

Re Dickson

IN THE MATTER OF:

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

and

Gordon Bruce Dickson

2014 IIROC 12

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

Heard: February 27, 2014 in Vancouver, BC
Decision: March 10, 2014

Hearing Panel:

Catharine Esson, Chair, David Pearson and James Ross

Appearances:

Paul Smith, Enforcement Counsel

DECISION (SETTLEMENT AGREEMENT)

¶ 1 At a hearing on February 27, 2014, the panel was asked to accept a Settlement Agreement negotiated between the Staff of IIROC and Gordon Bruce Dickson (the “Settlement Agreement”). Mr. Dickson, who works outside the Lower Mainland, did not attend the hearing. We were advised that he had been in ongoing communication with Enforcement Counsel, was aware of the hearing and had advised Enforcement Counsel he did not intend to attend the hearing. We therefore proceeded in his absence. At the end of the hearing, we advised Enforcement Counsel that we accepted the Settlement Agreement and would issue reasons at a later date. These are those reasons.

¶ 2 A copy of the Settlement Agreement is attached to this Decision. It includes the following:

- a. The facts which form the basis of the settlement;
- b. Mr. Dickson’s acknowledgement that, between April, 2007 and October, 2008, Mr. Dickson, as Branch Manager, failed to adequately supervise certain Registered Representatives and client accounts at his branch, contrary to IIROC Dealer Member Rules 1300.2 and 2500 [prior to June 2008 IDA Regulation 1300.2 and IDA Policy 2.1];
- c. Mr. Dickson’s agreement to a prohibition from registration approval as a Branch Manager and from acting in any supervisory capacity with a Dealer Member Firm for a period of five years; and
- d. Mr. Dickson’s agreement that he will pay a fine of \$60,000 to IIROC.

¶ 3 The parties entered into an earlier Settlement Agreement which was rejected by a different IIROC Hearing Panel. We reviewed the Decision of the earlier Hearing Panel. We are not bound by that Decision but note that the parties revised the terms of their agreement substantially to try to address the concerns of the earlier Hearing Panel.

¶ 4 Our jurisdiction in this hearing is to accept or reject the Settlement Agreement. We agree with the following characterization of the role of a Hearing Panel considering a settlement agreement from *Re: Deutsche Bank Securities Ltd.* [2013] IIROC 7 at paragraph 9:

It is clear from jurisprudence emanating from the courts and from Hearing Panels of IIROC, Investment Dealers Association and the Mutual Fund Dealers Association, 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. We cite from the recent decision of the Hearing Panel in *Re CIBC World Markets Inc.*, [2011] IIROC No. 38:

13 Finally, hearing panels will not lightly interfere with a negotiated settlement. As was said in *Re Milewski*, [1999] IDACD No. 17,

... a District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

¶ 5 Because the Settlement Agreement is the product of a process of negotiation and compromise between the parties, it does not contain all of the detail that one would expect after a full hearing. This should not preclude us from accepting it, as it contains sufficient facts to allow us to determine if the agreed upon sanction is within a reasonable range.

¶ 6 The Settlement Agreement concerns a substantial failure of a branch manager to supervise two registered representatives. There is no suggestion in the facts agreed to that the failure was intentional or that Mr. Dickson was enriched by it. Mr. Dickson acknowledged his supervisory failure.

¶ 7 With respect to the first registered representative, the supervisory failure related to suitability issues in two client accounts, both of which resulted in significant losses to vulnerable clients. With respect to the second registered representative (who were in fact a team of two registered representatives), the supervisory failure related to an option strategy the registered representatives recommended to their clients generally. While Mr. Dickson had supervisory responsibility for this team, he was just one of a number of supervisors and senior managers who were aware of and monitoring the risk associated with the option strategy. His firm was also sanctioned by IIROC in connection with this.

¶ 8 We have considered the authorities provided to us, including *Re: Floyd and McDonald* 2013 IIROC 27, a recent decision of an IIROC Panel in Alberta following a contested hearing. Having regard to the authorities and the particular facts agreed to in this case, we conclude that the agreed upon sanction was reasonable. We therefore approve the Settlement Agreement.

Dated at Vancouver, British Columbia] this 10th day of March, 2014.

Catharine Esson, Chair

David Pearson

James Ross

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and Gordon Bruce Dickson (the “Respondent”), consent and agree to the settlement of this matter by way of this settlement agreement (“the Settlement Agreement”).
2. The Enforcement Department of IIROC has conducted an investigation (“the Investigation”) into the

conduct of the Respondent.

3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.
4. The Respondent is subject to the jurisdiction of IIROC.
5. 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

6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
7. The Respondent admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, IDA By-Laws, Regulations or Policies:

Between April 2007 and October 2008, the Respondent, as a Branch Manager failed to adequately supervise certain Registered Representatives and client accounts at his branch contrary to IIROC Dealer Member Rules 1300.2 and 2500 [prior to June 2008 IDA Regulation 1300.2 and IDA Policy 2].

