, 2010 and December 2010. Since the account opened, D. Ltd. had earned $633 in dividends and interest and paid $2,093 in interest on a margin loan.

¶ 28 As of the last account statement, 18 months later, the account value had declined to $494,687. This represented a decline in market value of about $225,548 and about $261,811 owed to Edward Jones. The account had paid total interest of $14,715, exceeding the income generated from the account. Between June 2009 and March 2012, there were 236 trades in the account. The net results of trading activity were a loss of approximately $292,749 excluding costs. Commissions were approximately $103,047. The portfolio ended up invested exclusively in nine equities with 70% exposure to the steel industry.

D Ltd. $Can Margin Account

¶ 29 There was a reference to this account in the staff witness's evidence. It apparently experienced an overall gain of $18,499 after deducting commissions and interest charges.

b. Manulife Securities

D. Ltd $US Margin Account 884-F

¶ 30 There was no evidence to explain the transfer of the D. Ltd. accounts from Edward Jones to TD Waterhouse Discount Brokerage prior to transfer to Manulife Securities. There was no account information for the 6 months from June 2012 to November 2012 and December 2012 when transfers to Manulife occurred. AG was vague about this episode. All D. Ltd holdings were transferred from TD Waterhouse to a $US margin account at Manulife. All these securities were then liquidated except for a single investment in Royal Dutch Shell and transferred to a $Can margin account.

D. Ltd. $Can Margin 264E

¶ 31 The complete account statements for D. Ltd. were not in evidence. We can surmise from Manulife correspondence and the January 2013 statement that an initial account was opened in November 2012 to transfer the proceeds of securities sold in the $US margin account. The opening amount as of December 2012 was $26,505. In January 2013, a further $262,846 was transferred. This included a debit balance of $157,206 originating at TD Waterhouse. There was no evidence to explain the discrepancy between the closing balance for D Ltd. at Edward Jones and the accounts closed at Manulife.

¶ 32 Proceeds of $170,000 from the sale of the G's restaurant were also deposited in the account. The account was invested in Mackenzie DSC and Low Load mutual funds and a Sentry DSC mutual fund, all of which imposed a penalty for early redemption. Between January 2013 and October 2013, the Mackenzie corporate bond mutual funds were redeemed to purchase Mackenzie money market funds. A Sentry income fund was redeemed and the same fund subsequently repurchased. Between December 2012 and January 2014 when Austin transferred to Mandeville, penalties on redemptions totalled $24,274.

¶ 33 At a meeting in Austin\s office in December 2013 after the G's retirement, Austin advised AG he could withdraw $7,000 per month from the D. Ltd account. AG began monthly withdrawals in January 2013 totalling $82,232 by January 2014 when Austin left Manulife and $93,001 by the time the accounts were transferred to Austin at Mandeville. AG was under the impression from Austin that the income generated by the portfolio supported these withdrawals. In fact, the borrowed cash in the account supported the monthly cash withdrawals. The account experienced a small gain of $5,946, and paid $12,997 in interest.

AG RRSP

¶ 34 The opening balance was $21,258. This was invested in much the same mutual funds as D. Ltd. DSC and Low Load Mackenzie bond and money market mutual funds. As with the D Ltd. account, there was an early redemption of a DSC fund in June 2013 incurring a penalty of $585.69.

EG RRSP

¶ 35 The opening balance in the account as of September 2012, was $79,220. This was invested in the same Mackenzie and Sentinel DSC and Low Load funds as D Ltd. As with D. Ltd., there was early redemption of the DSC funds incurring penalties of $1,690.

IZ RRSP

¶ 36 The opening balance as of September 2012, was $91,548. This was initially invested in a Low Load Mackenzie bond fund. This was subsequently redeemed and a Mackenzie money market fund purchased. A few days later, this was redeemed and Sentry DSC income fund purchased. This was subsequently redeemed and a Sentry DSC income fund purchased. Total DSC redemption penalties of $3,212 were incurred.

