

Re Kassam

IN THE MATTER OF:

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

and

Alykham Kassam

2019 IIROC 25

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

Heard: September 18, 2019 in Vancouver, B.C.

Decision: September 18, 2019

Reasons: October 4, 2019

Hearing Panel:

John Rogers, Chair, David Pearson and Robert Travers

Appearance:

Stacey Robertson, Senior Enforcement Counsel

George Cadman, for Respondent, Alykhan Kassam

The Respondent was not present at the hearing

REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT

¶ 1 At a Settlement Hearing on September 18, 2019, Staff of the Investment Industry Regulatory Organization of Canada (“IIROC”) and Counsel for Alykhan Kassam (the “Respondent”) jointly recommended that the Hearing Panel accept the attached settlement agreement agreed to by the Respondent on July 2, 2019 (the “Settlement Agreement”). The settlement agreed to by IIROC and the Respondent was effected in accordance with the provisions of Section 8215 of the IIROC Consolidated Enforcement, Examination and Approval Rules (the “Rules”), with the Settlement Hearing constituted in accordance with the provisions of Section 8203 of the Rules, and held in accordance with the Rules of Practice and Procedure as set out in Rule 8400 of the Rules.

¶ 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 Book containing copies of:

- the Settlement Agreement,
- extracts from the Rules,
- Dealer Member Rule 1300,
- IIROC Sanction Guidelines dated February 2, 2015, and

- selected IIROC hearing panel decisions.

TERMS OF SETTLEMENT

¶ 3 The Settlement Agreement contains the agreement of the Respondent and IIROC Staff that the Respondent acted contrary to Dealer Member Rule 1300.1(q) by making unsuitable recommendations in respect of two client accounts, the first contravention occurring between March 2013 and December 2014 and the second contravention in or around December 2013.

¶ 4 Dealer Member Rule 1300.1(q) 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.”

¶ 5 As a result of these contraventions, the Settlement Agreement confirms that the Respondent and IIROC Staff have agreed to the following sanctions:

- A fine in the amount of \$15,000;
- A 60 day suspension from registration in any capacity with IIROC;
- As the Respondent is not currently registered with IIROC, a period of 9 months of close supervision upon any registration with IIROC; and
- The Respondent to pay the above fine within 30 days of acceptance of the Settlement Agreement by this panel unless otherwise agreed upon by IIROC Staff and the Respondent.

STATEMENT OF FACTS

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

The Respondent

- From June 2003 until September 2015, the Respondent was employed at the Vancouver branch of what is now Canaccord Genuity Corp. (“Canaccord”). From September 2015 until September 2018, the Respondent was employed at the Vancouver branch of Scotia Capital Inc. The Respondent is not currently a Registered Representative.

Client JL

- JL opened an RRSP account (the “RRSP Account”) with Canaccord in 2002 and JL was a client of the Respondent from September 2006 until March 2015.
- Upon opening the RRSP Account, the Account Information Form recorded JL’s investment objectives as 50% moderate growth-medium risk and 50% short term trading-medium to high risk, with his net worth recorded as \$60,000 and an annual income of \$35,000.
- In 2005, an account update increased JL’s net worth to \$270,000 with no other material changes. A further update in 2014 increased his net worth to \$600,000, his annual income to \$60,000, and changed his investment objectives to 50% moderate growth-medium risk, 25% short term trading-medium to high risk, and 25% speculative-high risk.

- Between March 2013 and January 2015, the Respondent made a series of recommendations for the purchase and sale of securities in the RRSP Account, which recommendations resulted in the account becoming increasingly more heavily weighted in high risk securities, consisting of:-
 - i. 30% high risk securities in January 2014,
 - ii. 80% high risk investments in September 2014,
 - iii. 98% high risk securities in January 2015, and
 - iv. 95% high risk securities in March 2015.
- Upon JL becoming a client of the Respondent in 2006, the market value of the RRSP Account was \$61,000. A contribution of \$7,000 was made in January of 2014. The market value of the account in December 2014 was approximately \$30,000, which market value was further reduced to \$22,000 by March 2015.
- IIROC Staff alleges that as the Respondent's recommendations increased the risk of the RRSP Account beyond both the stated investment objectives and risk tolerance in the Account Information Forms for the RRSP Account and JL's actual investment objectives and risk tolerance, the recommendations made by the Respondent were unsuitable for the RRSP Account.

