

Re Vorstadt

IN THE MATTER OF:

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

and

Paul James Vorstadt

2012 IIROC 15

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

Heard: March 9, 2012
Decision: March 20, 2012

Hearing Panel:

Hon. Patrick T. Galligan, Q.C. (Chair), Nick Savona, Terry Bourne, FCSI

Appearances:

Rob DelFrate, Enforcement Counsel

David Hausman, Counsel for the Respondent

DECISION AND REASONS

BACKGROUND

¶ 1 We were constituted as a Hearing Panel of the Ontario District Council of the Investment Industry Regulatory Organization of Canada (IIROC) to consider, pursuant to Dealer Member Rule 20.36, a Settlement Agreement jointly recommended by Counsel for IIROC and the Respondent. The Settlement Agreement was signed by the parties and is attached hereto as Exhibit A.

¶ 2 In the Settlement Agreement the Respondent admitted that, in or around March 2009, he fabricated a letter purportedly from Manulife Financial Corp. (“Manulife”) in which he misrepresented the guarantee features of an investment product he had recommended to a client. He printed the letter on Manulife letterhead and then forged the signature of a Manulife employee, contrary to Dealer Member Rule 29.1. The conduct of the Respondent is described, in more detail, in the Settlement Agreement.

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

- a) A fine of \$40,000; and
- b) The Respondent would be prohibited from seeking approval in any capacity until October 5, 2012.
- c) Costs in the amount of \$5,000.

SUBMISSIONS

¶ 4 Enforcement Counsel submitted that forgery and falsification of documents are always serious and must be punished and deterred. He referred us to the frequently cited decision of the Hearing Panel in *Re Bell*, [2005] I.D.A.C.D. No. 15 at para. 35. The decision in *Re Bell* points out that forgery is always serious, is never minor,

and is unequivocally condemned. However, it is possible to make a distinction between more and less egregious examples of forgery. The presence of mitigating factors can make a forgery a less egregious example thereof.

¶ 5 Enforcement Counsel advised us of a number of mitigating circumstances.

- a) This appears to be an isolated incident.
- b) During 17 years as a registrant in the securities industry, the Respondent has never been the subject of any prior disciplinary investigations or proceedings.
- c) The Respondent has admitted his misconduct, recognized his responsibility for it and has cooperated fully with IIROC.
- d) By his admission he has avoided the necessity of IIROC conducting a hearing which would be costly to IIROC and, ultimately, costly to its membership.
- e) The Respondent has offered to make compensation to the client.
- f) There is no evidence that other clients have been affected.
- g) The Respondent did not obtain any monetary benefit as a result of his misconduct.

¶ 6 Counsel for the Respondent pointed out that his client self reported his misconduct to IIROC before it was aware of the complaint. While cooperation is required of all registrants, the Respondent's proactive approach to the acknowledgment of his wrongdoing is to his credit.

¶ 7 Counsel referred us to a number of decisions of other hearing panels in cases where forgery or/and falsification of documents had occurred. Those cases were: *Re Bell (supra)*; *Re Abbott*, [2012] IIROC No. 2; and *Re Dean*, [2010] IIROC No. 43. Counsel also referred us to the Dealer Member Disciplinary Sanction Guidelines.

DECISION

¶ 8 Disciplinary jurisprudence is clear and constant about the nature of the duty to be performed by a hearing panel on a settlement hearing. Its duty is not to determine whether, if it had heard the case as a contested matter, it would have come to the same conclusion as that reached by the parties in their settlement. The duty of a hearing panel is to decide whether the penalty agreed upon is a reasonable one, in the sense that it falls within the range of penalties imposed in other similar cases and that it would tend to maintain the integrity of the investment industry and its disciplinary process. If it meets those criteria a settlement would be in the public interest and should be accepted. See *B.C. Securities Commission v. Seifert* (2008), 72 BCLR (4th) 72 (B.C.C.A.); *Re Bereskin*, [2010] IIROC no. 37; *Re Milewski*, [1999] I.D.A.C.D. No. 17; and *Re Higgs*, [2010] I.D.A.C.D. No. 3. It is not necessary to engage in an analysis of those and other cases which express similar opinions. There is no jurisprudence to the contrary.

¶ 9 After a consideration of the circumstances, the decisions of other hearing panels, and the Guidelines, we reached the conclusion that the settlement was a reasonable one and that it was in the public interest. Accordingly, we accepted it and so advised the parties at the conclusion of the hearing.

¶ 10 Before leaving this case we wish to stress the importance of respect for the settlement process. Settlement leads to fair, efficient and economical resolution of disciplinary matters. The settlement process should be encouraged and supported. In *Re Clarke*, [1999] I.D.A.C.D. No. 40, the Hearing Panel stated, at p. 3:

The panel must be cognizant of the importance of the settlement process and should not interfere lightly in a negotiated settlement.

[Emphasis added.]

¶ 11 We subscribe to that view.

Dated at Toronto, this 20th day of March 2012.

