

Re Li

IN THE MATTER OF:

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

and

Xavier Cheng Kuo Li

2016 IIROC 10

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

Heard: December 18, 2015 in Vancouver, British Columbia

Decision: December 18, 2015

Reasons: January 27, 2016

Hearing Panel:

John Rogers, Chair, John van Koll and Doug Stewart

Appearances:

Enforcement Counsel, Paul Smith

Respondent's Counsel, Patrick Sullivan and Fei Kang

The Respondent was not present

REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT

¶ 1 At a Settlement Hearing on December 18, 2015, Staff of the Investment Industry Regulatory Organization of Canada ("IIROC") and Counsel for Xavier Cheng Kuo Li, (the "Respondent") jointly recommended that the Hearing Panel accept the attached settlement agreement agreed to by the Respondent on December 15, 2015 (the "Settlement Agreement"). The settlement agreed to by IIROC and the Respondent was in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive, and Rule 15 of the IIROC Dealer Member Rules of Practice and Procedure.

¶ 2 The Hearing Panel received and considered oral submissions from IIROC Enforcement Counsel and the Respondent's Counsel and received and considered the IIROC Settlement Brief containing:

1. the Settlement Agreement,
2. extracts from IIROC Dealer Member Rules,
3. IIROC Sanction Guidelines dated February 2, 2015, and
4. selected IIROC hearing panel decisions.

TERMS OF SETTLEMENT

¶ 3 The Settlement Agreement contains the agreement of the Respondent and IIROC Staff that from January, 2011 through June 2013, the Respondent conducted discretionary transactions in the accounts of two different clients contrary to IIROC Dealer Member Rule 1300.4

¶ 4 As a result of this contravention, the Settlement Agreement confirms that the Respondent and IIROC Staff have agreed to the following sanctions:

1. A fine in the amount of \$40,000;
2. A one year suspension from registration in any capacity with IIROC;
3. A requirement to successfully rewrite the exam based upon the Conduct and Practices Handbook; and
4. A requirement that any future registration shall be subject to a one year period of strict supervision in addition to any supervision requirements imposed on new registrants.

¶ 5 In addition, the Respondent agreed to pay IIROC costs in the sum of \$2,500.

STATEMENT OF FACTS

¶ 6 The Settlement Agreement contains certain facts agreed to by IIROC Staff and the Respondent for the purpose of the Settlement Agreement. A summary of these facts is as follows:

The Respondent

1. The Respondent was first registered in 2000 and worked in the investment industry until 2007 when his registration was suspended for a period of 6 weeks. Following this suspension, the Respondent continued working until he took a leave of absence for medical reasons in July 2013, which leave continues until today. Despite being on medical leave, the Respondent's registration remains active;
2. The suspension of his registration in 2007, together with a fine in the amount of \$45,000, was agreed to by the Respondent as a result of his admission that he had altered a transfer form to change an "In Kind" transfer to an "In Cash" transfer and then to using the cash obtained to purchase mutual funds without the approval of his clients. When the clients complained, the Respondent admitted to offering them a proposal to settle their complaint without them reporting their complaint to the Respondent's employer;

Clients SX & JG

3. SX & JG in January 2011 opened two joint investment accounts for which the Respondent was responsible depositing the sum of approximately \$500,000 into these accounts. As SX & JG had very limited English language skills, communicating with the Respondent in Mandarin, and not understanding how securities transactions were properly conducted, they instructed the Respondent to use his discretion to make investment decisions that were within the framework of their investment objectives;

Clients FC, DC & KC

4. Beginning in 2008, FC, DC & KC, a Mandarin speaking family, had at least four accounts for which the Respondent had responsibility. Throughout the life of these accounts the Respondent kept these clients updated on the details of the transactions conducted in the accounts; but did so only after he had used his discretion as to the specific security transacted and the quantity, price or timing of the transaction. The clients have indicated that they understood that this practice was the standard way that transactions were effected in investment accounts;

The Transactions

5. From January 2011 through to June 2013, there were a total of 474 buy and sell transactions in the four FC, DC & KC accounts and a total of 113 buy and sell transaction in the two SX & JG accounts. Of these 587 transactions, the Respondent acknowledged that at least a majority of them were conducted on a discretionary basis; and
6. While verbal authorization was given, none of the clients for the six accounts in issue gave the

Respondent written authorization to make discretionary transactions in these accounts, nor were any of these accounts designated or approved as a discretionary account by the Respondent's employer.

