

Re Blythe

IN THE MATTER OF:

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

and

Kindle Blythe

2020 IIROC 20

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

Heard: June 25, 2020 electronically in British Columbia

Decision: June 25, 2020

Reasons for Decision: July 8, 2020

Hearing Panel:

Catharine Esson, Chair, Barbara Fraser and Brian Worth

Appearance:

Stacy Robertson, Senior Enforcement Counsel

Owais Ahmed, Counsel for Kindle Blythe

Kindle Blythe (absent)

DECISION ON ACCEPTANCE OF SETTLEMENT

¶ 1 This decision sets out the Hearing Panel's reasons for accepting a Settlement Agreement negotiated by the parties. It follows an electronic hearing attended by counsel for both parties on June 25, 2020. At the conclusion of that hearing, the Hearing Panel advised the parties that it accepted the Settlement Agreement, with reasons to follow.

¶ 2 In the Settlement Agreement, the Respondent admitted two contraventions:

- a) Between September 2016 and January 2017, the Respondent failed to report four client complaints to her Dealer Member, contrary to the Dealer Member's policies and procedures and Dealer Member Rule 3100.
- b) The Respondent misled IIROC Enforcement Staff in a sworn interview, contrary to Consolidated Rule 1400.

¶ 3 The details of these contraventions are set out in the Settlement Agreement attached to this Reasons for Decision.

¶ 4 The parties agreed on the following sanctions:

- a) Suspension from registration with IIROC for nine months;
- b) Close supervision for six months upon any registration with IIROC;

- c) Successful re-write of the Conduct and Practices Handbook course;
- d) Payment of a fine of \$10,000; and
- e) Payment of costs of \$500.

¶ 5 IIROC Enforcement Staff advised that, but for the Respondent's inability to pay more than the agreed upon fine and costs, IIROC Staff would have sought higher amounts as a fine and costs.

The Test for Accepting a Settlement Agreement

¶ 6 A hearing panel must accept a settlement agreement before it becomes effective and binding (IIROC Dealer Member Rule 8216).

¶ 7 The well-established test for accepting a settlement agreement was described this way in *Re Deutsche Bank Securities Ltd.* 2013 IIROC 07:

¶ 9 It is clear from jurisprudence ...that our task is not to decide whether, in this case, we would have arrived at the same decision as that reached by the parties. Rather, our duty is to determine whether the penalty is a reasonable one and that it meets the objectives of the disciplinary process which are to maintain the integrity of the investment industry.

¶ 8 Many hearing panels have noted that hearing panels should generally respect the sanctions the parties agree on. There are numerous reasons for this, including:

- a) the public interest in encouraging settlements;
- b) the recognition that a negotiated settlement is often a product of give and take between the parties; and
- c) the recognition that the hearing panel will generally not be privy to all the facts, motivations, compromises and considerations that led to the agreement.

¶ 9 It is particularly appropriate to accord some deference to the parties' agreement where, as in this case, experienced counsel for both parties confirmed that the settlement is the product of negotiation, risk assessment and compromise.

¶ 10 This deference is not unlimited, however. The Hearing Panel does need to be satisfied that the agreed upon penalty is reasonable and meets the purpose of an IIROC sanction.

The Purpose of the Sanction

¶ 11 An IIROC sanction is intended to protect the investing public, IIROC and the integrity of the investment industry and securities markets. The penalty is not intended as punishment, but to deter both the Respondent and others in the industry from future wrongdoing. (*Re Milewski* (1999) IDACD No. 17, page 11; *Re Edward Jones* 2016 IIROC 42, para 32.)

The Agreed Upon Sanction is Reasonable

¶ 12 The Hearing Panel determined that the agreed upon sanctions were within the reasonable range of sanctions for the admitted misconduct. In so doing, it has accepted IIROC Enforcement Staff's determination that the Respondent was not financially able to pay a higher fine or costs.

¶ 13 The Settlement Agreement describes the background to the misconduct, including mitigating circumstances. The Hearing Panel has considered these, as well as the submissions of counsel on the appropriate range of sanctions, previous decisions involving somewhat similar misconduct and the IIROC Sanction Guidelines.

¶ 14 In considering the sanctions, it is important to emphasize that IIROC has not alleged that the

Respondent committed forgery or was aware of the forgeries described in the Settlement Agreement prior to the clients complaining about them. The Respondent's misconduct was failing to advise her firm of complaints of forgeries and misleading IIROC Enforcement Staff in a sworn interview about her knowledge of the forgeries and client complaints.

