

Re Dirani

IN THE MATTER OF:

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

and

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

Wasseem Dirani

2014 IIROC 09

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

Heard: February 5, 2014
Decision: February 5, 2014

Hearing Panel:

Martin L. Friedland, C.C., Q.C. (Chair), Daniel P. Iggers and David E. Lang

Appearances:

Natalija Popovic, Senior Enforcement Counsel, IIROC

David Di Paolo, for the Respondent

REASONS FOR DECISION

INTRODUCTION

¶ 1 Staff of the Investment Industry Regulatory Organization of Canada (“IIROC”) and the Respondent, Wasseem Dirani (“Dirani” or “the Respondent”), entered into the attached Settlement Agreement, dated January 20, 2014.

¶ 2 The Settlement Agreement was presented to the Hearing Panel for acceptance on February 5, 2014.

¶ 3 After hearing counsel for IIROC and the Respondent and considering the material filed, the Hearing Panel issued an order accepting the Settlement Agreement. These are our reasons for making that order.

SETTLEMENT AGREEMENT

¶ 4 The Respondent was a registrant with IIROC Dealer Edward Jones in Burlington Ontario from June 2003 to March 2013. He is currently a registrant with another dealer, where he has been employed since April 2013.

¶ 5 Following a complaint by ABC in June 2013, the Enforcement Department of IIROC conducted an investigation of the Respondent, which disclosed matters for which he might be disciplined by a hearing panel. As a result, a Settlement Agreement was entered into by IIROC and the Respondent. The Respondent consents to be subject to the jurisdiction of IIROC.

¶ 6 In the attached Settlement Agreement, the Respondent “admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, IDA By-Laws, Regulations or Policies:

- a) From or about March 2006 to June 2012 the Respondent failed to use due diligence to ensure that recommendations were suitable for his client, contrary to IIROC Dealer Member Rule 1300.1(q) [IDA Regulation 1300.1(q) prior to June 1, 2008]
- b) In or about August 2012 the Respondent engaged in undisclosed personal business with a client without the knowledge or consent of his firm, contrary to IIROC Dealer Member Rule 29.1 [IDA By-Law 29.1 prior to June 1, 2008].”

¶ 7 IIROC Staff and the respondent agree to the following terms of settlement:

- a) A fine of \$40,000;
- b) Strict Supervision of the Respondent for 12 months;
- c) The Respondent re-write the Conduct and Practices Handbook exam;
- d) Disgorgement of \$3,100; and
- e) The Respondent pay costs to IIROC in the sum of \$2,500.

¶ 8 IIROC Staff and the Respondent jointly recommended that the Hearing Panel accept the Settlement Agreement.

THE RESPONDENT’S CONDUCT

¶ 9 The Respondent’s conduct was serious. He recommended and purchased securities for the margin account of one of his clients, ABC, utilizing funds that he knew that ABC had borrowed. ABC was retired and was an unsophisticated investor; her house was her only major asset; and her income consisted solely of a modest disability/government pension. The use of borrowed funds and the use of margin were unsuitable for client ABC. The details of the various transactions are set out in the Settlement Agreement (paragraphs No. 16-36).

¶ 10 This conduct breached IIROC Dealer Member Rule 1300.1(q), which provides:

“Each Dealer Member, when recommending to a client the purchase, sale, exchange or holding of any security, shall use due diligence to ensure that the recommendation is suitable for such client based on factors including the client’s current financial situation, investment knowledge, investment objectives and time horizon, risk tolerance and the account or accounts’ current investment portfolio composition and risk level.”

¶ 11 In addition, the Respondent took a personal loan from another client, XYZ, that was secured by a mortgage on the Respondent’s house. The Respondent failed to disclose the personal loan to his firm and accordingly engaged in personal business with this client without his firm’s knowledge or consent. See Settlement Agreement (paragraphs No. 37-38).

¶ 12 This conduct is contrary to IIROC policy and is contrary to IIROC Rule 29.1 which provides that “Dealer Members and each...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...”

STANDARD FOR REVIEWING A SETTLEMENT AGREEMENT

¶ 13 The standard for reviewing a Settlement Agreement was well-stated in a 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.”