ACCEPTANCE PRINCIPLES

¶ 7 Under IIROC Rule 20.36, at the conclusion of a settlement hearing a hearing panel may either accept or reject the proposed settlement. To assist it in exercising its discretion, IIROC Staff Counsel referred the Hearing Panel to the following decisions:

- *Re Deutsche Bank Securities Ltd.* [2013] IIROC 7 (paragraph 9);
- *Rault v. Law Society of Saskatchewan* [2009] SKCA 81 (C.A.) (at paragraph 18);
- *Re Clark* [1999] IDA 40;
- *Re Milewski* [1999] IDA 17; and

In particular to *Re Wood* [2014/ IIROC 50 where the hearing panel noted (paragraph 18):

Our legal system places a high value on the settlement of legal disputes. Indeed, lawyers are under a professional obligation to encourage compromise or settlement whenever it is possible to do so on a reasonable basis. Settlement not only relieves parties of the cost, risk and uncertainty that comes with litigation, but as the product of negotiation and compromise a settlement is more likely to arrive at a fair and balanced resolution of a dispute.

¶ 8 In addition, IIROC Staff Counsel referred the Hearing Panel to the following decisions where hearing panels considered contraventions involving IIROC Dealer Member Rule 1300.4:

- *Re Shameseer* 2011 IIROC 5;
- *Re Beck* 2012 IIROC 41; and
- *Re Karim* 2015 IIROC 04

And submitted that both he and Respondent's counsel agreed that *Re Shamseer* was the closest to the matter at hand.

¶ 9 In *Shamseer* the respondent was alleged to have made 19 discretionary trades in the account of one client without having the account approved and accepted as a discretionary account contrary to IIROC Dealer Member Rule 1300.4. The decision notes that the respondent had a disciplinary history of having previously contravened Rule 1300.4 and in a settlement agreement had previously agreed to a fine in the amount of \$40,000, disgorgement of commissions in the amount of \$2,100, rewriting the CPHC, and costs in the amount of \$3,000.

¶ 10 At her hearing resulting in the decision, the hearing panel imposed a 6 months suspension, a fine in the amount of \$50,000, rewriting the CPHC, and strict supervision with specific restrictions for 12 months of strict supervision followed by a period of 6 months of close supervision if she sought reinstatement of her registration.

¶ 11 In comparing *Shameseer* to the matter at hand, IIROC Counsel noted:

1. *Shameseer* was not a settlement hearing;
2. Although the Respondent conducted over 200 unauthorized trades and the respondent in *Shameseer* 19, the penalties agreed to by the Respondent in the Settlement Agreement include a one year suspension while a suspension of 6 months was imposed in *Shameseer*.

DECISION

¶ 12 We are satisfied as a panel that the sanctions agreed to in the Settlement Agreement, including the costs of \$2,500, are within the acceptable range, and, for that reason, we find it to be in the public interest that we accept this Settlement Agreement and we so do.

