

Re Karakolis

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Nicholas Karakolis

2018 IIROC 07

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

Heard: January 23, 2018 in Toronto, Ontario

Decision: February 14, 2018

Hearing Panel:

The Honourable Robert P. Armstrong, Q.C., Chair, Mr. Leo Ciccone and Mr. Christopher Hill

Appearances:

Ms. Natalija Popovic, Enforcement Counsel for IIROC

Ms. Melissa MacKewan, Counsel for Respondent

REASONS FOR DECISION

I. INTRODUCTION

¶ 1 A hearing was held in Toronto on January 23, 2018 to determine whether according to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, a Hearing Panel should accept the terms of a settlement pursuant to a Settlement Agreement between the Investment Industry Regulatory Organization of Canada (“IIROC”) and Nicholas Karakolis (the “Respondent”).

¶ 2 The Respondent was charged with the following contravention of IIROC’s Rules:

From March 2015 to April 2016, the Respondent failed to comply with his Dealer Member firm’s policies and procedures regarding the opening of client accounts, contrary to IIROC Dealer Member Rule 29.1

¶ 3 The agreed facts are set out in detail in the Settlement Agreement and are summarized below.

II. EMPLOYMENT AND REGISTRATION HISTORY

¶ 4 The Respondent was a dealing representative registered with the Mutual Fund Dealers Association at TD Investment Services from 2011 to 2012. From 2013 to 2016, he was an investment representative with TD Waterhouse Inc. Direct Investing (“TDW”).

¶ 5 The Respondent was promoted to a management position at TDW in about August 2014. At this time, he received virtually no substantial training before taking on the position.

¶ 6 At the time of the alleged offence, the Respondent was 26 years old.

III. THE FACTS OF THE ALLEGED BREACH OF IIROC’S RULES

Overview

¶ 7 The following overview of the alleged breach of the IIROC Rules is set out in paragraphs 6 and 7 of the

Settlement Agreement as follows:

- (6) In early 2015, the Respondent and his staff opened accounts for approximately 220 new clients who were transferring their accounts from a trust company. The Respondent understood that his staff [was] opening the accounts relying on copies of client identification records without meeting the clients in person or viewing original valid identification documents as required by TDW's policies and procedures ("P&P").
- (7) Certain of the Respondent's staff understood that he had approval to open accounts in this manner and/or an exception from the P&P requirements.

The Details of the Alleged Breach of the IIROC Rules

¶ 8 The details of the alleged breach are contained in paragraphs 10 to 32 of the Settlement Agreement as follows:

The New Client Accounts

- (10) In February 2015, the Respondent was invited to meet with representatives of a non-profit organization ("the Non-Profit") whose members had investment accounts with an incorporated trust company ("the Trust Company").
- (11) At the time, the Non-Profit members' accounts held a security called Ansar Financial and Development Corporation ("Ansar Financial").
- (12) Ansar Financial was in the process of becoming a publicly traded company and the Trust Company could no longer maintain the accounts, as holding publicly traded securities was contrary to its policies.
- (13) The members of the Non-Profit therefore needed to transfer their accounts out of the Trust Company. The Respondent agreed to open accounts at TDW and the process began in March 2015.
- (14) Based on information provided by the Non-Profit, the Respondent expected that he and his team would open approximately 400 accounts; by April 2016, approximately 220 accounts had been opened with TDW as order execution only accounts.

TDW's Client Identification Verification Requirements

- (15) According to TDW's policies and procedures to satisfy the new account opening requirements, a TDW employee had to meet the client in person and obtain a certified true copy of the client's original valid identification.
- (16) A "CERTIFIED TRUE COPY" stamp was required to be applied to a photocopy of the client's original valid ID and to be signed by the TDW employee. The stamp represented that the employee had met the client in person and had viewed original valid ID.
- (17) The ID verification requirements in the policies and procedures are consistent with the Conduct and Practices Handbook ("CPH") guidelines, as well as with Canadian anti-money laundering ("AML") legislation and regulations.

Respondent's Conduct Contrary to TDW's Policies and Procedures

- (18) The Respondent and his staff used the stamp on copies of client IDs, provided to them by a third party related to the Non-Profit, without meeting the clients in person or viewing original valid IDs.
- (19) Certain of the Respondent's staff state that they understood from him that he had received internal approval to open accounts in this manner, and other staff state that they understood that he had an exception from the requirement to meet clients and view original valid identification

documents. This was not accurate.

