Re Allan

IN THE MATTER OF:

The By-Laws of the Investment Dealers Association of Canada

and

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

and

Douglas Charles Allan

2013 IIROC 56

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

Heard: October 17, 2013 in Calgary, Alberta
Decision: December 5, 2013

Hearing Panel:
The Hon. H. Benjamin Casson, Q.C., Chair, Mr. Martin Davies and Mr. J.H. Ross
Appearances:
Mr. Tayen Godfrey, Enforcement Counsel
Mr. R. Chan, Senior Investigator
Mr. James Rooney, Q.C., For the Respondent, Douglas Charles Allan

DECISION

¶ 1 On October 17, 2013, the Hearing Panel ("the Panel") accepted all the terms of a Settlement Agreement executed on October 16, 2013 between Douglas Charles Allan, a regulated person of the Investment Industry Regulatory Organization of Canada (the "Respondent"), and Tayen Godfrey ("Enforcement Counsel") on behalf of Staff of the Investment Industry Regulatory Organization of Canada ("IIROC").

¶ 2 The Settlement Agreement was based on an Agreed Statement of Facts as follows:

Registration History:

- On June 1, 2008, the Respondent became a regulated person of IIROC.
- The Respondent currently works at Retire First Ltd. ("Retire First"), where he has held the following positions, since starting there in July of 2006:
  a. Ultimate Designated Person;
  b. Chief Compliance Officer;
  c. Registered Representative;
  d. Portfolio Manager.
- Previous to Retire First, the Respondent worked at: Raymond James Ltd. (2001 – 2006), BMO

Nesbitt Burns Inc. (1992 – 2001), and RBC Dominion Securities (1983 – 1992).

Disciplinary History

- In a February 17, 2000 decision, a Panel accepted a Settlement Agreement between the IDA and Allan. In the Agreement, Allan admitted to failing to ensure a trade was consistent with the Managed Account Authorization signed by the client. He was given a $2,500.00 fine.

Account of D.E.

- D.E. and her husband opened a Spousal Registered Retirement Income Fund ("RRIF") account at Retire First in 2006. D.E. had limited investment knowledge. Her husband oversaw the couple's finances and he had full trading authority over the RRIF account. The Respondent was their financial advisor.
- D.E.'s husband passed away in late January of 2008. She was 76 years old at the time. Approximately one week later, on February 1st of 2008. D.E. agreed to have her RRIF account designated a fee based Managed Account, to be managed by the Respondent. D.E. had advised the Respondent that she did not feel capable of dealing with her finances the way her husband had, and a Managed Account was suggested by the Respondent.
- In February of 2008, D.E.'s account was valued at approximately $358,000.00. This represented approximately 83% of her liquid assets. The other 17% was comprised of, the pending, $75,000.00 in proceeds from her husband's life insurance policy, which she invested in a Guaranteed Investment Certificate at a bank. She also owned her home, value at approximately $175,000.00.
- D.E. relied on income from her RRIF to help cover her living expenses. Withdrawals of $2,500.00 from her RRIF and approximately $1,400.00 from various pension benefits, accounted for D.E.'s entire monthly income.
- In February of 2008, the objectives and risk tolerances for D.E.'s account were updated, however they were too aggressive given D.E.'s age, personal circumstances, income requirements and investment knowledge.
- The objectives and risk tolerances were recorded as:

  A. Investment Options

  i. 0% Income

  ii. 80% Growth

  iii. 20% Speculative

  B. Risk Tolerance:

  i. 0% Low

  ii. 80% Medium

  iii. 20% High

- However, D.E. has limited knowledge and experience dealing with investments. In the past, her husband had always dealt with their financial investments. When she reviewed her Managed Account statements, she simply looked at the account balance.
- While D.E. required income from her investments, she was not comfortable with a lot of risk, and she was willing to reduce the monthly withdrawals from her account.
- While D.E.'s recorded objectives and risk tolerances were too aggressive, the actual holdings in the account were even more so.