Client DT

- Client DT had a spousal RSP account at Canaccord (the "DT Account") for which the Account Information Form from March 2004 stated that:
 - i. income from all sources was \$75,000,
 - ii. that DT and his spouse had total assets of \$230,000, and
 - iii. that the stated investment objective was 100% moderate growth-medium risk.

There was no account update form signed by DT after the March 2004 Account Information Form.

- On or about December 30, 2013, the Respondent recommended and executed the purchase of BNK Petroleum Inc. IIROC Staff alleges that BNK Petroleum Inc. was a speculative, high-risk security and was not suitable for purchase by the DT Account.
- For the statement period ending:
 - i. December 31, 2013, the DT Account had a total market value of approximately \$25,400 and the holdings were 67% in speculative, high-risk securities;
 - ii. December 31, 2014 the DT Account had a total market value of approximately \$6,900 and the holdings were 92% in speculative, high-risk securities;
 - iii. December 31, 2015 the DT Account had a total market value of approximately \$3,400 and the holdings were 89% in speculative, high-risk securities;
- The losses in the DT Account from December 30, 2013 to June 30, 2015 when the Respondent left Canaccord, were approximately \$17,250 or 68%, of which the losses relating to BNK Petroleum Inc. from December 30, 2013 to June 30, 2015 were approximately \$6,400 or a 67% decline in market value of the purchased security.

Other Relevant Factors

- Canaccord entered into a settlement with JL for approximately \$58,000, towards which, as of May 2018, the Respondent had contributed \$3,000
- The Respondent has no prior disciplinary history with IIROC.
- The Respondent acknowledges that if not for his inability to pay, the fine agreed upon in the Settlement Agreement would have been higher and that he would have been ordered to pay costs.

ACCEPTANCE PRINCIPLES

¶ 7 Under IIROC Rule 8215(5), at the conclusion of a settlement hearing, a hearing panel may either accept or reject the proposed settlement. It does not have the jurisdiction to amend or alter the agreed upon sanctions.

¶ 8 IIROC Enforcement Counsel referred to Rule 8428(6) of the Rules noting that this Rule provides that the facts to be considered by the Hearing Panel in making our decision are limited to the facts as set out in the Settlement Agreement. However, IIROC Enforcement Counsel further noted that as the Respondent was not present at the hearing, IIROC Staff were authorized by this Rule to disclose additional relevant facts, if so requested by the Hearing Panel. The Hearing Panel determined that it did not require from the Respondent's Counsel facts additional to those contained in the Settlement Agreement.

¶ 9 To assist us in exercising our discretion, IIROC Enforcement Counsel referred the Hearing Panel to the following decisions:

- *Re Deutsche Bank Securities Ltd.* 2013 IIROC 07;
- *Re Clark* [1999] I.D.A.C.D. No. 40;
- *Re Milewski* [1999] I.D.A.C.D. No. 17;
- *Re Edward Jones* 2016 IIROC 42; and
- *Re Heakes* 2019 IIROC 09.

¶ 10 IIROC Enforcement Counsel summarized the principles enunciated in these decisions as providing that in making a determination under IIROC Rule 8215(5), a hearing panel is not to determine whether or not in its opinion the penalties agreed upon in a settlement agreement are correct or in accordance with the hearing panel's particular view of the appropriate penalty, but rather whether the penalties agreed upon in the settlement agreement come within an acceptable range of appropriateness after taking into account the general benefits to all parties of the settlement process. This approach, it was submitted, provides the parties some significant latitude in negotiating a settlement that may take many factors into account, including the time and expense of a liability hearing and the availability and convenience of witnesses, particularly clients who have already suffered significant losses.

