

Re McKee

IN THE MATTER OF:

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

and

Michael Alexander McKee

2020 IIROC 12

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

Heard: February 19, 2020

Decision: February 19, 2020

Written Reasons for Decision: April 7, 2020

Hearing Panel:

Thomas J. Lockwood, Q.C., Chair, Peter Gribbin and Craig Meeds

Appearance:

Sally Kwon, Enforcement Counsel for IIROC

Dan Giantsopoulos, for Michael Alexander McKee

Michael Alexander McKee (absent)

REASONS FOR DECISION

A. INTRODUCTION

¶ 1 On June 4, 2019, the Investment Industry Regulatory Organization of Canada (“IIROC”) issued a Notice of Hearing against Michael Alexander McKee (“Respondent”).

¶ 2 An Initial Appearance was held before an IIROC Hearing Panel on September 4, 2019, at which time, with the consent of the parties, a date for the Hearing on the Merits of February 19-20, 2020 was established. An Order was also made establishing a schedule for the delivery of disclosure, witness lists and witness statements by the parties.

¶ 3 When the Respondent did not deliver his disclosure, witness list and witness statements in accordance with the September 4, 2019 Order, a series of Pre-Hearing Conferences were held on January 7, 16 and 29, 2020, which resulted in a further series of Orders by the Hearing Panel.

¶ 4 At the commencement of the Hearing on the Merits, on February 19, 2020, the Hearing Panel was advised that a tentative settlement had been reached between the parties. The Hearing Panel acceded to the parties’ request that the matter be adjourned to 10:00 a.m. on February 20, 2020, so that the appropriate documentation could be prepared, executed and presented to the Hearing Panel.

¶ 5 On February 20, 2020, the Hearing Panel was presented with a Notice of Motion for Settlement Hearing, prepared in accordance with Section 8428 of the Consolidated Enforcement, Examination and Approval Rules of IIROC (“Consolidated Rules”).

¶ 6 The Hearing Panel was also presented with a Settlement Agreement, dated February 20, 2020, which had been entered into between IIROC Staff and the Respondent. The parties jointly recommended that the Hearing Panel accept the Settlement Agreement.

¶ 7 After hearing Counsel for IIROC and the Respondent, and carefully considering the material filed, the Hearing Panel issued an Order accepting the Settlement Agreement. These are our Reasons for making that Order.

B. SETTLEMENT AGREEMENT

¶ 8 In the Settlement Agreement, the Respondent admitted to the following contraventions of IIROC’s Consolidated Rules:

CONTRAVENTION 1

In March 2017 and April 2017, the Respondent made false and misleading representations to his Dealer Member regarding the relationship between his client and subjects of a securities regulatory proceeding, contrary to Consolidated Rule 1400.

CONTRAVENTION 2

Between February 2017 and April 2017, the Respondent (1) failed to inform his client IH about an error he had made in respect of IH’s corporate account, obtain instructions in relation thereto, and inform IH about securities that were subsequently sold; and (2) failed to follow his Dealer Member’s instructions regarding the error, contrary to Consolidated Rule 1400.

¶ 9 Consolidated Rule 1400 provides, in part, as follows:

1402. Standards of Care

(1) A. Regulated Person

- (i) in the transaction of business, must observe high standards of ethics and conduct and must act openly and fairly and in accordance with just and equitable principles of trade, and
- (ii) must not engage in any business conduct that is unbecoming or detrimental to the public interest.

(2) Without limiting the generality of the foregoing, any business conduct that:

- (i) is negligent;
- (ii) fails to comply with a legal, regulatory, contractual, or other obligation, including the rules, requirements, and policies of a Regulated Person;
- (iii) displays an unreasonable departure from standards that are expected to be observed by a Regulated Person; or
- (iv) is likely to diminish investor confidence in the integrity of securities, commodities or derivatives markets

may be conduct that contravenes one or more of the standards set forth in subsection 1402(1).