- In 16 months of a 40 month period, the speculative holdings in D.E.'s account was greater than the already high stated objection of 20%. During those months, the speculative components of her account varied between 26% and 69%
- As well, there were a number of occasions when D.E.'s account had been overly concentrated in oil and gas investments. There was nine months where oil and gas securities concentration in D.E.'s holdings ranged between 45% and 68% of her portfolio.
- On average, the securities in D.E.'s account can be categorized approximately as:
  a. 32% Income;
  b. 44% Growth;
  c. 24% Speculative;
- With risk levels of approximately:
  d. 10% Low risk;
  e. 66% Medium risk;
  f. 24% High risk.
- In May of 2011, the Respondent liquidated the majority of D.E.'s account, after D.E.'s son expressed concerns to him about the account's holdings. In July of 2011, D.E. transferred approximately 97% of her account out of Retire First. The remaining 3% was transferred out in September, and the account was finally closed in October of 2011.
- During when the account was designated a Managed Account, to when the majority of the account was transferred out of Retire First (February 2008 to July 2011), D.E.'s account balance had fallen to $134,625.00. Only $122,951.00 of this drop was attributable to withdrawals made by D.E. The rest was due to the value of the securities in the account declining by approximately $100,292.00, representing a 28% loss. During that same period the S&P/TSX Capped Composite Total Return Index Increased by 7.7%.

¶ 3 Based on those facts, the Respondent admitted to the following contraventions of IIROC's Dealer Member Rules, Guidelines, Investment Dealers Association ("IDA") By-Laws, Regulations and Policies:

a) Contravention 1:

Between February 2008 and September 2011, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to D.E., contrary to Dealer Member Rule 1300.1(a) (Investment Dealer Association by-law 100.1(a) prior to June 1, 2008);

b) Contravention 2:

Between February 2008 and September 2011, the Respondent made unsuitable recommendations in the account of D.E., contrary to Dealer Member Rule 1300.1(q) (investment Dealer Association by-law 1300.1(1) prior to June, 2008).

¶ 4 The Settlement Agreement provides for penalties for the above-mentioned contraventions as follows:

a) A fine in the amount of $60,000.00:

b) The Respondent Rewrite the Conduct and Practices Handbook exam;

c) The Respondent agrees to pay costs to IIROC in the sum of $10,000.00

¶ 5 In his submission recommending acceptance of the sanctions agreed to in the Settlement Agreement, Enforcement Counsel referred the Panel to the following:

1. Dealer Member Rule 1300

1300.1

(a) Each Dealer Member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted.

(q) Each Dealer Member, when recommending to a customer the purchase, sale, exchange or holding of any security, shall use due diligence to ensure that the recommendation is suitable for such customer based on factors including the customer's financial situation, investment knowledge, investment objectives and risk tolerance.

2. General Principles as set out in the Dealer Member Disciplinary Sanction Guidelines.

¶ 6 The Panel recognized that the General Principles apply in imposing sanctions for any contravention of IIROC's regulatory process, whereas Dealer Member Rule 1300(a) and (q) applies, specifically, to the two contraventions admitted to by the Respondent.

¶ 7 In support of the proposed disciplinary sanctions, Enforcement Counsel emphasized the following factors:

(a) In respect of Contravention 1, the violation continued over a period of 40 months.

(b) The Respondent was solely in charge of the Complainant's ("D.E.'s") Managed Account.

(c) D.E. was 76 years of age when she agreed to have her RRIF account designated as a fee-based Managed Account, to be managed by the Respondent who knew her husband had recently passed away and that D.E. knew little about investing. D.E., therefore, was in a vulnerable position.

(d) The Respondent had a prior disciplinary record for a violation of IIROC Rule 1300.1(a), i.e. failing to use due diligence to ensure that a trade in the Managed Account of a client was consistent with the Managed Account Authorization and Agreement signed by the client. The Respondent was fined $2,500.00 with costs set at $800.00.

(e) The Respondent, by accepting responsibility for his mismanagement of D.E.'s Managed Account, has spared DE having to testify.

(f) The Respondent did not benefit, financially, from the mismanagement of D.E.'s Managed Account because it was a fee-based account.

(g) The Respondent's mismanagement did not involve elements of misrepresentation or deception as in conduct of a criminal nature.

