

Re Dalla-Longa

IN THE MATTER OF:

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

and

Sherry Jean Dalla-Longa (“the Respondent”)

2018 IIROC 20

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

Heard: May 2, 2018

Oral Decision: May 2, 2018

Written Decision: June 14, 2018

Hearing Panel:

Alan V.M. Beattie, Q.C., Chair, William Welton and Kathleen Jost

Appearance:

Tayen Godfrey, Enforcement Counsel on behalf of Enforcement Staff of IIROC

Jeffrey N. Thom, Q.C., Counsel for the Respondent

The Respondent was personally in attendance

REASONS FOR DECISION

Introduction

¶ 1 A Settlement Agreement (a copy of which is attached) was entered into on March 26, 2018 between Sherry Jean Dalla-Longa (“the Respondent”) and the Investment Industry Regulatory Organization of Canada (“IIROC”).

¶ 2 The Settlement Agreement contains a complete statement of Agreed Facts, a description of the Contraventions and the Terms of Settlement. In the Settlement Agreement the Respondent admits to the contraventions. Staff of IIROC and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement. It is stated that the Settlement Agreement is subject to acceptance by the Hearing Panel and if the Panel accepts the Settlement Agreement, the Respondent waives her right under IIROC Rules and any applicable legislation to any further hearing, appeal and review.

¶ 3 The Hearing Panel was convened on May 2, 2018 pursuant to Section 8215 of the Consolidated Enforcement, Procedural, Examination and Approval Rules of IIROC. The Settlement Agreement was submitted to the Hearing Panel for its acceptance or rejection. A Settlement Hearing Book was provided in advance of the Hearing by IIROC to the Respondent and his Counsel, and to members of the Hearing Panel.

¶ 4 After hearing the oral submissions of Enforcement Counsel and Counsel for the Respondent, the Panel unanimously accepted the Settlement Agreement and signed a copy of the Settlement Agreement.

The Allegations

- ¶ 5 In the Settlement Agreement the Respondent admits to the following contraventions of IIROC's Rules:
- (a) Between January 2011 and December 2015, the Respondent failed to use due diligence to learn and remain informed of the essential facts in regard to her clients DF and JF, contrary to Dealer Member Rule 1300.1(a);
 - (b) Between January 2011 and December 2015, the Respondent made recommendations that were not suitable for her clients DF and JF, contrary to Dealer Member Rule 1300.1(q); and
 - (c) Between January 2011 and July of 2013, the Respondent provided financial compensation to her clients DF and JF without the knowledge or approval of her firm, contrary to Dealer Member Rule 29.1.

Facts

¶ 6 The facts are set out in the Settlement Agreement and were agreed upon by Staff and the Respondent. An overview of the facts follows:

- Over a period of four years, the Respondent recommended mutual funds to her clients which had Deferred Service Charge fees ("DSC fees"). The clients were husband and wife farmers who were not sophisticated investors. The mutual fund investments constituted \$500,000.00, the entirety of their liquid assets. The investments were not suitable for the clients, because of the DSC fees, as they required the ability to liquidate their investments periodically for the purpose of running their farm. The clients did not appreciate the implications of investing in DSC encumbered funds.
- The Respondent personally reimbursed the clients for most of the DSC fees they incurred, without the knowledge or approval of her firm.
- The Respondent was not forthcoming about the reimbursement when first questioned by her firm's compliance department or during Staff's investigation.
- The Respondent is not currently registered with IIROC.

Mitigating Factors

¶ 7 The Respondent does not have a previous disciplinary history. The mutual funds were not unsuitable investments other than the DSC fees. While the clients were compensated \$5,644.29 for the fees resulting from their initial two withdrawals, they were not compensated for approximately \$1,800 in DSC fees that they later incurred when they liquidated accounts in order to transfer to another financial institution that did not accept the funds that they held. The Respondent was not motivated by personal financial enrichment. She has taken responsibility for her actions.

Joint Settlement Recommendation

¶ 8 Staff and the Respondent agreed to the following sanctions and costs:

- a) A fine in the amount of \$40,000.00;
- b) Suspension from registrations in any capacity for one month;
- c) Upon registration a period of close supervision for three months; and
- d) Costs to IIROC in the amount of \$5,000.00.