¶ 15 This misconduct is serious. It occurred on repeated occasions over an extended period of time. At least the second contravention, misleading IIROC Enforcement Staff in a sworn interview, was dishonest.

¶ 16 It is not clear that the Respondent intended to deceive her firm by not reporting the client complaints. However, even if not dishonest, the failure to report the complaints may have hindered her firm in investigating forgeries of client signatures and, therefore, is damaging to the integrity of the investment industry.

¶ 17 The Hearing Panel considered the context in which the misconduct occurred. The Respondent had primarily been an administrative assistant to another advisor. Shortly after they moved to a new firm, the other advisor was terminated, leaving the Respondent as the broker of record for a book of clients for the first time. She was overwhelmed and under considerable pressure. She was focused on moving beyond the problems left by the terminated advisor.

¶ 18 In these circumstances, the Hearing Panel was satisfied that the agreed upon sanctions fall within the reasonable range of sanctions to provide specific and general deterrence and maintain the integrity of the investment industry.

¶ 19 The Hearing Panel therefore accepted the Settlement Agreement.

Dated this 8 day of July, 2020.

Catharine Esson

Barbara Fraser

Brian Worth

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 Kindle Blythe ("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

1. The Respondent failed to report client complaints alleging that someone at Harbourfront had forged

their signatures on their account documents to Harbourfront's compliance department.

2. The Respondent then misled Enforcement Staff about the client complaints during an investigative interview.

Background

3. The Respondent was employed at the Vancouver branch of Investors Group Financial Services Inc. ("IG") from August 2012 to July 2016. Between November 2014 to July 2016, she was a Dealing Representative registered with the Mutual Fund Dealers Association ("MFDA"). During this time, the Respondent predominantly assisted another Dealing Representative registered with the MFDA, Mohammad Movassaghi, to service the accounts of clients that had been assigned to him. The Respondent primarily performed administrative tasks in support of Movassaghi. The Respondent and Movassaghi both moved to Harbourfront Wealth Management Inc., an IIROC Dealer Member in July 2016.
4. Upon transfer to Harbourfront, all of the clients were put under Movassaghi's broker code. The Respondent continued to assist Movassaghi with his clients and primarily performed administrative tasks. The Respondent only had a few clients of her own.
5. The Respondent's last day with IG was July 8, 2016 and her first day with Harbourfront was July 11, 2016.
6. On September 2, 2016, Harbourfront terminated Movassaghi for forging a client's documents including transfer documents to transfer the client's account from IG to Harbourfront. The Respondent became the broker of record after Movassaghi's termination from Harbourfront.
7. On June 28, 2017, an IIROC hearing panel accepted a settlement agreement between IIROC and Mohammad Movassaghi relating to the client forgeries, which included an eight month suspension from registration in any capacity with IIROC (the "MM IIROC Settlement").

Harbourfront's Complaint Handling Procedure

8. Harbourfront has policies and procedures regarding the reporting of client complaints. Harbourfront requires that all client complaints submitted in writing or verbally be reported to the CCO. The policy specifically referred to complaints alleging misconduct and forgery. The policy also stated that a complaint includes any expression of dissatisfaction with any employee of Harbourfront.
9. IIROC Rule 3100(I)(A)(1)(d) requires every registrant to report to their firm, within two business days, whenever he or she is aware of a customer complaint, whether in writing or any other form, with respect to any other registrant involving allegations of theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentations or unauthorized trading.
10. The Respondent signed an acknowledgement on July 13, 2016 that she had read and understood the policies and procedures of Harbourfront including the Business Practices and Conduct Procedures Manual, which contained Harbourfront's complaint handling procedures.

The Client Complaints

11. As a result of the identified forgery by Movassaghi, the Respondent understood that Harbourfront compliance department would be sending correspondence to all of the clients transferred from IG to confirm their signatures and other information on the client documents, and that the correspondence would advise the clients to contact the compliance department if any of the information was incorrect. However, unbeknownst to the Respondent, Harbourfront compliance in fact only sent a letter to a few select clients to confirm their signatures and information on their account documents.
12. On September 3, 2016, the day after Movassaghi was terminated by Harbourfront, the Respondent sent

an email from her Harbourfront email address to all her clients welcoming them to Harbourfront and advising them that they may receive a standard welcoming letter from Harbourfront to follow up on the transfer process and make sure clients were happy with the service provided.

13. After receiving their account documentation from Harbourfront, four clients emailed the Respondent stating that the signatures on their account documents were not theirs.
14. The Respondent did not report any of these complaints to anyone at Harbourfront as required by Harbourfront's policies and procedures or Dealer Member Rules 2500B and 3100.
15. The details of the clients' complaints are set out below.

