Re Yaskiw

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Jamie Peter Yaskiw

2017 IIROC 19

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

Heard: March 7, 2017
Decision: April 4, 2017

Hearing Panel:
Shelley L. Miller, Q.C., Chair, Kathleen Jost and Don Milligan
Appearances:
David McLellan, Senior Counsel for IIROC
No one appearing for Jamie Peter Yaskiw

PENALTY DECISION

¶ 1 In its Decision and Reasons issued on December 5, 2016, this Hearing Panel found that three contraventions alleged in the Notice of Hearing issued by IIROC were proven to the required standard.

¶ 2 The contraventions proven were as follows:

a. Between approximately January, 2012 and June, 2014, the Respondent failed to use due diligence to learn and remained informed of the essential facts relative to three (3), clients contrary to Dealer Member Rule 1300.1(a);

b. Between approximately January, 2012 and June, 2014, the Respondent failed to use due diligence to ensure that recommendations were suitable for three (3) clients contrary to Dealer Member Rule 1300.1(q);

c. Between approximately January 2012 and June 2014, the Respondent engaged in discretionary trading with respect to the accounts of three (3), clients contrary to Dealer Member Rule 1300.4.

¶ 3 In this Hearing Panel's earlier decision of December 5, 2016, it reviewed the allegations in IIROC's Notice of Hearing statement of particulars, which were to the following effect:

Failure to Know Your Client

¶ 4 An IIROC investigator analyzed the trading in the accounts of the LK and JK, and SA, clients of the Respondent at the material times, interviewed the clients and the Respondent, examined various emails between the clients and the Respondent, and between the Respondent and his superiors. The investigator determined that LK and JK wanted to retire in seven years and that LK told the Respondent at the time they opened the accounts with him that they wanted to semi-retire. He also determined that LK and JK wanted the investment funds to fund their retirement and they depended on the advice of the Respondent because they did not know much about

the stock market.

¶ 5 The investigator concluded that the accounts did not reflect a balanced portfolio and contained a lot of speculative stock. He concluded that the objectives set out in the initial NCAFs were appropriate but were updated six months later with changed objectives that were too risky for their personal and financial circumstances.

¶ 6 The investigator reviewed an NCAF for SA dated January 26, 2012 signed by the Respondent pertaining to the opening of three accounts. It documented that SA's net worth was $170,000 and that her investment knowledge was less than "fair". He observed from his interview with SA that she had never personally met the Respondent and she wanted to make money for her retirement. She had no recall of the objectives set out in the NCAF, or that the Respondent explained risk tolerance, investment objectives, numbers, or that he asked any questions of her.

Suitability

¶ 7 The investigator noted from his asset allocation analysis of the account of LK and JK that large amounts were invested in equities. The degree of concentration in the accounts at one point was as much as 42.5% in energy securities, which indicated a high level of risk. Further, their portfolio revealed significant day trading, options and penny stocks. He noted five trades involving $250,000 on one day in August 2013. He gave other examples also occurring in August 2013 of these types of trades involving penny stocks. He opined that short sells, day trading, and sales in penny stock in combination were not suitable for LK and JK, having regard to their ages and their personal circumstances. He concluded that the Respondent's strategy was aggressive and that 60 to 75% of the trades were in the high-risk category.

¶ 8 The Respondent told the investigator in his interview that he told LK and JK he would "do some shorting" to protect them. He stated his investment strategy was not designed for retiring clients and that despite his observation that they were approximately aged 60, he claimed LK and JK told him they were not retiring and did not need the income.

¶ 9 The investigator observed from the monthly statements in the accounts of LK and JK that they lost the sum of $125,337.44, which approximated an 11.23% loss on their portfolio. He compared the performance of the TSX and S & P Composite Index for the same period and found it increased by 22.78%.

