

Re Lewis

IN THE MATTER OF:

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

and

Robert Lewis

2016 IIROC 01

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

Heard: November 18, 2015
Decision: November 18, 2015
Written Reasons: January 12, 2016

Hearing Panel:

Jean P. Whittow, Q.C., (Chair), L. Karen Henderson, Bradley Doney

Appearances:

Stacy Robertson, Enforcement Counsel

Patrick Sullivan, Counsel for the Respondent

DECISION ON SETTLEMENT AGREEMENT

Introduction

¶ 1 This Panel was constituted pursuant to the IIROC Dealer Member Rule 20.30 to consider a Settlement Agreement entered into between the staff of IIROC and the Respondent. A copy of the Settlement Agreement is attached as Schedule “A”.

¶ 2 In the Settlement Agreement, the Respondent admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations, or Policies:

- a) Between 2008 and 2012, the Respondent acted contrary to Dealer Member Rules 29.1 and 18.14 by preparing tax returns for his clients and charging a fee for this service without the written approval of his firm;
- b) Between 2008 and 2012, the Respondent engaged in personal financing dealings with five of his clients contrary to Dealer Member Rule 29.1 by loaning funds to his clients without the knowledge or approval of this firm;
- c) Between September and December 2011, the Respondent acted contrary to Dealer Member Rule 29.1 when he failed to notify the firm of a client complaint and settled the client complaint without the approval or knowledge of his firm;
- d) Between 2008 and 2012, the Respondent acted contrary to Dealer Member Rule 29.1 by using blank forms and documents which had been signed by his clients to process client instructions concerning transactions they had authorized in their accounts;
- e) Between 2008 and 2012, the Respondent acted contrary to Dealer Member Rule 29.1 when he

made improper use of monies from clients' credit union accounts held outside of his firm.

These items are referred to further in the Settlement Agreement as "Contravention 1" (being "a"), "Contravention 2" (being "b"), etc. We will refer to these items in the numeric style.

¶ 3 IIROC staff and the Respondent agreed to the following terms of settlement:

- a) a fine of \$175,000.00 which includes disgorgement of fees;
- b) suspension from registration in any capacity with IIROC for five years;
- c) 12 months of strict supervision upon any re-registration with IIROC; and
- d) costs in the amount of \$20,000.00.

Submissions

¶ 4 Counsel for IIROC submitted that the Settlement Agreement was appropriate in all the relevant circumstances and should be accepted by the Panel. In making submissions, IIROC counsel reviewed the admitted contraventions and reviewed past decisions concerning similar issues.

¶ 5 The facts agreed upon are set out in the attached Settlement Agreement in paragraphs 7 to 54. The Panel is mindful that the language in a settlement agreement is the result of careful negotiations between the parties.

¶ 6 The admitted facts concerning Contravention 1, outside business activity in preparing tax returns for a fee without member firm authorization, are set out in paragraphs 11 to 17 of the Settlement Agreement. IIROC counsel noted that the Respondent's practice went on for years, but ceased prior to its discovery. IIROC counsel referred to *Re: Che* [2002] I.D.A.C.D. No. 53; *Re: Deck* [2007] I.D.A.C.D. No. 19, and *Re: Rail* 2009 IIROC 36, and noted that the range of fines for this conduct in these cited cases has been from \$35,000 to \$150,000.

¶ 7 The admitted facts concerning Contravention 2, personal financial dealings with clients, are set out in paragraphs 32 to 48 of the Settlement Agreement. IIROC counsel referred to *Re: Wenman* 2012 IIROC 3 and *Re: Strong* [2004] I.D.A.C.D. No. 53, where fines of \$10,000 and \$25,000 respectively were imposed, plus a requirement to rewrite the conduct and practices course and submit to supervision. Counsel submitted that the circumstances in *Re Wenman* and *Re Strong* were similar to those in the present case.