(h) A suspension is not necessary for the following reasons:

- There is no element of misrepresentation or deception.
- There is only one client and one violation as opposed to numerous clients and a series of violations indicating a pattern of mismanagement.
- The prior disciplinary history, though relevant because of the similarity of the violation, involved one client and did not involve any element of deception or misrepresentation and the Respondent did not receive any financial benefits from his mismanagement of the account.

¶ 8 Enforcement Counsel cited four cases in support of the proposed disciplinary sanctions:

1. *Re: Hanna* 2012, IIROC 71;
2. *Re: Gareau* 2011, IIROC 72;
3. *Re: Allan*, [2000] I.D.A. C.D. No. 5;
4. *Re: Phillips* 2011, IIROC 60

¶ 9 A brief summary of the relevant facts of those cases follows:

1. *Re: Hanna*

- This was a Settlement Agreement.
- In April, 2006, VF (the client) and her husband, JF, opened RRSP/RRIF accounts with Hanna. VF and JF were retired farmers, aged 68 and 73. UF died in 2008.
- VF looked to Hanna for investment advice for her income of $68,000 per year.
- In 2006, VF signed a New Client Application Form indicating a net worth of $540,000.00. The NCAF indicated VF's investment knowledge as good when it was very limited.
- The NCAF indicated VF's objectives at 15% low risk income producing securities; 70% moderate to high risk income-producing securities; 15% moderate risk, growth – oriented securities and 0% high risk speculative securities.
- In 2007, VF's objectives were updated to 0% low risk income-producing securities; 80% moderate to high risk income-producing securities; 20% moderate risk, growth-oriented securities and 0% high risk speculative securities.
- In 2007, VF and JF also opened a joint cash account with Hanna. The NCAF for this account indicated 0% low risk income producing securities; 100% moderate to high risk income-producing securities; 0% moderate risk, growth-oriented securities and 0% high risk speculative securities.
- The objectives of the joint case account were updated the same year to 0% low risk income-producing securities; 80% moderate to high risk income-producing securities; 15% moderate risk, growth-oriented securities and 5% high risk speculative securities.
- The objectives of the joint case account were updated after JF's death in 2008 to 10% low risk; 80% medium risk; 10% high risk and 100% balanced (a level of income with a prospect of long-term growth).
- In the period over which Hanna managed VF's and JF's accounts, 10% of the securities were in low risk income-producing securities; 84% were in two categories of moderate to high risk income-producing securities and moderate risk, growth-oriented securities. 6% of the amounts were in high risk speculative securities.
- Approximately 38% of the securities held in VF's accounts were new issues. VF's accounts were fee based and did not generate commissions beyond the flat fee. However, when a new issue was purchased, the issuer paid a commission, which was credited to Hanna. The increased revenue from the purchase of new issues benefitted Hanna as it created the potential for further entitlement to firm compensation for Hanna.
- With just 10% of securities allocated to lower risk, income producing securities, the stated investment objectives and risk tolerance parameters were too risky and were not consistent with VF's true financial situation, investment knowledge, investment objectives and risk tolerance.
- Over the 40 months of the life of the accounts, VF's portfolio declined approximately 11.6%, reflecting loss of approximately $61,012.00.
- Hanna co-operated fully with IIROC's investigation of this matter. Civil matters between VF and Hanna were settled prior to the parties entering into this Settlement Agreement.
- Hanna admitted to the following contraventions:

  (a) Between April, 2006 and August, 2009, he failed to use due diligence to learn and remain informed of the essential facts relative to his client, VF, contrary to IIROC Rule 1300.1(a) (IDA Regulation 1300.1(a) prior to June 1, 2008);

(b) Between April, 2006 and August, 2009, he failed to use due diligence to ensure that recommendations were suitable for his client, VF, based on factors including the client's financial situation, investment knowledge, investment objectives and risk tolerance, contrary to IIROC Rule 100.1(q) (IDA Regulation 1300.1(1) prior to June 1, 2008).

