Re Hewat

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Richard Hewat

2019 IIROC 10

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

Heard: December 20, 2018 in Vancouver, BC
Decision: April 8, 2019

Hearing Panel:
Wade Nesmith, Chair, David Duquette and Brian Field
Appearance:
Stacy Robertson, Enforcement Counsel
Richard Hewat, unrepresented, appearing by teleconference

DECISION ON SETTLEMENT AGREEMENT

¶ 1 This matter came before the Panel pursuant to Dealer Member Rule 8215 which provides for our approval or rejection of a settlement agreement. The Settlement Agreement in the matter is appended to this decision.

¶ 2 We do not propose to itemize the allegations of Staff that have been agreed to by the Respondent. In summary, the allegations involve 3 separate accounts – one corporate and 2 personal.

¶ 3 The Respondent has admitted that in respect of the corporate account, he made trades that were not properly authorized by the corporation. In addition, the securities held in that account were held in inappropriate concentrations, contrary to the policies of the corporation. These activities occurred over a 4 year period and at the end of that time, losses of $65,000 had been accumulated.

¶ 4 With respect to the individual accounts, Mr. Hewat similarly concentrated trades in a limited number of securities in a manner that was not in compliance with the stated goals of the account holders. That activity occurred over a 5 ½ year period and the total losses in those accounts at the end of that period were approximately $90,000.

¶ 5 Mr. Hewat had been in the industry since 1989 and was most recently employed from 2003 until December 2018 by Leede Jones Gable. He worked out of a sub-branch of that firm located in Kaslo, B.C. and

left the firm in December 2018. For the last two years of his employment he was under strict supervision. He is not currently employed in the industry. His employment prospects in Kaslo are not promising.

¶ 6 The role of a hearing panel reviewing a settlement agreement is well established and there is no need in an exhaustive review of it at this time. Suffice to say that the Panel has been guided by the decision of the hearing panel in Re: Milewski [1999] I.D.A.C.D No. 17 at p. 12 where the panel 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 its consideration of specific settlements."

¶ 7 Additionally, we are mindful of Rule 8200 which makes it clear that a settlement hearing panel does not have the jurisdiction to amend or alter the agreed upon penalty.

¶ 8 Mr. Robertson, on behalf of IIROC Staff, led the panel through a number of decisions involving both unauthorized and unsuitable trading. At the end of his submissions he invited the Panel to accept that in the normal course, a penalty of $50,000 would be appropriate but given Mr. Hewat's inability to pay (which Staff accepted but for which little evidence was provided to the Panel), an appropriate fine should be $10,000, which Mr. Robertson argued should be an absolute minimum in any matter. No additional conditions or sanctions were recommended.

¶ 9 At the end of the hearing, the Panel chose to adjourn to consider 4 issues:

1. Should a hearing panel simply accept an assertion that a respondent is unable to pay a fine without further inquiry;
2. Would $50,000 be an appropriate penalty in these circumstances but for the inability to pay;
3. Is $10,000 an absolute minimum fine is all circumstances; and
4. Is it necessary that other or additional sanctions be imposed such that this Settlement Agreement be rejected?

¶ 10 The Panel is prepared to accept the Settlement Agreement but believes that it should comment on the issues identified above.

¶ 11 With respect to whether a panel should accept, without any evidence, an assertion with respect to ability to pay, we are of the view that if Staff advises a panel that it has reviewed the circumstances and has come to the conclusion that a respondent has an inability to pay, then a panel should be able to choose to accept that assertion if it wishes to do so. We do not believe, however, that a panel should be precluded from making its own inquiries should it wish to do so. In the instant matter, we accept that Staff has made the necessary inquiries and accept that Mr. Hewat is unable to pay a fine of any significance.

¶ 12 We make no decision with regard to whether $50,000 would otherwise have been an appropriate fine in this matter, although we do believe it should have been greater than $10,000. The issue, given the settlement and the inability to pay, was not before us.

¶ 13 Equally, we do not believe that there is any jurisprudence that $10,000 is a minimum fine for conduct of this type. Each matter must be adjudicated on its merits.

¶ 14 Finally, we are surprised that Staff did not seek either conditions of testing and requalification and/or conditions such as strict supervision in the event that the Respondent decided to seek employment again in the industry. However, in our view, that in and of itself is not a sufficient reason to reject the settlement.

¶ 15 In conclusion, we accept the Settlement Agreement.

Dated at Vancouver, British Columbia this 8 day of April 2019.

Wade Nesmith

David Duquette

Brian Field

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 Richard Hewat ("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 made unsuitable recommendations for three clients when he recommended the purchase of a security which represented an excessive concentration in relation to the total value of the clients' accounts.

5. The Respondent also executed trades in a client account without authorization.

Registration History

6. The Respondent has been employed in the securities industry since 1989. The Respondent has been employed with Leede Jones Gable Inc. since 2003.

7. The Respondent worked out of a sub-branch located in Kaslo, B.C. and was supervised by the branch manager of the Vancouver office of Leede Jones Gable Inc. until his termination in December 2018.

Client KS

8. Client KS was a local society and became a client of the Respondent in 2012. The account opening documents provided that instructions on the account were to be obtained from either one of two authorized individuals.

