

# Re Howell

IN THE MATTER OF:

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

**and**

**Shaun Wayne Howell**

2016 IIROC 48

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

Heard: November 21, 2016

Decision: November 21, 2016

Reasons: December 2, 2016

**Hearing Panel:**

Eric Spink, QC, Chair, James Ross, Peter McWilliams

**Appearances:**

David McLellan, Senior Enforcement Counsel for IIROC

No one appearing for Shaun Wayne Howell

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## REASONS FOR ACCEPTANCE OF SETTLEMENT

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¶ 1 This Settlement Hearing considered a Settlement Agreement agreed to by Shaun Wayne Howell on November 17, 2016. The Settlement Agreement is attached as Appendix 1.

¶ 2 The Hearing Panel heard submissions from IIROC’s counsel and, after a brief adjournment, the panel accepted the Settlement Agreement with reasons to follow. These are our reasons.

¶ 3 In the Settlement Agreement, the Respondent admits to the following contraventions of IIROC Dealer Member Rule 29.1:

Between November, 2008 and February, 2015, the Respondent solicited clients to invest in a variety of securities and then misappropriated the funds received, thereby engaging in conduct unbecoming or detrimental to the public interest...; and

In February, 2013, the Respondent engaged in personal financial dealings with a client when he borrowed money from a client without his Dealer Member firm’s knowledge....

¶ 4 The Settlement Agreement provides for the following penalties and costs:

- a) a \$500,000 fine;
- b) permanent ban from registration in any capacity; and
- c) costs of \$10,000.

¶ 5 The panel’s role in a settlement hearing is to determine whether the proposed settlement falls within “a reasonable range of appropriateness” (Re Milewski [1999] I.D.A.C.D. No. 17), bearing in mind the facts of the case, the IIROC Sanction Guidelines, and other decisions involving similar misconduct. Milewski observes that

the panel is asked “to ‘accept’, rather than approve, a settlement agreement”, and that the panel’s consideration of specific settlements must “reflect the public interest benefits of the settlement process”.

¶ 6 IIROC’s counsel aptly described the facts of this case as “sad and offensive”. The Respondent was employed as a Registered Representative at the same firm since 1999. In 2008, he fraudulently solicited \$692,584 from clients by claiming to have access to certain attractive investment opportunities. The Respondent deposited those funds in his personal bank account and used them for his own benefit. Until the scheme was discovered in 2015, the Respondent paid \$290,021 to some of the clients, which he represented as investment returns. He provided a falsified account statement to some clients. Many of the clients defrauded were long-term personal friends of the Respondent.

¶ 7 The Respondent also borrowed \$50,000 from another client in 2013, without the knowledge of his firm. The loan was to be repaid by quarterly payments over 3 years. The Respondent made interest payments of \$8,736 but did not repay any of the principal.

¶ 8 IIROC’s counsel reviewed the Sanction Guidelines applicable in this case, particularly Guideline 6, which says:

A permanent bar should be considered where:

- the contraventions involve significant harm to the investing public, the integrity of the market or the securities industry;
- the misconduct had an element of criminal or quasi-criminal activity; or
- there is reason to believe that the respondent cannot be trusted to act in an honest and fair manner in their dealings with the public, their clients, and the securities industry as a whole.

A fine and/or disgorgement should be considered even where a permanent bar is imposed in egregious cases involving significant harm to investors or to the integrity of the securities industry as a whole.

¶ 9 This is clearly an egregious case. The Respondent preyed upon his clients over a period of almost 7 years, exploiting their trust and friendship in order to defraud them. One client was 60 years of age when the Respondent encouraged her to withdraw funds from her RRSP and to borrow approximately \$50,000 from a line of credit, in order to provide the Respondent with \$285,654.

¶ 10 The panel was referred to Re Melville 2014 IIROC 51, which involved facts somewhat similar to the present case. Mr. Melville was a Registered Representative who misappropriated approximately \$2 million from his clients over a 3-year period. A number of the clients were elderly and vulnerable and all had placed great trust and confidence in him. Mr. Melville in some instances used false account statements to conceal his misconduct. The panel accepted a Settlement Agreement imposing a permanent ban on registration in any capacity, a fine of \$400,000 and costs of \$10,000.