- Disciplinary Sanctions imposed were:

(c) Hanna agrees to pay a fine to IIROC in the sum of thirty thousand dollars ($30,000.00);

(d) Hanna shall be suspended from registration with IIROC in any capacity for a period of thirty (30) days commencing upon the acceptance of the Settlement Agreement;

(e) Hanna shall be subject to a period of six (6) months of close supervision commencing upon the expiry of the period of suspension above;

(f) Hanna agrees to pay costs to IIROC in the sum of two thousand, five hundred dollars ($2,500.00);

(g) Hanna shall re-write and successfully complete the Conduct and Practices Handbook examination within 12 months of the acceptance of this Settlement Agreement.

2. *Re: Gareau*

- This was not a Settlement Agreement.
- Gareau recorded inaccurate minor risk tolerance and investment knowledge of two separate client families and failed to ensure that recommendations he made to purchase and hold securities were suitable investments.
- Gareau was also found to have sold an income-producing bond against the wishes of a client.
- The investments which he made for the clients were almost exclusively in equity mutual funds.
- One client family lost $600,000 which was reimbursed to the extent of $500,000 by Gareau's firm.
- Disciplinary Sanctions were as follows:
  - Disgorgement of commissions of $47,383.00;
  - The Respondent must successfully re-take the CPH Examination prior to re-registration;
  - In the event the Respondent is re-registered, he must be subject to strict supervision for one year subsequent to re-registration and followed by a further six months of close supervision;
  - Payment of costs of $20,000.00.

3. *Re: Allan*

- This was a Settlement Agreement which involved the Respondent who was the subject of the Settlement Agreement before the Panel on October 17, 2013.
- In September 1994, Allan was the registered representative for a client who maintained a managed account with Nesbitt Burns Inc. A term in the Managed Account Authorization and Agreement prohibited the account from holding speculative grade securities and other high risk investments. On September 6, 1994, following an unsolicited order from the client, Allan facilitated the purchase of a security, considered speculative, and therefore, contrary to the express terms of the Managed Account Authorization and Agreement.
- Allan admitted to failing to use due diligence to ensure that a trade made in the managed account of a client was consistent with the Managed Account Authorization and Agreement, signed by

the client and the internal policies of his Member firm contrary to Regulation 100.1(a) and accepted the following disciplinary sanctions:

(a) A fine in the amount of $2,500.00:
(b) Costs of $800.00.

4. *Re: Phillips*

- This was not a Settlement Agreement.
- Phillips was found to have made unsuitable purchases, unauthorized discretionary trades, completed tax returns without prior approval of her firm and without any formal training or designation to do so and for selling shares to a client from her own portfolio without informing the client of her interest in the shares and ensuring that the client purchased the shares at the best price.
- The unsuitable purchases involved 30 purchases on 17 different days in which 70% of the client's holdings were placed in high risk speculative junior missing stocks and small cap income trusts. The client lost $169,000.00. A second client lost 50% of an initial investment of $138,000.00 as a result of the Registrant making 13 purchases of high risk speculative securities on 7 days with 90% of the client's investment funds.
- The Registrant knew that the client were vulnerable.
- The Panel imposed disciplinary sanctions as follows:

  (a) A fine of $290,000.00;

  (b) Disgorgement of profits of $10,350.00;

  (c) An order that the Respondent may not seek registration for 3 years from the date of the decision as to sanctions;

  (d) A requirement for full payment of fine, disgorgement, & costs prior to re-registration;

  (e) the Respondent must successfully re-take and complete all appropriate courses successfully prior to re-registration, which will include the Canadian Securities Course, the CPH and others, depending upon the class of registration sought and the courses required at the time of application;

  (d) in the event the Respondent is re-registered, she must thereafter be subject to strict supervision for first 2 years of re-entry to the securities industry; and

  (g) payment of costs of $15,000.00.

Acceptance of the Settlement Agreement

¶ 10 In accepting the Settlement Agreement, the Panel endorsed and followed the reasoning of the District Council in *Re: Milewski, [1999] I.D.A.C.D. No. 17,* decided on July 28, 1999. The Panel made these comments at page 9:

> Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. 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.

