

Re Connor

IN THE MATTER OF:

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

and

Robert Connor

2015 IIROC 43

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

Heard: November 2 and 3, 2015; in Toronto, Ontario
Oral Decision and Reasons: November 3, 2015
Written Reasons published: November 24, 2015

Hearing Panel:

Paul M. Moore, Q.C., Chair, Ron Smith and Peter Gribbin

Appearances:

Kathryn Andrews, Enforcement Counsel

Amanda Chapman, Respondent's Counsel

ORAL DECISION AND REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT

Background

¶ 1 This matter was commenced by Notice of Hearing dated May 4, 2015.

¶ 2 At a first appearance in May 2015, it was agreed that this matter would be heard on November 2, 3, 4, and 5. A schedule for disclosure of documents, exchange of witness lists, and willsays was agreed to. In addition, it was agreed that October 27, 2015 would be used to hear preliminary motions and to deal with any other procedural issues that might arise.

¶ 3 The panel was advised on October 20, 2015 that neither Staff nor the Respondent intended to bring any motions on October 27.

¶ 4 At the commencement of the hearing on November 2, counsel for the Respondent requested an adjournment for a few weeks because of a medical emergency suffered by the Respondent the previous evening and of which she had been advised only the morning of November 2.

¶ 5 Staff refused to consent to an adjournment. She submitted that both parties were prepared to proceed, that witnesses were available in Toronto to testify and that a short adjournment would be unlikely because of the difficult logistics for assembling witnesses and other persons in the near future. Furthermore, there could be no confidence regarding when the medical emergency would be over.

¶ 6 Respondent's counsel advised that she was informed that the Respondent had suffered a breakdown but that no medical certificate was yet available. She confirmed that she was prepared to proceed if an adjournment

was denied.

¶ 7 We decided to proceed with the hearing, with Staff putting in its case, and left open the possibility of an adjournment before or during the time when the Respondent's case was to be presented and after reviewing any medical certificate as to the nature and prognostication of the medical problem.

¶ 8 After Staff had examined its first witness, but before Respondent's counsel cross-examined the witness, there were a series of adjournments that culminated later in the day with Staff and Respondent's counsel advising that a Settlement Agreement had been agreed to, and requesting that the hearing be converted into a hearing to accept the Settlement Agreement by the panel, commencing on November 3.

Settlement Agreement

¶ 9 The parties signed a Settlement Agreement dated November 2, 2015 a copy of which is set out in the appendix to these reasons. In the Settlement Agreement the Respondent admits to the following contravention of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

- i) During the period between March 2011 and September 2012, the Respondent, Robert Connor, made unsuitable recommendations in a client's account, contrary to IIROC Dealer Member Rule 1300.1(q).
- ii) During the period between October 2010 and August 2012, Robert Connor compensated clients without his member firm's knowledge or consent, thereby engaging in conduct unbecoming a registrant or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1.
- iii) During the period between October 2010 and August 2012, Robert Connor made unauthorized trades in clients' accounts, thereby engaging in conduct unbecoming a registrant or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1.
- iv) During the period between October 2010 and August 2012, Robert Connor engaged in discretionary trading in client accounts, without the accounts having been accepted or approved as discretionary accounts, contrary to IIROC Dealer Member Rule 1300.4.

Facts

¶ 10 The facts are set out in Part 3 of the Settlement Agreement.

Agreed Penalty

¶ 11 Staff and the Respondent agree to:

- i) The payment by the Respondent of a fine in the amount of \$30,000;
- ii) A one year suspension from registration in any capacity;
- iii) That the Respondent re-write the CPH upon any re-registration; and
- iv) That the Respondent be under 12 months of close supervision upon any re-registration.

In addition the Respondent agrees to pay costs to IIROC of \$10,000.

Decision

¶ 12 We approved the Settlement agreement as being in the public interest and therefore we accepted it.

Reasons

¶ 13 The Respondent was a registered representative at Scotia Capital Inc., the Member firm from August 2010 to October 2012. From March 2011 until September 2012, he made a number of recommendations to a client to purchase high risk securities that were unsuitable for the client.

