

Re Michetti

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Carlo Michetti

2017 IIROC 22

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

Heard: March 30, 2017 in Toronto, Ontario

Decision: April 5, 2017

Hearing Panel:

Thomas G. Heintzman, Chair, Jane Waechter and Neil Murphy

Appearances:

Kathryn Andrews, Enforcement Counsel

A. Abosharia, for the Respondent, Carlo Michetti

Carlo Michetti, absent

SETTLEMENT DECISION

¶ 1 This is the Decision of the Hearing Panel in respect of an application pursuant to Sections 8215 and 8428 of the Consolidated Enforcement, Examination and Approval Rules of the Investment Industry Organization of Canada (IIROC). The application is to accept a Settlement Agreement dated March 1, 2017 (the Settlement Agreement) between the staff (Staff) of IIROC and the Respondent Carlo Michetti (the Respondent). For the reasons set forth in this Decision, the Hearing Panel's Decision is that Settlement Agreement should be accepted.

FACTS:

¶ 2 The facts stated in the Settlement Agreement are as follows.

¶ 3 The Respondent was employed as a Registered Representative with Edward Jones in London, Ontario from 2011 until June 2016. He is not currently an IIROC registrant.

¶ 4 AB was born in 1945. AB was the Respondent's friend and neighbour and became a client of the Respondent in October 2015. The Respondent advised IIROC Staff that in 2015 AB offered to loan him certain sums, as described in more detail below, because he was experiencing financial difficulties.

¶ 5 According to the Respondent, in March 2015 AB offered to loan the Respondent some funds to assist him with his mortgage payments and property taxes. The details were to be finalized when AB received funds from his father's estate. AB's father died in September 2015.

¶ 6 The Respondent told Staff that he obtained a second mortgage on his property in mid 2015. At some

point in the fall of 2015, according to the Respondent, AB offered to loan the Respondent approximately \$30,000 in order to pay off his second mortgage. The Respondent agreed to the loan.

¶ 7 In or about February 2016 AB loaned the Respondent approximately \$30,000 in order to pay off his second mortgage. In or about March 2016, AB began making monthly loans of approximately \$1,340 to help the Respondent to pay his first mortgage and property taxes.

¶ 8 At the time of the Respondent's termination from Edward Jones in June 2016, he had received a total of approximately \$34,000 from AB. As of August 4, 2016, none of the loan amounts had been re-paid by the Respondent.

¶ 9 The Respondent told Staff that he and AB have negotiated a loan agreement which provides that a total of \$44,000 will be re-paid by the Respondent by way of monthly payments which will commence in March 2017 and continue for a period of five years.

¶ 10 At the time of the Respondent's dealings with AB, he was subject to heightened supervision conditions by his firm as a result of various personal financial issues. In or about January 2014, the firm's Compliance Department had warned the Respondent about inappropriate business conduct, including personal financial dealings with clients.

¶ 11 In two Advisor Audit Questionnaires dated June 2015 and April 2016 and submitted to his firm, the Respondent acknowledged that he understood that he could not borrow money from any client without the prior consent of the firm. At the time the Respondent signed the April 2016 Questionnaire, AB was a client.

¶ 12 Edward Jones' Policies and Procedures Manual at the material time also indicated that Registered Representatives were prohibited from taking loans from their clients. The Respondent did not tell his firm about the loans and payments from AB, nor did he seek his firm's approval for any aspect of these transactions.

¶ 13 The Respondent does not have a previous disciplinary history and has expressed remorse for his actions.

¶ 14 In the Settlement Agreement, the Respondent acknowledged that during 2015 and 2016, he engaged in personal financial dealings with a client without his member firm's knowledge or consent, contrary to IIROC Dealer Member Rule 43.

ISSUE

¶ 15 The issue in this application is whether the Settlement Agreement should be accepted or rejected by the Hearing Panel.

