

# Re Lynch

IN THE MATTER OF:

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

and

**Paul Wayne Lynch**

2016 IIROC 52

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

Heard: November 16, 2016

Decision: November 16, 2016

Reasons: December 14, 2016

## **Hearing Panel:**

Paul M. Moore, Q.C., Chair, Debbie Archer, Neil Murphy

## **Appearances:**

Sally Kwon, Enforcement Counsel; Robert Natanson, Senior Investigator

Laura Paglia, Respondent's Counsel

## **In attendance:**

Paul Wayne Lynch

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## **REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT**

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### **Acceptance of settlement agreement**

¶ 1 The panel accepted the settlement agreement between the staff of IIROC and Paul Wayne Lynch, the respondent, dated November 16, 2016. A copy of the settlement agreement is attached to these reasons. The agreed facts are set out in part 3 of it.

### **Contraventions**

¶ 2 The respondent admitted to the following contraventions of IIROC's Rules:

Count 1: Between 2010 and 2012, the respondent made discretionary trades in the accounts of his client LC, and in the account of his clients HM and SM, without the accounts having been approved and accepted as discretionary accounts, contrary to Dealer Member Rule 1300.4.

Count 2: Between 2010 and 2012, the respondent failed to maintain required minimum records in respect of the account of his client MM, in that he accepted trading instructions from MH for MM's account, without obtaining written authorization from MM to do so, contrary to IIROC Dealer Member Rule 200.1(i)(3) (now Dealer Member Rule 200.2(m)(iii)).

### **Agreed sanctions**

¶ 3 The agreed sanctions were a global fine of \$17,500 for both counts; that the respondent re-write the Conduct and Practices Handbook course within 6 months; and a costs award of \$2,000.

¶ 4 In addition, the respondent had previously paid a fine of \$7,500 to his member, CIBC World Markets

Inc., and had successfully undergone a 6 month period of close supervision by CIBC, following an investigation by CIBC of a complaint by his client LC.

### **Issues faced by the panel**

#### *The need for additional information*

¶ 5 As a panel, we had to form a positive conclusion, based on facts, that the agreed sanctions fell within a reasonable range of appropriateness, that the settlement agreement was fair and reasonable, and that the agreed sanctions would provide an adequate deterrent to the respondent and to industry.

¶ 6 To do this we had to understand the facts.

¶ 7 If critical facts were missing or were not reasonably inferable from the agreed facts disclosed in the settlement agreement, we had to ask for them from the parties.

¶ 8 We could not compel the parties to provide any facts not disclosed in the settlement agreement and the parties could only provide additional facts if they both agreed.

¶ 9 However, without having critical missing facts, we would not be able to form the positive conclusion required, and would have to refuse to accept the settlement agreement.

¶ 10 In that situation, the panel would prepare written reasons for its refusal to accept the settlement agreement which would be made available to the parties. However, neither the settlement agreement nor the panel's reasons for rejecting it, would be publicly disclosed.

¶ 11 If we refused to accept the settlement agreement, according to IIROC's Consolidated Rules, staff could bring the matter to a contested hearing before a different panel. Or staff could abandon the matter altogether. Or the parties could enter into a second settlement agreement which would go for acceptance before a different panel.

¶ 12 If our panel refused to accept the settlement agreement and a second settlement agreement went before a different panel, our panel's reasons for refusing to accept the settlement agreement considered by us would be filed with the panel considering the second settlement agreement.

¶ 13 We found the settlement agreement to be too bare bones to understand the agreed facts and to come to the positive conclusion required for acceptance of the settlement agreement.

¶ 14 Therefore, the panel asked a few questions which elicited enough information to allow us to come to the conclusion that we could accept the settlement agreement.

#### *Additional facts provided by the parties*

¶ 15 There was a complaint. We asked why there was a complaint. We were told that it was based on allegedly unauthorized trading in the complainant's accounts. We were told that it was the complainant's view that she had lost money. We asked whether there had been restitution. We were told that there had been, by the member, and the respondent had contributed to that. Counsel for the respondent commented that institutions make payments to complainants for various business reasons and that such payments alone should not be taken as evidence of regulatory infraction.

