

Re Newman

IN THE MATTER OF:

**Dealer Member Rule of the Investment Industry Regulatory
Organization of Canada (IIROC)**

and

**The By-laws of the
Investment Dealers Association of Canada**

and

Harry Richard Newman

2012 IIROC 55

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

Hearing: September 24, 2012

Decision: September 28, 2012

Hearing Panel:

Terrance Sweeney, Chair, Terry Bourne, Richard Austin

Appearances:

Susan Kushneryk, IIROC Senior Enforcement Counsel

Carolyn Bean, IIROC Investigator

David Hausman and Shelley Babin, Counsel for the Respondent Harry Richard Newman

HEARING PANEL DECISION

BACKGROUND

¶ 1 We were constituted as a Hearing Panel of the Ontario District Council of IIROC to consider a Settlement Agreement¹ jointly recommended by Counsel for IIROC and Counsel for the Respondent and signed by them on September 24, 2012.

¶ 2 In the Settlement Agreement, the Respondent admitted to the following contravention of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

Between June 2007 and April 2010, Newman engaged in excessive trading in a client account which was not within the bounds of good business practice and was unsuitable, contrary to IIROC Dealer Member Rules 1300.1(o) and (p) (IDA Regulations 1300.1 (o) and (p) prior to June 1, 2008).

¶ 3 The Respondent engaged in a practice of excessive trading in the account of MD, a single, elderly investor. Through this practice, the Respondent earned more than \$900,000 in commissions in less than three years on MD's account alone, which at its highest month-end point during that period was valued at only approximately \$2.8 million.

¹ Exhibit 1

¶ 4 Between January 2009 and October 2010 alone, the Respondent earned over \$600,000 in commission on MD's account. This was far more than he earned on any of his other client accounts, and almost two-and-a-half times more than on his client account with the next highest commission/fee amount.

¶ 5 Counsel for the parties agreed to the following terms of settlement:

- (a) Newman is permanently prohibited from approval for registration with IIROC; and
- (b) Newman will pay IIROC the sum of \$5,000 to reflect the costs that Staff incurred in connection with this matter.

SUBMISSIONS

¶ 6 Ms. Kushneryk noted that the Respondent had consented to a permanent prohibition from registration with IIROC. This is the ultimate sanction a Hearing Panel can impose. The Respondent, by agreeing to the Settlement Agreement, acknowledged his transgressions and saved IIROC the costs of a lengthy hearing.

¶ 7 Members of the Hearing Panel expressed concern that no fine was to be imposed. IIROC Disciplinary Guidelines call for a minimum fine in cases of this kind.

¶ 8 Ms. Kushneryk reminded the Hearing Panel that the Guidelines were not mandatory. She said that this case was unique in that the Respondent had paid his victim \$680,000.00 from his own funds as part of a mediated settlement in a civil case brought against him. The civil case was commenced to address concerns regarding limitation periods and did not progress beyond the initiating process stage, limiting legal expenses incurred by MD.

¶ 9 Mr. Hausman told the Hearing Panel that the Respondent had thereby substantially indemnified his victim.

REASONS AND DECISION

¶ 10 The Hearing Panel may only accept or reject the Settlement Agreement. The Hearing Panel knows the proper tests to use in evaluating a Settlement Agreement. We respect the settlement process and will not lightly interfere with it.

¶ 11 The Hearing Panel in a recent case succinctly summarized our responsibility:²

... [I]t is the responsibility of this Panel to determine whether the penalties set forth in the Settlement Agreement strike a reasonable balance between fairness to the Respondent in the circumstances and the need to protect the investing public, the industry membership, the integrity of the discipline process, the integrity of the securities markets and prevention of a repetition of the offense.

¶ 12 The Hearing Panel carefully considered the rather unique facts in this case and the submissions of Counsel. We were persuaded that no fine was necessary or appropriate given the substantial payment made by the Respondent to his victim. He will be permanently barred by IIROC.

¶ 13 Accordingly, we signed the Order requested by Counsel.

¶ 14 The Chair said that brief reasons would follow. These are those reasons.

Dated at Toronto, Ontario this 28th day of September 2012.

Terrance A. Sweeney, Chair

Terry Bourne, Panel Member

Richard Austin, Panel Member

² *Re Bereskin*, [2010] IIROC No. 37

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Enforcement staff of the Investment Industry Regulatory Organization of Canada (“IIROC”) and the respondent, Harry Richard Newman (“Newman” or the “Respondent”), consent and agree to the settlement of this matter by way of this agreement (the “Settlement Agreement”).
2. IIROC’s Enforcement Department has conducted an investigation (the “Investigation”) into the Respondent’s conduct.
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. IIROC staff (“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:

Between June 2007 and April 2010, Newman engaged in excessive trading in a client account which was not within the bounds of good business practice and was unsuitable, contrary to IIROC Dealer Member Rules 1300.1(o) and (p) (IDA Regulations 1300.1(o) and (p) prior to June 1, 2008).