¶ 10 The investigator noted the objectives listed for SA included "60% speculative" which he concluded was too aggressive for her. He concluded that from February 2012 to February 2014, the securities traded were in a high-risk category. He found that all the stocks were placed in the energy sector. The records showed many trades in penny stocks, and short trades which, which taken together, in his view, were too risky for her account and demonstrated an unsuitable strategy.

¶ 11 He observed that SA sustained losses of nearly $41,000 over a two-year period that constituted a loss of 38.6% on her portfolio.

Discretionary Trading

¶ 12 The investigator noted that the Respondent was not permitted to undertake discretionary trading. He calculated that the Respondent conducted 585 transactions in the accounts of LK and JK in one year. Except for reference to certain trades in a total of five emails produced from the Member firm, the Respondent did not retain any notes of obtaining advance permission for trades from LK and JK.

¶ 13 The investigator identified to LK certain specific trades occurring in September and November 2013, who confirmed that she did not instruct the purchase of the same. He noted that the Respondent's supervisors advised the Respondent that LK and JK's accounts had too high a concentration in high-risk securities in light of the clients' investment objectives and he was directed to rebalance their accounts. The Respondent's supervisors had characterized the account as a "non-approved discretionary" account and decided that the Respondent's trading must be restricted until he had updated the NCAF forms and completed and approved an Investment Policy Statement, ("IPS").

¶ 14 Further email correspondence with supervisors in December 2013 referencing concerns about trades executed without specific instructions indicated that supervisors had directed the Respondent to restrict trading in the accounts until managed portfolio account documents were received. It further indicated that the Respondent agreed to convert the accounts to portfolio accounts and draft an IPS to show the strategy plan.

¶ 15 The investigator concluded that the Respondent had engaged in discretionary trading in the account of LK and JK and noted that except for 19 out of 585 trades, no other handwritten notes were found to verify the Respondent had prior permission from the clients for the remaining trades.

¶ 16 While the investigator found that the Respondent was also not permitted to conduct discretionary trades for SA, nevertheless, he located 109 transactions in SA's account with no notes of conversations with SA prior to the trades. SA told the investigator that she found out about the trades made in her account after the fact by going online or by receiving slips in the mail. SA said the Respondent rarely called in advance to advise of the trade. She said he often executed trades on his own, and she did not know he was not to do that.

DECISION FINDINGS

¶ 17 After considering all of the *viva voce* evidence of the witnesses presented on behalf of IIROC, the documentary evidence, the Respondent's testimony and the submissions of the Respondent and Enforcement Counsel, this Hearing Panel made the following findings of fact:

As regards the failure to know the clients, LK and JK

(a) The Respondent was a Registered Representative since 1999, and was employed with Wolverton in Calgary since 2012;

(b) LK and JK were a married couple aged 59 and 57, respectively, when they opened accounts with the Respondent,

(c) LK and JK were an oil and gas field manager and small business owner, respectively, with little knowledge of financial markets,

(d) LK and JK sought the Respondent's advice as to how to invest a sum of approximately $1.15 million which remained from a sale of shares they held in an oil and gas company bought in 1998 for $25,000 and sold in 2012 for approximately $1.4 million,

(e) LK told the Respondent they were planning to retire, did not have detailed knowledge of financial markets, and planned to rely on him for investment advice and recommendations,

(f) The Respondent was responsible for the accounts of LK and JK,

(g) On April 16, 2013, he became registered as a portfolio manager, but none of his accounts were set up as managed or discretionary accounts,

(h) The Respondent opened 12 accounts in July, 2013, for LK and JK, all of which had new client account forms, ("NCAFs") with the following investment objectives: 0% income/ 75% growth/ 25% speculative, and the following risk tolerance parameters: 0% low/75% medium/25% high. In the NCAFs, their investment knowledge was stated to be "fair",

(i) The Respondent asked LK and JK in February 2014 to sign an updated NCAF form and a managed account agreement. In those forms, he had modified the investment objectives to allow him to undertake a more aggressive trading strategy,

(j) LK and JK signed the forms without realizing the objectives and risk tolerance had increased, and

(k) LK and JK had no trading experience with options and short selling.