REASONS FOR DECISION

¶ 16 The standard of review of the Settlement Agreement to be applied by the Hearing Panel has been set forth in several decisions of previous Hearing Panels. Thus in *Re Ast*,¹ the Hearing Panel stated as follows:

“The standard for reviewing a Settlement Agreement was well-stated in a recent Pacific District hearing, *Re Johnson* (2012 IIROC 19), where the panel stated:

‘The test applicable to a decision whether to accept or reject a settlement is well-known. Simply put, a panel should accept such an agreement unless it considers the penalty provided for clearly to fall outside a reasonable range of appropriateness.’

There are many similar statements. See, for example, *Re Jiwa and Hoffer* (2012 IIROC 9), which adopted an earlier IDA decision, stating: "It will not reject a settlement unless it views the penalty as

¹ *Ast (Re)*, 2012 LNIROOC 38 at paras. 13-15.

clearly falling outside a reasonable range of appropriateness." Another recent example is *Re Trapeze Capital* (2012 IIROC 25), where the panel states:

‘It is clear from jurisprudence emanating from the courts and from Hearing Panels of IIROC, Investment Dealers Association and the Mutual Fund Dealers Association, that our task is not to decide whether, in this case, we would have arrived at the same decision as that reached by the parties. Rather, our duty is to determine whether the penalty is a reasonable one and that it meets the objectives of the disciplinary process which are to maintain the integrity of the investment industry.’

And, finally, see the statement in *Re Rotstein and Zackheim* (2012 IIROC 27):

‘Based upon this material it is our responsibility to review the agreement in order to satisfy ourselves that it falls within a reasonable range of appropriateness to the offence and circumstances recorded in the agreement and that there is nothing in the agreement which would be contrary to the public interest or bring the administration of the Rules of IIROC into public disrepute. If we are satisfied that the Settlement Agreement does not offend these principles then it should be accepted.’ (underlining added)

¶ 17 In considering the facts in the present case and the sanction proposed in the Settlement Agreement, we have had regard to prior IIROC decisions in which the respondent borrowed monies from his client. The prior decisions which we considered were *Re D’Souza*,² *Re Darrigo*,³ *Re Chung*,⁴ and the Settlement Agreement in *Re Brian McCullough*⁵ which we were advised has been approved by an IIROC Hearing Panel.

¶ 18 The elements of the sanctions proposed in the Settlement Agreement are: a fine of \$15,000; the re-writing and passing by the Respondent of the Conduct and Practices Handbook course of the Canadian Securities Institute (CPH) within one year of, and six months close supervision after, re-registration with IIROC; and payment of costs of \$1,000. In our view, those elements fall within the bounds of reasonableness having regard to the facts in the present case. The fine is less than those imposed in the other decisions referred to above, but several of those decisions involved other contraventions of IIROC Rules and more egregious circumstances than those in the present case. In addition, the Respondent does not have a previous disciplinary record and has expressed remorse for his actions. He is also taking immediate steps to pay back the loan to AB which led to this proceeding.

¶ 19 The other elements of the sanction proposed in the Settlement Agreement are reasonable and intended to protect the public, namely, the requirement that the Respondent re-write and pass the CPH and be under close supervision after re-registration with IIROC. And the payment of costs by the Respondent ensures that the public expense in bringing this application is to some extent defrayed.

¶ 20 In considering the sanctions proposed in the Settlement Agreement, we have had regard to the IIROC Sanctions Guidelines. Those Guidelines address the preventative and protective purposes of sanctions, and emphasize that sanctions should be directed toward strengthening the market integrity and business standards and practices of the investment industry. By imposing a fine and costs on the Respondent, the proposed sanctions will help to prevent registrants from borrowing from their clients, particularly without notifying their Dealer Member, by sending the message that the conduct in question will not be tolerated even in relation to

² *D’Souza (Re)*, 2014 LNIRO 53

³ *Darrigo (Re)*, 2014 LNIRO 48, 2015 LNIRO 3, 2016 LNONOSC 301

⁴ *Chung (Re)*, 2015 LNIRO 40

⁵ Settlement Agreement dated February 9, 2017

relatively small borrowings and by registrants who have not been subject to previous discipline. At the same time, the proposed sanctions will allow the Respondent to re-register with IIROC, thereby recognizing his previous unblemished disciplinary record, but subject to supervision and the Respondent successfully re-taking the CPH thereby providing public protection and the enforcement of the investment industry's standards.