Unauthorized Trading

9. In or around May 2014, the one authorized individual that the Respondent was accepting instructions from left KS. After that individual left KS, the Respondent did not obtain proper authorized instructions for the 18 trades executed after May 2014. For approximately six months after May 2014, the Respondent did have some conversations with another member of KS who was not authorized to provide instructions on the KS account. Three of the eighteen trades occurred during this initial six month period. Fifteen of the eighteen unauthorized trades occurred after the initial six month period from April 2015 to November 2016 where the Respondent did not obtain any instructions from a representative of KS.

Suitability - Concentration

10. The KS account had an investment policy statement which provided that:

    a. Maximum allowable assets in equities of 50%;

    b. No more than 10% of the equity portion of the account will be invested in any one issuer; and

    c. No more than 30% of the equity portion of the account will be invested in stocks within the same industry.

11. From January 2013 to December 2016 (48 months or 4 years), the KS account was not invested in accordance with the investment policy statement and was unsuitable as follows:

    a. there were 37 months where the KS account contained more than 50% of its assets in equities;

    b. there were 28 months where the KS account contained more than 70% of its assets in equities and 17 months where the account contained more than 90% of its assets in equities;

    c. there were 42 months where the value of one issuer in the KS account was more than 10% of the total value of the KS account; and

    d. there were 36 months where the value of one issuer in the KS account was more than 30% of the total value of the KS account and 14 months were the value of one issuer was more than 50%.

12. From the opening of the account in June 2012 to December 2016 approximately $75,000 was deposited into the KS account. During that time, the KS account had total losses of approximately 75% of the total amount deposited. The single security concentration in the KS account involved three separate securities but only contained one of the three securities at any given time. The three securities were medium risk securities that were not unsuitable from a risk tolerance or investment objective standpoint but the single security concentration was unsuitable.

13. The trading losses for these three securities was over $65,000.

Clients JM and SM

14. Clients JM and SM each opened RSP accounts with the Respondent in August 2003. The client account documents for JM and SM indicated the following:

    a. They were self-employed business owners with a total income of approximately $100,000;

    b. They had total assets of $600,000;

    c. Their stated risk tolerance was 30% low, 60% medium and 10% high risk; and

d. Their stated investment objectives as 30% income, 60% long term growth and 10% short term speculative.

Suitability - Concentration

15. From July 2011 to December 2016 (66 months or 5½ years), the accounts of JM and SM often contained a single medium risk security that represented over 30% of the total value of each of the accounts. The securities themselves were not unsuitable from a risk tolerance or investment objective standpoint but the single security concentration was unsuitable. The single security concentration in the JM and SM accounts involved seven separate securities but the accounts only contained one of the seven securities at any given time.

16. During the 5½ year review period, the account of JM contained single security concentration as follows:

    a. a single security represented more than 30% of the account's total value in 43 months;

    b. a single security represented more than 40% of the account's total value in 26 months; and

    c. a single security represented more than 50% of the account's total value in 5 months.

17. During the 5 ½ year review period, the account of SM contained single security concentration as follows:

    a. a single security represented more than 30% of the account's total value in 39 months;

    b. a single security represented more than 40% of the account's total value in 25 months; and

    c. a single security represented more than 50% of the account's total value in 9 months.

18. JM's account totaled approximately $110,000 on June 30, 2011 and totaled approximately $55,000 on December 31, 2016. During that time the losses on the trading activity in the seven stocks that represented the single security concentration issues in the account totaled approximately $37,000 and the losses on one individual security during the last 13 months of the relevant period was approximately $49,000.

19. SM's account totaled approximately $93,000 on June 30, 2011 and totaled approximately $58,000 on December 31, 2016. During that time the losses on the trading activity in the seven individual stocks that represented the single security concentration issues in the account totaled approximately $68,000 and the losses on one individual security during the last 13 months of the relevant period was approximately $49,000.

Additional Relevant Factors

20. The Respondent acknowledges that if not for his inability to pay, the agreed fine would have been higher and that an order to pay costs would also have been made.

21. The Respondent is 59 years old.

22. The Respondent has contributed in excess of $70,000 to settlements with the clients referred to in this Settlement Agreement.

23. The Respondent has no prior disciplinary history and has been under strict supervision by Leede Jones Gable from January 2017 until December 2018 with no reported incidents.

24. During the course of the IIROC investigation, the Respondent admitted to the misconduct described above and agreed to resolve this matter by way of a settlement agreement with IIROC Staff.

PART IV – CONTRAVENTIONS

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

Contravention 1

Between June 2011 and December 2016, the Respondent failed to use due diligence to ensure that recommendations were suitable for three clients, contrary to Dealer Member Rule 1300.1(q).

Contravention 2

Between July 2014 and December 2016, the Respondent conducted unauthorized trades in a client account, contrary to Dealer Member Rule 29.1 and Consolidated Rule 1400 (after September 1, 2016).

PART V – TERMS OF SETTLEMENT

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

    a. a fine of $10,000.

27. 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

28. 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.

29. 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

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

31. 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.

32. 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.

33. 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.

34. 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.

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

36. 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.

37. 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.

38. 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

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

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

DATED this 30 day of November, 2018.

"Witness"

Witness

"Richard Hewat"

Richard Hewat (Respondent)

"Witness"

Witness

"Stacy Robertson"

Stacy Robertson

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

The Settlement Agreement is hereby accepted this 8 day of April 2019 by the following Hearing Panel:

Per: "Wade Nesmith"

Panel Chair

Per: "David Duquette"

Panel Member

Per: "Brian Field"

Panel Member