PENALTY CONSIDERATIONS

¶ 11 IIROC Enforcement Counsel referred the Hearing Panel to the Dealer Member Disciplinary Sanction Guidelines (the "Sanction Guidelines") and to the following decisions involving the consideration by hearing panels of contraventions involving Rule 1300.1(q) and the appropriate penalties resulting therefrom:

- *Re Dion* 2017 IIROC 20;
- *Re Kunz* 2017 IIROC 23;
- *Re Jones* 2014 IIROC 15;

- *Re Bodon* 2018 IIROC 12;
- *Re Husebye* 2016 IIROC 21;
- *Re Newbury* 2019 IIROC 07; and
- *Re Heakes* 2019 IIROC 09.

¶ 12 In his submissions, IIROC Enforcement Counsel noted that the Sanction Guidelines identified two types of factors a hearing panel should take into account when assessing a penalty, namely aggravating factors and mitigating factors.

¶ 13 He submitted that the aggravating factors in the matter at hand were:

- the contraventions agreed to by the Respondent involved several recommendations and two separate clients; and
- there were significant losses to clients resulting from the conduct.

¶ 14 The mitigating factors, he submitted, were:

- the Respondent has no prior disciplinary record with IIROC;
- the Respondent accepted that his conduct was in breach of the Rules and entered into a settlement agreement with IIROC; and
- the Respondent contributed some amounts to Canaccord's settlement with Client JL.

¶ 15 IIROC Enforcement Counsel referred to the *Re Dion* and *Re Kunz* decisions noting that the contraventions dealt with regarded unsuitable recommendations to one client and noted that a suspension was not part of the sanction ordered.

¶ 16 *Re Dion* involved a concentration in the gold and precious metal sector of between 20% and 39% constituting what was agreed to be an excessively high level of risk leading to a 20% decline in value over the relevant 32 month period. The panel accepted a penalty consisting of a fine of \$25,000 (of which \$2,976 was a disgorgement of commissions), costs of \$3,000 and the obligation to re-write the CPH course within 12 months.

¶ 17 *Re Kunz* as well dealt with concentration, this time in the energy sector and involving the use of margin and options. The amount of concentration ranged from 30% to 70%. The panel noted losses of \$460,000 or a 39% decline in the account value and accepted a penalty of a fine of \$70,000 and costs of \$5,000.

¶ 18 The decisions in *Re Jones*, *Re Bodon*, *Re Huseby*, *Re Newbury*, and *Re Heakes* all were instances where the hearing panels accepted the imposition of suspensions.

¶ 19 In *Re Jones*, the hearing panel accepted a settlement agreement in which the respondent acknowledged a contravention involving discretionary trading and unsuitable recommendations for one client. In coming to its decision, the panel noted that the respondent had been under close supervision by her firm for the 3 years prior to the hearing. It agreed to the penalty consisting of a fine of \$48,000, a 3 month suspension, strict supervision for a year, and \$15,000 in costs. The panel specified that the \$48,000 fine was to be paid in monthly installments of \$2,000 per month.

¶ 20 *Re Bodon* involved two clients and, again concentration, this time in the energy and industrial sectors and ranging from 43% to 73% for one client, and in the energy and utilities sectors and ranging from 45% to 64% for the other. The first client suffered a loss of \$385,000 representing a 43% loss in the initial investment and the second a loss of \$180,000 representing a 34% loss in the initial investment. The panel accepted the imposition of the fine of \$50,000, a six month suspension, and costs of \$5,000.

¶ 21 Re Husebye dealt with a contested matter where the hearing panel found the respondent making unsuitable recommendations to 3 clients with respect to inverse exchange traded funds. The hearing panel assessed a penalty of a fine of \$20,000, a six month suspension, re-writing the CPH course, and costs of \$10,000.