As regards recommendations that were not suitable for LK and JK

(l) The Respondent focused trading in their accounts on frequent transactions in high-risk securities and employed speculative short selling strategies,

(m) The Respondent undertook an investment strategy not designed for clients entering into their retirement years, such as engaging in numerous trades in penny stocks, day trading and short sales, which was not consistent with the personal circumstances of LK and JK including their expressed intentions with respect to retirement,

(n) In the 12-month period of July 2013 to July 2014, the accounts contained 11% lower risk, 19% medium risk and 70% high risk classified securities, and

(o) During the same period, the accounts lost approximately $125,000, or 11% of the clients' portfolio and during the same period, the S&P TSX Composite Index increased by approximately 22%.

As regards engaging in discretionary trading for LK and JK

(p) In December 2013, Wolverton compliance personnel expressed concerns about discretionary trading in the accounts of LK and JK, and imposed a restriction limiting new positions,

(q) As a result, the Respondent agreed to set up the accounts as managed accounts but despite a process being undertaken, managed accounts were not established,

(r) Between July 23, 2013 and June 6, 2014 the Respondent conducted 585 trades in the accounts, but prior to March 10, 2014 made no notes evidencing client approval for trades,

(s) In February, 2014 Wolverton notified the Respondent of evidence of executed trades without prior client consent in the LK and JK accounts and required all new trades be approved by his supervisor with evidence of client consent,

(t) Of the 159 trades that occurred after March 10, 2014, the Respondent provided notes evidencing only 19 telephone conversations with LK and JK,

(u) Many of the trades executed by the Respondent in the accounts of LK and JK occurred without prior confirmation with the clients of the details of the same,

(v) The Respondent did not obtain the written authorization of LK and JK to conduct discretionary trading in their accounts,

(w) Wolverton did not designate the accounts of LK and JK as discretionary,

(x) At no material times did the Respondent have the authority to conduct discretionary trades in any client accounts, and

(y) The Clients sustained varying degrees of losses in their accounts.

As regards failure to know client SA:

(z) SA was the client of the Respondent at his previous firm, and transferred her account to Wolverton when he joined it in January, 2012,

(aa) In January 2012 SA was age 49, single and employed as a computer programmer who was seeking secure investments with respect to her eventual retirement,

(bb) In the NCAFs dated January 26, 2012, it was stated she opened three accounts, one an RRSP, one a TFSA, and a Cash account. It showed her investment experience as "fair", and

(cc) The cash account had stated investment objectives of 0% income/40% growth/60% speculative and risk tolerance parameters of 0% low/40% medium/60% high.

As to recommendations that were not suitable for SA:

(dd) The Respondent pursued an aggressive investment strategy involving a high degree of risk to her account, and which Choy concluded was too aggressive for SA,

(ee) The Respondent focused trading in her accounts on frequent trades in high-risk securities in the energy and materials sectors,

(ff) Between February 2012 and February 2014, 100% of the holdings in her account were in high-risk securities, and approximately 75% of the account holdings were concentrated in the energy and materials sectors, and

(gg) Between February 2012 and February 2014, she lost approximately $41,000, or 38.6% of her portfolio and during the same period, the S&P TSX Composite Index increased by 19.79%.

As regards engaging in discretionary trading for SA

(hh) In March, 2014, shortly after SA closed her RRSP and TFSA accounts, a Wolverton internal compliance review found evidence that the Respondent had engaged in discretionary trading in SA's accounts,

(ii) The Respondent was fined and ordered to rewrite the Conduct and Practices Handbook examination,

(jj) On April 8, 2014, the Respondent agreed in writing to Wolverton that discretionary trades would not occur in any account without a signed and approved managed agreement in place,

(kk) Between February, 2012 email and February 28, 2014 the Respondent conducted 109 trades in SA's accounts, but made no notes evidencing her approval for the same,

(ll) During the material times, the Respondent executed several trades in SA's account, without confirming the details of the trades prior to their execution, and

(mm) The Respondent did not obtain SA's written authorization for discretionary trading, and Wolverton did not designate her accounts as discretionary.