¶ 8 The admitted facts concerning Contravention 3, unauthorized settlement with client, are set out in paragraphs 26 to 31 of the Settlement Agreement. IIROC counsel referred to *Re: Toban* [2005] I.D.A.C.D. No. 28, where a registrant was fined \$10,000 and required to re-write examinations for settling a client complaint without firm approval. IIROC counsel noted that the Respondent had previously been fined by his employer for a prior "inappropriate settlement".

¶ 9 The admitted facts concerning Contravention 4, the use of blank forms signed by clients, are set out in paragraphs 49 to 54 of the Settlement Agreement. The Settlement Agreement states that these forms were used by the Respondent "after he received verbal instructions from his clients" (paragraph 49). However, the Respondent continued to use pre-signed client forms despite a warning by his firm that their use was prohibited. Counsel referred to *Re: Landry* 2012 LNCMFDA 66 and other MFDA decisions in which fines of \$20,000 to \$30,000 were imposed.

¶ 10 Contravention 5, the improper use of monies outside his firm, is, in the view of the Panel, the most serious allegation. We refer the reader to paragraphs 18 through 25 of the Settlement Agreement attached. IIROC counsel referred to *Re: Dass* 2009 IIROC 22, *Re: Ramsay* 2013 IIROC 41 and *Re: Kumar* 2015 IIROC 33, in which, in addition to fines and other penalties, the registrant was permanently banned from registration. He also referred to *Re: Betnar* [2003] I.D.A.C.D. No. 32, in which the registrant was suspended for five years. The facts in these cases are quite different than those agreed upon in the case before this Panel.

¶ 11 IIROC counsel also argued that the suspension proposed was consistent with the IIROC Sanction Guidelines, given the nature and number of contraventions.

¶ 12 Counsel for the Respondent also submitted that the Settlement Agreement should be accepted. He emphasized that the purpose of regulatory proceedings is the protection of societal interests and not punishment of the registrant, relying upon *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 SCR 132, 2001 SCC 31 (CanLII) (“*Asbestos*”). He submitted that the ‘acceptable range’ pertains to the range of outcomes that fulfill that goal, not merely the range of penalties imposed in prior cases.

¶ 13 Counsel for the Respondent advised the Panel of the Respondent’s personal circumstances, including, that the Respondent had been in the industry for his entire career of nearly 30 years, and that he does not currently work for an IIROC firm and he does not intend to re-enter the industry. This information was provided to the Panel with the agreement of IIROC counsel.

Analysis

¶ 14 The authorities are clear that a panel should accept a negotiated settlement unless it is clearly outside an acceptable range of appropriate outcomes (*Re: Deutsche Bank Securities Ltd.* 2013 IIROC 07; *Re: Clark* [1999] I.D.A.C.D. No. 40; and *Re: Milewski* [1999] I.D.A.C.D. No. 17).

¶ 15 As stated in *Asbestos, supra*, and in *Re Cartaway Resources Corp.*, [2004] S.C.J No. 22, the purpose of the imposition of sanctions is the protection of the public by the prevention of further acts of misconduct, whether by this registrant or any other. Sanctions provide for both specific and general deterrence.

¶ 16 The Panel recognizes, as stated in *Re: Steinhoff* 2014 BCSECCOM 23, that a suspension of a duration longer than a normal vacation is a very serious matter. A five year suspension from registration in any capacity with IIROC is tantamount to termination of the registrant’s career as a Registered Representative.

¶ 17 As submitted by both counsel, the Panel notes that the Settlement Agreement shows that the Respondent accepts responsibility for his actions. By entering the Agreement, weeks of hearing are avoided, including the need to call elderly and out of town persons as witnesses.

¶ 18 Having reviewed the authorities referred to by IIROC counsel, described above, considered the Sanction Guidelines, and taken into account the circumstances of this case, the Panel is satisfied that the Settlement Agreement fulfills IIROC’s public protection mandate. To employ the language of the extensive case law, the penalties set out in the Settlement Agreement do not fall outside the reasonable range of appropriateness.