8. Staff and the Respondent agree to the following terms of settlement:
 - a) The Respondent’s is prohibited from any registration approval as a Branch Manager or from acting in any supervisory capacity with a Dealer Member Firm for a period of five years; and
 - b) The Respondent must pay a fine of \$60,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

9. 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.

(ii) Factual Background

Overview

10. These facts relate to the failure of a branch manager to adequately supervise registered representatives (“RRs”) at a branch office of Canaccord Capital Corporation¹ (“**Canaccord**”) in Kelowna, British Columbia (**the “Kelowna Branch”**). One RR made recommendations and structured portfolios for two clients that contained significantly greater risk than was suitable for those clients. Two other RRs who worked as partners recommended an index option strategy to their clients including some for whom the strategy was unsuitable. Those two RRs also failed to adhere to certain conditions that were attached to the strategy.

The Respondent

11. The Respondent was the branch manager of the Kelowna Branch from April 2002 until March 2011. He had been registered since 1975 and had been a branch manager for four years at another member firm prior to joining Canaccord in 2002. He left Canaccord for another dealer member firm in August 2011 and is currently an RR at that firm but is not responsible for any supervision.

¹ Now known as Canaccord Genuity Corp.

12. During the relevant period, the Respondent supervised approximately 12 registered representatives who were working at the Kelowna Branch.

The RRs

13. Melaney Phillips (**“Phillips”**) was one of the RRs working at the Kelowna Branch where she was responsible for client accounts. Phillips had been registered since 1997 and joined Canaccord at the Kelowna Branch in January 2006.
14. Two other RRs at the Kelowna Branch who worked together and shared responsibility for the same client accounts, were Traian Moldovan (**“Moldovan”**), who was first registered in 1996, and Robert Bruce Holmes (**“Holmes”**), who was first registered in 1995.

Supervision of Phillips

15. SF and DW were two separate clients who opened accounts at Canaccord (**the “SF Accounts” and the “DW Accounts”**) with Phillips as their RR.
16. The New Client Application Form (**“NCAF”**) for the SF Accounts indicated that SF was 83 years old; had an estimated net worth of \$432,000, which included fixed assets; and had Investment Objectives of 50% Income / Low-Medium Risk and 50% Moderate Growth / Medium Risk.
17. SF deposited approximately \$257,000 to the SF Accounts when they were opened in January, 2006. This amount was initially invested primarily in income trusts.
18. In March and April, 2007, Phillips began selling the income trusts and purchasing higher risk junior exploration companies and other companies with a limited history of earnings.
19. In June 2007, SF deposited an additional approximately \$411,000 to the SF Accounts. Virtually all of that amount was used to purchase greater amounts of the same or similar higher risk junior exploration companies and other companies with a limited history of earnings.
20. These purchases exposed the SF Accounts to risks beyond that which a supervisor would have expected in the SF Accounts based on the NCAF.
21. The NCAF for the DW Accounts indicated that:
 - a) DW was a 56 year old (born in 1950) health care worker whose annual income from all sources was approximately \$20,000;
 - b) DW’s Investment Objectives were 80% Moderate Growth / Medium Risk and 20% Short Term Trading / Medium-High Risk;
 - c) DW had no experience in common shares; and
 - d) DW’s net worth was \$475,000, of which \$390,000 were fixed assets.
22. DW made total deposits of approximately \$138,000 to the DW Accounts when they were opened in April, 2007.
23. Starting in April 2007, in the DW Accounts, Phillips, almost exclusively, purchased junior higher risk exploration companies, or other companies with a limited history of earnings and created portfolios which exposed the DW Accounts to risks beyond that which a supervisor have expected in the DW Accounts based on the NCAF.
24. All of the transactions in the SF Accounts or the DW Accounts appeared on a report which was printed daily (the **“Daily Commission Report”**) and was available for the Respondent to review in order to detect suitability concerns in client accounts. It included transaction details such as; trade date, settlement date, name of security, quantity of shares, price of shares, and commission charged. It also included client information such as client name, account type, and account number as well as a suitability code for the account which gave the client’s age and described the account objectives.

25. Although the Respondent advised IIROC that he used the Daily Commission Report as his primary means of reviewing trading to detect suitability concerns, he relied too much on the judgment of the RR and failed to take sufficient action to ensure Phillips' recommendations were suitable for her clients. He didn't detect the purchases in the SF or DW Accounts as potentially unsuitable or sufficiently question Phillips about the purchases.
26. Losses in the SF Accounts were approximately \$143,000 and losses in the DW Accounts were approximately \$70,000 or more than 50%.
27. Phillips resigned from Canaccord in August 2008. In 2011, an IIROC Hearing Panel imposed sanctions on Phillips after it found her recommendations to SF and DW were unsuitable.