¶ 18 This Hearing Panel then made the following findings as regards the contraventions alleged:

(a) The Respondent failed to know the Clients, all of whom had limited investment knowledge,

(b) The Respondent failed to use due diligence to ensure that his recommendations were suitable for the clients when he pursued an aggressive investment strategy which involved the pursuit of many high-risk, speculative securities concentrated primarily in the energy and materials sectors,

(c) The Respondent engaged in discretionary trading in the accounts of the clients without first having those accounts approved and accepted as discretionary accounts.

PENALTY HEARING

¶ 19 At the outset of the Penalty Hearing, Enforcement Counsel submitted two affidavits, the first of which documented the communications with the Respondent pertaining to the setting of a hearing date for Penalty to the email address the Respondent used throughout the proceedings.

¶ 20 One exhibit attached to the first affidavit evidenced the Respondent's response (from the same email address) that conveyed strong disagreement with the liability decision and his intention to appeal the same.

¶ 21 Another exhibit revealed that, when asked for compatible dates in January for the Penalty hearing, the Respondent replied that he would be out of the country until March 5, 2017. The affidavit showed that, despite being provided with a copy of the Penalty submissions and asked for confirmation of receipt of it and whether he would attend the hearing, the Respondent made no further responses thereafter.

¶ 22 This Hearing Panel was satisfied that the Respondent was aware of the date and time this Penalty hearing was to take place, not only by reason of the communications documented in the affidavit, but also since notice of this proceeding was published on IIROC's website. Out of an abundance of caution, this Hearing Panel delayed the start of the penalty hearing for an additional 30 minutes, after which, in conformity with the Rules of Practice and Procedure, it directed Enforcement Counsel to proceed in the absence of the Respondent.

¶ 23 Enforcement Counsel submitted that the appropriate monetary penalty should be a global fine of $120,000.00 and payment of $25,000 of IIROC's costs. IIROC also sought a suspension for 2 years, a condition that if the Respondent in future were to become re-registered, he must successfully rewrite the Conduct and Practices Handbook ("CPH") examination, and be subject to strict supervision for the first 18 months upon re-entry to the investment industry.

¶ 24 Enforcement Counsel advised that intentionally, he did not seek an order for disgorgement of profit with respect to commissions, because of the complexity of calculating the Respondent's actual profit with respect to commissions. However, he confirmed that this aspect had been factored into the determination by IIROC of the appropriate global monetary penalty.

¶ 25 Enforcement Counsel also referenced a Bill of Costs attached to the second affidavit filed in the proceedings which contained a breakdown of the costs incurred by IIROC in the conduct of this matter, which stood in the total sum of $145,720.00.

¶ 26 In support of its submissions, IIROC referred to IIROC Dealer Member Rules 20.30 - 20.34, the Dealer Member Disciplinary Sanction Guidelines (the "Guidelines") and to certain case authorities, including *Biduk (Re), 2013* LNIIROC 47, *Crandall (Re),* 2016 LNIIROC 37, *Floyd (Re),* 2013 LNIIROC 27, *Gareau (Re),* 2011 LNIIROC 72, *Harding (Re),* 2011 LNIIROC 65, *Jones (Re),* 2015 LNIIROC 5, *Matthews (Re),* 2015 LNIIROC 2, *Opaleke (Re),* 2015 LNIIROC 10, and *Renaud (Re),* 2016 LNIIROC 20.

