

Re Stefaniuk

IN THE MATTER OF:

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

and

Gerald Stefaniuk AKA Jerry Stefaniuk

2015 IIROC 36

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

Heard: September 29, 2015 in Vancouver, B.C.

Decision: September 29, 2015

Reasons: October 22, 2015

Hearing Panel:

Winton Derby, Q.C., Chair; Robert Travers and Brian Worth

Appearances:

Stacy Robertson, Enforcement Counsel for IIROC

No one appearing for the Respondent

REASONS FOR ACCEPTANCE OF SETTLEMENT

¶ 1 At a Settlement Hearing on September 29, 2015 we were asked to accept a Settlement Agreement negotiated between the Staff of IIROC and GERALD STEFANIUK (AKA JERRY STEFANIUK). The Settlement Agreement was signed by Mr. Stefaniuk on June 15, 2015, agreed to by Staff at IIROC on September 27, 2015 and is attached. The Panel heard submissions from counsel for IIROC who referenced written submissions and a comprehensive Settlement Book containing, inter alia, IIROC Rules and relevant IIROC and Court decisions.

¶ 2 The Settlement Agreement sets out the facts of the admitted violations at paragraphs 10 through 27 inclusive. They were characterized as "Contraventions" by IIROC staff, being:

Contravention 1

Between March 2012 and January 23, 2013, the Respondent engaged in discretionary trading with respect to the account of a client without being authorized and approved to do so contrary to Dealer Member Rule 1300.4; and

Contravention 2

On January 18, 22 and 23, 2013, the Respondent processed three unauthorized trades in the account of a client contrary to Dealer Member Rule 29.1; and

Contravention 3

Between March 2012 and January 23, 2013, the Respondent, contrary to Dealer Member Rule 29.1,

made misrepresentations on trade tickets regarding the source of a client's trading instructions.

¶ 3 IIROC Staff and the Respondent agreed to the following penalties contained at paragraphs 6 and 7 of the Settlement Agreement:

- a. A suspension from registration in any capacity with IIROC for two years;
- b. A fine of \$35,000;
- c. A period of strict supervision upon any registration with IIROC for two years with a term and condition of strict supervision that the Respondent must conduct all trading instructions in person or on a recorded work telephone number and that his firm conduct random monthly audits to ensure this term is being met; and
- d. The Respondent must re-write the Conduct and Practices Handbook course.

¶ 4 The Respondent has been registered in the investment industry since 1985 with several dealer member firms. Since October 2009 the Respondent has been under strict supervision by IIROC as a result of an IIROC hearing panel decision dated April 7, 2008 (Stefaniuk [2008] I.D.A.C.D. No. 5). He was employed by Global Securities from August 2008 until April 2015. He has not been registered with IIROC since April 2015.

¶ 5 IIROC Counsel reviewed the materials in the Settlement Book including IIROC Dealer Member Rules, Sanction Guidelines and relevant decisions.

¶ 6 The Role of the Hearing Panel on Settlement Hearings was discussed. The following, inter alia, were referred to:

¶ 7 *Re: Deutsche Bank Securities Ltd.* 2013 IIROC 07. That IIROC Hearing Panel said:

"It is clear from jurisprudence emanating from the courts and from Hearing Panels of IIROC, Investment Dealers Association and the Mutual Fund Dealers Association, that our task is not to decide whether, in this case, we would have arrived at the same decision as that reached by the parties. Rather, our duty is to determine whether the penalty is a reasonable one and that it meets the objectives of the disciplinary process which are to maintain the integrity of the investment industry."

¶ 8 *Re: Milewski* [1999] I.D.A.C.D. No. 17 stated:

"A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District council will reflect the public interest benefits of the settlement process in consideration of specific settlements."