The M&H Options Strategy

28. In 2005 Moldovan and Holmes were both working at another member firm where they operated an option strategy which entailed writing - also known as selling - short term uncovered calls and uncovered puts for stock and commodity indices (**the "Strategy"**).
29. In the fall of 2005 Moldovan and Holmes transferred to Canaccord where they continued the Strategy with many of the same clients who followed them to Canaccord. The Strategy was recommended almost universally across their client base and it generated virtually all of their revenue.
30. Generally, the Strategy operated as follows:
 - A client deposited funds into their margin account.
 - In a combination trade an equal number of uncovered calls and uncovered puts were written for the same index. Both the calls and puts expired in two months.
 - The following month an equal number of uncovered calls and uncovered puts were written for the same index. Both the puts and calls expired in two months.
 - In each consecutive month, calls and puts would expire and new uncovered calls and uncovered puts were written.
31. The ideal outcome of the Strategy was that at expiration the underlying index would be at a level below the price of the written call, but above the price of the written put. Accordingly, both the call and put options would expire out of the money – worthless - and the client would retain all of the premiums that were generated from writing the contracts.
32. Another potential outcome of the Strategy was that at expiration the index was at a level either above the written call or below the written put, resulting in either the written call or written put being in the money. Therefore, clients likely incurred a loss on the position.
33. To address this scenario, Moldovan and Holmes bought back the in-the-money position and then wrote new uncovered calls and uncovered puts that would attempt to recapture the cost of buying back the in-the-money position at expiration. This process often narrowed the difference between the exercise prices of the uncovered calls and uncovered puts.
34. Alternatively, rather than writing new index option contracts a client could have simply bought back the in-the-money position and realized a loss.
35. Canaccord's compliance staff expressed concern over the risks associated with the Strategy. To allay these concerns, a condition was attached to the Strategy. To contain losses in the event that an index dropped below the exercise price of a written put, Moldovan and Holmes were required to purchase offsetting long puts at a level further out of the money than the main position. These became known as the "protective puts". The requirement to purchase protective puts was written into the employment contract for Moldovan and Holmes.
36. The Respondent knew of the requirement to purchase protective puts. The Respondent also knew that after a period of time and at least by the summer of 2008 Moldovan and Holmes had stopped purchasing

the protective puts but he was also aware that an email had been sent to clients advising them that the protective puts were no longer being purchased.

37. Although he believes they were aware, the Respondent could not produce evidence to indicate that he advised Canaccord's compliance department that the protective puts were not being purchased.
38. The Strategy was profitable for a number of years while markets were less volatile.
39. By the summer of 2008, however, market volatility made the Strategy more risky. Clients began losing money as they bought back in-the-money positions and wrote new contracts to continue with the Strategy.
40. In September and October 2008 the market volatility associated with the global financial crisis of 2008 increased significantly. In these months, Moldovan and Holmes continued the Strategy and continued to write new contracts to recapture the losses rather than just buy back the in-the-money positions and realize existing losses.
41. As market volatility worsened the written put options continued to expire in-the-money and many clients could not withstand the losses they had incurred because they had no further margin available to purchase new contracts and continue with the Strategy.
42. Although the Respondent was the branch manager for Moldovan and Holmes, he was not responsible for them bringing the Strategy to Canaccord. They were specifically recruited to Canaccord by others with knowledge that they would be executing the Strategy. The Strategy required level 4 option approval which was granted by Canaccord's Head Office, not the Respondent. At the critical time in the fall of 2008, Dickson was just one of a number of Canaccord supervisors and senior managers monitoring the risk associated with the Strategy. Dickson did not have singular authority over the future of the Strategy.
43. Moldovan and Holmes are each Respondents in an ongoing IIROC disciplinary proceeding for which they will be sanctioned.
44. Canaccord has been sanctioned by IIROC for its failure to supervise the Strategy.
45. Each of the NCAFs for 25 accounts that IIROC reviewed indicated that the clients accepted the risks associated with 100% short term trading or 100% speculative high risk trading. Each of the 25 accounts IIROC reviewed were separately compensated by Canaccord.

IV. TERMS OF SETTLEMENT

46. 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.
47. The Settlement Agreement is subject to acceptance by the Hearing Panel.
48. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
49. 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.
50. 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.
51. 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.
52. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

53. 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.
54. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
55. 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 Kelowna, British Columbia, this 14th day of February, 2014.

WITNESS

“Gordon Bruce Dickson”

GORDON BRUCE DICKSON

AGREED TO by IIROC Staff at Vancouver, British Columbia, this 26th day of February, 2014.

“Shannon Mathieson”

WITNESS

“Paul Smith”

PAUL SMITH

Enforcement Counsel on behalf of IIROC Staff

ACCEPTED at Vancouver in the Province of British Columbia, this 27th day of February, 2014, by the following Hearing Panel:

Per: “Catherine Esson”

Catherine Esson, Chair

Per: “David Pearson”

David Pearson

Per: “James Ross”

James Ross

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