¶ 27 IIROC Dealer Member Rule 20.33(2) specifically states as follows:

> *(2) Pursuant to subsection (1), a Hearing Panel may impose any one or more of the following penalties upon the Approved Person:*
>
> *(a) A reprimand*
> *(b) A fine not exceeding the greater of:*
>
> *(i) $1,000,000 per contravention; and*
>
> *(ii) An amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention*
>
> *(c) suspension of approval for any period of time and upon any conditions or terms;*
> *(d) terms and conditions of continued approval;*
> *(e) prohibition of approval in any capacity for any period of time;*
> *(f) termination of the rights and privileges of approval;*
> *(g) revocation of approval;*
> *(h) a permanent bar from approval with IIROC; or*
> *(i) any other fit remedy or penalty.*

¶ 28 This Hearing Panel reviewed the Guidelines in the IIROC submission, which are intended to assist and provide a framework to guide the exercise of discretion in determining a penalty, or penalties that meet the general sanctioning objectives.

¶ 29 The decision in *Re Gareau* at paragraph 12 contains a useful discussion of the purpose and application of the Disciplinary Sanction Guidelines as follows:

> *"The publication of sanction guidelines is an approach that has been adopted by other regulatory bodies. The goal is that hearing panels treat such guidelines as indicative of industry expectations and as relevant to a penalty determination, although they are neither exhaustive nor determinative. The guidelines do not prescribe specific results but set out factors that panels should take into account in determining penalties. The guidelines are careful to preserve the individualization of sanctions and not suggest a blanket approach. In part 2 of the Sanction Guidelines at page 8 it states:*
>
> *Sanctions should be based on the circumstances of the particular misconduct by a Respondent with an*

aim at general deterrence.

Emphasis is placed on investor protection and market integrity. The guidelines say:

Registrants who choose to act in ways that threaten the integrity of the capital markets must have the expectation that they will be held accountable through enforcement action by regulators.

Thus in addition to the individual circumstances of a Registrant who is subject to sanctions, there is an overall public policy goal and objective that must be taken into account by panels when they are fashioning disciplinary sanctions for infractions of IIROC's regulations and by-laws. The balancing of these two interests underscores the very difficult tasks that a panel, such as the present one, must undertake."

¶ 30 This Hearing Panel then reviewed the key considerations that panels are asked in the Guidelines to take into account in determining sanctions. These are now considered in turn.

Harmed Clients, Employer and/or the Securities Market

¶ 31 The Respondent's conduct caused significant harm to his clients. He purchased unsuitable securities that were not consistent with the clients' investment objectives and tolerance for risk. The result was that the clients were exposed to significant risk given their ages and long-term objectives.

¶ 32 As was stated by the hearing panel in *Re Gareau* at paragraph 15:

"The core duty and responsibility of an investment advisor is to make suitable recommendations in accordance with the clients' objectives and risk factors, and to properly obtain instructions before implementing trades. ***Where almost total reliance is placed on the investment advisor, as it was in the present case, the responsibility to make suitable investments is heightened."*** *(*emphasis added*)*

¶ 33 This Hearing Panel concluded that the Respondent's conduct caused significant harm to these clients by engaging in an aggressive trading strategy that was not consistent with their investment objectives and tolerance for risk having regard to their ages and long term retirement objectives.

Blameworthiness

¶ 34 The Respondent's actions although not fraudulent, were high-handed and reckless, and repeated over an extended period of time. The Respondent did not accept the contention that his trades were unsuitable and appears to steadfastly maintain his denial of wrongful or even inappropriate conduct to the present date.

Degree of Participation

¶ 35 The Respondent was the direct perpetrator solely responsible for the client losses. In the view of this Hearing Panel, the fact that others at Wolverton may have known about his aggressive strategy or unsuitable trades does not relieve the Respondent from responsibility for his misconduct.

Prior Disciplinary Record

¶ 36 The Respondent has no prior disciplinary history with IIROC.

Acceptance of Responsibility, Acknowledgment of Misconduct and Remorse

¶ 37 The Respondent has not acknowledged his wrongdoing. He has accordingly refused to accept responsibility for or acknowledge any misconduct on his part. Apart from expressing regret that clients sustained losses on his trading strategy, he has expressed no remorse for his misconduct.

Credit for Cooperation

¶ 38 The Respondent did not self-identify a breach of the rules or report any infractions, however, there was no evidence to suggest that the Respondent was uncooperative.