Clients DC and EC

16. DC and EC were clients of Movassaghi at IG prior to the transfer to Harbourfront.
17. On September 7, 2016, Harbourfront sent a letter to DC asking for verification of signatures and other information on their account documents.
18. On September 16, 2016, DC sent an email to the Respondent stating that she had received account documentation from Harbourfront. DC noted several discrepancies in the information on the documentation and said: "It would appear that [Movassaghi] has signed this document in my name. It is my understanding that I should be signing it as well. Is that correct?".
19. On November 6, 2016, DC sent an email to the Respondent stating that she received a letter from IG's compliance department with documents for her to review her signatures. DC confirmed that neither she nor EC had signed the transfer documents and she requested an explanation as to why they were never asked to sign them. The Respondent did not report this complaint to anyone at Harbourfront.
20. In response to the November 6, 2016 email, the Respondent advised DC and EC to contact compliance at IG. The Respondent did not also advise DC and EC to contact compliance at Harbourfront.
21. On December 15, 2016, Harbourfront sent a letter to DC and EC welcoming them as clients of Harbourfront and including their original account documentation for review. It requested them to notify Harbourfront of any discrepancies.
22. On February 5, 2017, an email was sent from DC and EC to the Respondent. They noted that they had received Harbourfront's letter and the account documentation for review. They identified several blatant errors and signatures that were not theirs and stated: "... we do have to report the discrepancies on the Application – do you have any suggestions on how we should proceed?".
23. In response to the February 5, 2017 email, the Respondent stated that she told DC and/or EC that they could report the February 5, 2017 complaint to compliance at Harbourfront.
24. The Respondent did not report the February 5, 2017 complaint to anyone at Harbourfront as required by Harbourfront's policies and procedures or Dealer Member Rule 3100.

Client CY

25. CY was a client of Movassaghi's at IG prior to the transfer to Harbourfront.
26. Around September 27, 2016, the Respondent was reviewing CY's corporate account, as there was an issue with its transfer from IG. During this review, she noticed some information on her personal accounts that did not appear to be accurate and she provided CY with updated account documents to review and sign. CY signed the updated account documentation forms and emailed them back to the Respondent on September 27, 2016.
27. On December 15, 2016, Harbourfront sent a letter to CY welcoming her as a client of Harbourfront and

including her original account documentation for review. It requested her to notify Harbourfront of any discrepancies. As of December 15, 2016, CY had already signed new account documents. On December 22, 2016, CY emailed the Respondent in response to the welcome package received from Harbourfront. CY notes that there are many discrepancies and the documents are not the ones that she signed. She states: "Harbourfront obviously has the forged documents, why wasn't mine sent out to me as confirmation? ... Please in the future do not sign for me without my consent." (the "CY Complaint").

28. The Respondent telephoned CY about her concerns in the CY Complaint and she stated that she told CY that she could contact the compliance department with her concerns.
29. The Respondent did not report the CY Complaint to anyone at Harbourfront as required by Harbourfront's policies and procedures or Dealer Member Rule 3100.

Client RS

30. RS was a client of Movassaghi's at IG prior to the transfer to Harbourfront.
31. On December 15, 2016, Harbourfront sent a letter to RS welcoming him as a client of Harbourfront and including his account documentation for review. It requested him to notify Harbourfront with any discrepancies. On January 7, 2017, RS emailed the Respondent noting that he received the welcome package from Harbourfront. He reviewed the account information and noted that the signatures were not his and wanting to know what happened and where his money was (the "RS Complaint").
32. In response to the RS Complaint, the Respondent called RS to set up a meeting. On January 11, 2017, the Respondent met with RS and the main point of the conversation was the transfer of his RRSP account from IG as there was a loan for that account. The conversation also included questions about beneficiaries on some of his accounts. Regarding the RS Complaint, the Respondent says that she stated that if RS had questions about the signatures on the documents he should contact Harbourfront compliance.
33. The Respondent did not report the RS Complaint to anyone at Harbourfront as required by Harbourfront's policies and procedures or Dealer Member Rule 3100.