¶ 10 The Settlement Agreement was based on the following Agreed Facts:

- (a) In March 2017, the Respondent opened an account for a client (the “client”), who was the director, officer, and shareholder of a corporation (the “Corporation”) and the spouse of an individual (the “Spouse”) that were both subjects of a securities regulatory proceeding.
- (b) On March 31, 2017, the Respondent’s Branch Manager asked the Respondent if the client was associated with the Spouse; however, the Branch Manager used a given name that was similar but not identical to the Spouse’s given name. The Respondent told the Branch Manager that the client was not associated with that name. This was a misleading representation as the Respondent knew or ought to have known that the purpose of the enquiry was to determine whether the client had any connection to the Spouse that was a subject of the securities regulatory proceeding. On April 24, 2017, when the Branch Manager asked the Respondent if the client was connected to the Corporation, the Respondent falsely represented that she was not. The Respondent knew or ought to have known that the client was a director, officer and shareholder of the Corporation.
- (c) Regarding client IH’s account, in September 2016, the Respondent failed to record IH’s instructions to keep his corporate account’s shares in respect of a reorganization. In January 2017, when the reorganization occurred, IH’s corporate account’s shares were exchanged for non-marginable shares instead of being maintained. The Respondent did not immediately inform IH about the error that had been made.
- (d) Scotia’s credit department notified the Respondent about a margin call for IH’s corporate account, as the exchanged shares were non-marginable. Scotia requested the Respondent to obtain instructions from IH by March 15, 2017, failing which certain shares would be sold to cover the margin call. The Respondent failed to obtain instructions from IH by March 15, 2017 and the shares were sold.
- (e) The Respondent did not inform IH about the error, subsequent margin call, and the fact that the shares had been sold until April 2017.

Background

- (f) The Respondent was registered in the securities industry between September 2009 and May 2017. He was a Registered Representative at Scotia from May 2016 until he was terminated on May 25, 2017.
- (g) The Respondent is not currently an IIROC registrant.

False and Misleading Representations to Dealer Member

- (h) At all material times, the Respondent understood from Scotia that he was not permitted to open an account for the Spouse who was a subject of a securities regulatory proceeding.
- (i) Rather than opening an account for the Spouse, in March 2017, the Respondent requested and obtained information and instructions from the Spouse to open an account in the name of his wife.
- (j) Upon opening an account for the Spouse’s wife (*i.e.* the client), the Respondent arranged for the transfer of assets from an external account of the Corporation, which was also a subject of the securities regulatory proceeding, into the client’s account. However, the transfer was never completed.

- (k) On March 31, 2017, the Respondent's Branch Manager asked the Respondent if the client was related to an individual with the same surname but different given name of the Spouse. The Respondent advised his Branch Manager that he was not aware of any connection. This was a misleading representation as the Respondent knew or ought to have known that his Branch Manager had misspelled the Spouse's name and that the true nature of her enquiry was to determine whether the client had any connection to the Spouse who was a subject of the securities regulatory proceeding.
- (l) On April 24, 2017, the Respondent's Branch Manager asked the Respondent if the client was connected to the Corporation. The Respondent advised his Branch Manager that she "had nothing to do with [the Corporation]". This was a false representation as the Respondent knew or ought to have known that she was an officer, director and shareholder of the Corporation, having received corporate documents for the Corporation in January 2017.
- (m) Scotia closed the client's account on or about May 9, 2017 upon determining that the client was connected to the Spouse who was a subject of the securities regulatory proceeding and the Corporation.