¶ 22 In Re Heakes, the hearing panel approved a settlement agreement whereby the respondent agreed to contraventions involving unsuitable recommendations to three clients. The penalty agreed upon was a two year suspension, a fine of \$20,000, re-writing of the CPH course, and costs of \$2,500.

¶ 23 With respect to the matter of a respondent's inability to pay, IIROC Enforcement Counsel referred the Hearing Panel to the decisions of Re Newbury and Re Sawisky 2017 IIROC 28. He advised that the Respondent had provided a sworn affidavit satisfying IIROC Staff of his inability to pay. IIROC Enforcement Counsel further advised that with this information provided by the Respondent regarding his income, liabilities, and lack of significant assets that IIROC Staff believes that the requirements in Part 1, Section 7 of the Sanction Guidelines have been met.

¶ 24 As was noted in Re Newbury at page 3, "Although the inability to pay is not an overriding and predominant factor in assessing financial penalties, it has to be taken into consideration."

SUBMISSIONS OF RESPONDENT'S COUNSEL

¶ 25 Respondent's Counsel submitted that he was in agreement with the submissions of IIROC Enforcement Counsel and encouraged the Hearing Panel to approve the Settlement Agreement.

DECISION

¶ 26 We have considered the submissions of IIROC Enforcement Counsel and Counsel for the Respondent. We have considered, as well, the decisions of previous hearing panels submitted by IIROC Enforcement Counsel.

¶ 27 In our consideration, we have noted that:

- the contraventions to which the Respondent has admitted involved more than one client, but that there was no discretionary trading alleged in either the RRSP Account or the DT Account;
- although the percentages of losses in these accounts were large, the dollar amounts were not;
- the Respondent acknowledged that if not for his inability to pay, the agreed upon fine would have been higher and that an order to pay costs would also have been made; and
- notwithstanding his proven inability to pay, the Respondent still contributed towards the settlement agreement between Canaccord and JL.

¶ 28 Based upon this review, we are satisfied as a panel that the sanctions agreed to in the Settlement Agreement, taking into account the fact that the Respondent has accepted responsibility for his actions and that he has satisfied IIROC Staff of his inability to pay, 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 4 day of October 2019.

John Rogers

David M. Pearson

Robert Travers

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 Alykhan Kassam (“Respondent”).

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. The Respondent recommended the purchase of securities that for two clients were outside the risk tolerances and investment objectives of their accounts.

Registration History

5. The Respondent was employed at the Vancouver branch of what is now Canaccord Genuity Corp. from 2003 until September 2015.
6. The Respondent was employed with the Vancouver branch of Scotia Capital Inc. from September 2015 until September 2018.
7. The Respondent is not currently a Registered Representative.

Client JL

8. Client JL opened an RRSP account (the “RRSP Account”) with Canaccord in 2002. JL was a client of the Respondent from September 2006 until March 2015.
9. JL’s initial Account Information Form for the RRSP Account recorded his investment objectives as 50% moderate growth – medium risk and 50% short term trading – medium to high risk. JL’s net worth was recorded as \$60,000 with annual income of \$35,000. An account update in 2005 updated the net worth to \$270,000 with no other material changes. An account update in 2014 updated his net worth to \$600,000 and his annual income to \$60,000 and changed his investment objectives to 50% moderate growth – medium risk, 25% short term trading – medium to high risk and 25% speculative – high risk.

Suitability

10. Between March 2013 and January 2015, the Respondent made a series of recommendations for the purchase and sale of securities in the RRSP Account which caused it to become more heavily weighted in high risk securities.
11. The RRSP Account consisted of approximately 30% high risk securities in January 2014; 80% high risk investments in September 2014; 98% high risk securities in January 2015; and 95% high risk securities in March 2015.

12. The effect of the Respondent's recommendations, as described in paragraph 11, increased the risk of the RRSP Account beyond both the stated investment objectives and risk tolerance in the Account Information Forms as well as JL's actual investment objectives and risk tolerance. The recommendations were unsuitable for the RRSP Account.

