

# Re Schayes

IN THE MATTER OF:

**The By-Laws of the Investment Dealers Association of Canada**

**and**

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

**and**

**David Guy Schayes**

2014 IIROC 58

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

Heard: November 21, 2014  
Decision: December 15, 2014

**Hearing Panel:**

The Hon. H. Benjamin Casson, Q.C., Char, Mr. Martin Davies and Mr. Peter McWilliam

**Appearances:**

Mr. Tayen Godfrey, Enforcement Counsel

No Appearance by Respondent

---

## PENALTY DECISION

---

¶ 1 By a Decision dated September 15, 2014, the Hearing Panel (“the Panel”) found that the Respondent, David Guy Schayes (“the Respondent”), committed the following contraventions:

Re: Account of H. G.D.

1. In September of 2006 and February of 2007, the Respondent made unsuitable recommendations for the account of H.G.D., contrary to IDA by-law 1300.1(q) (Dealer Member Rule 100.1(q) after June 1, 2008);
2. Between April 2007 and March 2010, the Respondent made unauthorized trades in the account of H.G.D., contrary to Dealer Member Rule 29.1 (Investment Dealer Association by-law Rule 29.1 prior to June 1, 2008).

Re: Account of L.M.

3. Between June of 2006 and September 2008, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to L.M., contrary to Dealer Member Rule 1300.1(a) (Investment Dealer Association by-law 1300.1(a) prior to June 1, 2008);
4. Between June of 2006 and September of 2008, the Respondent made unsuitable recommendations for the account of L.M. contrary to Dealer Member Rule 1300.1(q) (Investment Dealer Association by-law 100.1(q) prior to June 1, 2008).

5. Between June of 2006 and September of 2008, the Respondent engaged in discretionary trading in the account of L.M., without the account first having been approved as a discretionary account, contrary to Dealer Member Rule 1300.4 (Investment Dealer Association by-law 1300.4 prior to June 1, 2008).

¶ 2 A Penalty Hearing was scheduled for 10:00 a.m. on November 21, 2014, at The Sutton Place hotel, 10235 101 St., Edmonton and commenced as scheduled.

¶ 3 The Respondent did not appear at 10:00 a.m. so the Hearing was adjourned, briefly, to allow some extra time for the arrival of the Respondent or to receive a message of explanation for his absence.

¶ 4 The Hearing resumed at 10:15 a.m. and as Mr. Tayen Godfrey (“Enforcement Counsel”) was ready to proceed with his Submission, the Panel agreed to proceed in the absence of the Respondent.

¶ 5 To the date of this Penalty Decision, the Panel has not been informed of any communications between the Respondent and the Investment Industry Regulatory Organization of Canada (“IIROC”) concerning his absence on November 21, 2014.

¶ 6 Early in his Submission, Enforcement Counsel stated that he would be seeking an overall penalty as follows:

1. A fine in the amount of \$70,000.00 that would include any disgorgement of commission.
2. A two year suspension from the securities industry.
3. Costs in the amount of \$20,000.00.
4. In the event of his return to the securities industry, a requirement that he must re-write the Conduct Practices Handbook examinations and, on the commencement of his services as an Approved Person, he would be under close supervision for six months.

¶ 7 As to the claim for costs, Enforcement Counsel provided the Panel with a detailed accounting of the costs of the investigation by IIROC staff totalling \$104,318.75.

¶ 8 At the Disciplinary Hearing, considerable evidence was heard by the Panel from five witnesses (three for IIROC) over four days of testimony. Evidence supporting the five contraventions is detailed in the Reasons for Decision of September 15, 2014. As IIROC’s case rested heavily on the evidence of clients H.G.D. and L.M., their evidence will be briefly summarized for the purposes of this Penalty Decision.

¶ 9 Client H.G.D.’s evidence supported Contraventions 1 and 2, i.e. Unsuitable Recommendations (Dealer Member Rule 1300.1(q)) and Unauthorized Trades (Dealer Member Rule Rule 29.1).

¶ 10 The panel found that H.G.D. deposited \$110,000 with the Respondent as a Registered Representative of CIBC Wood Gundy and requested that the funds be invested in a non-registered money market fund so that they could be readily available to buy a home. The Panel found that the Respondent disregarded her instructions and deposited \$10,000.00 in a non-registered money market fund and the remaining funds in eleven mutual funds and income trusts without any authorization.