¶ 14 There are many similar statements. See, for example, *Re Taggart* (2013 IIROC 24); *Re Scotia Capital* (2013 IIROC 38); *Re Jiwa and Hoffar* (2012 IIROC 9); *Re Rotstein and Zackheim* (2012 IIROC 27); *Re*

Portfolio Strategies Securities Inc. (2012 IIROC 36), *Re Ast* (2012 IIROC 38), all stemming from *Re Milewski* ([1999] I.D.A.C.D. no. 17), where the panel stated:

“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.”

CONCLUSION

¶ 15 The penalty agreed to in this case does not clearly fall outside a reasonable range of appropriateness. It is consistent with comparable cases brought to our attention by counsel for IIROC.

¶ 16 A mitigating factor, the Settlement Agreement points out, is that “Dirani has fully repaid the \$30,000 personal loan from client XYZ and has received a discharge from that client.” Further, Dirani has co-operated with Staff’s investigation.

¶ 17 For the above reasons, the Panel accepted the Settlement Agreement.

Dated at Toronto this 10th day of February 2014.

Martin L. Friedland, C.C., Q.C., Chair

Daniel P. Iggers

David E. Lang

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent, Wasseem Dirani, (“Dirani” or “the Respondent”) 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 Wasseem Dirani.
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) From or about March 2006 to June 2012 the Respondent failed to use due diligence to ensure that recommendations were suitable for his client, contrary to IIROC Dealer Member Rule 1300.1(q) [IDA Regulation 1300.1(q) prior to June 1, 2008]

- b) In or about August 2012 the Respondent engaged in undisclosed personal business with a client without the knowledge or consent of his firm, contrary to IIROC Dealer Member Rule 29.1[IDA By-law 29.1 prior to June 1, 2008]
- 8. Staff and the Respondent agrees to the following terms of settlement:
 - a) A fine of \$40,000
 - b) Strict Supervision for 12 months
 - c) Re write the CPH
 - d) Disgorgement of \$3,100
- 9. The Respondent agrees to pay costs to IIROC in the sum of \$2,500.

III. STATEMENT OF FACTS

(i) Acknowledgment

- 10. 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

- 11. The Respondent recommended and purchased securities for the margin account of one of his clients utilizing funds that he knew that the client had borrowed. The client on one occasion utilized a line of credit and on a second occasion obtained a mortgage. The Respondent knew that both of these loans had been secured as against the client's house.
- 12. In addition, the Respondent recommended that this client use margin to finance the purchase of a vehicle as well as certain other securities.
- 13. The use of borrowed funds, and the use of margin, was unsuitable for this client. The Respondent was aware that throughout the relevant time this client was retired, that her house was this client's only major asset and that the client's income consisted solely of a modest disability / government pension.
- 14. In addition, the Respondent took a personal loan from another client that was secured by a mortgage on the Respondent's house. The Respondent failed to disclose the personal loan to his firm and accordingly engaged in personal business with this client without his firm's knowledge or consent.

B. Registration History

- 15. The Respondent was a registrant with Edward Jones from June 2003 to March 2013. He is currently a registrant with IPC Securities Corporation where he has been employed since April 2013.

C. Unsuitable Recommendations for Investments Using Borrowed Funds

- 16. In or about early 2006 client ABC came to Dirani inquiring about taking out a reverse mortgage on her home as she required funds for ongoing living expenses. She had met Dirani through a church group to which they both belonged. ABC was at that time approximately 63 years of age, was retired, was an unsophisticated investor, and had not been in the work force since the late 1970s.
- 17. ABC advised Dirani that she needed additional funds as her sole income at the time was a modest disability / government pension of less than \$10,000 annually. She further advised Dirani that her house, with an estimated value of approximately \$250,000 in 2006, was her only major asset and that it was fully paid for.
- 18. Dirani advised ABC against taking out a reverse mortgage, and instead suggested that ~~the~~ only way she could generate the income she was looking for was if she took out a line of credit so as to avoid losing control over her home. He recommended that she invest the borrowed funds in mutual funds to be

purchased on a Deferred Sales Charge (“DSC”) basis, and that she could make regular withdrawals to satisfy her need for income under the 10% free redemption provisions. He advised her that in order to fund the level of withdrawals she indicated she needed it would be necessary for her to borrow approximately \$250,000.

