Re Asplund

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Brenda Louise Asplund

2018 IIROC 01

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

Heard: December 19, 2017 in Calgary, Alberta
Decision: January 19, 2018

Hearing Panel:
Shelley L. Miller, Q.C., Chair, Martin Davies and John H. Wells

Appearances:
David McLellan, Enforcement Counsel
Jonathan Selnes Respondent Counsel for Brenda Louise Asplund
Brenda Louise Asplund

SETTLEMENT AGREEMENT ACCEPTED DECEMBER 19, 2017

¶ 1 On December 4, 2017 the Investment Industry Regulatory Organization of Canada ("IIROC") issued a Notice of Application to hold a settlement hearing on December 19, 2017 at 10:00 a.m. at Bow Valley Square Conference Centre in Calgary, Alberta.

¶ 2 The purpose of the hearing was 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 Brenda Louise Asplund ("Respondent" or "Asplund").

¶ 3 The Settlement Agreement addressed a proposed allegation that the Respondent engaged in conduct unbecoming, contrary to IIROC Dealer Member Rule 29.1, when she accepted funds in order to participate with a client in a private placement.

¶ 4 The issue for this Hearing Panel was whether it should accept or reject the proposed settlement.

¶ 5 The Settlement Agreement, appended to these Reasons for Decision, set out in Part III facts in support of the allegation to which both parties to this hearing agreed.

Key Facts Found

¶ 6 This Hearing Panel noted the following particular facts contained in the Settlement Agreement as relevant to its decision:*The Respondent, Brenda Louise Asplund ("Asplund") is a Registered Representative ("RR"), with Leede Jones Gable Inc. ("Leede") in Calgary.*

(b) At all material times, BR was a Leede client and also a close friend of Asplund.

(c) On February 10, 2016, BR received an email from an RR at Leede soliciting interest in a non-

brokered private placement of convertible securities comprised of subscription receipts in Kaizen Capital Corp ("Kaizen"), a capital pool company. BR emailed Asplund to inquire further, and they discussed the opportunity over the telephone.

(d) Asplund accepted funds from a client ("BR") payable to her personally, and then used the funds, together with her own, to participate in a private placement through Asplund's own trading account.

(e) On February 12, 2016, the Respondent completed a new client application form ("NCAF") with BR for a TFSA and a new Margin account the specific purpose for which was to allow BR to invest in Kaizen because she only had a managed account, which Kaizen's subscription receipts could not be deposited in. Asplund signed the NCAF on February 16, 2016 and it was approved by her supervisor on February 20, 2016.

(f) In a subscription agreement dated February 12, 2016, Asplund agreed to personally purchase 100,000 subscription receipts of Kaizen at $0.10 per subscription receipt ($10,000). She endorsed on the subscription agreement that she was a member of a "pro group", that she qualified for the accredited investor exemption as defined under National Instrument 45-106 (NI 45-106), and that she was purchasing as principal and not for the benefit of any other person.

(g) On February 22, 2016, Asplund changed the subscription agreement in order to increase her purchase from 100,000 to 150,000 subscription receipts ($15,000) to reflect her purchase of 50,000 subscription receipts on behalf of BR. The changes were initialed by Asplund. Asplund purchased the 50,000 subscription receipts as a favour to BR, who was a close friend and was outside the city and unavailable at the material time.

(h) At all material times, BR did not qualify as an accredited investor, or for any of the other exemptions available under NI 45-106.

(i) On February 23, 2016, BR's TFSA and Margin accounts were opened.

(j) On February 25, 2016, BR provided Asplund with a cheque in the amount of $5,000. Asplund deposited the $5,000 that she received from BR into her personal bank account. Asplund then transferred the funds into her own Leede trading account by individual transfers on February 26, and March 8, 2016.

(k) On April 15, 2016, pursuant to the subscription agreement, Asplund's purchase of 150,000 subscription receipts closed and on April 18, the subscription receipts were exchanged on a one for one basis for 150,000 Kaizen shares. The 150,000 Kaizen shares were reflected in Asplund's trading account statement dated April 30, 2016.

(l) On May 12, 2016, following confirmation of completion of its qualifying transaction, Kaizen changed its name to Tudor Gold Corp. ("Tudor"), and began trading on the TSX Venture Exchange under the symbol TUD.

(m) By email dated May 13, 2016, Asplund sent a draft letter ("Letter of Direction") to BR from her Leede email account. In the email, Asplund stated to BR: "I just drafted this letter for the Tudor shares ... I will print it on Leede letterhead for both of us to sign ... on paper your investment of $5,000 is worth $37,500."