¶ 9 After reviewing the details of the contraventions counsel referred us to penalty considerations and the Supreme Court of Canada decision in *Re: Cartaway Resources Corp.* 2004 SCC 26 at paras 60-61, which stated:

"...nothing inherent in the Commission's public interest jurisdiction, as it was considered by this Court in *Asbestos*, supra, prevents the Commission from considering general deterrence in making an order. To the contrary, it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative. Ryan J.A. recognized this in her dissent: "The notion of general deterrence is neither punitive nor remedial. A penalty that is meant to generally deter is a penalty designed to discourage or hinder like behaviour in others" (para 125).

The Oxford English Dictionary (2nd ed. 1989) vol. XII, defines "preventive" as "[t]hat anticipates in order to ward against; precautionary; that keeps from coming or taking place; that acts as a hindrance or obstacle". A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction under s. 162. The respective importance of general deterrence as a factor will vary according to the breach of the Act and the circumstances of the person charged with breaching the Act."

¶ 10 Part I of the IIROC Sanction Guidelines provide some factors to be considered when determining whether a suspension is an appropriate part of a penalty. The factors are:

1. There has been one or more serious contraventions;
2. There has been a pattern of misconduct;
3. The Respondent has a prior disciplinary history;
4. The contravention involved fraudulent, willful and/or reckless misconduct; or
5. The misconduct in question has caused some measure of harm to Investors, the integrity of a marketplace or the securities industry as a whole.

¶ 11 Counsel submitted the following:

"In this case, almost all of the above factors relating to a suspension apply. There are three serious contraventions involving a pattern of conduct over the entire period of time that the account was opened. The Respondent was under a condition of strict supervision while the contraventions occurred. While there were no specific findings in relation to the imposition of strict supervision by IIROC, the fact that the Respondent committed the contraventions which were intentional, while under strict supervision is a serious aggravating factor and one which demands a period of suspension to meet both the general and specific deterrence objectives.

Part II of the Sanction Guidelines sets out some key factors to consider when determining sanctions. Those factors can be classified as either mitigating or aggravating factors. In relation to the contraventions in this matter, the relevant mitigating are as follows:

- a. The Respondent has accepted responsibility for the contraventions by agreeing to the settlement agreement, saving the time and expense of a hearing and the necessity of having former clients testify;
- b. The Respondent did not financially benefit from any of the contraventions other than some minor commissions;
- c. The client was aware of the discretionary trading and consented to it, however, he did not consent to the unauthorized trading;
- d. The client was compensated by the Respondent through his firm for his losses.

The aggravating factors are as follows:

- a. The contraventions were repetitive in nature and occurred over a long period of time;
- b. The Respondent was under a condition of strict supervision by IIROC at the time of the contraventions;
- c. The Respondent failed to follow written instructions from client to liquidate the account; and

- d. The Respondent intentionally hid his improper trading conduct from his firm's compliance department and thereby eliminated the supervisory protections of both the provisions of Rule 1300.4 and the condition of strict supervision which was imposed upon him by IIROC."

¶ 12 Although no two cases are identical counsel assisted us by referring to some similar cases in three areas; being Discretionary Trading, Unauthorized trading and Misrepresentation. The cases were: *Re: Shamseer* 2011 IIROC 5, *Re: Jeske* 2014 IIROC 07, *Re: Clifton* [2004] I.D.A.D.C. No. 44, *Re: Kim* [2007] I.D.A.D.C. No. 54, *Re: Eley* 2014 IIROC 52, *Re: Ricci* 2015 LNONOSC 107, *Re: Wooster* IIROC Decision dated July 9, 2004, and *Re: Cuthbertson* 2012 IIROC 24.

¶ 13 We are guided by the principles stemming from *Re: Milewski* (supra). A panel should not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. We find the sanction in this case is within the reasonable range of appropriateness given the Guidelines, the cases referred to and the facts in this case.

¶ 14 For these reasons the Panel accepted this Settlement Agreement, and executed the original agreement on September 29, 2015.

Dated at Vancouver, British Columbia this 22nd day of October, 2015.