19. In or about March 2006 Dirani opened a margin account for ABC. Although ABC had no liquid assets to speak of at that time, Dirani recorded on her KYC that she had liquid assets of \$125,000. He recorded that ABC’s annual income was \$25,080, that she was not retired, but that her employer was “Disability”; the investment objectives were 40% growth and income and 60% growth with 100% medium risk.
20. Dirani updated ABC’s account information on two occasions, namely March 2007 and July 2008, when he was prompted by supervision queries that the account holdings did not match the investment objectives and risk tolerance recorded for ABC’s account. Dirani addressed each query by changing the investment objectives and risk tolerance to conform to the account holdings as indicated below. However, he did not update her annual income or net worth, or factor in borrowing on the line of credit or mortgage into her net worth figures. Notwithstanding the updates to the KYCs, ABC’s investor profile did not in fact change throughout the relevant time.

| KYC | Investment Objectives | Risk Tolerance | Net Liquid Assets |
|------------|---|--|---|
| 2006 | <ul style="list-style-type: none"> • 40% growth and income • 60% growth | <ul style="list-style-type: none"> • 100% medium | <ul style="list-style-type: none"> • \$125,000 |
| 2007 | <ul style="list-style-type: none"> • 12% income • 47% growth and income • 21% growth • 20% aggressive | <ul style="list-style-type: none"> • 80% medium • 20% high | <ul style="list-style-type: none"> • \$125,000 |
| 2008 | <ul style="list-style-type: none"> • 54% growth and income • 34% growth • 12% aggressive | <ul style="list-style-type: none"> • 88% medium • 12% high | <ul style="list-style-type: none"> • \$150,000 |

Dirani Recommends Client Obtain Line of Credit Loan for Investing

21. In or about April 2006, on Dirani’s recommendation, ABC obtained a line of credit, secured as against her house, from her bank; though she was only able to obtain a maximum of \$75,000 rather than the \$250,000 Dirani calculated she needed. She deposited the whole of the \$75,000 into the account with Dirani. Dirani was aware that the funds were borrowed monies. ABC deposited an additional \$15,000 from an inheritance for a total deposit in the account with Dirani of approximately \$90,000.
22. ABC advised Dirani that she did not want the principal amount of her investments to be reduced, but needed an income stream from the investments to service both the interest on the line of credit and provide her with additional income she needed for living expenses. ABC understood that the investments with him would provide her with the funds she needed to do so.
23. In or about April 2006 Dirani recommended and purchased the following investments for ABC in the margin account:
 - Four DSC mutual funds for a value of approximately \$72,000
 - One mutual fund on a 4% front end basis, for a value of approximately \$18,000
24. In or about May 2006 ABC commenced regular monthly withdrawals from the account of approximately \$960 which she understood from Dirani consisted strictly of income generated by the investments, and none of the capital. Consistent with what she advised Dirani she needed from the account, this amount did

in fact allow her to service the interest on the line of credit and to have additional income needed for living expenses.

25. However, by or about January 2008 ABC's principal had been reduced to approximately \$72,000 from \$90,000. Though concerned about this decrease in her principal, ABC relied on Dirani and understood from him that her account was in good shape, and that she could safely continue with the monthly withdrawals.

Dirani Recommends Client Obtain Second Loan for Investing

26. In or about mid-2008, due to a change in her personal circumstances, ABC advised Dirani that she required an increased amount for monthly expenses. ABC understood that if she borrowed additional monies, and invested them with him in a similar way, she could take a larger amount out on a monthly basis without encroaching on the principal. Dirani referred ABC to a contact he had at a different bank than the one where ABC obtained the line of credit, in order for ABC to borrow additional funds.
27. In or about July 2008 ABC obtained approximately \$165,000 as a loan from the bank to which Dirani had referred her; and which was secured by a mortgage against her house. With this amount, ABC paid off the remaining balance on the line of credit with the result that approximately \$80,000 remained for further investing with Dirani.
28. Dirani purchased additional DSC mutual funds in ABC's account and subsequently ABC commenced regular monthly withdrawals from the account of approximately \$1860; which she understood consisted strictly of income generated by the investment, and none of the principal. Consistent with what she had advised Dirani, this amount allowed her to service the cost of borrowing this second loan and have the additional income she advised him that she needed for living expenses.