Failure to Advise Client of Error and Follow Dealer Member's Instructions Regarding Error

- (n) The Respondent opened a personal account and corporate account for his client IH in May 2016 and June 2016. Both of these accounts were margin accounts. As of May 2016, IH's personal account held Intertain Group Ltd. ("Intertain") shares and as of June 2016, IH's corporate account held Intertain convertible debentures and Intertain shares.
- (o) In August 2016, Intertain announced a reorganization pursuant to which Intertain shareholders could elect to keep their Intertain shares or receive shares of Jackpotjoy plc ("Jackpotjoy"). Intertain shareholders were required to elect their option by January 20, 2017 and the default option was to receive shares of Jackpotjoy.
- (p) On or around September 20, 2016, IH advised the Respondent, in regards to the Intertain reorganization, that he wanted to keep the Intertain shares held in his personal account, and convert the Intertain convertible debentures held in his corporate account and keep the Intertain shares held in that account as well.
- (q) On or around September 21, 2016, the Respondent entered instructions to convert IH's corporate account's Intertain convertible debentures into Intertain shares but did not enter instructions for IH's corporate account to keep those Intertain shares.
- (r) On or about January 27, 2017, the Intertain reorganization occurred and IH's corporate account's Intertain shares were converted into Jackpotjoy shares.
- (s) On February 2, 2017, the Respondent received notification from Scotia's credit department of a margin call for IH's corporate account in the amount of \$657,556 because the account held Jackpotjoy shares and Jackpotjoy was not margin eligible.
- (t) Upon receiving notification of the margin call, the Respondent did not contact IH to inform him of the error or obtain instructions on how to proceed.
- (u) Scotia repeatedly requested that the Respondent obtain instructions from IH regarding the margin call by no later than March 15, 2017. Scotia advised the Respondent that if the margin call was not covered by March 15, 2017, then the Amaya shares held in IH's corporate account would be sold.

- (v) The Respondent failed to obtain instructions from IH regarding the margin call by March 15, 2017. IH's Amaya shares were sold to cover the margin call.
- (w) Upon receiving notification that IH's corporate account's Amaya shares had been sold, the Respondent did not contact IH to inform him of the sale. Only after IH had made inquiries relating to his Amaya shares on or about April 13, 2017 did the Respondent inform IH about the error and subsequent margin call and sale. This was approximately 2.5 months after the Respondent learned about the error and one month after IH's corporate account's Amaya shares had been sold.
- (x) IH was compensated by Scotia.

¶ 11 Based on the Agreed Facts and the admitted contraventions of Consolidated Rule 1400, the parties jointly submitted that the following sanctions and costs should be imposed:

- (a) Payment of a fine in the amount of \$30,000.00;
- (b) Successful re-write of the Conduct and Practices Handbook course prior to any re-registration with IIROC; and
- (c) Costs in the amount of \$5,000.00

C. THE LAW

¶ 12 Section 8215(5) of the Consolidated Rules provides that after a settlement hearing, a hearing panel may accept or reject a settlement agreement.

¶ 13 In making the decision whether to accept or reject the Settlement Agreement, the Hearing Panel should determine whether the proposed settlement falls within a range or reasonableness. As has been stated, on many occasions, this allows for a range of possible results. Settlement is a product of compromise. Each settlement must be judged on its own peculiar set of facts and circumstances.

¶ 14 In submitting that the Settlement Agreement before us fell within the reasonable range, IIROC Enforcement Staff ("Staff") referred the Hearing Panel to the IIROC Sanction Guidelines ("Guidelines"), as well as a number of previous decisions.

¶ 15 The Guidelines are intended, *inter alia*, to assist IIROC Staff and respondents in the negotiation of settlement agreements, as well as hearing panels, in making a determination as to whether to accept a settlement agreement once it has been negotiated.

¶ 16 Staff reviewed certain of the applicable principles, as well as the key factors, to show how, in its submission, this Settlement Agreement complied with same.

¶ 17 Staff also reviewed a number of previous IIROC decisions, some of which involved settlement agreements, seeking to show how, on a comparative basis, the settlement reached with the Respondent, in the case before us, was reasonable.

¶ 18 The cases reviewed included the following:

- (a) *Re King*, 2013 IIROC 11;
- (b) *Re Suleiman*, 2016 IIROC 27;
- (c) *Re IPC Securities*, 2016 IIROC 32;
- (d) *Re Sian*, 2017 IIROC 34;
- (e) *Re Bridgman*, 2018 IIROC 14;

(f) *Re Rudensky*, 2018 IIROC 38.