¶ 14 The Respondent compensated several clients for losses suffered in their accounts. He made most of the

compensation payments as a result of losses related to purchases of a particular security. He did not tell his Member firm about these payments at the time he made them.

¶ 15 The Respondent also made both unauthorized and discretionary trades in various client accounts.

¶ 16 The Respondent was a registrant from 1997 until 2012, and he has been out of the industry, and/or not a registrant, since that time.

¶ 17 The Respondent paid various clients a total of \$34,360, for the reasons given in the Settlement Agreement.

¶ 18 In addition, the Respondent paid his Member firm \$35,000 relating to client complaints about certain securities in their accounts.

¶ 19 The Respondent does not have any previous disciplinary history with IIROC.

¶ 20 The Respondent has been cooperative with this process and with IIROC, and has admitted responsibility for the client compensation, unauthorized trading, and discretionary trading referred to in the Settlement Agreement.

¶ 21 We found no evidence of fraud or misappropriation of funds or personal gain by the Respondent, apart from normal commissions he would earn through trading. These factors are relevant in considering whether there should be a suspension, and if so, the length of any suspension.

¶ 22 In addition, we note that there were multiple clients and multiple transactions and compensation events over a period of more or less two years.

¶ 23 The tests we face as a panel in accepting the Settlement Agreement consist of many factors.

¶ 24 First and foremost, we have to be satisfied that the Settlement Agreement is in the public interest. In so deciding, we look to matters such as whether the proposed penalties are within acceptable parameters. They need not be the penalties that we as a Panel might prefer to impose, but they need to be within reasonable acceptable parameter based on precedents.

¶ 25 Counsel for IIROC took us through several cases, and the Panel is satisfied that the agreed penalties are well within the range of acceptability.

¶ 26 The penalties have to be fair and reasonable to the Respondent, and we determine that this test was met.

¶ 27 The Panel has to be satisfied that the penalties and sanctions provide sufficient deterrence against the repetition of wrongdoing by the Respondent if and when the Respondent returns to the industry, and also serves as a sufficient general deterrence to other members of the industry as to the possible consequences from such kind of conduct as we were dealing with in this case. We were satisfied that the agreed penalties provide the necessary deterrence.

¶ 28 We looked at the IIROC Sanction Guidelines and the various items set forth in the Sanction Guidelines and were satisfied that the agreed penalties were in accordance with the suggestions in IIROC's Sanction Guidelines.

¶ 29 We note that under the rules of IIROC, anybody out of the industry for more than three years has to take a battery of examinations and go through various steps before he can get back in. So with the one-year suspension and the fact that the Respondent has been out of the industry since 2012, we are satisfied that a one-year suspension is appropriate and fair in this case.

¶ 30 The Settlement Agreement provides for the payment of IIROC's costs to the extent of \$10,000. IIROC counsel explained to us that this represented a proportion of the costs that IIROC had incurred, taking into account the length of the process since the beginning of the investigation and the necessity to prepare for a full hearing. We found that the \$10,000 figure, although perhaps somewhat higher than in some of the precedents presented to us, was fair and reasonable under the circumstances and reflected a portion of IIROC's costs and that this was an appropriate amount.

¶ 31 This written version of the oral decision and reasons is dated at Toronto this 24th day of November, 2015.

Paul M. Moore

Ron Smith

Peter Gribbin

APPENDIX SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff (“Staff”) and the Respondent Robert Connor (the “Respondent”), 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 the Respondent’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 contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:
 - (i) During the period between March 2011 and September 2012, Robert Connor made unsuitable recommendations in a client’s account, contrary to IIROC Dealer Member Rule 1300.1 (q).
 - (ii) During the period between October 2010 and August 2012, Robert Connor compensated clients without his member firm’s knowledge or consent, thereby engaging in conduct unbecoming a registrant or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1.
 - (iii) During the period between October 2010 and August 2012, Robert Connor made unauthorized trades in clients’ accounts, thereby engaging in conduct unbecoming a registrant or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1.
 - (iv) During the period between October 2010 and August 2012, Robert Connor engaged in discretionary trading in client accounts, without the accounts having been accepted or approved as discretionary accounts, contrary to IIROC Dealer Member Rule 1300.4.
6. Staff and the Respondent agree to the following terms of settlement:
 - a) Payment of a fine in the amount of \$30,000;
 - b) A one year suspension from registration in any capacity;
 - c) To re write the CPH upon any re-registration; and,
 - d) 12 months of close supervision upon any re-registration.
7. The Respondent agrees to pay costs to IIROC in the sum of \$10,000.