¶ 19 For these reasons, the Panel accepts the Settlement Agreement.

Dated at Vancouver, British Columbia, this 12th day of January, 2016.

Jean P. Whittow, Q.C., Chair

L. Karen Henderson, Panel Member

Bradley Doney, Panel Member

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff (“Staff”) and the Respondent, Robert Lewis, consent and agree to the settlement of this matter by way of this agreement (the “Settlement Agreement”).
2. The Enforcement Department of IIROC has conducted an investigation (“the Investigation”) in the conduct of Robert Lewis.
3. 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

4. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. The Respondent admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:
 - a) Between 2008 and 2012, the Respondent acted contrary to Dealer Member Rules 29.1 and 18.14 by preparing tax returns for his clients and charging a fee for this service without the written approval of his firm;
 - b) Between 2008 and 2012, the Respondent engaged in personal financing dealings with five of his clients contrary to Dealer Member Rule 29.1 by loaning funds to his clients without the knowledge or approval of his firm;
 - c) Between September and December 2011, the Respondent acted contrary to Dealer Member Rule 29.1 when he failed to notify the firm of a client complaint and settled the client complaint without the approval or knowledge of his firm;
 - d) Between 2008 and 2012, the Respondent acted contrary to Dealer Member Rule 29.1 by using blank forms and documents which had been signed by his clients to process client instructions concerning transactions they had authorized in their accounts;
 - e) Between 2008 and 2012, the Respondent acted contrary to Dealer Member Rule 29.1 when he made improper use of monies from clients' credit union accounts held outside his firm.
6. Staff and the Respondent agrees to the following terms of settlement:
 - a) Fine of \$175,000 which includes disgorgement of fees;
 - b) Suspension from registration in any capacity with IIROC for five years;
 - c) 12 months of strict supervision upon any re-registration with IIROC; and
 - d) Costs of \$20,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

7. 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.

Registration History

8. The Respondent was first registered in the securities industry in 1988. The Respondent was first registered with the Investment Dealers' Association on June 17, 1999. From April 16, 2004 to April 12, 2012, the Respondent was employed by Manulife Securities Inc. ("Manulife").
9. The Respondent's employment was terminated by Manulife on or about April 12, 2012. After April 13, 2012, the Respondent was registered with Raymond James Ltd.
10. These particulars relate to the period of time between January 2008 and April 2012 while the Respondent Robert Lewis was a Registered Representative with the Vancouver office of Manulife.

Outside Business Activity

Preparing Tax Returns for a Fee Without Member Firm Authorization

11. The Respondent had been preparing income tax returns for clients, family, employees of Manulife and friends since at least 2004. The Respondent charged a fee for his tax preparation services.
12. In 2008, the Respondent prepared income tax returns for the 2007 income tax year for approximately 223 clients. The Respondent charged a fee to approximately 201 of those clients and collected approximately \$20,255 in fees for these services.

13. In 2009, the Respondent prepared income tax returns for the 2008 income tax year for approximately 204 clients. The Respondent charged a fee to approximately 175 of those clients and collected approximately \$18,994 in fees for these services.
14. In 2010, the Respondent prepared income tax returns for the 2009 income tax year for approximately 197 clients. The Respondent charged a fee to approximately 169 of those clients and collected approximately \$17,979 in fees for these services.
15. In 2011, the Respondent prepared income tax returns for the 2010 income tax year for approximately seven clients. The Respondent charged a fee to those seven clients and collected approximately \$980 in fees in total.
16. The Respondent did not prepare tax returns for his clients in 2012 and has not prepared tax returns for his clients since that time.
17. While some employees of Manulife at the Respondent's office location were aware that the Respondent was providing tax return services, no one outside of the office at Manulife's Compliance Department was aware that the Respondent was providing tax return services. The Respondent did not formally notify or seek the written approval of Manulife prior to providing these tax preparation services to his clients. Manulife's policies and procedures manual required that written notice be provided to the Branch Manager and the Compliance Department before acceptance of any compensation from any person other than Manulife.

