

Re Wenman

IN THE MATTER OF:

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

and

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

James Edward Lytton Wenman

2012 IIROC 3

Investment Industry Regulatory Organization of Canada
Hearing Panel (Pacific District Council)

Hearing: January 30, 2012

Decision: February 7, 2012

(9 paras.)

Hearing Panel:

Jean P. Whittow, Q.C., (Chair), Chris Lay, Brian Worth

Appearances:

Paul Smith, Enforcement Counsel

Dwight Stewart, Counsel for the Respondent

James Wenman, the Respondent

DECISION ON SETTLEMENT AGREEMENT

BACKGROUND

¶ 1 This Panel was constituted pursuant to the rules of the Investment Industry Regulatory Organization of Canada (“IIROC”) to consider, pursuant to dealer member rule 20.36 a Settlement Agreement, signed by counsel for IIROC and the Respondent on January 30, 2012 and recommended by both counsel. A copy of the Settlement Agreement is attached as Schedule “A”.

¶ 2 In the Settlement Agreement, the Respondent admitted that he had made three short term loans to a client to enable the client to make trades while his account was under margin, without obtaining the brokerage firm’s consent to do so.

¶ 3 IIROC staff and the Respondent agreed to the following terms of settlement:

- a. a fine in the amount of \$10,000.00;
- b. before seeking registration with IIROC again, the Respondent must successfully complete the *Conduct and Practices Handbook* course;
- c. if registered with IIROC in future, the Respondent’s registration will be subject to a one year period of close supervision by his firm; and

d. costs in the amount of \$2,500.00.

SUBMISSIONS

¶ 4 Mr. Smith, counsel for IIROC, submitted that registrants should avoid personal transactions with their own clients, and to enter such transactions only with the informed consent of the client and of the firm. He noted that while there were three loans made to the client without the firm's knowledge or consent, the loans were at the client's request and that each was repaid quickly and before another loan was made.

¶ 5 Mr. Stewart, counsel for Mr. Wenman noted that Mr. Wenman had previously had a nearly 30 year career without any prior incident and that Mr. Wenman had cooperated throughout IIROC's process. The Panel was advised that the loans were at low interest rates, and no special profit was earned.

¶ 6 Mr. Smith referred the Panel to the Dealer Member Disciplinary Sanction Guidelines, and to the minimum recommended penalties for Undisclosed Personal Business with a Client. He also referred to *Re Claggett*, [2011] IIROC No. 32 in which a registrant was fined \$10,000 for paying a client \$14,000 to attempt to settle the client's complaint.

¶ 7 Mr. Smith as well referred the Panel to *Re Claggett* for the principle expressed in *Re Milewski*, [1999] I.D.A.C. No. 17, that a Panel ought to approve a negotiated settlement unless the proposed penalty falls outside a reasonable range of appropriateness.

DECISION

¶ 8 This Panel is satisfied that the proposed settlement is consistent with the disciplinary sanction guidelines and case-law, and is an appropriate disposition of the matter.

¶ 9 The Hearing Panel therefore approved and signed the Settlement Agreement dated January 30, 2012, at the end of the hearing on January 30, 2012.

Dated at Vancouver, British Columbia, this 7 day of February, 2012.

Jean P. Whittow, Q.C., Chair

Chris Lay, Panel Member

Brian Worth, Panel Member

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and James Edward Lytton Wenman ("the Respondent") consent and agree to the settlement of this matter by way of this settlement agreement ("the Settlement Agreement").
2. The Enforcement Department of IIROC has conducted an investigation ("the Investigation") into the conduct of the Respondent.
3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.
4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. 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

6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.

7. The Respondent admits that between June 2008 and January 2009 the Respondent engaged in undisclosed personal financial dealing with a client by loaning his client money on three separate occasions without the consent of his firm, contrary to IIROC Dealer Member Rule 29.1.
8. Staff and the Respondent agree to the following term of settlement:
 - a) The Respondent will pay a fine in the amount of \$10,000.
 - b) The Respondent is not currently registered with IIROC. Before seeking registration with IIROC again, he must retake and successfully complete Conduct and Practices Handbook Course.
 - c) If he is registered with IIROC in the future, the Respondent's registration will be subject to a one year period of close supervision by his firm, in addition to any period of supervision required of a newly registered approved person.
9. The Respondent agrees to pay costs to IIROC in the amount of \$2,500.

III. STATEMENT OF FACTS

(i) Acknowledgment

10. 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

11. This Settlement Agreement relates to the period of time from approximately June 2008 until the end of December 2008 (the "Relevant Period") when the Respondent was a Registered Representative ("RR") working at Canaccord Genuity Corp. ("Canaccord") in Victoria, British Columbia.
12. On three separate occasions, the Respondent loaned one client \$50,000 to fund that client's margin account, without advising his firm. Each loan was paid back before the next loan was made. In one case the loan was outstanding for approximately two months. In the other two cases the loans were outstanding for less than one month.
13. The Respondent was continuously registered in the securities industry from 1982 until the Relevant Period. He has not been registered in the securities industry since April, 2010.
14. LC was a longtime friend of the Respondent and had been a client of the Respondent since at least 1999. The New Client Application Form ("NCAF") for LC's margin account indicated that LC's annual income was \$150,000 and his networth was \$1,750,000.
15. The trading activity in LC's margin account was generally unsolicited and utilized margin.
16. On three separate occasions in 2008, the Respondent loaned money to LC. Each loan arose from a margin transaction initiated by LC. At some point after each transaction LC's margin account was under margin. In order to make additional trades that he wanted to make while his account was under margin, LC asked the Respondent to loan him money to deposit to the account. After other transactions in the account freed up excess margin, LC withdrew money from the margin account and paid the Respondent back.
17. Each loan was made and paid back as follows:

Date	Amount loaned	When paid back
June 12, 2008	\$50,000	Approximately two months later
Sept. 29, 2008	\$50,000	Oct. 10, 2008
Dec. 8, 2008	\$50,000	Jan. 5, 2009

18. The Respondent did not get Canaccord's permission to loan LC any money and did not tell Canaccord that he had done so.

IV. TERMS OF SETTLEMENT

19. 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.

20. The Settlement Agreement is subject to acceptance by the Hearing Panel.

21. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

22. 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.

23. 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.

24. 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.

25. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

26. 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.

27. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

28. 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 at Vancouver, British Columbia, this 30th day of January, 2012.

"Dwight Stewart"

Witness

"James Wenman"

James Wenman

AGREED TO at Vancouver, British Columbia, this 30th day of January, 2012.

"Brad McKay"

Witness

"Paul Smith"

Paul Smith

Enforcement Counsel, IIROC

ACCEPTED at Vancouver, British Columbia, this 30th day of January, 2012.

"Jean Whittow"

Ms. Jean Whittow, Q.C., Panel Chair

"Chris Lay"

Mr. Chris Lay, Panel Member

"Brian Worth"

Mr. Brian Worth, Panel Member