6. Staff and the Respondent agree to the following terms of settlement:
 - (a) Newman is permanently prohibited from approval for registration with IIROC; and
 - (b) Newman will pay IIROC the sum of \$5,000 to reflect the costs that Staff incurred in connection with this matter.

III. STATEMENT OF FACTS

(i) *Acknowledgment*

7. 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*

A. Overview

8. Newman engaged in a practice of excessive trading in the account of MD, a single, elderly investor. Through this practice, Newman earned more than \$900,000 in commissions in less than three years on MD’s account alone, which at its highest month-end point during that period was valued at only approximately \$2.8 million.
9. Between January 2009 and October 2010 alone, Newman earned over \$600,000 in commission on MD’s account. This was far more than he earned on any of his other client accounts, and almost two-and-a-half times more than on his client account with the next highest commission/fee amount.

B. Newman’s Registration History

10. Newman was first approved as a Registered Representative (“RR”) in 1980. He started working at Research Capital Corporation, now known as Mackie Research Capital Corporation (“MRCC”), in 2001 and remained there until his employment was terminated in March 2011. Newman currently works at Foster & Associates Financial Services Inc., where he started on May 2, 2011.

C. Client MD

11. MD is a retired nurse who lives alone in Markham, Ontario. She has no children and has never been

married. In addition to her investments with Newman, MD held Canada savings bonds and shares in TransAlta and a Canadian bank outside her investment account.

12. MD was Newman's client for many years and at MRCC from 2001 to 2010. Newman believes that MD was 59 when she first became his client. She was 69 when she opened her account at MRCC. MD had limited investment knowledge and relied entirely on Newman for advice and all trading in her account.
13. MD did not update her client account form, including her investment objectives and risk tolerances, at any time before 2008.
14. In January 2008, MRCC advised Newman that MD's account form was seven years old and should be updated. In February 2008, Newman arranged for MD to update her client account form for the first time since the account was opened at MRCC. In that update, MD increased her risk tolerance from her initial 40% low, 30% medium and 30% high to 10% low and 90% medium risk. Newman arranged for MD to update her client account form again in June 2009 and in February 2010, both times increasing the proportion of her account objectives for income and short term capital gains, away from medium and long term capital gains.
15. There is nothing to indicate that MD's circumstances, including her risk tolerance and limited investment knowledge, changed over the period from 2007 to 2010 to warrant any change to her risk tolerance or investment objectives.

D. Excessive Trading

16. From June 2007 to April 2010 (the "Relevant Period"), the Respondent executed approximately 290 trades in MD's account. Over 80% of those trades were for purchases or sales of shares of large Canadian banks.
17. The trades in MD's account over the Relevant Period generated over \$930,000 in commissions. The month-end value of the account over the Relevant Period was only approximately \$2.8 million at its peak on June 30, 2007, and as little as approximately \$1.7 million at its lowest point on February 28, 2009.
18. During the 35 months making up the Relevant Period, Newman made approximately \$19 million worth of purchases in MD's account and approximately \$19 million worth of sales from the account.
19. Newman's trading in MD's account during the Relevant Period, which involved the same class of securities over and over, constituted excessive trading that was unsuitable and outside the bounds of good business practice in light of MD's net worth, risk profile, age and income preferences.

E. Repayment to MD

20. MD commenced a lawsuit against MRCC and Newman in January 2012. In connection with that lawsuit, Newman personally contributed \$680,000 to a payment to MD. As such, Newman made a significant contribution toward restitution to MD for the losses she suffered in connection with his excessive trading.

IV. TERMS OF SETTLEMENT

21. 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.
22. The Settlement Agreement is subject to acceptance by the Hearing Panel.
23. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
24. 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.

25. 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.
26. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement, or Staff may proceed to an expedited or disciplinary hearing in relation to the matters disclosed in the Investigation.
27. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
28. 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.
29. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
30. 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 24th day of September, 2012.

“David Hausman”

“Harry Newman”

Witness

Harry Richard Newman

AGREED TO by Staff at the City of Toronto, in the Province of Ontario this 24th day of September, 2012.

“Carolyn Bean”

“Susan Kushneryk”

Witness

Susan Kushneryk

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 24th day of September, 2012, by the following Hearing Panel:

“Terrance Sweeney”

Mr. Terrance Sweeney

“Terry Bourne”

Mr. Terry Bourne

“Richard Austin”

Mr. Richard Austin

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