Improper Use of Clients' Funds

18. The Respondent had access to and control over approximately 75 client bank accounts held at a credit union in Vancouver (the "Credit Union").
19. The Credit Union accounts were originally set up for clients of the Respondent to allow them to take advantage of deposit products which the Credit Union offered but which the Respondent's firm did not offer.
20. Between 2008 and 2012, the Respondent accessed approximately ten client accounts at the Credit Union to transfer monies (the "Funds") to an account in the name of Lewis Financial Services which was also held at the same Credit Union.
21. On at least 40 occasions between 2008 and 2012, the Respondent transferred Funds in amounts between \$150 and over \$5,000 per transfer and totaled over \$35,000.
22. The Respondent claims that the Funds were transferred as payment for ongoing investment counseling services which he claims he provided to those clients. However, the Respondent did not notify or seek the written approval of Manulife prior to charging his clients investment counseling fees.
23. The Respondent prepared tax returns for several of his clients that he charged investment counseling fees and he did not claim those fees as a tax deductible expense on their tax returns.
24. The Respondent did not obtain the clients' consent to charge the fees and did not obtain the clients' consent to transfer money from their Credit Union accounts to pay for those fees. The clients say that they were not aware that any fees were being charged and did not receive any invoices for any ongoing investment counseling services either prior to or after the Respondent withdrew the Funds from their accounts at the Credit Union.
25. Several of the clients' Credit Union account statements were sent directly to the Respondent using his firm's office address.

Unauthorized Settlement with Client

26. Starting in or around September 16, 2011, the Respondent became aware of an email complaint from client BS regarding the short term decline of her investment of approximately \$2,300. BS had been referred by the Respondent's mother and her investments were in fixed income style mutual funds and

were impacted by the credit situation in the United States at the time. Client BS indicated to the Respondent that she did not want to lose any of her investment.

27. The Respondent did not notify his employer, Manulife, of the client complaint from BS.
28. In response to BS' complaint, the Respondent communicated to BS that he would ensure that her account was restored to its initial value.
29. In October 2011, the Respondent paid BS \$1,000 with a cheque dated October 17, 2011 drawn on the chequing account of Lewis Financial Services and agreed to reimburse BS for her remaining losses by the end of November 2011.
30. The Respondent did not seek or obtain the approval of Manulife regarding the payment to BS and never brought BS' complaint or the circumstances of the settlement and payment to the attention of Manulife.
31. The Respondent had been previously fined by his employer in March 2008 regarding an inappropriate settlement made from his personal bank account to his client WF.

Personal Financial Dealings with Clients

Clients MM

32. Client CM and client VM (together, "MM") were both clients of the Respondent. The Respondent, through Lewis Financial Services, prepared MM's tax returns for 2009 as well as for several other years.
33. In or around February 2011, the Canada Revenue Agency notified MM that they owed approximately \$4,000 in additional taxes plus interest for the 2009 tax year. MM, in turn, notified the Respondent of this development.
34. The Respondent identified that an error had been made by his third party tax preparer and issued a cheque from the account of Lewis Financial Services to the Receiver General of Canada in the amount of \$144.84. This sum appears to represent the interest charges on the outstanding tax bill received by MM.
35. The Respondent did not seek or obtain the approval of Manulife to pay MM's interest in relation to the error in completing MM's tax return.

Client BR

36. In or around December 2008, BR was a client of the Respondent.
37. On or about December 16, 2008, the Respondent loaned BR \$10,000 on a short term basis to assist him with a real estate closing. The Respondent advanced the funds to BR from his Lewis Financial Services Bank account.
38. The Respondent did not notify or obtain the approval of Manulife to loan money to his client.