¶ 11 Of the funds invested without authorization, \$40,000.00 was invested in investments with Deferred Sales Charges.

¶ 12 In 2008, H.G.D. noted in her Income Tax Assessment that the Respondent had removed \$5,500.00 from her RRSP Account for a First Time Home Buyers withdrawal without her knowledge or approval. When confronted with this withdrawal by H.G.D., the Respondent explained that the withdrawal resulted from a mistake in coding by an employee of CIBC.

¶ 13 The Panel rejected that explanation and found that the withdrawal was made to offset losses incurred by the sale of equities, purchased without authorization, from the funds which, on H.G.D.’s instructions, were to be invested in a non-registered money market fund to purchase a home.

¶ 14 Client L.M.’s evidence supported Contraventions 3, 4 and 5, i.e. Failing to Use Due Diligence (Dealer

Member Rule 1300.1(a)); Unsuitable recommendations (Dealer Member Rule 100.1(q)); Engaging in Discretionary Trading (Dealer Member Rule 1300.4).

¶ 15 The Panel found that in March 2004, L.M. open a non-registered account with the Respondent as a Registered Representative of TD Waterhouse with a deposit of \$128,169.43.

¶ 16 L.M. met with the Respondent in April, 2005, and discussed her plan to retire at age 55. The Respondent advised her that if she pooled her investments at TD Waterhouse, the proceeds of the sale of her house in Ft. McMurray, Alberta and the proceeds of her pension, her portfolio would allow her to receive a monthly income of \$5,000.00.

¶ 17 L.M.'s evidence was that in April, 2005, she had \$941,000.00 to invest which included her savings of \$200,000.00, the proceeds of the sale of her house of \$510,000.00 and the value of her pension.

¶ 18 L.M. transferred \$939,225.13 to TD Waterhouse in December, 2005.

¶ 19 In 2006, the Respondent rated L.M.'s investment knowledge as "good" in her Know Your Client Form based on her teaching experience in Grade IX mathematics and her previous investments in GIC's, stocks, bonds and investment funds on the recommendations of her previous investment advisor.

¶ 20 The panel found that the rating of L.M.'s investment knowledge as "good" was ill-considered and inaccurate.

¶ 21 In the summer of 2006, the Respondent moved to CIBC Wood Gundy and L.M. transferred her account, also, to that firm. In 2007, L.M.'s account totalled \$680,196.53.

¶ 22 In 2007, L.M. noted from her monthly statements that the Respondent had made purchases of investments totalling \$80,000.00 without her knowledge or approval and requested of the Respondent that he call her in the future before he made such investments.

¶ 23 L.M. started seeing negative signs in her statements from CIBC Wood Gundy and learned from an assistant to the Respondent that the Respondent was borrowing money to invest in her name. She noted that interest payment on the borrowed money in one year totalled \$10,134.59.

¶ 24 L.M. did not know what "margin" meant.

¶ 25 Gil Gauthier ("Gauthier"), Manager of Investigations for IIROC, testified that his investigations of L.M.'s account with the Respondent at CIBC Wood Gundy revealed that L.M. had a margin account and that, as of December 1, 2006, the negative balance of the account was \$33,094.73. On December 29, 2006, the Respondent purchased three securities:

- Excel India Fund DSC (\$10,000.00)
- Finning International (\$23,322.00)
- Toronto Dominion Bank (\$34,410.00)

These purchases, Gauthier testified, increased the negative cash balance in L.M.'s Margin account by \$67,733.00 to a total of \$111,015.75 by December 29, 2006.

¶ 26 As of June 29, 2007, L.M.'s statement revealed a negative cash balance of \$127,119.06 which, by July 2007, increased by another \$30,000.00 to \$157,779.78.

¶ 27 In August, 2007, the Respondent purchased, without authorization, UTS Accuity Small Cap Corp. for \$20,000.00 bringing the negative balance in L.M.'s margin account to \$183,727.94.

¶ 28 Gauthier testified that the use of margin for L.M. – a person in her mid to late fifties, retired, relying solely on her account for income and with only fair investment knowledge, was unsuitable for her.