Submissions of Staff

¶ 9 Mr. Godfrey, Enforcement Counsel, presented an overview of the foregoing components of the case, the role of the Panel [*Re Milewski*, (1999) I.D.A.C.D. No. 17], and the appropriate range of penalties with reference

to the following cases:

Re Janmohamed, 2016 LNIROC 45

Re Munro, 2016 LNIROC 47

Re Connor, 2015 LNIROC 43

Re Latta, 2014 LNIROC 5

Re Kwok, 2010 LNIROC 38

¶ 10 Mr. Godfrey highlighted the similarities and differences in the cases and submitted that the cases establish that the agreed sanctions are within the appropriate range, particularly considering the Respondent's lack of forthrightness in the two investigations.

Submissions of the Respondent

¶ 11 Mr. Thom, Counsel for the Respondent, referenced the extensive negotiations over one year which led to the Settlement Agreement and the desire of the Respondent to acknowledge her wrongdoing and get the matter behind her. He observed that the \$40,000.00 fine may be considered on the high side, relative to the cases, but that the Settlement Agreement should be accepted by the Panel.

Reasons for Decision

¶ 12 We confirm our oral decision given at the Hearing that we are satisfied the contraventions took place as alleged and that the Respondent violated the applicable Rules, as admitted by the Respondent.

¶ 13 In assessing the appropriate penalty we have taken into account the Sanction Guidelines and the cases relied upon by Staff (para. 9 above). While we agree with Counsel for the Respondent that the agreed penalties (para. 8 above), in particular the one month suspension and the fine of \$40,000.00, may be viewed as somewhat higher than some of the penalties in the referenced cases, we also agree with Enforcement Counsel that a salient factor in this case is the Respondent's lack of forthrightness in the investigations. There are numerous mitigating factors in the Respondent's favour (para. 7 above) which we have taken into consideration. The proposed costs of \$5,000.00 are certainly fair to the Respondent and are within the reasonable range. Although they will not fully cover IIROC's costs, they reflect the reduced involvement and cost for IIROC resulting from the Respondent's cooperation. The close supervision for three months is also appropriate.

¶ 14 Applying the general principles of protection of the investing public, protection of the integrity of the IIROC process, protection of the integrity of the securities market, prevention of a repetition of conduct of the type under consideration, and general deterrence, leads us to the conclusion that the penalties agreed upon between IIROC and the Respondent in the Settlement Agreement fall within the reasonable range established in the Sanction Guidelines and in the decisions, are appropriate and should be accepted.

Dated at Calgary, Alberta, this 14th day of June, 2018.

Alan V.M. Beattie

Chair

William Welton

Industry Representative

Kathleen Jost

Industry Representative

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 Sherry Jean Dalla-Longa (“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. These allegations stem from the Respondent recommending mutual funds with Deferred Service Charge fees (“DSC” fees) to her clients DF and JF. The Respondent failed to appreciate that these investments were not suitable for her clients, and resulted in the Respondent personally reimbursing them for DSC fees they incurred.

Registration History

5. The Respondent is no longer working as a Registered Representative. She was employed as a Registered Representative at Edward Jones from March 2004 to July 2012 and then Raymond James Ltd. until January 2017.

Failure to Know Client and Unsuitable Recommendations

6. DF and JF (“Mr. & Mrs. F”) are grain farmers with limited investment knowledge. When they opened their accounts with the Respondent at Edward Jones in December 2010, they were age 46 (DF) and 42 (JF). In January 2011 they transferred \$500,000.00 into the Respondent’s care. This represented the entirety of their liquid assets and approximately 67% of their overall assets. In July of 2012, Mr. & Mrs. F moved their accounts with the Respondent to Raymond James Ltd.
7. When Mr. & Mrs. F opened their accounts only a portion of their investments were intended to be long term, as they required the ability to liquidate holdings for the purpose of running their farm. The Respondent failed to appreciate this and recommended they invest their entire portfolio in mutual funds subject to a seven-year DSC fee schedule.
8. Mr. & Mrs. F were not sophisticated investors and were relying on the Respondent’s advice. However, the Respondent failed to adequately explain DSC fees to her clients. Consequently, Mr. & Mrs. F did not appreciate the implications of investing in DSC encumbered funds. Had they understood the fee structure associated with these investments they would not have purchased them.
9. Within two years of purchasing the funds, Mr. & Mrs. F needed to make two large withdrawals, totalling \$135,000.00 (27% of their portfolio). These withdrawals resulted in a total of \$5,644.29 in DSC fees. They would later liquidate their joint cash account and TFSA accounts, incurring a further \$1,800.00 in DSC fees.