- (20) The Respondent told his supervisor he was “vouching” client identification; which she stated that she understood to mean that the Respondent was meeting the new clients in person, one or two at a time, prior to opening the accounts.
- (21) The clients were transferring their accounts from a trust company and the Respondent and his staff ensured that the client identification provided matched the account information at the trust company.
- (22) The Respondent told Staff that he met with only one of the Non-Profit members.
- (23) A significant number of the new clients were located outside of Toronto and/or out of province. The Respondent’s supervisor received a weekly report of the new client accounts opened. She did not raise any concerns upon receipt of this report.
- (24) Opening of new client accounts was related to certain annual targets.

Respondent’s Annual Attestations and Training by TDW

- (25) The Respondent completed annual attestations, including in 2013, 2014, and 2015, that he had reviewed the TDW policies and procedures.
- (26) Further, the Respondent completed the CPH in 2013 and numerous TDW Regulatory and Compliance training modules/courses between 2012 and 2015 related to either client onboarding procedures or AML issues. The Respondent’s staff also completed certain of these TDW modules/courses as part of their training.
- (27) The Respondent told Staff that he had not been trained in the use of the stamp. However, the use and purpose of the stamp is straightforward.
- (28) The stamp clearly indicates “CERTIFIED TRUE COPY” and its purpose was to certify that the information provided on the original valid ID was the same as the copy.
- (29) The Respondent told Staff that he was aware of other staff members at TDW using it in the same manner.

No Evidence of Client Harm

- (30) Following an internal investigation in April 2016, the Respondent’s employment with TDW was terminated. The Respondent has not worked in the industry since that time.
- (31) There was no evidence of any client complaints or client losses in relation to the Respondent’s conduct nor is there evidence of any client identification errors in respect of the client accounts.
- (32) The Respondent does not have a regulatory history with IIROC.

IV. PROPOSED SANCTIONS AND COSTS

¶ 9 The parties have agreed that if the Panel accepts the Settlement Agreement, the appropriate sanctions are as follows:

- a) A global fine of \$15,000;
- b) A suspension of three months;
- c) A requirement to rewrite the CPH examination prior to registration with IIROC, and;
- d) Costs of \$2,000.

¶ 10 If the Settlement Agreement is accepted by the Panel, the Respondent has agreed to pay the above amounts within 30 days unless otherwise agreed between staff and the Respondent.

V. SUBMISSIONS OF COUNSEL

¶ 11 The Panel received submissions from counsel in support of the settlement agreement.

¶ 12 Both counsel agreed that in considering the proposed sanctions, we must be satisfied that they are “within a reasonable range of appropriateness given consideration to IIROC Sanction Guidelines (the “Guidelines”) and with previous regulatory decisions.” Both counsel submitted the proposed sanctions fall within a reasonable range. This principle was articulated in Milewski (Re)[1999]1DACD no.17 and has been followed in a long line of IIROC cases.

¶ 13 Counsel for IIROC referred to four cases, which are obviously not identical to this case, but they have broadly similar fact situations.

¶ 14 In Teng (Re) 2012 LNIIROC51, Mr. Teng admitted to four charges in which he *inter alia* represented on account documents of two clients that he had met the clients when he had not. Mr. Teng agreed to sanctions consisting of a fine of \$10,000, a one-year suspension, a successful rewrite of the CPH course as a condition of reregistration and costs of \$5,000.

¶ 15 In Whilton (Re) 2009 LNIIROC20, the Panel accepted a settlement agreement where Mr. Whilton admitted to two charges, the second of which was that he falsely attested on new client account documentation that he had seen original identification and had verified the clients’ signatures against it for the purpose of AML legislation, contrary to IIROC rule 29.1. In accordance with the settlement agreement, Mr. Whilton agreed to a total fine of \$20,000, of which \$5,000 was for the second charge, and \$5,000 for costs.