(n) The Letter of Direction, which was dated April 15, 2016, sought to evidence BR's ownership of 50,000 Tudor shares and her obligation to pay any capital gains taxes. Asplund says that she wrote this Letter of Direction to BR so that if BR suddenly passed away there would be documentation confirming that Asplund was holding the 50,000 Tudor shares for the benefit of BR's estate. BR did not sign the Letter of Direction.

(o) On June 30, 2016, Tudor shares traded at $1.49 per share, which equated to an unrealized gain of $69,500 on the $5,000 investment.

(p) *On July 6, Leede compliance became aware of the Letter of Direction through a routine review of Asplund's emails sent from her Leede email account. On July 7, 2016, on the direction of Leede's CCO, Asplund sent a letter to BR, whereby Asplund agreed to "unwind" the transaction and repay the $5,000 to BR. As a result, Leede imposed a 6 month period of close supervision on Asplund.*

(q) *On July 8, 2016, Asplund sent BR a second Letter of Direction under which she returned the $5,000 that BR had given her for the purchase of the 50,000 shares of Kaizen. BR signed the Letter of Direction and deposited the $5,000 into her own account.*

(r) *As of February 2017, Asplund continued to hold the Tudor shares in her own trading account.*

(s) *Asplund deposited client funds into her own trading account, and jointly participated in a private placement with the client.*

(t) *The Dealer Member firm was not aware that BR had participated in the private placement with Asplund. As such, the transaction had the effect of circumventing the accredited investor exemption requirement, and prevented the Dealer Member firm from assessing suitability of the investment for the client. In addition, it impeded the firm's ability to supervise Asplund's activities.*

¶ 7 By entering into the Settlement Agreement, the Respondent admitted that her conduct described above constituted a contravention of IIROC's Rules. In particular, she admitted engaging in conduct unbecoming by accepting funds from a client in order to jointly participate with the client in a private placement without the knowledge or consent of her Dealer Member firm, contrary to Dealer Member Rule 29.1.

Decision on Contravention of Dealer Member Rule 29.1

¶ 8 In light of the above facts, as well as the admission of the Respondent, who was at all material times represented by legal counsel, that they constituted a breach of Dealer Member Rule 29.1, this Hearing Panel concludes that the Respondent knew or should have known that she was not permitted to accept funds from a client to jointly participate with the client in a private placement without the knowledge or consent of her Dealer Member firm.

¶ 9 The cases of *Leung (Re)* [2002] I.D.A.C.D. No. 46 and *Begic (Re)* [2004] I.D.A.C.D. No. 8, both make abundantly clear that engaging in personal financial dealing with a client without the Member firm's knowledge and approval constitutes conduct unbecoming a registered representative. Accordingly this Hearing Panel is satisfied that the allegation contained in the Notice of Application is proven to the required standard.

Decision on Penalty

¶ 10 The Settlement Agreement proposed specific terms pertaining to penalty which are set out below for ease of reference:

a. *A fine in the amount of $15,000;*

b. *Successful rewrite of the Conduct and Practices Handbook examination within 90 days of accepting the Settlement by the Hearing Panel; and*

c. *Costs in the amount of $1,500.*

¶ 11 The Respondent, who as stated, was represented by legal counsel, agreed to the foregoing sanctions and costs.

¶ 12 This Hearing Panel is aware that its responsibility is to either accept the settlement agreement or reject it, as stated by the I.D.A. Ontario District Council in Milewski (Re) [1999] I.D.A.C.D No. 17 at p. 10, Ontario District Council Decision dated July 28, 1999.

¶ 13 This Hearing Panel was also reminded of the provisions of the IIROC Sanction Guidelines that are intended, inter alia, to assist hearing panels in the fair and efficient determination of appropriate sanctions after

disciplinary hearings, although they are not intended to fetter the discretion of a hearing panel in determining the appropriate sanction.

¶ 14 This Hearing Panel considered the following factors in support of the penalty submission:

a. There was only one transaction at issue.

b. The respondent had not engaged in a pattern of misconduct.

c. The respondent had not engaged in the misconduct over an extended period of time.

d. The conduct was not intentional, willfully blind, or reckless with respect to regulatory requirements, but rather mistakenly undertaken with the goal of helping a friend.

e. The conduct was harmful to market integrity and the reputation of the marketplace.

f. The respondent had no prior disciplinary history.

g. The respondent accepted responsibility for and acknowledged the misconduct to her employer and the regulator after detection and intervention by the Dealer Member.

h. The respondent was subject to close supervision by the Dealer Member subsequent to discovery of the misconduct.

i. The respondent made no attempt to conceal her misconduct.

j. The respondent engaged in the misconduct at issue notwithstanding prior warnings that the conduct contravened IIROC rules and was not in the best interests of the client or public.