P. T. Galligan, Chair
Nick Savona
Terry Bourne, FCSI

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and Paul James Vorstadt (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. 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:

In or around March 2009, the Respondent fabricated a letter purportedly from Manulife Financial Corp. (“Manulife”) in which he misrepresented the guarantee features of an investment product he had recommended to a client. The Respondent printed the letter on Manulife letterhead and then forged the signature of a Manulife employee, contrary to Dealer Member Rule 29.1.

6. Staff and the Respondent agree to the following terms of settlement:
 - a) The Respondent will pay a fine in the amount of \$40,000; and
 - b) The Respondent is prohibited from seeking approval in any capacity until October 5, 2012;
7. The Respondent agrees to pay costs to IIROC in the sum of \$5,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

8. 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

A. Overview

9. In 2006 and 2007, the Respondent recommended an investment in a Manulife segregated fund to several clients. At the time of the recommendation, the Respondent mistakenly advised the clients that the product had a 100% guarantee at maturity. In fact, it only had a 75% guarantee at maturity.
10. In or around March 2009, when questioned by one of the clients about the guarantee feature, the Respondent recognized his mistake. Instead of admitting that he had mistakenly provided incorrect information, the Respondent, in response to a client request, created a false and misleading a letter on Manulife letterhead confirming the incorrect information. He then forged the signature of a Manulife employee and provided the letter to the client.

B. Registration History

11. From September 2002 to April 2011, the Respondent was registered as a Registered Representative with a Markham, Ontario branch of TD Waterhouse Canada Inc. ("TD Waterhouse"), a Dealer Member of IIROC. Prior to that, the Respondent was registered as a Mutual Fund Representative with Investors Group from 1994-2002. During the Respondent's 17-years as a registrant in the securities industry, he has never been the subject of any prior disciplinary investigations or proceedings.
12. In May 2011, the Respondent joined a Toronto, Ontario branch of Dundee Securities Ltd. ("Dundee"), a Dealer Member of IIROC. On October 5, 2011, pursuant to an agreement with Dundee, the Respondent voluntarily resigned in light of the IIROC investigation.
13. On June 1, 2008, the Respondent became a regulated person of IIROC.

C. The Client – "MP"

14. In 2006 and 2007, the Respondent recommended that his client, MP, purchase the Manulife GIF Encore Series 2 fund (the "Manulife Fund"). The Respondent mistakenly advised MP that one of the features of the Manulife Fund was a 100% guarantee at maturity.
15. At or around that time, the Respondent also recommended the Manulife Fund to six other clients and provided them with the same mistaken information. In fact, the Manulife Fund only had a 75% guarantee at maturity. This issue has been resolved with these other clients to their satisfaction.
16. In or around March 2009, MiP, MP's son and Power of Attorney, contacted the Respondent about the guarantee feature of the Manulife Fund. At this time, the Respondent learned that the guarantee at maturity was only 75% and not the 100% he had mistakenly told his clients at the time of purchase.
17. Instead of advising MP and MiP of the initial error, the Respondent confirmed that the Manulife Fund had a 100% guarantee at maturity.
18. MP and MiP insisted on written confirmation of the 100% guarantee. In response, the Respondent fabricated a letter on Manulife letterhead. The Respondent then forged the signature of a Manulife representative and provided the letter to MP and MiP.
19. MP and MiP were satisfied with the letter and did not again question the Respondent about the guarantee feature.
20. In May 2011, the Respondent left TD Waterhouse to join Dundee. MP did not move his accounts to Dundee.
21. In July 2011, MP raised the issue of the 100% guarantee at maturity with Manulife. When informed of the correct information, MP filed a complaint with Manulife, who subsequently advised TD Waterhouse.

E. Cooperation with IIROC Staff

22. Upon being notified of the complaint, the Respondent, through his counsel, immediately contacted IIROC to report the matter.
23. The Respondent attended an interview with IIROC and admitted the conduct.
24. The Respondent also cooperated with TD Waterhouse's investigation into this matter and, through TD Waterhouse, has offered to compensate MP. Although the offer still stands, TD Waterhouse has not yet requested that the Respondent make any compensation payments to MP.
25. On October 5, 2011, the Respondent, pursuant to an agreement with Dundee, voluntarily resigned his position in order to deal with the ongoing IIROC investigation. As a result, he has not been working in the securities industry since that time.

IV. TERMS OF SETTLEMENT

26. 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.

27. The Settlement Agreement is subject to acceptance by the Hearing Panel.
28. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
29. 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.
30. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
31. 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.
32. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
33. 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.
34. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
35. 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 Toronto, in the Province of Ontario, this 9th day of March, 2012.

“Witness signature”

“Paul Vorstadt”

Witness

Paul James Vorstadt

NAME

AGREED TO by Staff at the City of Toronto, in the Province of Ontario, this 9th day of March, 2012.

“Witness signature”

“Rob DelFrate”

Witness

Rob DelFrate

Name

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

ACCEPTED at the City of Toronto, in the Province of Ontario, this 9th day of March, 2011, by the following Hearing Panel:

Per: **“Patrick Galligan”**

Panel Chair

Per: **“Terry Bourne”**

Panel Member

Per: **“Nick Savona”**

Panel Member