¶ 11 The following factors were of particular significance to the Panel in accepting the Settlement Agreement:

a) The admission, by the Respondent, of mismanaging the account of the Complainant, DE, over a period of 40 months and thereby contributing (along with losses due to market factors) to a loss to DE of approximately $100,000.00 to her account;

b) The Respondent was the sole manager of DE's account;

c) The Respondent was fully informed of DE's lack of investment knowledge and experience making her very vulnerable as a client;

d) The Respondent had a prior disciplinary record for mismanaging a client's account;

e) By admitting to his mismanagement, the Respondent has avoided the necessity of a more costly hearing on the merits, originally set for 3 days, at which DE, in her late 70's, would be faced with the ordeal of being examined and cross-examined, in an adversarial proceeding, on investment issues on which she, admittedly, was unfamiliar;

f) The Respondent's mismanagement of DE's account did not involve deception or misappropriation;

g) The Respondent did not benefit, financially, from his mismanagement of DE's financial affairs;

h) The Respondent's contraventions involved one client;

i) The Panel addressed the absence of a period of suspension in the Settlement Agreement and considered the factors set out in section 4.2.1 of The Dealer Member Disciplinary Sanction Guidelines on this issue. The Panel accepted the submission of Enforcement Counsel as follows:

A suspension is not necessary for the following reasons:

- There is no denial or misrepresentation or deception.
- There is only one client and one violation as opposed to numerous clients and a series of violations indicating a pattern of mismanagement.
- The prior disciplinary history, though relevant because of the similarity of the violation, involved one client, did not involve any element of deception or misrepresentation and the Respondent did not receive any financial benefits from his management of the account.

j) On the issue of a suspension, the Panel recognized that the fine of $60,000.00 with costs of $10,000.00, accepted by the Respondent and to be paid forthwith, is a substantial penalty and provides a significant specific and general deterrent.

¶ 12 The Panel concluded that the Settlement Agreement which provided for a fine of $60,000.00, costs of $10,000.00 and a requirement for a re-write of the Conduct and Practices Handbook examination was reasonable, proportionate and appropriate having regard to the circumstances of the case, and therefore signed the Settlement Agreement on October 17, 2013.

DATED this 5th day of December, 2013.

H. Benjamin Casson, Q.C.

Chair

Martin Davies,

Industry Representative

J. H. Ross,

Industry Representative

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent, Douglas Charles Allan ("Allan"), 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 the Respondent.

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) Between February 2008 and September 2011, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to D.E., contrary to Dealer Member Rule 1300.1(a) (Investment Dealer Association by-law 1300.1(a) prior to June 1, 2008);

   b) Between February 2008 and September 2011, the Respondent made unsuitable recommendations in the account of D.E., contrary to Dealer Member Rule 1300.1(q) (Investment Dealer Association by-law 1300.1 (q) prior to June 1, 2008);

8. Staff and the Respondent agrees to the following terms of settlement:

   a) A fine in the amount of $60,000.00; and

   b) The Respondent Rewrite the Conduct and Practices Handbook exam.

9. The Respondent agrees to pay costs to IIROC in the sum of $10,000.00

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

Overview

11. This matter deals with the Respondent's handling of a Managed Account belonging to D.E. At the time D.E.'s account became designated a Managed Account, she was a recently widowed 76 year old woman

who relied on her investments for part of her income. The Respondent is accused of failing to use due diligence to know his client, and making unsuitable recommendations.

Registration History

12. On June 1, 2008, the Respondent became a regulated person of IIROC.

13. The Respondent currently works at Retire First Ltd. ("Retire First"), where he has held the following positions, since starting there in July of 2006:

    a. Ultimate Designated Person;

    b. Chief Compliance Officer;

    c. Registered Representative;

    d. Portfolio Manager.

14. Previous to Retire First, the Respondent worked at: Raymond James Ltd. (2001 – 2006), BMO Nesbitt Burns Inc. (1992 – 2001), and RBC Dominion Securities (1983 – 1992).

Disciplinary History

15. In a February 17, 2000, decision a Panel accepted a Settlement Agreement between the IDA and Allan. In the Agreement, Allan admitted to failing to ensure a trade was consistent with the Managed Account Authorization signed by the client. He was given a $2,500.00 fine.

Account of D.E.