¶ 29 In his Submission, Enforcement Counsel referred the Panel to the following Dealer Member Rules, Contraventions and Disciplinary Sanction Guidelines:

### **Dealer Member Rules:**

- Rules 20.1 – 20.6
- Rules 20.30 – 20.40
- Rules 20.49 – 20. 52

### **Contraventions:**

- IIROC Dealer Member Rule 1300.1(q)
  - IDA Bylaw 1300.1(q)
- IIROC Dealer Member Rule 29.1
  - IDA Bylaw. 29.1
- IIROC Dealer Member Rule 1300.1(a)
  - IDA Bylaw 1300.1(a)
- IIROC Dealer Member Rule 1300.4
  - IDA Bylaw 1300.4

### **Disciplinary Sanction Guidelines**

- General Principles
- 3.1 – Unsuitable Recommendations
- 3.7 – Unauthorized Trading
- 3.2 – Failure to Know Your Client
- 3.6 – Discretionary Trading

¶ 30 The Panel has reviewed, considered and applied the Rules and Guidelines and recognizes that the penalties as proposed are not prescribed penalties.

¶ 31 The Panel also recognized that the main concerns in determining an appropriate penalty, as set out in *Re: Derivative Services Inc., 2000 I.D.A.C.D. #26 at p. 3*:

1. Protection of the investing public;
2. Protection of the Investment Industry Regulatory Organization’s membership;
3. Protection of the integrity of the Investment Industry Regulatory Organization’s process;
4. Protection of the integrity of the securities markets, and
5. Prevention of a repetition of conduct of the type under consideration, i.e. deterrence.

¶ 32 In considering Enforcement Counsel’s recommended penalty in this matter, the Panel finds that the following evidence is of particular significance:

1. In Contravention #1 and #2, the Respondent’s disregard for H.G.D.’s request to invest \$110,000.00 (monies that she had received from a settlement in a personal matter) in a non-registered money market fund and his investments, contrary to those instructions, in unauthorized and unsuitable investments.
2. In Contraventions #3 and #4, the Respondent’s rating of L.M.’s investment knowledge as “good” was ill-considered and inaccurate and based on insufficient information. L.M. did not understand margin but learned that the Respondent, without her knowledge or approval had borrowed monies, in her name, to invest in the market, to the extent of \$183,727.94.
3. In Contravention #5, L.M. complained to the Respondent about purchases he had made in the

\$20,000 - \$30,000.00 range without her knowledge or approval and requested that he do so in the future. The respondent failed to do so as she had requested and continued to purchase securities. The Respondent had no authority to do so as required by Dealer Member Rule 1300.4.

4. Both H.G.D. and L.M. were vulnerable clients in that they were unsophisticated investors, placed their trust and confidence in the Respondent as a Registered Representative of CIBC Wood Gundy and relied solely on their investments with the Respondent for income.

¶ 33 The panel recognizes that the Respondent has no prior record of securities-related violations and that there is no evidence before the Panel that the Respondent benefited, financially, from his contraventions.

¶ 34 In support of his recommended penalties, Enforcement Counsel referred the Panel to the following cases:

1. *Re: Wilson, 2011 IIROC 47*
2. *Re: Futher, 2008 IIROC 29*
3. *Re: Harding, 2011 IIROC 65*
4. *Re: Balanko, 2007 I.D.A.C.D. No. 10*
5. *Re: Gareau, 2012 IIROC 72*
6. *Re: Moldovan 2014 IIROC 17*
7. *Re: Steinhoff 2014 LNBSCSC 12; 2014 BCSECOM 23*

¶ 35 The cases are relevant for reason that the respective Panels considered the same, or similar, contraventions as in the case under consideration; considered and applied the same principles and key factors as set out in the Dealer Member Disciplinary Guidelines; and arrived at penalties within the range as proposed by Enforcement Counsel, i.e.

1. A fine in the amount of \$70,000.00 that would include any disgorgement of commissions;
2. A two year suspension from the Securities Industry;
3. In the event of his return to the securities industry, a requirement that he must re-write the Conduct Practices Handbook examinations and, on the commencement of his services as an Approved Person, he would be under close supervision for six months; and
4. Costs of \$20,000.00

¶ 36 The Panel approves the proposed penalty as being appropriate in that it meets the concerns expressed for determining a penalty in *Re: Derivative Services In., 2000, I.D.A.C.D. No. 26, at p. 3.*

**DATED** this 15th day of December, 2014.

H.Benjamin Casson

Chair

Martin Davies

Industry Representative

Peter McWilliams

Industry Representative

*Copyright © 2014 Investment Industry Regulatory Organization of Canada. All Rights Reserved.*