¶ 16 We were advised that all this had been taken into consideration by staff in reaching a settlement. While the parties considered that this information was not necessary information to go into the settlement agreement, we found it necessary to us in understanding the agreed facts and in assessing the adequacy of the agreed sanctions when taking into the analysis the key factors of the nature of the misconduct, harm to the public, loss suffered by clients, the circumstances of the respondent, the range of appropriateness, fairness and reasonableness, and deterrence.

¶ 17 CIBC did its own investigation. It had a disciplinary proceeding and came up with what, we assumed, it considered appropriate sanctions. Why, we asked, was that not sufficient and IIROC felt it had to take its own action as well? Were the member's sanctions not adequate? Did IIROC's investigation discover any additional

misconduct not discovered by the member? In particular, did IIROC discover any dishonest or fraudulent activity or otherwise disreputable conduct? Was the respondent's conduct intentionally or willfully blind or reckless?

¶ 18 Counsel confirmed that this was not a case of dishonest or willfully blind, or other disreputable conduct of that nature.

¶ 19 We were not sure that we fully understood staff's answers as to why IIROC felt the need to bring its own action in addition to that of CIBC's. We were told that CIBC's disciplinary measures were in relation to its investigation of the complaint by LC and what it concluded in the course of its investigation as described in paragraphs 10 and 17 of the settlement agreement. We concluded that CIBC's sanctions were not necessarily for all the misconduct investigated by IIROC but for just a subset and that the agreed sanctions (including a fine of \$17,500) plus CIBC's sanctions (including a fine of \$7,500) were for all the conduct.

¶ 20 We decided not to press staff on the point since counsel confirmed that IIROC's investigation and the agreed facts did not suggest that the IIROC allegations of misconduct were based on any additional dishonest or fraudulent conduct.

¶ 21 The key issues before the panel were 1) whether the settlement agreement was fair and reasonable, 2) whether the agreed sanctions provided an adequate deterrent to the respondent and others, and 3) whether they were within a reasonable range of appropriateness, considering the precedent cases submitted by staff.

¶ 22 We concluded that the agreed sanctions will provide an adequate deterrent to the respondent and to industry and are within a reasonable range of appropriateness.

¶ 23 Both parties to the settlement agreement were represented by counsel. The agreement was freely negotiated. Each party had their own motivating reasons for settling and submitted that they considered it to be fair and reasonable. In view of this, and the fact that the agreed sanctions provide an adequate deterrent to the respondent and others, we found that the settlement agreement was fair and reasonable.

¶ 24 Accordingly, we accepted the settlement agreement because to do so was in the public interest.

Dated at Toronto this 14<sup>th</sup> day of December, 2016.

Paul M. Moore

Panel Chair

Debbie Archer

Panel Member

Neil Murphy

Panel Member

## **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 Paul Wayne Lynch ("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.

#### **Overview**

4. In 2014, the Respondent's Dealer Member firm, CIBC World Markets Inc. ("CIBC"), investigated a complaint made by the Respondent's client LC about the trading in her accounts. As a result of this internal investigation, CIBC determined that between 2010 and 2012, the Respondent had exercised discretion with respect to the timing and price of securities transactions in certain client accounts. None of these accounts were designated as discretionary or managed accounts.
5. Furthermore, between 2010 and 2012, the Respondent accepted trading instructions from his client HM (the father of his client MM) for his client MM's account. The Respondent did not obtain written authorization from MM to do so.

#### **Background**

6. The Respondent is currently a Registered Representative employed at a CIBC branch located in Ottawa, Ontario. He has never been registered as a Portfolio Manager.
7. LC had been the Respondent's client since approximately 1998. LC had three accounts with the Respondent.
8. HM and SM are spouses and had been the Respondent's clients since approximately 2005. HM and SM had one joint account with the Respondent where HM was the primary contact.
9. MM is the daughter of HM and SM and had been the Respondent's client since approximately 2006. MM had one account with the Respondent.