16. D.E. and her husband opened a Spousal Registered Retirement Income Fund ("RRIF") account at Retire First in 2006. D.E. had limited investment knowledge. Her husband oversaw the couple's finances and he had full trading authority over the RRIF account. The Respondent was their financial advisor.

17. D.E.'s husband passed away in late January of 2008. She was 76 years old at the time. Approximately one week later, on February 1st of 2008, D.E. agreed to have her RRIF account designated a fee based Managed Account, to be managed by the Respondent. D.E. had advised the Respondent that she did not feel capable of dealing with her finances the way her husband had, and a Managed Account was suggested by the Respondent.

18. In February of 2008, D.E.'s account was valued at approximately $358,000.00. This represented approximately 83% of her liquid assets. The other 17% was comprised of, the pending, $75,000.00 in proceeds from her husband's life insurance policy, which she invested in a Guaranteed Investment Certificate at a bank. She also owned her home, valued at approximately $175,000.00.

19. D.E. relied on income from her RRIF to help cover her living expenses. Withdrawals of $2,500.00 from her RRIF and approximately $1,400.00 from various pension benefits, accounted for D.E.'s entire monthly income.

20. In February of 2008 the objectives and risk tolerances for D.E.'s account were updated, however they were too aggressive given D.E.'s; age, personal circumstances, income requirements and investment knowledge.

21. The objectives and risk tolerances were recorded as:

    a. Investment Objectives

        i. 0% Income

        ii. 80% Growth

        iii. 20% Speculative

    b. Risk Tolerance:

i. 0% Low

ii. 80% Medium

iii. 20% High

22. However, D.E. has limited knowledge and experience dealing with investments. In the past, her husband had always dealt with their financial investments. When she reviewed her Managed Account statements, she simply looked at the account balance.

23. While D.E. required income from her investments, she was not comfortable with a lot of risk, and she was willing to reduce the monthly withdrawals from her account.

24. While D.E.'s recorded objectives and risk tolerances were too aggressive, the actual holdings in the account were even more so.

25. In 16 months of a 40 month period, the speculative holdings in D.E.'s account was greater than the already high stated objective of 20%. During those months, the speculative components of her account varied between 26% and 69%.

26. As well, there were a number of occasions when D.E.'s account had been overly concentrated in oil and gas investments. There was nine months where oil and gas securities concentration in D.E.'s holdings ranged between 45% and 68% of her portfolio.

27. On average, the securities in D.E.'s account can be categorized approximately as:

a. 32% Income;

b. 44% Growth;

c. 24% Speculative;

With risk levels of approximately:

d. 10 % Low risk;

e. 66% Medium risk;

f. 24% High risk.

28. In May of 2011, the Respondent liquidated the majority of D.E.'s account, after D.E.'s son expressed concerns to him about the account's holdings. In July of 2011, D.E. transferred approximately 97% of her account out of Retire First. The remaining 3% was transferred out in September, and the account was finally closed in October of 2011.

29. During when the account was designated a Managed Account, to when the majority of the account was transferred out of Retire First (February of 2008 to July of 2011), D.E.'s account balance had fallen to $134,625.00. Only $122,951.00 of this drop was attributable to withdrawals made by D.E. The rest was due to the value of the securities in the account declining by approximately $100,292.00, representing a 28% loss. During that same period the S&P/TSX Capped Composite Total Return Index increased by 7.7%.

IV. TERMS OF SETTLEMENT

30. 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.

31. The Settlement Agreement is subject to acceptance by the Hearing Panel.

32. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

33. 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.

34. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/it's right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.

35. 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.

36. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

37. 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.

38. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

39. 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 Red Deer in the Province of AB, this 16th day of October, 2013.

"Witness" "D.C. Allan"

Witness **Respondent**

AGREED TO by Staff at the City of Calgary in the Province of Alberta, this 16th day of October, 2013.

"Witness" "Tayen Godfrey"

Witness **Tayen Godfrey**

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

ACCEPTED at the City of Calgary in the Province of Alberta, this 17th day of October, 2013, by the following Hearing Panel:

Per: "H.Benjamin Casson"

Panel Chair

Per: "Martin Davies"

Panel Member

Per: "J.H.Ross"

Panel Member