¶ 11 The panel in Melville discussed a number of other decisions dealing with the misappropriation of client funds by registered representatives, including several that were referred to this panel: Re Ramsay 2013 IIROC 41; Re Rao 2011 IIROC 12; and Re Ryan 2012 IIROC 29. Each of those decisions imposed a permanent ban and a large fine, which included disgorgement of the amounts wrongfully misappropriated.

¶ 12 We were also referred to Re Wong 2010 IIROC 50, where the panel described the misappropriation of \$210,000 as egregious, deliberate and deceptive. In imposing a permanent bar and a fine of \$100,000, that panel made the following comments which, in our view, apply also to the present case:

To achieve both general and specific deterrence, the penalties imposed must be appropriately unpleasant to the respondent taking into account the respondent’s specific misconduct, and must also be in line with industry expectations. [para. 29]

A registrant is bound to act in an ethical manner. Misappropriation is related to theft and is one of the most serious regulatory offences; the penalty upon conviction is generally a permanent ban. [para. 31]

A clear message must be sent to the industry and to the respondent that misappropriation is a serious matter. Anything less than a permanent ban in this case would undermine industry expectations and imperil the trust and confidence in securities markets that is shaken when this kind of misappropriation occurs. [para.36]

A fine must have some significance. It should not appear to be a slap on the wrist. The very minimum for an appropriate fine in this case is \$100,000. [para. 41]

¶ 13 IIROC’s counsel noted that the Respondent cooperated with the investigation by attending for an interview and, by entering into the Settlement Agreement, the Respondent acknowledged and accepted responsibility for his conduct to some extent. The panel observes that the Settlement Agreement was signed only a few days before the contested hearing was scheduled to begin and, moreover, that these mitigating factors pale into insignificance when compared to the Respondent’s misconduct.

¶ 14 We were informed that the Respondent’s clients were reimbursed by his firm, so that over \$400,000 of the proposed \$500,000 fine represents disgorgement of the amount misappropriated by the Respondent.

¶ 15 After considering all the facts and submissions, the panel determined that the agreed-upon penalties in this case are fair and reasonable. We therefore accepted and executed the original Settlement Agreement on November 21, 2016.

Dated at Calgary, Alberta this 2<sup>nd</sup> day of December, 2016.

Eric Spink

Chair

James Ross

Peter McWilliams

## **APPENDIX 1**

### **INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

**IN THE MATTER OF:**

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA  
(IIROC)**

**AND**

**SHAUN WAYNE HOWELL**

### **SETTLEMENT AGREEMENT**

#### **I. INTRODUCTION**

1. IIROC Enforcement Staff (“Staff”) and the Respondent, Shaun Wayne Howell, 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”) in the conduct of Shaun Wayne Howell.
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:

- a) Between November, 2008 and February, 2015, the Respondent solicited clients to invest in a variety of securities and then misappropriated the funds received, thereby engaging in conduct unbecoming or detrimental to the public interest, contrary to Dealer Member Rule 29.1;and
  - b) In February, 2013, the Respondent engaged in personal financial dealings with a client when he borrowed money from a client without his Dealer Member firm's knowledge, contrary to Dealer Member Rule 29.1.
6. Staff and the Respondent agrees to the following terms of settlement:
- a) Payment of a fine of \$500,000; and
  - b) Permanent ban from registration in any capacity.
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. Between 2008 and 2015, while Howell was a Registered Representative with RBC Dominion Securities Inc. ("RBC-DS"), Howell solicited funds from clients to invest in the amount of approximately \$692,000.
10. However, instead of investing the funds, Howell misappropriated the funds by depositing them directly into a personal bank account.
11. Over the course of several years, he paid a total of approximately \$290,000 to certain clients for what he falsely represented to them was an investment return. In addition, he provided one client with a falsified account statement.
12. Howell also borrowed \$50,000 from one client without the knowledge of his firm.