¶ 21 Accordingly, in our view the elements of the sanctions that are contained in the Settlement Agreement fall within the bounds of reasonableness.

¶ 22 However, one element, arguably, is missing from the proposed sanctions stated in the Settlement Agreement, and that is an investor protective term concerning the unpaid loan from the Respondent's client, AB. While the Settlement Agreement states that the Respondent has agreed to repay AB over five years, there is nothing in the Settlement Agreement that requires that to occur, or connects repayment to the Respondent's registration. That is in contrast to the requirement in the Settlement Agreement that the Respondent pay IIROC a \$15,000 fine.

¶ 23 The sanctions imposed in previous IIROC decisions have, in these sort of circumstances, ordered the repayment of the loan to the client, or imposed another remedy which addressed the loan. Thus, in *Re Chung*, the hearing panel ordered that the future registration of the respondent would be subject to "The Respondent having repaid, or otherwise discharging, the debt owed to his former client,"⁶. In *Re Darrigo*, the sanctions included a fine representing disgorgement of the loan proceeds.⁷ In *Re Brian McCullough*, the Settlement Agreement recited that the respondent had settled the claim against him arising from the impugned gift to him.

¶ 24 In light of these precedents, the Hearing Panel had substantial concerns that the Settlement Agreement in the present case, unlike the sanctions in *Re Chung*, did not properly recognize the role that sanctions have in protecting the investing public. That role is recognized in the very first part of the first principle of the IIROC Sanction Guidelines: "Disciplinary sanctions are preventative in nature and should be designed to protect the investing public." Permitting the registrant to continue in the investment industry without formally addressing loan repayment has the appearance of condoning the conduct of the Respondent in accepting the loan from his client. Moreover, failing to deal with an unpaid loan in the sanctions does not address the fourth principle in the IIROC Sanctions Guidelines, namely, that the "sanctions should ensure that a respondent does not financially benefit as a result of the misconduct." While we appreciate that IIROC should not be a collection agency for lenders to members of the investment industry, nevertheless requiring a registrant to address loan repayment before continuing in the industry, or crafting a remedy directed to that end, does not appear to us to be too much to ask. Clearly the hearing panel in *Re Chung* adopted that approach.

¶ 25 In her submissions made to the Hearing Panel, counsel for the Respondent advised that the Respondent has sold his home, that the loan to AB would be repaid out of the proceeds of the sale, and that AB holds a second mortgage on the home to secure that repayment. In these circumstances, those facts combined with the facts recited in the Settlement Agreement and referred to in paragraph 8 of this Settlement Decision provide reasonable assurance, and a virtual undertaking by the Respondent, that the loan to AB will be immediately repaid and that there is security in place to ensure that that occurs.

¶ 26 In these circumstances, the Hearing Panel is satisfied that the concerns that it had, relating to the failure of the Settlement Agreement to address the continued existence of the impugned loan, have been dealt with. In the result, the Hearing Panel is satisfied that the Settlement Agreement should be accepted. Had it not been for the submissions and assurances of counsel for the Respondent referred to in paragraph 25 of this Settlement Decision, and the facts referred to in the Settlement Agreement and contained in paragraph 8 of this Settlement

⁶ *Chung (Re)*, footnote 4, para. 37(3)(a).

⁷ *Darigo (re)*, footnote 3, 2015 LNIROC 3 at para. 28.

Decision, the Hearing Panel might well have concluded that the Settlement Agreement should not be accepted.

DECISION

¶ 27 Accordingly, the Hearing Panel orders that the Settlement Agreement is reasonable and accepts it.

Dated at Toronto, Ontario, this 5th day of April 2017

Thomas G. Heintzman

Jane Waechter

Neil Murphy

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 Carlo Michetti (“Respondent” or “Michetti”).

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. Michetti was employed by Edward Jones. AB became a client of Michetti in October 2015. In or about February 2016 AB lent Michetti approximately \$30,000 to pay off his second mortgage. Commencing in or about March 2016 AB paid approximately \$1,340 each month to cover Michetti’s first mortgage and property taxes. Michetti did not disclose these loans and payments to his firm.