Dirani Recommends Client Use Margin

29. In or about June 2008 ABC advised Dirani that she needed to purchase a car. Dirani arranged for ABC to borrow \$13,000 on margin against her account. ABC did not know what a margin account was or that that was the type of account she had with Dirani. She understood from Dirani that the money was being borrowed from Edward Jones; that there would be no interest on this amount; and that Dirani would pay it off over time with proceeds from the investments in her account over and above the amount she was withdrawing on a monthly basis.
30. Further, in or about February 2009, Dirani recommended and purchased a \$15,000 bond in ABC's account, financed by borrowing in ABC's margin account. Given that equity in the account originally came from a line of credit and subsequently from a mortgage, this investment was double leveraged because of the cost of margin borrowing plus mortgage interest.
31. The investments recommended and purchased by Dirani for ABC's account, and his recommendation that she use margin, were unsuitable given that he knew:
- She was using borrowed funds
 - She did not want to encroach on the principal amount, but needed an income stream for living expenses
 - That the funds were secured as against her house which was her only major asset, and
 - That her income at the relevant time consisted solely of a modest disability government pension
32. From 2007 and through to at least 2011, Dirani completed ABC's income tax filings as an added service, at no charge. Accordingly, he was acutely aware of the details of her financial circumstances, including that her only income was from the disability-government pension.

Client Suffers Loss to Principal

33. Beginning in May 2009, some of the regular redemptions to fund ABC's monthly withdrawals began to

incur DSC redemption fees. Following the deposit of \$80,000 in July 2008, until about June 2012, the principal in ABC's account with Dirani continued to generally decrease in value. By June 2012 the net equity of her account had declined to approximately \$19,000 and she had sustained an overall loss in her account of approximately \$27,000. The losses were comprised of a decline in value of some securities, redemption fees, and margin interest; however, additional costs to ABC that are not included in this amount are interest paid on the line of credit and mortgage. At the same time ABC's outstanding mortgage was \$145,000.

Client Complaints Not Disclosed to Firm

34. Between April 9, 2012 and June 4, 2012, ABC wrote to Dirani via his personal email on at least 12 occasions expressing concerns about her account with him. Among the issues raised, ABC indicated that she:
- Feared ending up "homeless" if she lost her house which had been mortgaged in order to invest with him
 - Was "very distressed" wondering if she would lose her house
 - Was "devastated by the loss of [her] investment" though she "trusted [Dirani] with the advice [he] gave"
 - Asked "What are you doing to help me resolve this..."
 - Noted when she learned that she had a margin debt "What margin. Nothing has been said to me about margin. Are you saying I owe more than what I have?"
35. Dirani was not approved by Edward Jones to use his personal email to conduct business correspondence with clients, and Edward Jones did not have access to, nor could it monitor, his personal email address.
36. Although Dirani responded to ABC's emails throughout this time, from his own personal email address, he did not disclose to Edward Jones that she had made a written complaint. On May 8, 2012 Dirani apprised Edward Jones of the "situation" with this client; and on June 1, 2012 Dirani's assistant completed a "verbal complaint form message" on instructions of Edward Jones staff. On or about June 7, 2012 ABC wrote a formal letter of complaint to Edward Jones in relation to the matters of concern, including those listed in her emails to Dirani.

D. Undisclosed Personal Business with his Client

37. At an IIROC interview, Dirani acknowledged that he engaged in undisclosed personal business with his client XYZ in that:
- In or about July 2012 he took a \$30,000 personal loan from his client XYZ at an interest rate of approximately 1% monthly
 - Gave a mortgage on his house to XYZ to secure the personal loan
 - Did not disclose to his firm that he had engaged in personal business with his client XYZ
38. Accordingly, Dirani engaged in undisclosed personal business with this client without the firm's knowledge or consent.

E. Mitigating Factors

39. Dirani has fully repaid the \$30,000 personal loan from client XYZ and has received a discharge from that client.
40. Dirani has co-operated with Staff's investigation.

IV. TERMS OF SETTLEMENT

41. 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.

42. The Settlement Agreement is subject to acceptance by the Hearing Panel.
43. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
44. 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.
45. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
46. 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.
47. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
48. 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.
49. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
50. 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 Ancaster in the Province of Ontario, this 27th day of January, 2014.

“Witness”

“Wasseem Dirani”

Witness

Respondent

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 27th day of January, 2014.

“Witness”

“Natalija Popovic”

Witness

Natalija Popovic

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 5th day of February, 2014, by the following Hearing Panel:

Per: “Martin L. Friedland”

Panel Chair

Per: “Daniel P. Iggers”

Panel Member

Per: “David E. Lang”

Panel Member