

Re Rotstein

IN THE MATTER OF:

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

and

Mark Steven Rotstein

2014 IIROC 34

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

Heard: July 3, 2014

Decision: July 21, 2014

Hearing Panel:

Hon. R. Jeffrey Flinn, Q.C. Chair, David W. Kerr, and Guenther W.K. Kleberg

Appearances:

Susan Kushneryck, Enforcement Counsel

Philip Epstein and Philip Anisman, Counsel for the Respondent

SETTLEMENT HEARING DECISION AND REASONS

¶ 1 The Hearing panel constituted under the Rules of the Investment Industry Regulatory Organization of Canada (IIROC) was to determine whether a Settlement Agreement entered into between the parties should be accepted in accordance with paragraph 20.36 of Schedule B.1 Rule 1. of IIROC (the Dealer Member Rules). A copy of the Settlement Agreement is attached as Exhibit # 1. The Panel received a brief and supporting material and heard submissions from Counsel for IIROC and heard the submissions of Mr. Anisman of Counsel for the Respondent. Both submissions advocated acceptance of the Settlement Agreement.

¶ 2 It was common ground that the Hearing Panel should accept the Settlement Agreement as fair and reasonable in all of the circumstances and that it serves the goals of protecting investors and the capital markets.

¶ 3 The facts upon which the settlement is based are set forth in the Settlement Agreement and the violation of the Rules or the contravention is set out in paragraph 9. which reads as follows;

“While subject to close supervision imposed under a settlement agreement accepted by an IIROC Hearing Panel in April 2012, Rotstein entered a trade for a client in June 2012 without the client's knowledge or authorization. In doing so, Rotstein failed to comply with a basic requirement of IIROC's Dealer Member Rules.”

¶ 4 Rotstein had been employed as a Registered Representative of RBC Dominion Securities from about February 1997 to April 5th 2011 when he was terminated for signing clients' names on accounts and investment documents. Full detail is found in the Reasons for Decision of the Hearing Panel heard April 18th 2012 found at 2012 IIROC 27 and reproduced at Tab 3 in the Brief of Enforcement Counsel. Subsequently he reregistered with Scotia Capital after the re-registration was approved subject to strict terms and conditions by IIROC Ontario District Council Registration Subcommittee which conditions were extended by order of the Hearing Panel on April 18th 2012. These conditions included sanctions that Rotstein serve a suspension of twelve months to be served in six month intervals, a fine of \$250,000.00 and continuation of the other terms for a

further period of three years.

Issue for the Hearing Panel and the Law

¶ 5 IIROC Dealer Member Rules deal with Settlement Hearings in Rules 20.35 to 20.40. The Rules permit a Hearing Panel to either accept or reject a settlement agreement. As stated both parties support acceptance of the Agreement here in issue on the grounds that it is fair and reasonable in all the circumstances. It follows that it should not be rejected unless unreasonable.

¶ 6 The Settlement Agreement sets forth the terms as follows;

- “a) Rotstein is prohibited from registration with IIROC for a period of eighteen months;
- b) Rotstein shall be subject to strict supervision for a period of two years in the event that he becomes registered with IIROC;
- c) Rotstein shall maintain written records of all client trading instructions in respect of all trades entered in client accounts during his two year period of strict supervision and those written records shall be reviewed by Rotstein’s supervisor as part of the requirements of strict supervision; and
- d) Rotstein’s written records shall be made available to IIROC staff on request for inspection over the two year period of strict supervision.

¶ 7 Respondent agrees to pay costs to IIROC in the sum of \$5,000. “

¶ 8 IIROC has in place "Dealer Member Disciplinary Sanction Guidelines" found at Tab 9 of the Enforcement Counsel's Brief. These Guidelines are stated to provide a framework for breach of the Dealer Member Rules and to help to determine an appropriate penalty for breach. Paragraph 3.7 of the Guidelines sets out considerations in assessing penalties “when a registrant executes a trade without the knowledge of his/her client”. Further the Guidelines in paragraph 3.9 suggest that "A prior disciplinary history may highlight a concern about individual or specific deterrence, an important objective of the disciplinary process and the need to impose progressively escalating sanctions on repeat offenders."

¶ 9 The Panel in this case finds aggravating factors. In the Settlement Agreement considered in the decision of April 12th 2012, Rotstein admitted that while at RBC Dominion Securities he had committed contraventions of the rules causing the Hearing Panel in that case to comment “the seriousness of the contraventions of the provisions of Rule 29.9...(were)..aggravated by the number of documents involved and the length of time over which the contraventions occurred (over a decade).”Further aggravation is the fact that the contravention in this case occurred within weeks of the settlement of the RBC case which case had been before IIROC since the autumn of 2011.

¶ 10 In mitigation there was one trade of little risk to the client and may have appeared to be for the client's benefit. The unauthorized trade was quickly reversed causing no loss to the client. Rotstein did not deny the occurrence and has in the Settlement Agreement admitted his responsibility for the unauthorized trade.

¶ 11 As was stated in the first Rotstein matter by the Hearing Panel (see 2012 IIROC 27) at par.19;

“...it is clear from the jurisprudence of the Courts and numerous hearing panels of IIROC that our role is not to decide whether we would have arrived at the same decision as that reached by the parties in the Settlement Agreement but rather to determine whether, in the particular circumstances of the case, the penalties are within a reasonable range of appropriateness with the overall objective of protecting the investing public and maintaining the integrity of the capital markets, the investment industry and IIROC’s processes as well as deterring similar conduct in the future by the Respondent and others. “

¶ 12 This view was supported by the settlement agreement cases cited by Counsel for IIROC albeit where there were different facts.