#### **Background**

13. At all material times, Howell was employed as a Registered Representative with a branch of RBC-DS located in Red Deer, Alberta. He was employed by that firm since 1999.
14. Howell has not been an IIROC Registrant since March 12, 2015, when his employment was terminated by RBC-DS.

#### **Howell's actions**

15. Between approximately November 2008 and February 2015, Howell solicited investments from clients by representing to them that he had access to certain attractive investment opportunities such as initial public offerings and new issues of securities.
16. Eight clients (the "Clients") delivered personal cheques, or bank drafts, payable to Howell personally, totaling \$692,584 (the "Funds").
17. However, the Funds were not invested as represented by Howell. Instead, he misappropriated the Funds by depositing them into his personal bank account and using them for his own benefit.
18. Over the relevant 7 year time period, Howell paid \$290,021 to five of the Clients which he told them represented an investment return.
19. The amounts provided by the Clients (which includes spousal couples) to Howell, together with amounts

paid to them, are as follows:

<b>Client</b>	<b>Provided to Howell</b>	<b>Paid by Howell</b>
MP/JP	\$23,000	0
TB/SB	\$87,480	0
SS/DS	\$104,850	\$111,373
KH/TH	\$65,600	\$43,958
RB	\$25,000	0
EM	\$285,654	\$43,540
PC	\$90,000	\$45,000
DT	\$11,000	\$46,150
Total	\$692,584	\$290,021

- Client PC was not listed as a client of Howell in RBC's records, but he believed that he was investing with Howell through RBC. The remaining Clients all held accounts with Howell through RBC.

#### **Client EM - Borrowed Funds/RRSP Withdrawal**

20. One Client, EM, was 60 years of age at the time that Howell encouraged her to withdraw funds from her RRSP and to draw against a personal line of credit in order to provide him with funds. As a result, she borrowed approximately \$50,000 from a line of credit and provided these funds to Howell.

#### **Clients MP and JP - Falsified Account Statement**

21. In approximately February of 2015, Howell provided a falsified account statement to Clients MP and JP following their request for documentation evidencing their investment.

#### **Fraud and Breach of Trust**

22. Many of the Clients were long-term personal friends of Howell's, and as a result they reposed a great deal of trust in him as their investment advisor. They relied on him to act in their best interests.
23. Howell's acts as outlined above constitute a fraud on the Clients as well as a breach of their trust. As such, his actions constitute conduct unbecoming or detrimental to the public interest contrary to IIROC Dealer Member Rule 29.1.

#### **Borrowing from clients**

24. In or about March 14, 2013, Howell borrowed \$50,000 from his client, DM. This loan was evidenced by a Promissory Note between Howell and DM, and was subject to quarterly payments over a 3 year period.
25. This personal loan was entered into without the knowledge of Howell's firm. It amounted to personal financial dealings with a client and is a violation of Dealer Member Rule 29.1.
26. Howell did make some interest only payments to DM in the amount of \$8,736 but has not repaid any of the principal amount of \$50,000.

#### **IV. TERMS OF SETTLEMENT**

27. 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.

28. The Settlement Agreement is subject to acceptance by the Hearing Panel.
29. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
30. 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.
31. 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.
32. 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.
33. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
34. 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.
35. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
36. 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 Red Deer in the Province of Alberta, this 17 day of November, 2016.

“Witness” \_\_\_\_\_

**Witness**

“Shaun Wayne Howell” \_\_\_\_\_

**Shaun Wayne Howell**

**AGREED TO** by Staff at the City of Calgary in the Province of Alberta, this 18th day of November, 2016.

“Witness” \_\_\_\_\_

**Witness**

“David McLellan” \_\_\_\_\_

**David McLellan**

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

**ACCEPTED** at the City of Calgary in the Province of Alberta, this 21st day of November, 2016, by the following Hearing Panel:

Per: “Eric Spink” \_\_\_\_\_

**Panel Chair**

Per: “James Ross” \_\_\_\_\_

**Panel Member**

Per: “Peter McWilliams” \_\_\_\_\_

**Panel Member**