¶ 15 Enforcement Counsel also cited the decisions of Leung (Re) (supra) and Begic (Re) (supra) (decided at least 13 years ago) in support of the submissions as to penalty. Both cases involved settlement agreements, both concerned unbecoming conduct in the way of personal financial dealing with a client without the Member's knowledge or consent, and both included as a sanction the payment of costs and a requirement that the respondent complete a successful rewrite of the Conduct and Practices Handbook examination. In Leung (Re) (supra) the hearing panel imposed a fine of $10,000 and in Begic (Re) (supra) a fine of $15,000 was imposed.

¶ 16 All of the foregoing factors supported the acceptance of the proposed Settlement Agreement by this Hearing Panel.

¶ 17 The only question over which this Hearing Panel felt the need to deliberate was whether the amount of the proposed fine of $15,000 was appropriate in 2017 having regard to the circumstances of this case.

¶ 18 First, the conduct was serious in nature. Second, while the client suffered no financial loss in the circumstances because the transaction was unwound, at the same time, the Respondent also suffered no financial loss on the transaction. Third, the Hearing Panel accepted that the Respondent fell into error in her misconduct for the reason that she was trying to help a friend. Fourth, the fact that the decisions cited to this Hearing Panel were more than a decade old signified to this Hearing Panel that this type of unbecoming conduct is not evidently a currently growing trend in the investment industry. Finally, this Hearing Panel accepted that legal counsel for both parties had negotiated the settlement terms in good faith. Taking into account all of these factors, this Hearing Panel in the result was satisfied that the acceptance of the Settlement Agreement in this instance satisfied both the aspects of general and specific deterrence of this type of conduct.

¶ 19 Accordingly this Hearing Panel imposes the following penalties:

a. Payment of a fine in the amount of $15,000;

b. A direction that the Respondent complete a successful rewrite of the Conduct and Practices Handbook examination within 90 days of the date of acceptance of the Settlement by the Hearing Panel; i.e. December 19, 2017 and

c. Payment of Costs in the amount of $1,500.

¶ 20 This Hearing Panel thanks both counsel for their assistance during the hearing.

Dated at Calgary, Alberta this 19th day of January, 2018.

Shelley L. Miller

Martin Davies

John H. Wells

APPENDIX

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 Brenda Louise Asplund ("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. The Respondent, Brenda Louise Asplund ("Asplund") is a Registered Representative ("RR"), with Leede Jones Gable Inc. ("Leede") in Calgary.

5. Asplund accepted funds from a client payable to her personally, and then used the funds, together with her own, to participate in a private placement through Asplund's own trading account.

Registration History

6. Since May, 2015, she has worked as an RR with Leede, and is fully registered to trade in securities. However, her primary role is as an associate performing administrative tasks to assist a Portfolio Manager.

7. Between October, 2012 and May, 2015, Asplund worked as an Investment Representative with another Dealer Member firm.

Private Placement

8. At all material times, BR was a Leede client and also a close friend of Asplund.

9. On February 10, 2016, BR received an email from an RR at Leede soliciting interest in a non-brokered private placement of convertible securities comprised of subscription receipts in Kaizen Capital Corp ("Kaizen"), a capital pool company. BR emailed Asplund to inquire further, and they discussed the opportunity over the telephone.

10. On February 12, 2016, Asplund completed a new client application form ("NCAF") with BR for a TFSA and a Margin account. The specific purpose for the new account was to allow BR to invest in Kaizen because she only had a managed account, which Kaizen's subscription receipts could not be deposited in. Asplund signed the NCAF on February 16, 2016 and it was approved by her supervisor on February 20,

2016.

11. In a subscription agreement dated February 12, 2016, Asplund agreed to personally purchase 100,000 subscription receipts of Kaizen at $0.10 per subscription receipt ($10,000). She endorsed on the subscription agreement that she was a member of a "pro group", that she qualified for the accredited investor exemption as defined under National Instrument 45-106 (NI 45-106), and that she was purchasing as principal and not for the benefit of any other person.

12. On February 22, 2016, Asplund changed the subscription agreement in order to increase her purchase from 100,000 to 150,000 subscription receipts ($15,000) to reflect her purchase of 50,000 subscription receipts on behalf of BR. The changes were initialed by Asplund. Asplund purchased the 50,000 subscription receipts as a favour to BR, who was a close friend and was outside the city and unavailable at the material time.