Winton Derby, Q.C., Chair

Robert Travers

Brian Worth

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff ("Staff") and the Respondent, Gerald Stefaniuk aka Jerry Stefaniuk, 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 Gerald Stefaniuk.
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:

Count 1

Between March 2012 and January 23, 2013, the Respondent engaged in discretionary trading with respect to the account of a client without being authorized and approved to do so contrary to Dealer Member Rule 1300.4;

Count 2

On January 18, 22 and 23, 2013, the Respondent processed three unauthorized trades in the account of a client contrary to Dealer Member Rule 29.1; and

Count 3

Between March 2012 and January 23, 2013, the Respondent, contrary to Dealer Member Rule 29.1, made misrepresentations on trade tickets regarding the source of a client's trading instructions.

6. Staff and the Respondent agrees to the following terms of settlement:
 - a. A suspension from registration in any capacity with IIROC for two years;
 - b. A fine of \$35,000;
 - c. A period of strict supervision upon any registration with IIROC for two years with a term and condition of strict supervision that the Respondent must conduct all trading instructions in person or on a recorded work telephone number and that his firm conduct random monthly audits to ensure this term is being met; and
 - d. The Respondent must re-write the Conduct and Practices Handbook course.

III. STATEMENT OF FACTS

(i) Acknowledgment

7. 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

Registration History

8. The Respondent has been employed in the investment industry since 1985 with several Dealer Member firms.
9. The Respondent is not currently registered with IIROC. He was employed with Global Securities from August 2008 until he left their employ in April 2015.

The Respondent has been subject to terms and conditions as part of his registration with IIROC since October 2009. An IIROC hearing panel imposed strict supervision pursuant to their decision dated April 7, 2008.

Discretionary Trading

10. GS opened several accounts at Global Securities on or around November 4, 2009 (the "Accounts") with the Respondent as his investment advisor.
11. When GS opened the Accounts his understanding with the Respondent was that the Respondent could make trades on a discretionary basis. This understanding, however, was not reduced to writing and was neither communicated to nor approved by Global Securities.
12. GS was not in regular contact with the Respondent regarding his Accounts and generally spoke to the Respondent about once a year. GS was aware of the activity in his Accounts through the receipt of trade confirmation slips and account statements.
13. During the material time, the Respondent entered 30 trades in GS's Accounts without confirming the details of the trades with GS prior to their execution. The Respondent discussed the identity of several of the securities prior to the trades, but failed to obtain specific instructions regarding the timing, price, or quantity of the trades. GS learned of the specifics of these and other trades in his accounts through the receipt of trade confirmation slips which he obtained after the completion of the trades.
14. The Respondent did not obtain GS's written authorization for discretionary trading in GS's Accounts and the Accounts were not designated as discretionary by Global Securities.
15. The Respondent did not notify Global Securities that he was exercising discretion over GS's Accounts and did not obtain Global Securities' approval to designate the Accounts as discretionary.

Unauthorized Trading

16. On or about January 10, 2013, GS sent the Respondent a letter via email and indicated his dissatisfaction with the performance of his Accounts and instructed the Respondent to liquidate the Accounts, except for certain shares of Goldcorp Inc. which he requested in certificate form. The email specifically asked the Respondent to advise if he needed anything further.
17. Shortly after the January 10, 2013 email, GS and the Respondent had a telephone conversation where the Respondent recommended holding the shares of Research In Motion Ltd. (“Blackberry”) for a week or so as there was positive news expected. GS agreed to hold the Blackberry shares for a short time longer.
18. The shares of Allon Therapeutics Inc. in GS’s Accounts were sold on January 15, 2013 pursuant to GS’s email instructions. The trade ticket indicated that this sale was unsolicited.
19. The shares of Blackberry in GS’s Accounts were sold on January 21, 2013 pursuant to a passive limit order which was extended on December 31, 2012 to January 31, 2014. The sale of Blackberry shares happened automatically pursuant to the outstanding sell order. The sale was marked as solicited on the trade ticket, indicating that instructions had been received from GS received via cellular phone.
20. The Respondent made the following trades in GS’s Accounts, all of which were indicated as solicited on the trade tickets:

Date	Trans	Quantity	Security	Value	Commission
Jan 18, 2013	Buy	1200	Walter Energy Inc.	\$44313	\$266
Jan 22, 2013	Sell	1200	Walter Energy Inc.	\$45596	\$280
Jan 23, 2013	Buy	1000	Weight Watchers Intl	\$56207	\$337

21. The Respondent indicated on the trade tickets for the purchase and sale of Walter Energy Inc. that he had received instructions from GS via text message on his cellular phone. The Respondent indicated on the trade ticket for the purchase of Weight Watchers Intl that he had received instructions from GS via his cellular phone.
22. GS was not contacted via text message or cellular telephone or any other method of communication to approve these trades prior to these trades being executed. He did not authorize these trades by the Respondent. These trades were all made after GS had given his January 10, 2013 instruction to liquidate the account and after the brief conversation between GS and the Respondent regarding holding the Blackberry shares.
23. On or about January 30, 2013, GS learned of the trades in Walter Energy Inc. and Weigh Watchers Intl. and sent the Respondent an email expressing surprise at the transactions. He repeated his request to have his Accounts liquidated and closed. The Respondent did not respond to GS’s January 30, 2013 email and did not follow GS’s instructions to liquidate and close the Accounts.
24. [Blank]

Misrepresentations

25. From March 2012 to January 23, 2013, the Respondent represented on the trade tickets for GS’s Accounts that he had received trading instructions from GS by a text message or a telephone call on his cellular phone. These representations were false. GS did not receive or send any text messages with trading instructions to the Respondent and he did not provide trading instructions to the Respondent through the Respondent’s cellular telephone for the trades indicated on the trade tickets.

26. The Respondent's firm was recording all of the Respondent's telephone calls on his work telephone as part of its strict supervision of his trading.
27. The Respondent misrepresented the source and existence of GS's trading instructions to his firm to evade detection of his discretionary and unauthorized trading activities in GS's Accounts. The firm was therefore deprived of its ability to properly supervise and verify the trading instructions on the Respondent's work telephone where the instructions would have been recorded.

Client Complaint

28. After receiving email confirmations for the trades in Walter Energy Inc. and Weight Watcher's Intl., GS sent the Respondent an email on January 30, 2013 which indicated his surprise about further purchases made in his Accounts. He repeated his instruction to liquidate his Accounts.
29. The Respondent did not respond to GS's January 30, 2013 email and did not have any further communication with GS regarding GS's Accounts.
30. GS sent the Respondent's supervisor an email on February 21, 2013 to complain about the Respondent's failure to follow his instructions and to seek assistance in having his Accounts liquidated.
31. Global Securities finally liquidated GS's Accounts on or about March 1, 2013.

Client Losses

32. GS suffered losses in his Accounts of approximately 18% of the value of his investments. These losses were incurred between the time that GS provided his instruction to liquidate and the date that the Accounts were ultimately liquidated.
33. The Respondent through his firm paid compensation to GS for his losses.

IV. TERMS OF SETTLEMENT

34. 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.
35. The Settlement Agreement is subject to acceptance by the Hearing Panel.
36. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
37. 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.
38. 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.
39. 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.
40. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
41. 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.
42. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

43. 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 Vancouver in the Province of British Columbia, this 24th day of June, 2015.

“Witness” _____

Witness

“Gerald Stefaniuk” _____

Respondent

AGREED TO by Staff at the City of Vancouver in the Province of British Columbia, this 27 day of September, 2015.

“Witness” _____

Witness

“Stacy Robertson” _____

Stacy Robertson

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

ACCEPTED at the City of Vancouver in the Province of British Columbia, this 29th day of September, 2015, by the following Hearing Panel:

Per: “Winton Derby”

Panel Chair

Per: “Robert Travers”

Panel Member

Per: “Brian Worth”

Panel Member

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