¶ 13 Taking into account all of the circumstances, the facts as agreed, the aggravating factors as well as the mitigating factors this Hearing Panel has agreed with the parties and their submissions that the penalties are

within the reasonable range of appropriateness, that the penalties are consistent with the sanction guidelines, and therefore the Settlement Agreement has been accepted by the Panel and the original copy of the Settlement Agreement Exhibit # 1 was executed by each member of the Hearing Panel on July 3rd 2014.

Dated at Toronto this 21 day of July 2014.

R. Jeffrey Flinn

David W. Kerr

Guenther W.K. Kleberg

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff (“Staff”) and the Respondent, Mark Steven Rotstein, 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”) into Rotstein’s conduct.
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 contravention of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

In or around June 2012 Rotstein entered a trade for a client without that client’s knowledge or authorization, contrary to IIROC Dealer Member Rule 29.1.

6. Staff and the Respondent agree to the following terms of settlement:
 - a. Rotstein is prohibited from registration with IIROC for a period of eighteen months;
 - b. Rotstein shall be subject to strict supervision for a period of two years in the event that he becomes registered with IIROC;
 - c. Rotstein shall maintain written records of any and all client trading instructions in respect of all trades entered in client accounts during his two year period of strict supervision and those written records shall be reviewed by Rotstein’s supervisor as part of the requirements of strict supervision; and
 - d. Rotstein’s written records shall be made available to IIROC staff on request for inspection over the two year period of strict supervision.
7. The Respondent agrees to pay costs to IIROC in the sum of \$5,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

8. 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

9. While subject to close supervision imposed under a settlement agreement accepted by an IIROC Hearing

Panel in April 2012, Rotstein entered a trade for a client in June 2012 without that client's knowledge or authorization. In doing so, Rotstein failed to comply with a basic requirement of IIROC's Dealer Member Rules.

The Respondent

10. Rotstein was registered as a Registered Representative, Options at RBC Dominion Securities Inc. from February 10, 1997, until April 5, 2011, when his employment was terminated for cause in connection with his signing client names on account and investment documents.
11. Rotstein applied for re-registration with Scotia Capital Inc. ("Scotia"). His re-registration was approved subject to strict terms and conditions by the IIROC Ontario District Council Registration Subcommittee in a decision dated July 21, 2011. Those terms and conditions were extended by an order of the IIROC Hearing Panel accepting a settlement agreement on April 18, 2012.
12. Rotstein was registered as a Registered Representative, Options at Scotia from July 2011 until July 12, 2012, when he resigned from Scotia at the firm's request as a result of his unauthorized trade in a client account.

Rotstein's Prior Disciplinary Matter

13. A Notice of Hearing was issued on October 19, 2011 naming Rotstein and his assistant concerning their practice of signing client names and passing those signatures off as the clients' own on account and investment related documents. Rotstein and his assistant agreed to a settlement with Staff and the settlement agreement was accepted by an IIROC Hearing Panel on April 18, 2012.
14. The settlement included the following sanctions for Rotstein: a suspension of his registration for a period of twelve months (to be served in two separate intervals of six consecutive months without interruption); a fine of \$250,000; and continuation of the strict terms and conditions on his registration for three years.

Unauthorized Trade

15. On June 12, 2012, Rotstein entered an order for \$60,000 of Ontario Savings Bonds for his client, DS. DS had been Rotstein's client for many years. This order was entered without her knowledge, approval or authorization.
16. DS learned of the order on her receipt of a confirmation notice in the mail. DS did not ratify the trade. DS did not want to make that investment because she was saving the cash for another purpose.
17. DS telephoned Rotstein on learning of the unauthorized trade, on or about June 18, 2012. Immediately after speaking with her, Rotstein cancelled the order and reported the call from DS to his branch manager at Scotia.
18. DS subsequently complained to Rotstein's branch manager. She noted that Rotstein indicated to her that he thought he had left her a voicemail message about the trade. DS denies receiving any such voicemail message, or any other communication from Rotstein regarding Ontario Savings Bonds prior to the trade.
19. DS is included on a list of clients for whom Rotstein instructed his assistant to purchase Ontario Savings Bonds. Rotstein admits that he never spoke with DS and never obtained her authorization for the trade.
20. As a result of Rotstein's unauthorized trade, Scotia suspended Rotstein from his employment on June 26, 2012. Rotstein did not resume active employment at Scotia at any time prior to his resignation on July 12, 2012.
21. Rotstein states that the order was intended to benefit DS and not for his personal gain.

IV. TERMS OF SETTLEMENT

22. 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.

23. The Settlement Agreement is subject to acceptance by the Hearing Panel.
24. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
25. 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.
26. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
27. 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.
28. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
29. 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.
30. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
31. 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 Toronto in the Province of Ontario, this 17th day of June, 2014.

“Sam Sopera”

Witness

“Mark Rotstein”

Mark Steven Rotstein

Respondent

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 17th day of June, 2014.

“Sharon Lloyd-Gyurkovics”

Sharon Lloyd-Gyurkovics

Witness

“Susan Kushneryk”

Susan Kushneryk

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

ACCEPTED at the City of Toronto in the Province of Ontario, this 3rd day of July, 2014, by the following Hearing Panel:

Per: “Jeffrey Flinn”

Jeffrey Flinn, Chair

Per: “David Kerr”

David Kerr

Per: “Guenther Kleberg”

Guenther Kleberg