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. The Respondent was a Registered Representative at Scotia Capital Inc. (“Scotia”) from August 2010 to October 2012. From March 2011 until September 2012, he made a number of recommendations to client OK to purchase high risk securities in her account. These recommendations were unsuitable for her given her investment objectives and risk tolerances.
10. In addition, the Respondent compensated several clients for losses suffered in their accounts. He made most of the compensation payments as a result of losses related to purchases of Yellow Media Inc. (“YLO”) shares. He did not tell Scotia about these payments at the time he made them.
11. The Respondent also made both unauthorized and discretionary trades in various Scotia client accounts. He was unable to precisely quantify the number of trades made in this manner.

Registration

12. The Respondent first became an IIROC registrant in 1997. At all material times the Respondent was a Registered Representative (“RR”) employed at a Scotia branch located in Barrie, Ontario. He began working at Scotia in August 2010 after leaving another member firm and bringing many of his clients with him.
13. The Respondent has not been an IIROC registrant since the fall of 2012.

Count 1: Suitability

14. During 2011 and 2012, the Respondent recommended that client OK purchase various securities which were high risk in nature. Examples include shares of Endeavour Silver Corp (“Endeavour”) and Copper Fox Metals Inc. These recommendations were unsuitable for OK given her investment objectives and risk tolerances.

Client OK

15. OK had been the Respondent’s client at a previous firm and became the Respondent’s client at Scotia in 2010. She was 63 years old at that time. The New Account Application Form for OK’s TFSA account (“OK’s Account”) indicates that her investment objectives were 100% long term capital appreciation and that she had a risk tolerance of 100% medium.

High risk securities held

16. Five securities purchased in OK’s Account on the Respondent’s recommendation between March 2011 and March 2012 were high risk in nature. These securities are set out in the chart below. These purchases were not suitable for OK given her investment objectives and risk tolerance.

Settlement Date	Security	Price	Quantity of Shares Purchased	Quantity Purchased	% Gain/(Loss)
March 2, 2011	Copper Fox Metals Inc.	\$1.47	2,000	\$2,953	-11%
March 29, 2011	Endeavour Silver Corp.	\$9.69	1,500	\$14,535	15%
August 10, 2011	Wi-Lan Inc.	\$7.20	300	\$2,160	
August 10, 2011	Wi-Lan Inc.	\$7.19	700	\$5,035	-31%
November 15, 2011	Open Range Energy Corp.	\$2.45	2,000	\$4,900	-55%
March 16, 2012	Avalon Rare Metals Inc.	\$2.79	1,500	\$4,185	-31%

17. Between February 2011 and September 2012, there were several months where only one or two securities were held in OK’s Account at month end. These securities were Yamana Gold Inc., Endeavour, Open Range Energy Corp., YLO, Wi-Lan Inc. and Avalon Rare Metals Inc. Six of the eight

securities purchased in OK's Account during this time period were resource related as well.

Losses

18. Between February 2011 and September 2012, OK's Account sustained an overall loss of approximately \$10,500. This amount includes dividends and both unrealized and realized losses. The value of OK's Account declined by approximately 45% during this time period.

Count 2: Compensation paid to clients

19. The Respondent paid several of his Scotia clients with his own funds as described in more detail below. For some clients, the Respondent had recommended that they purchase shares of YLO. The client accounts had subsequently sustained losses. The Respondent did not tell Scotia about these payments at the time he made them. The Respondent did not keep track of which clients were paid or the exact amounts given.

Client PH

20. PH was a client of the Respondent at Scotia. The Respondent recommended that she purchase 2,000 shares of YLO which she did in June 2011. The YLO shares then declined in price. The Respondent offered to compensate her for her losses. He paid PH \$10,700 in the summer of 2012.