Dated at Vancouver, British Columbia this 27 day of January 2016

John Rogers, Chair

John van Koll

Doug Stewart

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff (“Staff”) and Xavier Cheng Kuo Li (the “Respondent”) consent and agree to the settlement of this matter by way of this agreement (the “Settlement Agreement”).
2. The Enforcement Department of IIROC has conducted an investigation (the “Investigation”) into the conduct of the Respondent.
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. 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:
 - (a) From January, 2011 through June 2013, the Respondent conducted discretionary transactions in the accounts of two different clients contrary to IIROC Dealer Member Rule 1300.4.
6. Staff and the Respondent agree that the following terms of settlement:
 - (a) A fine in the amount of forty thousand dollars (\$40,000);
 - (b) A one year suspension from registration in any capacity with IIROC;
 - (c) A requirement to successfully rewrite the exam based on the Conduct and Practices Handbook; and
 - (d) A requirement that any future registration shall be subject to a one year period of strict supervision in addition to any supervision requirements imposed on new registrants.
7. The Respondent agrees to pay costs to IIROC in the sum of two thousand and five hundred dollars (\$2,500).

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

Overview

8. These facts relate to the period of time from January 2011 through June 2013 when the Respondent was a Registered Representative (“RR”) working at Raymond James Ltd. (“Raymond James”) in Vancouver,

British Columbia. During that period, the Respondent routinely made discretionary transactions in the accounts of two unrelated sets of clients.

The Respondent

9. The Respondent was first registered in 2000.
10. The Respondent worked continuously as an RR in Richmond or Vancouver until July 2007 when he entered into a settlement agreement with IIROC's predecessor, the Investment Dealers Association of Canada. In that settlement agreement the Respondent admitted to altering a transfer form to change an "In Kind" transfer to an "In Cash" transfer and then using the cash obtained to purchase mutual funds without the approval of his clients. When the clients complained, the Respondent offered a proposal to settle their complaint without reporting the complaint to his firm. He was suspended for six weeks and fined \$45,000.
11. After serving his suspension, the Respondent, in September 2007, joined Raymond James, where he worked continuously until taking a leave of absence for medical reasons in July 2013. That leave has continued to the date of this Settlement Agreement. Despite being on medical leave the Respondent's registration remains active.

The Clients (SX & JG)

12. SX & JG resided together in Vancouver, British Columbia. Both have very limited English language skills and therefore communicated with the Respondent in Mandarin.
13. In January 2011, SX & JG opened two joint investment accounts at Raymond James with the Respondent being the RR responsible for those accounts. They deposited approximately \$500,000 into those accounts.
14. SX & JG have indicated that because they did not understand how securities transactions were properly conducted, they instructed the Respondent to use his discretion to make investment decisions that were within the framework of their investment objectives.

The Clients (FC, DC & KC)

15. Since 2008, another Mandarin speaking client family ("FC, DC & KC") had at least four accounts at Raymond James with the Respondent being the RR responsible for those accounts.
16. Throughout the life of those accounts, the Respondent kept FC, DC & KC updated on the details of transactions conducted in the accounts but only did so after he had used his discretion as to the specific security transacted and the quantity, price or timing of the transaction.
17. FC, DC & KC have indicated that they understood this practice to be the standard way that transactions were effected in investment accounts.

Qualifications

18. While verbal authorization was given, none of the clients gave the Respondent written authorization to make discretionary transactions in their accounts.
19. None of the accounts for any of the clients were designated or approved as a discretionary account by Raymond James.

Number and Character of Transactions

20. In the two and a half year period from January 2011 through June 2013 there were a total of 474 buy and sell transactions in the four FC, DC & KC accounts and another 113 buy and sell transactions in the two accounts of SX & JG.
21. It is not exactly clear how many of this total of 587 transactions were conducted on a discretionary basis.

The Respondent acknowledges that at least the majority of the transactions were conducted on a discretionary basis because of the way that he routinely conducted transactions for these clients.

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 Vancouver, British Columbia, this 15th day of December, 2015.

“Witness” _____

WITNESS

“Xavier Li” _____

RESPONDENT

AGREED TO by Staff at Vancouver, British Columbia, this 18th day of December, 2015.

“Lorne Herlin” _____

WITNESS

“Paul Smith” _____

PAUL SMITH

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

ACCEPTED at Vancouver, British Columbia, this 18th day of December, 2015, by the following Hearing Panel:

Per: “R. John Rogers” _____

Per: “Doug Stewart” _____

Per: “John van Koll” _____