D. DECISION

¶ 19 After a careful review of the Settlement Agreement, the Guidelines, the precedent cases, as well as the submissions of the parties, we unanimously concluded that the penalties proposed fell within a range of reasonableness, and that it was in the public interest that the Settlement Agreement be accepted.

DATED at Toronto, Ontario this 7 day of April 2020.

Thomas J. Lockwood

Peter Gribbin

Craig Meeds

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada (“IIROC”) will issue a Notice of Motion 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 Michael Alexander McKee (“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.
4. In March 2017, the Respondent opened an account for a client (the “client”), who was the director, officer, and shareholder of a corporation (the “Corporation”) and the spouse of an individual (the “Spouse”) that were both subjects of a securities regulatory proceeding.
5. On March 31, 2017, the Respondent’s Branch Manager asked the Respondent if the client was associated with the Spouse; however, the Branch Manager used a given name that was similar but not identical to the Spouse’s given name. The Respondent told the Branch Manager that the client was not associated with that name. This was a misleading representation as the Respondent knew or ought to have known that the purpose of the enquiry was to determine whether the client had any connection to the Spouse that was a subject of the securities regulatory proceeding. On April 24, 2017, when the Branch Manager asked the Respondent if the client was connected to the Corporation, the Respondent falsely represented that she was not. The Respondent knew or ought to have known that the client was a director, officer and shareholder of the Corporation.
6. Regarding client IH’s account, in September 2016, the Respondent failed to record IH’s instructions to keep his corporate account’s shares in respect of a re-organization. In January 2017, when the re-organization occurred, IH’s corporate account’s shares were exchanged for non-marginable shares

instead of being maintained. The Respondent did not immediately inform IH about the error that had been made.

7. Scotia's credit department notified the Respondent about a margin call for IH's corporate account, as the exchanged shares were non-marginable. Scotia requested the Respondent to obtain instructions from IH by March 15, 2017, failing which certain shares would be sold to cover the margin call. The Respondent failed to obtain instructions from IH by March 15, 2017 and the shares were sold.
8. The Respondent did not inform IH about the error, subsequent margin call, and the fact that the shares had been sold until April 2017.

Background

9. The Respondent was registered in the securities industry between September 2009 and May 2017. He was a Registered Representative at Scotia from May 2016 until he was terminated on May 25, 2017.
10. The Respondent is not currently an IIROC registrant.

False and Misleading Representations to Dealer Member

11. At all material times, the Respondent understood from Scotia that he was not permitted to open an account for the Spouse who was a subject of a securities regulatory proceeding.
12. Rather than opening an account for the Spouse, in March 2017, the Respondent requested and obtained information and instructions from the Spouse to open an account in the name of his wife.
13. Upon opening an account for the Spouse's wife (*i.e.* the client), the Respondent arranged for the transfer of assets from an external account of the Corporation, which was also a subject of the securities regulatory proceeding, into the client's account. However, the transfer was never completed.
14. On March 31, 2017, the Respondent's Branch Manager asked the Respondent if the client was related to an individual with the same surname but different given name of the Spouse. The Respondent advised his Branch Manager that he was not aware of any connection. This was a misleading representation as the Respondent knew or ought to have known that his Branch Manager had misspelled the Spouse's name and that the true nature of her enquiry was to determine whether the client had any connection to the Spouse who was a subject of the securities regulatory proceeding.
15. On April 24, 2017, the Respondent's Branch Manager asked the Respondent if the client was connected to the Corporation. The Respondent advised his Branch Manager that she "had nothing to do with [the Corporation]". This was a false representation as the Respondent knew or ought to have known that she was an officer, director and shareholder of the Corporation, having received corporate documents for the Corporation in January 2017.
16. Scotia closed the client's account on or about May 9, 2017 upon determining that the client was connected to the Spouse who was a subject of the securities regulatory proceeding and the Corporation.