4. Edward Jones Supervisory Visits

¶ 37 The staff witness testified that Edward Jones made three supervisory visits reviewing Austin's accounts between 2009 and 2011. Edward Jones data from these visits compiled by the staff witness showed that for 2010 the Gs' accounts represented 30% of Austin's assets under administration and 40 % of his total commission, and for 2011 the Gs' accounts represented 23% of his total assets under administration and 61% of his total commissions. The staff witness testified that the ratio of commissions earned to assets under administration or "turn ratio" for the G's accounts was unduly high by industry standards

ANALYSIS

1. Unsuitable Trades

¶ 38 IIROC Rule 1300.1(q) and IDA Regulation 1300.1(q) both provide;

Each Dealer Member, when recommending to a customer the purchase, sale, exchange or holding of any

security, shall use due diligence to ensure that the recommendation is suitable for such customer based on factors including the customer's financial situation, investment knowledge, investment objectives and risk tolerance.

¶ 39 The trades and portfolio composition recommended for a non-discretionary account must be supported by the KYC information recorded for the account. If this information is not properly recorded, the trades may well be unsuitable. EG and AG on behalf of himself, IZ and D. Ltd did not address their minds to the meaning of the KYC information recorded for them at Edward Jones or Manulife Securities. Based on their testimony, that information was highly inaccurate.

¶ 40 Austin did not appear to explain the KYC information changes he initiated for the Gs at Edward Jones after he took over their accounts. The frequency of KYC updates cannot be related to changes in the Gs circumstances. Nor can the changes in investment objectives and the escalating designations for risk tolerance and investment knowledge. There was never any basis to reclassify AG's investment knowledge as "extensive" or "sophisticated" or EG's even as "moderate". The only conclusion we could draw from the evidence was that Austin manipulated the KYC information retroactively to validate trades falling outside of the applicable KYC parameters, probably in response to internal Compliance notifications.

¶ 41 The Gs were vulnerable to manipulation by Austin. They were not aware that he was an industry novice, nor that their accounts in 2011 accounted for 60% of his commissions. AG was hoping for returns but had little understanding of risk; AG understood he was borrowing money from Edward Jones in the D. Ltd. margin account but he did not understand the risks or costs of this strategy. AG relied on conversations with Austin for information on the performance of his account and Austin encouraged this. AG did not make his own suggestions or follow the market.

¶ 42 AG could not explain Austin's labelling of trades as "unsolicited" or "solicited." AG's only participation seemed to be an occasional direction that the overall cost of a trade be proportional to the total gain. AG understood that he was borrowing money from Edward Jones and buying and selling equities frequently to capture market gains that exceeded the costs. However, he accepted Austin's assurances unquestioningly that the strategies were successful. In fact, the trading in the accounts particularly in the largest D. Ltd. account appears irrational and thus unsuitable for any risk tolerance or objectives.

¶ 43 Austin's trades appear to reflect an expensive, unsuccessful market timing strategy with losses exacerbated by the use of borrowed money, and commissions maximised by the frequent trades. The accounts experienced below-market returns or losses during a steadily rising equity market. The Gs were not aware that their portfolios were unduly concentrated in single positions or single sectors. AG did not understand that Austin had a conflict of interest in recommending margin borrowing to purchase equity in that this increased Austin's commissions while exposing D. Ltd. to higher costs and risk.

¶ 44 The opening NAAFs that Austin completed for the Gs on their transfer to Manulife do not reflect the financial circumstances of the Gs at the time. None of them should have been classified as having "sophisticated' investment knowledge. Austin was aware the Gs had retired and had advised them the accounts would support withdrawals of $7,000 per month, and the NAAF recorded a 1-3-year timeline, the accounts were invested in mutual funds that imposed a penalty for early termination. There was no reasonable justification for the series of purchases, redemptions and repurchases of mutual funds in the Manulife Securities accounts. AG was unaware that the sums totalling $84,000 withdrawn from over 11 months were drawn against borrowed funds, not income generated in the accounts. Austin encouraged this confusion to conceal the true performance of the G's accounts.