Client RM

34. RM was a client of Movassaghi's at IG prior to the transfer to Harbourfront.
35. On August 24, 2016, the Respondent emailed RM advising her that some of her money had been transferred over to Harbourfront and providing her with some Fund Fact documents for her to review to invest her money. On September 3, 2016, RM responded to the Respondent questioning why she had not received any funds transfer consent document to be signed and verified and she requested a response on how this was done without her formal and written consent.
36. On December 31, 2016, the Respondent sent an email to RM confirming that RM's request to transfer her accounts out of Harbourfront was being processed. The Respondent proceeded to send and receive a series of emails with RM about this request. In these emails RM questioned how her accounts could be transferred from IG without her consent and approval.
37. The Respondent did not report the RM's complaint to anyone at Harbourfront as required by Harbourfront's policies and procedures or Dealer Member Rule 3100. She stated that she had been advised by Harbourfront that Harbourfront's compliance department would be contacting all clients as a result of Movassaghi's previous client forgery and assumed that RM's complaint would be dealt with as part of that process.
38. On November 29, 2017, RM emailed the CCO of Harbourfront making a formal complaint that Movassaghi had forged her signatures on transfer documents and transferred her money from IG to

Harbourfront in August 2016.

39. On March 22, 2018, Harbourfront issued a discipline letter to the Respondent for failure to report a client complaint regarding RM.

The Respondent Misled Enforcement Staff

40. In the course of Enforcement Staff's investigation of the conduct of Movassaghi that led to disciplinary proceedings against him, Enforcement Staff interviewed the Respondent under oath on January 30, 2017. Enforcement Staff asked the Respondent twice whether she had any information about any other alleged forgeries or client complaints in relation to Movassaghi's conduct. The Respondent stated she did not. At that time, as set out above, the Respondent had received email complaints from four clients alleging that someone had forged their signatures on documents.
41. The Respondent misled Enforcement Staff in the January 30, 2017 sworn interview about her knowledge of other client forgeries and complaints.
42. The Respondent's mitigating factors are as follows:
- a) The Respondent has no prior IIROC disciplinary record;
 - b) There is no allegation that the Respondent committed or was previously aware of the forgeries identified by the clients in their email complaints;
 - c) The Respondent relied on Movassaghi who was the broker of record prior to his termination from Harbourfront as almost all of the clients were Movassaghi's clients;
 - d) The Respondent stated that she was advised that Harbourfront's compliance department would be contacting all clients as a result of Movassaghi's admitted forgery to confirm the accuracy of their signatures and information and she assumed that the client complaints would be dealt with as part of that process. The Respondent also told two of the clients that they could, and one of the clients that they should, contact Harbourfront's compliance department with their complaints; and
 - e) After Movassaghi was terminated, the Respondent became the broker of record for all the clients that had been transferred from IG to Harbourfront. This was the first time that she had more than a handful of clients to manage on her own, and she was overwhelmed and under considerable pressure with this and the circumstances surrounding the abrupt termination of Movassaghi's employment at Harbourfront. The Respondent was focused on moving forward from the problems Movassaghi had created for her. This was the context in which the Respondent failed to answer Enforcement Staff's questions accurately.

PART IV – CONTRAVENTIONS

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

Contravention 1

Between September 2016 and January 2017, the Respondent failed to report four client complaints to her Dealer Member, Harbourfront Wealth Management Inc. ("Harbourfront"), contrary to Harbourfront's policies and procedures and Dealer Member Rule 3100.

Contravention 2

On January 30, 2017, the Respondent misled Enforcement Staff in a sworn interview, contrary to Consolidated Rule 1400.

PART V – TERMS OF SETTLEMENT

44. The Respondent agrees to the following sanctions and costs:
- Nine (9) month suspension from registration with IIROC;
 - Six (6) months of close supervision upon any registration with IIROC;
 - Successful re-write of Conduct and Practices Handbook course;
 - Payment of fine of \$10,000; and
 - Payment of costs of \$500.
45. The Respondent acknowledges that but for her demonstrated inability to pay more than the agreed upon fine and costs, Staff would have sought a fine and costs that were higher.
46. If this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees to pay the amounts referred to above pursuant to a payment plan agreed to between Staff and the Respondent.

PART VI – STAFF COMMITMENT

47. 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.
48. 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

49. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
50. 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.
51. 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.
52. 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.
53. 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.
54. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
55. 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.
56. If this Settlement Agreement is accepted, the Respondent agrees that neither she nor anyone on her behalf, will make a public statement inconsistent with this Settlement Agreement.

57. 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

58. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

59. A fax or electronic copy of any signature will be treated as an original signature.

DATED this 14th day of June, 2020.

“Witness”

Witness

“Kindle Blythe”

Kindle Blythe

Respondent

Witness

“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 14th day of June, 2020 by the following Hearing Panel:

Per: “Catherine Esson”

Panel Chair

Per: “Brain Worth”

Panel Member

Per: “Barbara Fraser”

Panel Member

Copyright © 2020 Investment Industry Regulatory Organization of Canada. All Rights Reserved