Losses

13. The RRSP Account's market value in September 2006 was approximately \$61,000. The Respondent made a \$7,000 contribution in January 2014. The market value of the account in December 2014 was approximately \$30,000 and the market value of the account in March 2015 was approximately \$22,000.

Client DT

14. Client DT had a spousal RSP account at Canaccord with the Respondent (the "DT Account"). The account information form from March 2004 indicated the following:

- a) income from all sources was \$75,000;
- b) DT and his spouse had total assets of \$230,000; and
- c) the stated investment objective was 100% moderate growth medium risk.

15. There were no account update forms signed by the client after the March 2004 Account Information Form.

Suitability

16. On or around December 30, 2013, the Respondent recommended and executed the purchase of BNK Petroleum Inc. BNK Petroleum Inc. was a speculative, high-risk security and was not suitable for the DT Account.

Losses

17. For the statement period ending December 31, 2013, the DT Account had a total market value of approximately \$25,400 and the holdings were 67% in speculative, high-risk securities. For the statement period ending December 31, 2014, the DT Account had a total market value of approximately \$6,900 and the holdings were 92% in speculative, high-risk securities. For the statement period ending December 31, 2015, the DT Account had a total market value of approximately \$3,400 and the holdings were 89% in speculative, high-risk securities.

18. The losses relating to the purchase of BNK Petroleum Inc. from December 30, 2013 to June 30, 2015 were approximately \$6,400 or a 67% decline in market value of the purchased security.

19. From December 30, 2013 to December 31, 2014, the total losses in the DT Account were over \$18,000 and represented a 72% loss in value. The total losses in the DT Account from December 30, 2013 to June 30, 2015, around the time when the Respondent left Canaccord and the DT Account was transferred to another Registered Representative, were approximately \$17,250 or 68%.

Other Relevant Factors

20. Canaccord entered into a settlement with JL for approximately \$58,000. As of May 2018, the Respondent had contributed \$3,000 towards that settlement.

21. The Respondent has no prior disciplinary history with IIROC.

22. The Respondent acknowledges that if not for his inability to pay, the agreed fine would have been higher and that an order to pay costs would also have been made.

PART IV – CONTRAVENTIONS

23. By engaging in the conduct described above, the Respondent committed the following contraventions of IIROC's Rules:
- a) Between March 2013 and December 2014, the Respondent failed to use due diligence to ensure that recommendations were suitable for a client, contrary to Dealer Member Rule 1300.1(q);
 - b) In or around December 2013, the Respondent failed to use due diligence to ensure that recommendations were suitable for a client, contrary to Dealer Member Rule 1300.1(q).

PART V – TERMS OF SETTLEMENT

24. The Respondent agrees to the following sanctions and costs:
- a) Fine of \$15,000;
 - b) Suspension from approval in any capacity for 60 days;
 - c) Period of 9 months of close supervision upon any registration with IIROC.
25. 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

26. 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 paragraph below.
27. 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

28. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
29. 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.
30. 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.
31. 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.
32. 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.
33. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has

been accepted by the Hearing Panel.

- 34. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full of 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.
- 35. If this Settlement Agreement is accepted, the Respondent agrees that neither [he/she/it] nor anyone on [his/her/its] behalf, will make a public statement inconsistent with this Settlement Agreement.
- 36. 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

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

DATED this "2nd" day of "July", 2019.

"George Cadman"

Witness

"Alykhan Kassam"

Alykhan Kassam (Respondent)

"Paul Smith"

Witness

Barrister, Solicitor, & Notary Public
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Vancouver, British Columbia V6E 3R5
Telephone: (604)331-4764

"Stacy Robertson"

Stacy Robertson

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

The Settlement Agreement is hereby accepted this "18" day of "September", 2019 by the following Hearing Panel:

Per: "R. John Rogers"

Panel Chair

Per: "David Pearson"

Panel Member

Per: "Robert Travers"

Panel Member