Client JD

21. JD was a Scotia client who purchased 2,200 YLO shares in June 2011. The Respondent paid JD \$4,000 by way of a cheque mailed to her mother in late 2011. The Respondent told Staff that this amount was paid to JD as partial compensation for losses relating to the YLO shares that he recommended that she purchase.

Clients BG and SG

22. The Respondent paid Scotia clients BG and SG a total of \$4,200 in the summer of 2011. SG and BG were in their 60s at the time. According to the Respondent, this compensation payment was not for YLO losses but was related to an earlier investment which did not generate cash flow for them as expected. This earlier investment was made while BG and SG were the Respondent's clients at his former firm.

Clients RC and LC

23. RC and LC (the "Cs") had been the Respondent's clients for many years. In September 2005, the Respondent offered to compensate the Cs for losses sustained earlier while the Cs were clients at another earlier firm.
24. The Cs had moved their accounts to the Respondent at Scotia. The Respondent provided various cheques or cash to the Cs and eventually sent them a total of \$68,400 over a number of years. Of this amount, \$12,500 was paid during 2010 and 2011, while the C's were Scotia clients.

Client TC

25. TC was a Scotia client. The Respondent told Staff that he offered to assist TC with paying his income taxes. In 2012, the Respondent paid TC \$2,000.

Client TE

26. TE was a Scotia client who had purchased 1,300 YLO shares in her LIRA account in June 2011. When the value of YLO shares dropped, TE's monthly payment was affected. The Respondent offered to pay her \$80 a month, which he did for one year in 2012, paying TE a total of \$960.

Chart indicating amounts paid

27. The following chart summarizes the information set out above. The Respondent did not disclose any of these payments to Scotia at the time.

Client Name	Amount and Reason for Compensation	Date Paid
PH	\$10,700 paid re: YLO purchase	Summer 2012
JD	\$4,000 paid re: YLO purchase	Late 2011
BG and SG	\$4,200 paid re: earlier transaction	Summer 2011
RC and LC	\$12,500 paid re: earlier transactions	2010 and 2011
TC	\$2,000 paid re: taxes	2012
TE	\$960 paid re: YLO shares	2012
	Total amount: \$34,360.	

Count 3: Unauthorized trades at Scotia

28. The Respondent admitted to IIROC Staff that while at Scotia he made unauthorized trades in several client accounts, namely in the accounts of the following clients:

- ES and TS
- TC
- SL
- CD
- GC
- EE
- VC
- EB

Count 4: Discretionary trades

29. The Respondent told Staff that while at Scotia he engaged in discretionary trading in some of the client accounts listed above. In addition, he engaged in discretionary trading in the accounts of Scotia clients JM and KM.

30. While these clients knew some details of the trades and were aware that the Respondent was effecting these trades in their accounts, all of the key elements of each trade, namely the identity of the security, the quantity, the price and the timing, were not all discussed with the client in advance.

Number of trades

31. The Respondent was not able to identify for Staff the precise number of unauthorized or discretionary trades that he had carried out. During the time period between October 2010 and August 2012, there were approximately 400 trades effected in the accounts for the clients listed above in paragraph 28.

32. Of these trades, the Respondent told Staff that some trades were discussed with the client in advance, some trades were not authorized by the client as the client was not aware until afterwards that a trade had been made, and some trades were discretionary.

Other Factors

33. In 2012, the Respondent paid Scotia approximately \$35,000 relating to client complaints about YLO share purchases in their accounts.

34. The Respondent does not have any previous disciplinary history with IIROC.

35. During the investigation process, the Respondent admitted responsibility for the client compensation, unauthorized trading and discretionary trading. .

IV. TERMS OF SETTLEMENT

36. 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.
37. The Settlement Agreement is subject to acceptance by the Hearing Panel.
38. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
39. 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.
40. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his rights under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
41. 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.
42. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
43. 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.
44. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
45. 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 "Barrie", in the Province of Ontario, this "2nd" day of November, 2015.

"WITNESS"

"ROBERT CONNOR"

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this "2nd" day of November, 2015.

"Witness"

"Kathryn Andrews"

Senior 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 "November", 2015, by the following Hearing Panel:

Per: "Paul Moore"

Panel Chair

Per: "Ron Smith"

Panel Member

Per: "Peter Gribbin"

Panel Member

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