Client DC

39. In or around January 2009, DC was a client of the Respondent.
40. On January 20, 2009, the Respondent transferred \$1,000 from his Lewis Financial Services Bank account into DC's account at Manulife. This transfer by the Respondent was in response to Manulife's concern about a debit position in DC's account.
41. The Respondent did not notify or obtain the approval of Manulife for this payment to DC.

Client JL

42. In or around June 2009, JL was a client of the Respondent.
43. On or around June 17, 2009, the Respondent instructed his assistant to have a cheque for \$330 drawn from the Lewis Financial Service's bank account for deposit into JL's line of credit account because JL's account had insufficient funds to process a \$12,000 pre-authorized withdrawal. The payment by

the Respondent prevented JL's line of credit from being charged an insufficient funds fee and allowed the pre-authorized withdrawal to be made and deposited into the Manulife investment account managed by the Respondent.

44. The Respondent did not notify or obtain the approval of Manulife for the payment to JL.

Client MY

45. In or around September 2009, MY was a client of the Respondent.
46. In or around September 2009, the Respondent transferred \$2,000 from his Lewis Financial Services bank account into MY's bank account held at another financial institution.
47. MY needed the funds on short notice for a real estate transaction and the Respondent determined that there was not enough time to liquidate the necessary holdings in MY's Manulife investment account to meet MY's request for funds.
48. The Respondent did not notify or obtain the approval of Manulife for the advance to MY.

Use of Blank Forms Signed by Client

49. After the Respondent was terminated by Manulife, Manulife's Compliance Department located 17 documents that were either blank or partially completed that contained clients' signatures. In addition, during 2010 and 2011, the Respondent had blank order entry authorization and pre-authorized chequing forms signed by approximately 10 clients.
50. From 2008 to 2012, the Respondent had clients sign and return blank pre-signed forms, either by mail or electronically, which the Respondent then filled out or caused to be filled out after he received verbal instructions from his clients. The Respondent then delivered those completed forms to Manulife and other securities industry participants to effect transactions in the clients' accounts.
51. The Respondent copied or reused blank forms which had the clients' signatures already on the form. All of the forms were completed by the Respondent, or on the Respondent's instructions, after the Respondent had received verbal client instructions for the transactions in question. Many of these forms were presented to other securities and banking industry participants, including mutual fund companies and financial institutions to process pre-authorized chequing instructions, order entry authorization instructions and withdrawal authorizations.
52. Between 2008 and 2012, the Respondent used a blank or partially completed form signed by a client or a copy of a blank or partially completed form signed by a client in over 100 different situations for approximately 22 different clients.
53. The Respondent had been warned by the Manulife Compliance Department in or around June 2010 that the possession of pre-signed client forms was prohibited. The Respondent acknowledged that the practice of holding blank pre-signed client forms was not permitted and was not an acceptable practice.
54. The Respondent continued using blank pre-signed client forms after receiving the warnings from Manulife and after acknowledging that the practice was improper.

IV. TERMS OF SETTLEMENT

55. 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.
56. The Settlement Agreement is subject to acceptance by the Hearing Panel.
57. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
58. 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.

59. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
60. 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.
61. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
62. 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.
63. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
64. 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 Vancouver in the Province of British Columbia, this 18th day of November, 2015.

“Patrick Sullivan”

Witness

AGREED TO by Staff at the City of Vancouver in the Province of British Columbia, this 12th day of November, 2015.

“Shannon Mathieson”

Witness

“Robert Lewis”

Robert Lewis

“Stacy Robertson”

Stacy Robertson

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

ACCEPTED at the City of Vancouver in the Province of British Columbia, this 18th day of November, 2015, by the following Hearing Panel:

Per: **“Jean Whittow”**

Panel Chair

Per: **“Bradley Doney”**

Panel Member

Per: **“Karen Henderson”**

Panel Member

Copyright © 2016 Investment Industry Regulatory Organization of Canada. All Rights Reserved.