2. Unauthorized Trades

¶ 45 IIROC Rule 29.1 provides

Dealer Members and each partner, Director, Officer, Supervisor, Registered Representative, Investment

Representative and employee of a Dealer Member (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board.

For the purposes of disciplinary proceedings pursuant to the Rules, each Dealer Member shall be responsible for all acts and omissions of each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member; and each of the foregoing individuals shall comply with all Rules required to be complied with by the Dealer Member.

¶ 46 EG had sole authority to trade in her account. AG did not have trading authority or a power of attorney. Between May 2009 and April 2012, there were 130 trades in EG's account. She did not authorise any of them. Austin treated AG as if he had trading authority over EG's account, as well as his and IZ's. AG testified that Austin did not generally confirm trades with him before he made them.

3. Refusal to Co-operate

¶ 47 Rule 19.5 provides:

For the purpose of any examination or investigation pursuant to this Rule 19, a Dealer Member, registered representative, investment representative, sales manager, branch manager, assistant or co-branch manager, partner, director, officer, investor or employee of a Dealer Member or any other person approved or seeking approval or under the jurisdiction of the Corporation pursuant to the Rules, may be required by the Corporation:

(a) To submit a report in writing with regard to any matter involved in any such investigation;

(b) To produce for inspection and provide copies of any books, records, accounts and documents, that are in the possession or control of the Dealer Member or the person, that the Corporation determines may be relevant to a matter under examination or investigation and such information, books, records and documents shall be provided in such manner and form, including electronically, as may be required by the Corporation; and

c) To attend and give information respecting any such matters;

And the person shall be obliged to submit such report, to permit such inspection, provide such copies and to attend, accordingly. Any person subject to an investigation conducted pursuant to this Rule 19 shall be advised in writing of the matters under investigation and may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the persons conducting the investigation. The person conducting the investigation may, in his or her discretion, require that any statement given by any person in the course of an investigation be recorded by means of an electronic recording device or otherwise and may require that any statement be given under oath.

¶ 48 Austin did not cooperate in the investigation or attend the hearing. At the time the complaints were made and the IIROC inquires commenced, Austin had left the industry. However, we accept IIROC staff's position that he was still obliged to respond to inquiries relating to his conduct while a registered representative with an IIROC firm, and his failure to do so was thus a contravention of Rule 19.5.

Penalty

¶ 49 IIROC staff sought the following sanctions:

i. A permanent ban on registration with IIROC;

ii. A fine of $50,000 for failure to cooperate;

iii. A combined fine of $120,000 for failure to ensure that recommendations were suitable and for unauthorized trading

iv. Disgorgement of commissions in the amount of $60,000

¶ 50 We consider that the proposed penalties, including disgorgement of commissions, are commensurate with Austin's misconduct. We considered the Sanction Guidelines highlighted in staff's submissions, in particular the issues of multiple incidents over time, pattern of misconduct, harm to clients or the securities markets, vulnerability of clients, benefit of misconduct to the respondent, any prior disciplinary record, and acceptance of responsibility and remorse.

¶ 51 AG's and EG's testimony confirmed that the Gs were vulnerable clients. AG, the family spokesman with trading authority for three accounts had little investment knowledge or expertise. EG had none. Austin commenced a program of unsuitable trades almost as soon as he was assigned to Gs accounts at Edward Jones and persisted in this conduct for four years while the Gs followed him to other IIROC members. He encouraged the improvident use of margin in the D. Ltd accounts at both Edward Jones and Manulife. He repeatedly manipulated the KYC information recorded to support this activity.

¶ 52 The AG, EG and D.Ltd. accounts suffered significant and unnecessary losses of about $400,000 in their accounts at Edward Jones during a period when the market was steadily rising. IZ's account made a small below-market gain, not commensurate with the risks taken. At Manulife, the Gs paid $28,000 in unnecessary redemption penalties and withdrew over $84,000 in borrowed funds based on a misunderstanding of the income generated by the account and the effect of margin, which Austin fostered.

¶ 53 Austin benefitted from his misconduct generating commissions of approximately $190,185 for his employers of which he retained between 35% and 51%. Austin was not present to rebut the inference that his motivation was primarily to maximize fees, commissions and interest charges generated from the accounts.