13. At all material times, BR did not qualify as an accredited investor, or for any of the other exemptions available under NI 45-106.

14. On February 23, 2016, BR's TFSA and Margin accounts were opened.

15. On February 25, 2016, BR provided Asplund with a cheque in the amount of $5,000. Asplund deposited the $5,000 that she received from BR into her personal bank account. Asplund then transferred the funds into her own Leede trading account by individual transfers on February 26, and March 8, 2016.

16. On April 15, 2016, pursuant to the subscription agreement, Asplund's purchase of 150,000 subscription receipts closed and on April 18, the subscription receipts were exchanged on a one for one basis for 150,000 Kaizen shares. The 150,000 Kaizen shares were reflected in Asplund's trading account statement dated April 30, 2016.

17. On May 12, 2016, following confirmation of completion of its qualifying transaction, Kaizen changed its name to Tudor Gold Corp. ("Tudor"), and began trading on the TSX Venture Exchange under the symbol TUD.

18. By email dated May 13, 2016, Asplund sent a draft letter ("Letter of Direction") to BR from her Leede email account. In the email, Asplund stated to BR: "I just drafted this letter for the Tudor shares ... I will print it on Leede letterhead for both of us to sign ... on paper your investment of $5,000 is worth $37,500."

19. The Letter of Direction, which was dated April 15, 2016, sought to evidence BR's ownership of 50,000 Tudor shares and her obligation to pay any capital gains taxes. Asplund says that she wrote this Letter of Direction to BR so that if BR suddenly passed away there would be documentation confirming that Asplund was holding the 50,000 Tudor shares for the benefit of BR's estate. BR did not sign the Letter of Direction.

20. On June 30, 2016, Tudor shares traded at $1.49 per share, which equated to an unrealized gain of $69,500 on the $5,000 investment.

21. On July 6, Leede compliance became aware of the Letter of Direction through a routine review of Asplund's emails sent from her Leede email account. On July 7, 2016, on the direction of Leede's CCO, Asplund sent a letter to BR, whereby Asplund agreed to "unwind" the transaction and repay the $5,000 to BR. As a result, Leede imposed a 6 month period of close supervision on Asplund.

22. On July 8, 2016, Asplund sent BR a second Letter of Direction under which she returned the $5,000 that BR had given her for the purchase of the 50,000 shares of Kaizen. BR signed the Letter of Direction and deposited the $5,000 into her own account.

23. As of February, 2017, Asplund continued to hold the Tudor shares in her own trading account.

Conduct Unbecoming

24. Asplund deposited client funds into her own trading account, and jointly participated in a private placement with the client.

25. The Dealer Member firm was not aware that BR had participated in the private placement with Asplund. As such, the transaction had the effect of circumventing the accredited investor exemption requirement, and prevented the Dealer Member firm from assessing suitability of the investment for the client. In addition, it impeded the firm's ability to supervise Asplund's activities.

PART IV – CONTRAVENTIONS

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

    a) The Respondent engaged in conduct unbecoming by accepting funds from a client in order to jointly participate with the client in a private placement without the knowledge or consent of her Dealer Member firm, contrary to Dealer Member Rule 29.1.

PART V – TERMS OF SETTLEMENT

27. The Respondent agrees to the following sanctions and costs:

    a. A fine in the amount of $15,000;

    b. Successful rewrite of the Conduct and Practices Handbook examination within 90 days of accepting the Settlement by the Hearing Panel; and

    c. Costs in the amount of $1,500.

28. 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

29. 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.

30. 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

31. This Settlement Agreement is conditional on acceptance by the Hearing Panel.

32. 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.

33. 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.

34. 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.

35. 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.

36. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.

37. 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.

38. If this Settlement Agreement is accepted, the Respondent agrees that neither she nor anyone on her behalf, will make a public statement inconsistent with this Settlement Agreement.

39. 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

40. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

41. A fax or electronic copy of any signature will be treated as an original signature.

DATED this 30th day of November 2017.

"WITNESS"
Witness

"BRENDA ASPLUND"
Respondent

"NARGIS BAKHTIARY"
Witness

"DAVID MCLELLAN"
David McLellan
Enforcement Counsel on behalf of Enforcement Staff of the Investment Industry Regulatory Organization of Canada

The Settlement Agreement is hereby accepted this 19th day of December, 2017, by the following Hearing Panel:

Per: **"SHELLEY MILLER"**
Panel Chair

Per: **"MARTIN DAVIES"**
Panel Member

Per: **"JOHN WELLS"**
Panel Member