Failure to Advise Client of Error and Follow Dealer Member's Instructions Regarding Error

17. The Respondent opened a personal account and corporate account for his client IH in May 2016 and June 2016. Both of these accounts were margin accounts. As of May 2016, IH's personal account held Intertain Group Ltd. ("Intertain") shares and as of June 2016, IH's corporate account held Intertain convertible debentures and Intertain shares.
18. In August 2016, Intertain announced a re-organization pursuant to which Intertain shareholders could elect to keep their Intertain shares or receive shares of Jackpotjoy plc ("Jackpotjoy"). Intertain

shareholders were required to elect their option by January 20, 2017 and the default option was to receive shares of Jackpotjoy.

19. On or around September 20, 2016, IH advised the Respondent, in regards to the Intertain re-organization, that he wanted to keep the Intertain shares held in his personal account, and convert the Intertain convertible debentures held in his corporate account and keep the Intertain shares held in that account as well.
20. On or around September 21, 2016, the Respondent entered instructions to convert IH's corporate account's Intertain convertible debentures into Intertain shares but did not enter instructions for IH's corporate account to keep those Intertain shares.
21. On or about January 27, 2017, the Intertain re-organization occurred and IH's corporate account's Intertain shares were converted into Jackpotjoy shares.
22. On February 2, 2017, the Respondent received notification from Scotia's credit department of a margin call for IH's corporate account in the amount of \$657,556 because the account held Jackpotjoy shares and Jackpotjoy was not margin eligible.
23. Upon receiving notification of the margin call, the Respondent did not contact IH to inform him of the error or obtain instructions on how to proceed.
24. Scotia repeatedly requested that the Respondent obtain instructions from IH regarding the margin call by no later than March 15, 2017. Scotia advised the Respondent that if the margin call was not covered by March 15, 2017, then the Amaya shares held in IH's corporate account would be sold.
25. The Respondent failed to obtain instructions from IH regarding the margin call by March 15, 2017. IH's Amaya shares were sold to cover the margin call.
26. Upon receiving notification that IH's corporate account's Amaya shares had been sold, the Respondent did not contact IH to inform him of the sale. Only after IH had made inquiries relating to his Amaya shares on or about April 13, 2017 did the Respondent inform IH about the error and subsequent margin call and sale. This was approximately 2.5 months after the Respondent learned about the error and one month after IH's corporate account's Amaya shares had been sold.
27. IH was compensated by Scotia.

PART IV – CONTRAVENTIONS

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

Contravention 1

In March 2017 and April 2017, the Respondent made false and misleading representations to his Dealer Member regarding the relationship between his client and subjects of a securities regulatory proceeding, contrary to Consolidated Rule 1400.

Contravention 2

Between February 2017 and April 2017, the Respondent (1) failed to inform his client IH about an error he had made in respect of IH's corporate account, obtain instructions in relation thereto, and inform IH about securities that were subsequently sold; and (2) failed to follow his Dealer Member's instructions regarding the error, contrary to Consolidated Rule 1400.

PART V – TERMS OF SETTLEMENT

29. The Respondent agrees to the following sanctions and costs:
 - a) Payment of a fine in the amount of \$30,000;
 - b) Successful re-write the Conduct and Practices Handbook course prior to any re-registration with IIROC; and
 - c) Costs in the amount of \$5,000.
30. 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

31. 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.
32. 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

33. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
34. 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.
35. 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.
36. 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.
37. 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.
38. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
39. 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.
40. 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.
41. 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

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

DATED this “20th” day of “February”, 20“20”.

“Witness”
Witness

“Michael Alexander McKee”
Respondent

“Frank Scali”
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 “20th” day of “February”, 20“20” by the following Hearing Panel:

- Per: “Tom Lockwood”
Panel Chair
- Per: “Craig Meeds”
Panel Member
- Per: “Peter Gribbon”
Panel Member

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