¶ 54 Austin did not attend the hearing or cooperate in the investigation. He has not acknowledged his misconduct. He had left the industry by the time the AGs complaints surfaced. While he has no past misconduct to consider, he has no period of employment in the industry where he did not engage in misconduct. This misconduct persisted for long enough that it cannot be attributed to inexperience, particularly in the absence of any evidence from Austin on the point.

¶ 55 We consider the proposed sanctions are consistent with the past decisions of IIROC panels which IIROC staff cited to us, in particular Wilson[2,] where KYC information was overstated to support a higher risk portfolio and excessive cash withdrawals were made from the account on the representative's advice based on a misunderstanding of margin.

¶ 56 We reviewed IIROC staff's cost submissions and determined that the costs sought were warranted. Austin's conduct showed disrespect for the compliance systems that serve to maintain public confidence in the industry. He made the investigation and enforcement processes more time consuming and costly than necessary.

¶ 57 We had some concerns about the fact that the fairly large cash penalties imposed here are unlikely ever to be recovered from this respondent, given he has left the industry after a relatively short tenure. However, recognising that we are providing for general as well as specific deterrence, we think it is important to make clear by our penalty award that the misconduct in issue here strikes at the heart of IIROC's goal to maintain the confidence of retail investors in IIROC member firms and their registered representatives. There was a flagrant disregard for the actual circumstances of the clients and manipulation of the KYC process to engaging in risky trading and generate commissions. Austin relied on a friendly relationship with the family spokesman to mislead a vulnerable family as to the true state of their accounts, and expose them to substantial losses. More

[2] *Re Wilson,* 2001 IIROC 47.

even than the risk of outright fraud by a rogue broker, it is the fear of the outcome here - a reduced retirement due to the steady erosion of wealth through risky, self-serving transactions the clients could not readily follow -- that can undermine investor confidence and deter retail clients from entrusting their savings to the investment industry. We believe therefore that this conduct should be condemned in strong terms with substantial penalties and order the following sanctions:

i. A permanent ban on registration with IIROC;

ii. A fine of $50,000 for failure to cooperate;

iii. A combined fine of $120,000 for failure to ensure that recommendations were suitable and for unauthorized trading; and

iv. Disgorgement of commissions in the amount of $60,000.

Dated at Toronto, Ontario this 24th day of January, 2017.

Julia Dublin, Chair

Zahra Bhutani

David Kerr

Re Austin

IN THE MATTER OF:

The Dealer Member Rules of the Investment Industry Regulatory Organization of Canada

and

Jeremy Nicholas Drew Austin

2017 IIROC 10

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

Heard: March 16, 2016 in Toronto, Ontario
Written Decision: February 8, 2017

Hearing Panel:
Julia Dublin, Chair, Zahra Bhutani, David Kerr
Appearance:
Elisa Sinha, Enforcement Counsel
Jeremy Austin, absent

ADDENDUM RE: COSTS TO REASONS FOR DECISION DATED JANUARY 24, 2017

¶ 1 In our written Reasons for Decision signed January 24, 2017 we indicated the following (at para. 56):

> *We reviewed IIROC staff's cost submissions and determined that the costs sought were warranted. Austin's conduct showed disrespect for the compliance systems that serve to maintain public confidence in the industry. He made the investigation and enforcement processes more time consuming and costly than necessary.*

¶ 2 However, we did not make a specific order for costs in that decision. This is that order.

¶ 3 IIROC Enforcement Counsel submitted that costs should be ordered in the amount of $50,000, and submitted an affidavit and Bill of Costs in support of that amount. The actual amount of costs outlined in the Bill of Costs was $67,261, but IIROC staff are only seeking $50,000 of that amount.

¶ 4 Therefore, for the reasons set out above from our earlier Reasons for Decision, we also order as follows:

(i) That the respondent pay to IIROC costs in the amount of $50,000.

Dated at Toronto, Ontario this 8th day of February, 2017.

Julia Dublin, Chair

Zahra Bhutani

David Kerr