¶ 16 In Lamothe (Re) 2009 LNIIROC33, the Hearing Panel accepted a settlement agreement in which Ms. Lamothe admitted to two charges and agreed that she failed to use due diligence to inform herself of essential facts related to her client and that she failed to use due diligence to ensure that acceptance orders for the account were within the bounds of good business practice when she knew or should have known that the trades could be an indication of suspicious activity contrary to IIROC rules 1300 and 29.1. Ms. Lamothe, after interview with IIROC staff admitted that she had not met her client in 2000 and had not verified the proof of identity, and also that she had lied to her firm when a non-resident account was opened for her client. The agreed sanctions were fines of \$10,000 on each charge, a one-year prohibition from registration, and costs of \$3,500.

¶ 17 In Scott (Re) 2017 LNCMFDA 74, a Hearing Panel accepted a settlement agreement where Ms. Scott admitted five charges including completing an account form where she falsely represented that she had verified the clients’ identities in breach of the MFDA Rules. Ms. Scott was 26 years old and relatively new to the business. The Panel in Scott noted that no material harm had been caused to clients who were reimbursed by her firm. The client did not make a complaint and continued to use Ms. Scott after the deficiencies were brought to the clients’ attention. Ms. Scott agreed to a fine of \$10,000, a one-month suspension, and payment of costs of \$5,000.

¶ 18 Counsel referred to the IIROC Sanction Guidelines, which “are intended to provide consistency, fairness, and transparency by providing a framework to guide the exercise of discretion in determining sanctions which meet the general sanctioning objectives.” The Sanction Guidelines set out a number of factors to consider, which include:

- (i) whether the Respondent has a previous disciplinary record;
- (ii) whether the Respondent has received any financial benefit from the misconduct; and
- (iii) whether the Respondent cooperated in the IIROC investigation.

Mr. Karakolis has no previous disciplinary record. He received no financial benefit from the misconduct and cooperated with the IIROC investigation at an early stage.

Conclusion

¶ 19 Having considered the settlement agreement, the submissions of counsel, the relevant case law and the mitigating factors referred to above, we are satisfied that the agreed sanctions are within a reasonable range and in accordance with the IIROC Sanctioned Guidelines.

¶ 20 In the result, the Panel accepts the Settlement Agreement in this case.

Dated at Toronto, this 9th day of February, 2018.

Robert P. Armstrong

Leo Ciccone

Christopher Hill

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada (“IIROC”) will issue a Notice of Application to announce that it will hold a settlement hearing to consider whether, pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, a hearing panel (“Hearing Panel”) should accept the settlement agreement (“Settlement Agreement”) entered into between the staff of IIROC (“Staff”) and Nicholas Karakolis (“Respondent”).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

PART III – AGREED FACTS

3. For the purposes of this Settlement Agreement, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

PART IV – CONTRAVENTION

4. By engaging in the conduct described above, the Respondent committed the following contravention of IIROC’s Rules:

From March 2015 to April 2016, the Respondent failed to comply with his Dealer Member firm’s policies and procedures regarding the opening of client accounts, contrary to IIROC Dealer Member Rule 29.1.

Overview

5. During the relevant time, the Respondent, Nicholas Karakolis, was a Business Development Manager at TD Waterhouse Inc. Direct Investing (“TDW”) responsible for, among other things, opening order execution only accounts. He had management and oversight of a team of six staff members. At the time the events at issue took place, the Respondent was 26 years old.
6. In early 2015, the Respondent and his staff opened accounts for approximately 220 new clients who were transferring their accounts from a trust company. The Respondent understood that his staff were opening the accounts relying on copies of client identification records without meeting the clients in person or viewing original valid identification documents as required by TDW’s policies and procedures (“P&P”).
7. Certain of the Respondent’s staff understood that he had approval to open accounts in this manner and / or an exception from the P&P requirements.

Registration History

8. The Respondent was an Investment Representative with TDW from 2013 to 2016. He was a Dealing Representative registered with the Mutual Fund Dealers Association at TD Investment Services from 2011 to 2012.
9. The Respondent was promoted to a Manager position at TDW in or about August 2014. He received virtually no substantive training before taking on this role, which he held for approximately a year and a

half before his employment was terminated.