Voluntary Rehabilitative Efforts

¶ 39 While the Respondent might have undertaken rehabilitative efforts at some point before the Liability and Penalty hearings to demonstrate his preparedness to accept re-education, there was no indication that he has done so.

Planning and Organization

¶ 40 The actions of the Respondent were not a rash or temporary lapse of judgment. He made numerous transactions and they were part of a deliberate, organized investment strategy. However, evidence was presented from LK that the Respondent also attempted to conceal his misconduct. This was unlike the conduct of the respondent in *Re Gareau*, (supra). In the view of this Hearing Panel, such conduct indicated the Respondent might be aware that his activities, if complained of, might well result in restriction of his trading activity or punishment. As such, it is an aggravating factor.

Multiple Incidents of Misconduct Over an Extended Period of Time

¶ 41 The Respondent planned and organized an investment strategy for clients that involved multiple transactions over an extended period of time. The wrongful conduct was not a random or isolated incident. The unsuitable recommendations occurred over a period of time as a result of an aggressive investment strategy that was planned over a long interval. As well, frequent discretionary trades occurred. The Respondent also failed to respond appropriately to warnings to restrain his behavior.

Vulnerability of Victim

¶ 42 The affected clients were all unsophisticated investors. They were trusting and completely reliant upon the Respondent's advice. Given the financial circumstances of each, they required conservative investment strategies and objectives consistent with low risk.

Failure to Cooperate with the Investigation

¶ 43 There is no evidence to suggest that the Respondent did not cooperate with the investigation by IIROC.

Significant Economic Loss to the Client and/or Dealer Member Firm

¶ 44 The Respondent's actions caused significant economic loss to his clients that could have been avoided, had he adhered to their wishes and expectations, or if he had properly responded to the supervisory efforts of his employer.

Review of Case Authorities

¶ 45 In the matter of *Re Mathews*, (*supra*), the contraventions there also related to unsuitable recommendations, discretionary trading and excessive trading. In determining the sanctions, the key factors taken into account by the hearing panel there were the vulnerability of the clients, the pattern of misconduct over a period of time, financial loss by clients due to misconduct and the absence of remorse. The sanctions imposed were: a global fine of $200,000, a 5-year prohibition on the re-registration with IIROC and costs of $20,000.

¶ 46 In the matter of *Re Harding*, (supra) the client was a 70-year-old widow and the contraventions concerned unsuitable recommendations in accounts where the risk tolerance had been overstated and unauthorized trading when the client was away. The sanctions imposed were a fine in the amount of $125,000, disgorgement in the amount of $17,861, a 5-year suspension and the costs in the amount of $25,000.

¶ 47 In the matter of *Re Floyd*, (supra), the hearing panel imposed a fine of $100,000, ordered that Floyd must disgorge the profits of $5860 and pay costs of $15,000. In addition, the hearing panel ordered a permanent ban.

¶ 48 This Hearing Panel observed some particular similarities between the fact pattern in *Re Floyd* and the case at hand. There, the hearing panel concluded that the respondent Floyd was the direct perpetrator of the unsuitable recommendations and discretionary trades. Floyd also attempted to deflect responsibility for the losses although his actions were more frequent and egregious than occurred in the case at hand. As well, Floyd

expressed no regret for his wrongdoing and instead attempted to justify his conduct as reasonable. This Hearing Panel also considered the following comments of the hearing panel were apposite *[* (supra) at para 43]:

> *"(his) steadfast refusal to face the reality of his failed conduct explains his continued grim determination to disavow responsibility and remorse for the significant harm to the client.*

And at para 45:

> *Nor in this Panel's view can Floyd seek refuge in McDonald's or Union's passive acquiescence in his aggressive trading activity which in the circumstances Floyd was, or should have been, aware was unsuitable. Floyd's planning and organization were deliberate and willful, especially as regards the discretionary trading which is a further aggravating circumstance.*

And at para 47:

> *"This Panel observed that …, Floyd displayed a singular lack of insight as to the impropriety of his conduct or the significance of its impact upon his client and the integrity of the securities industry. During the proceedings, this Panel noted occasions on which Floyd was careless with the truth. If Floyd has successfully deceived himself to this date that he is not at fault for the consequences to Stokes, this Panel has reason to suspect he will continue to deceive himself, his clients, and his supervisors. Such a future risk of harm extends to the public and the securities industry as a whole…. "*

And at para 49:

> *"This Panel is gravely concerned that Floyd is and will be continuously ungovernable. It has serious doubts that his professional attitude can be appropriately adjusted with strong and continuous encouragement and supervision to instill in him the importance of always observing the language and the spirit of the Member Dealers Rules."*

¶ 49 In *Matthews (Re*), (supra) the hearing panel ordered the Respondent pay a fine of $200,000; pay costs of $20,000; and be prohibited from approval by IIROC in any capacity for a period of 5 years. This Hearing Panel agreed with the comment made at the end of paragraph 19 which stated:

> "*Respondents have the right not to appear at hearings. By choosing not to appear at either hearing in this case, the Respondent leaves the panel with no alternative but to conclude that the Respondent continues to stand by the positions he took throughout the proceedings -- which deny any responsibility or wrongdoing and show no remorse for the misconduct nor any attempt to remedy it."*

¶ 50 After considering all the foregoing, this Hearing Panel adjourned to deliberate. It concluded that a global monetary penalty for all the misconduct pertaining to the three clients affected was appropriate and accepted that the sum of $120,000 would properly recognize the general principal of deterrence.

¶ 51 However, this Hearing Panel then spent time considering the issue of the appropriate period of suspension in this case, particularly having regard to the comments made by the hearing panel in *Re Floyd.* (supra).

¶ 52 In this instance, the Respondent's fixed conviction about the lack of merit of any of the allegations against him and his inability to have grasped the effect of his conduct upon his clients, even in the face of their sworn testimony, left a strong impact on this Hearing Panel. It appears at that even at the date of the Penalty Hearing, the Respondent does not understand that his aggressive trading strategy was inappropriate and unsuitable.

¶ 53 This Hearing Panel remained concerned about whether, after only a two-year period, his current professional attitude could be appropriately adjusted with strong and continuous supervision to instill in him the importance of always observing the language and the spirit of the Dealer Member Rules.

¶ 54 On the other hand, this Hearing Panel recognized that this Respondent had no prior disciplinary record and did submit substantially to the IIROC investigation and process. Moreover, his conduct was not fraudulent

and he did not set out to harm his clients, while extracting a benefit for himself. It further recognized that it does not have the capability of forecasting with accuracy what epiphanies this Respondent might experience during the period of a two-year suspension.

¶ 55 As a result, and taking into account as well the global amount of the monetary penalty, and the amount of costs claimed, this Hearing Panel ultimately concluded in all the circumstances, the period of two years as a suspension from trading activities was an appropriate penalty based on the facts of this case.

¶ 56 This Hearing Panel agreed with the remaining sanctions proposed by Enforcement Counsel, with one stipulation, which was to order that the rewrite of the qualifying examinations by the Respondent occur *at the end of the suspension period* if the Respondent wished to return to the industry. This additional feature was considered necessary to ensure the Respondent's requalification pertained to the then current contents of the qualifying examinations.

¶ 57 In summary, this Hearing Panel orders that the Respondent:

(a) pay a fine of $120,000;
(b) be suspended from engaging in the securities industry for a period of 2 years;
(c) be ineligible for reinstatement until he has rewritten and passed the CPH examination following the conclusion of the suspension period;
(d) be subject to strict supervision for the first 18 months upon re-entry to the investment industry; and
(e) pay costs of $25,000 in payment of IIROC costs incurred in these proceedings.

Dated at Calgary this 4th day of April, 2017

Shelley L. Miller

Kathleen Jost

Don Milligan