Personal Compensation of Clients

10. On two occasions, between June 2011 and July 2013, the Respondent personally compensated Mr. & Mrs.

F for DSC fees incurred in their accounts, without the knowledge or approval of her firm. The Respondent was evasive and misleading when later questioned about this conduct.

11. On June 2, 2011, Mr. F made a withdrawal of \$35,000.00 from his Edward Jones cash account. To facilitate that withdrawal, the Respondent redeemed units of a Mackenzie fund, incurring \$1,484.29 in DSC Fees. On June 15, 2011, a cheque in the amount of \$1,484.29 was deposited to Mr. F's cash account. This cheque was drawn on the Respondent's personal bank account at TD Canada Trust, which she also used for business purposes. The Respondent carried out this reimbursement without the knowledge or consent of Edward Jones.
12. The Respondent was not forthcoming about this reimbursement during IIROC Staff's investigation. She incorrectly stated that Edward Jones had deducted the \$1,484.29 against her profit and loss report. However, Edward Jones was not aware of the payment until several years after the Respondent had moved to Raymond James.
13. On March 6, 2013, Mr. F made a withdrawal of \$100,000.00 from his cash account at Raymond James. To facilitate that withdrawal, the Respondent redeemed units of two Mackenzie funds, incurring a total of \$4,160.00 in DSC Fees. On July 3, 2013 a cheque in the amount of \$4,159.04 was deposited to Mr. F's cash account. This cheque was drawn on the Respondent's personal bank account at TD Canada Trust. The Respondent carried out this reimbursement without the knowledge or consent of Raymond James. The Respondent then purchased more funds subject to DSC fees with the \$4,159.04 she reimbursed to Mr. & Mrs. F.
14. The Respondent was not forthcoming when first questioned about this reimbursement by the Raymond James compliance department. She originally stated that Mr. F had been directly compensated by the company managing the investment fund. The Respondent eventually admitted this was incorrect.

Conduct not Financially Motivated

15. The Respondent's unsuitable recommendation of the mutual funds was not motivated by personal financial enrichment.

Financial Impact on Mr. & Mrs. F

16. While Mr. & Mrs. F were compensated \$5,644.29 for the fees resulting from their initial two withdrawals, they were not compensated for approximately \$1,800.00 in DSC fees that they later incurred when they liquidated their joint cash account and Tax Free Savings Account accounts.

PART IV – CONTRAVENTIONS

17. By engaging in the conduct described above, the Respondent committed the following contraventions of IIROC's Rules:
 - a) Between January 2011 and December 2015, the Respondent failed to use due diligence to learn and remain informed of the essential facts in regard to her clients DF and JF, contrary to Dealer Member Rule 1300.1(a);
 - b) Between January 2011 and December 2015, the Respondent made recommendations that were not suitable for her clients DF and JF, contrary to Dealer Member Rule 1300.1(q); and
 - c) Between June 2011 and July of 2013, the Respondent provided financial compensation to her clients DF and JF without the knowledge or approval of her firm, contrary to Dealer Member Rule 29.1.

PART V – TERMS OF SETTLEMENT

18. The Respondent agrees to the following sanctions and costs:
 - a) A fine in the amount of \$40,000.00;

- b) Suspension from registrations in any capacity for one month;
 - c) Upon registration a period of close supervision for three months; and
 - d) Costs to IIROC in the amount of \$5,000.
19. 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

20. 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.
21. 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

22. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
23. 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.
24. 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.
25. 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.
26. 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.
27. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
28. 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.
29. 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.
30. 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

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

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

DATED this 2nd day of May, 2018.

“Witness”

Witness

“ Sherry Jean Dalla-Longa”

Sherry Jean Dalla-Longa

“Witness”

Witness

“Tayen Godfrey”

Tayen Godfrey

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

The Settlement Agreement is hereby accepted this 2nd day of May, 2018 by the following Hearing Panel:

Per: “Alan Beattie”

Panel Chair

Per: “Kathleen Jost”

Panel Member

Per: “William Welton”

Panel Member

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