Background

5. Michetti was employed as a Registered Representative with Edward Jones in London, Ontario from 2011 until June 2016. He is not currently an IIROC registrant.

Client AB

6. AB was born in 1945. AB was Michetti’s friend and neighbour and became a client of Michetti in October 2015.
7. Michetti told Staff that in 2015 AB offered to loan him certain sums, as described in more detail below, because he was experiencing financial difficulties.

Loan specifics

8. According to Michetti, in March 2015 AB offered to loan Michetti some funds to assist him with his mortgage payments and property taxes. The details were to be finalized when AB received funds from his father’s estate. AB’s father died in September 2015.

9. Michetti told Staff that he obtained a second mortgage on his property in mid 2015. At some point in the fall of 2015, according to the Respondent, AB offered to loan Michetti approximately \$30,000 in order to pay off his second mortgage. Michetti agreed to the loan.
10. In or about February 2016 AB loaned Michetti approximately \$30,000 in order to pay off his second mortgage.
11. In or about March 2016, AB began making monthly loans of approximately \$1,340 to help Michetti to pay his first mortgage and property taxes.
12. At the time of Michetti's termination from Edward Jones in June 2016, he had received a total of approximately \$34,000 from AB.

Re payment terms

13. As of August 4, 2016, none of the loan amounts had been re-paid by Michetti.
14. Michetti told Staff that he and AB have negotiated a loan agreement which provides that a total of \$44,000 will be re-paid by the Respondent by way of monthly payments which will commence in March 2017 and continue for a period of five years.

Heightened supervision

15. At the time of Michetti's dealings with AB, he was subject to heightened supervision conditions by his firm as a result of various personal financial issues. In or about January 2014, the firm's Compliance Department had warned the Respondent about inappropriate business conduct, including personal financial dealings with clients.

Firm annual questionnaires

16. In two Advisor Audit Questionnaires dated June 2015 and April 2016 and submitted to his firm, Michetti acknowledged that he understood that he could not borrow money from any client without the prior consent of the firm. At the time the Respondent signed the April 2016 Questionnaire, AB was a client.

Compliance manual

17. Edward Jones' Policies and Procedures Manual at the material time also indicated that Registered Representatives were prohibited from taking loans from their clients.

Firm not aware

18. Michetti did not tell his firm about the loans and payments from AB, nor did he seek his firm's approval for any aspect of these transactions.

Other

19. The Respondent does not have a previous disciplinary history.
20. The Respondent has expressed remorse for his actions.

PART IV – CONTRAVENTIONS

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

During 2015 and 2016, Carlo Michetti engaged in personal financial dealings with a client without his member firm's knowledge or consent, contrary to IIROC Dealer Member Rule 43.

PART V – TERMS OF SETTLEMENT

22. The Respondent agrees to the following sanctions and costs:
- a) A fine in the amount of \$15,000;
 - b) To re write and pass the CPH within one year of any re-registration with IIROC;
 - c) Six months close supervision upon any re-registration with IIROC; and,
 - d) Costs of \$1,000.
23. 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

24. 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 following paragraph.
25. 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

26. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
27. 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.
28. 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.
29. 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.
30. 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.
31. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
32. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full 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.
33. 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.
34. 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

- 35. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.
- 36. A fax or electronic copy of any signature will be treated as an original signature.

DATED this “1st” day of March, 2017.

“Abeer Abosnana”

Witness

“Carlo Michetti”

Respondent Carlo Michetti

“Ricki Newmarch”

Witness

“Kathryn Andrews”

Kathryn Andrews

Senior Enforcement Counsel on behalf of
Enforcement Staff of the Investment Industry
Regulatory Organization of Canada

The Settlement Agreement is hereby accepted this 5th day of “April, 2017 by the following Hearing Panel:

Per: “Thomas G. Heintzman”

Panel Chair

Per: “Jane Waechter”

Panel Member

Per: “Neil Murphy”

Panel Member

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