#### **Discretionary Trading**

10. In May 2012, LC complained to CIBC about the trading in her accounts. CIBC investigated the complaint. The Respondent admitted that on occasion he had exercised discretion with respect to the timing and price of securities transactions made in the accounts of LC. CIBC also concluded during the course of its investigation that the Respondent had exercised time and price discretion in respect of the joint account of HM and SM.
11. Between 2010 and 2012, approximately 67 transactions were effected in the accounts of LC and the joint account of HM and SM. During this period, LC had a capital gain of \$208,271.39, and HM and SM had a capital loss of \$12,628.95 though had positive returns over the term of their account.
12. The Respondent admitted to Staff that on occasion he exercised discretion with respect to the timing and price of transactions effected in the accounts of LC and the joint account of HM and SM. The Respondent was not able to identify which of these trades were discretionary.
13. None of LC's accounts or HM and SM's joint account had been accepted or approved as discretionary accounts by CIBC. None of LC, or HM and SM provided any written authorization to the Respondent or to CIBC to effect discretionary trades in their accounts.
14. LC, HM and SM received trade confirmations and month end statements for their accounts.

#### **Trades in MM's Account without Written Trading Authorization**

15. Between 2010 and 2012, the Respondent effected seven sales in MM's account.
16. The Respondent admitted to Staff that he accepted trading instructions from MM or MM's father, HM, for MM's account. The Respondent did not obtain written authorization from MM to do so.

#### **Mitigating Factors**

17. In June 2014, CIBC provided a Letter of Reprimand to the Respondent and imposed disciplinary

measures including payment of a fine of \$7,500 and close supervision for a period of six months in relation to its investigation described in paragraph 10 above. The Respondent acknowledged and agreed to the terms and disciplinary measures outlined in the Letter of Reprimand.

18. CIBC advised Staff that the six month period of close supervision was completed and no concerns were noted during this time.
19. The fines and costs set out in the Terms of Settlement described in paragraph 21 herein have been reduced in consideration of the internal disciplinary measures that have already been imposed by CIBC.

#### **PART IV – CONTRAVENTIONS**

20. By engaging in the conduct described above, the Respondent committed the following contraventions of IIROC's Rules:

**Count 1:** Between 2010 and 2012, the Respondent made discretionary trades in the accounts of his clients LC, and HM and SM, without the accounts having been approved and accepted as discretionary accounts, contrary to IIROC Dealer Member Rule 1300.4.

**Count 2:** Between 2010 and 2012, the Respondent failed to maintain required minimum records in respect of the account of his client MM, in that he accepted trading instructions from her father HM for MM's account, without obtaining written authorization from MM to do so, contrary to IIROC Dealer Member Rule 200.1(i)(3) (now IIROC Dealer Member Rule 200.2(m)(iii)).

#### **PART V – TERMS OF SETTLEMENT**

21. The Respondent agrees to the following sanctions and costs:
  - a) payment of a global fine by the Respondent in the amount of \$17,500;
  - b) re-write of the Conduct and Practices Handbook course within six months; and
  - c) costs to IIROC in the sum of \$2,000.
22. 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**

23. 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 paragraph 24 below.
24. 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**

25. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
26. 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.
27. 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.
28. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights under

the IIROC Rules and any applicable legislation to any further hearing, appeal and review.

29. 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.
30. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
31. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full of copy of this Settlement Agreement on the IIROC website. IIROC will also publish a summary of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement.
32. 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.
33. 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**

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

**DATED** this \_\_9th\_\_ day of \_November\_\_\_\_\_, 2016\_\_.

“Witness” \_\_\_\_\_

Witness

“Paul Lynch” \_\_\_\_\_

Paul Wayne Lynch

“Witness” \_\_\_\_\_

Witness

“Sally Kwon” \_\_\_\_\_

Sally Kwon

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

The Settlement Agreement is hereby accepted this \_16th\_\_ day of \_November\_\_\_\_\_, 2016 by the following Hearing Panel:

Per: “Paul Moore” \_\_\_\_\_

Panel Chair

Per: “Debbie Archer” \_\_\_\_\_

Panel Member

Per: “Neil Murphy” \_\_\_\_\_

Panel Member

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