The New Client Accounts

10. In February 2015, the Respondent was invited to meet with representatives of a non-profit organization (“the Non-Profit”) whose members had investment accounts with an incorporated trust company (“the Trust Company”).
11. At the time, the Non-Profit members’ accounts held a security called Ansar Financial and Development Corporation (“Ansar Financial”).
12. Ansar Financial was in the process of becoming a publicly traded company and the Trust Company could no longer maintain the accounts, as holding publicly traded securities was contrary to its policies.
13. The members of the Non-Profit therefore needed to transfer their accounts out of the Trust Company. The Respondent agreed to open accounts at TDW and the process began in March 2015.
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15. According to TDW’s policies and procedures to satisfy the new account opening requirements a TDW employee had to meet the client in person and obtain a certified true copy of the client’s original valid identification.
16. A “CERTIFIED TRUE COPY” stamp was required to be applied to a photocopy of the client’s original valid ID and to be signed by the TDW employee. The stamp represented that the employee had met the client in person and had viewed original valid ID.
17. The ID verification requirements in the policies and procedures are consistent with the Conduct and Practices Handbook (“CPH”) guidelines, as well as with Canadian anti-money laundering (“AML”) legislation and regulations.

Respondent’s Conduct Contrary to TDW’s Policies and Procedures

18. The Respondent and his staff used the stamp on copies of client IDs, provided to them by a third party related to the Non-Profit, without meeting the clients in person or viewing original valid IDs.
19. Certain of the Respondent’s staff state that they understood from him that he had received internal approval to open accounts in this manner, and other staff state that they understood that he had an exception from the requirement to meet clients and view original valid identification documents. This was not accurate.
20. The Respondent told his supervisor he was “vouching” client identification; which she stated that she understood to mean that the Respondent was meeting the new clients in person, one or two at a time, prior to opening the accounts.
21. The clients were transferring their accounts from a trust company and the Respondent and his staff ensured that the client identification provided matched the account information at the trust company.
22. The Respondent told Staff that he met with only one of the Non-Profit members.
23. A significant number of the new clients were located outside of Toronto and/or out of province. The Respondent’s supervisor received a weekly report of the new client accounts opened. She did not raise any concerns upon receipt of this report.
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the TDW policies and procedures.

26. Further, the Respondent completed the CPH in 2013 and numerous TDW Regulatory and Compliance training modules/courses between 2012 and 2015 related to either client onboarding procedures or AML issues. The Respondent's staff also completed certain of these TDW modules/courses as part of their training.
27. The Respondent told Staff that he had not been trained in the use of the stamp. However, the use and purpose of the stamp is straight forward.
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29. The Respondent told Staff that he was aware of other staff members at TDW using it in the same manner.

No Evidence of Client Harm

30. Following an internal investigation in April 2016 the Respondent's employment with TDW was terminated. The Respondent has not worked in the industry since that time.
31. There was no evidence of any client complaints or client losses in relation to the Respondent's conduct nor is there evidence of any client identification errors in respect of the client accounts.
32. The Respondent does not have a regulatory history with IIROC.

PART V – TERMS OF SETTLEMENT

33. The Respondent agrees to the following sanctions and costs:
 - a) A global fine of \$15,000
 - b) A suspension of 3 months
 - c) A requirement to rewrite the CPH examination prior to reregistration with IIROC, and
 - d) Costs of \$2,000
34. If this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and the Respondent.

PART VI – STAFF COMMITMENT

35. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against the Respondent in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of the paragraph below.
36. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

37. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
38. This Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing in accordance with the procedures described in Sections 8215 and 8428, in addition to any other procedures that may be agreed upon between the parties.
39. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.

40. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights under the IROC Rules and any applicable legislation to any further hearing, appeal and review.
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 based on the same or related allegations.
42. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
43. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IROC will post a full of copy of this Settlement Agreement on the IROC website. IROC will also publish a summary of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement.
44. If this Settlement Agreement is accepted, the Respondent agrees that neither he nor anyone on his behalf, will make a public statement inconsistent with this Settlement Agreement.
45. The Settlement Agreement is effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

46. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.
47. A fax or electronic copy of any signature will be treated as an original signature.

DATED this “3rd” day of “December”, 2017.

“Witness” _____

Witness

“Nicholas Karakolis” _____

Nicholas Karakolis

DATED this “5th” day of “December”, 2017.

“Cynthia Stasinski” _____

Witness

“Natalija Popovic” _____

Natalija Popovic

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

The Settlement Agreement is hereby accepted this “23rd” day of “January”, 20“18” by the following Hearing Panel:

Per: “Robert Armstrong” _____

Panel Chair

Per: “Leo Ciccone” _____

Panel Member

Per: “Christopher Hill” _____

Panel Member

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