Re Melville

IN THE MATTER OF:

The Dealer Member Rules of the Investment Industry Regulatory Organization of Canada

and

Alistair Malcolm Melville

2014 IIROC 51

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

Heard: September 24, 2014
Decision: October 23, 2014

Hearing Panel:
Edward T. McDermott, Chair, Lou D'Souza and Stuart Livingston
Appearances:
Kathryn Andrews, Senior Enforcement Counsel
Ian Epstein, Counsel for Alistair Malcolm Melville

REASONS FOR DECISION

INTRODUCTION

¶ 1 This Hearing Panel was constituted pursuant to Part 10 of Dealer Member Rule 20 and Section 1.9 of Schedule C.1 to Transition Rule No. 1 of the Investment Industry Regulatory Organization of Canada ("IIROC").

¶ 2 The purpose of this hearing was to determine whether the Hearing Panel was prepared to accept or reject the terms of a Settlement Agreement which had been entered into between IIROC and the Respondent Alistair Malcolm Melville pursuant to a written agreement dated July 31, 2014, a copy of which is attached as a schedule to these Reasons for Decision.

¶ 3 Upon receiving this document the Hearing Panel satisfied itself that the terms of the Settlement Agreement contained all of the requirements as set forth in Rule 14.1 of IIROC's *Rules of Practice and Procedure* which provides as follows:

> **14.1 Contents of Settlement Agreements**
>
> A Settlement Agreement pursuant to Dealer Member Rule 20.35 shall be in writing, signed by or on behalf of the parties and contain:
>
> (a) a statement of the violations admitted to by the Respondent with reference to specific Dealer Member Rules, or any applicable statutory provisions;
>
> (b) a statement of the relevant facts;
>
> (c) a statement of the penalties and costs to be imposed upon the Respondent;
>
> (d) a statement that the Respondent waives all rights to any further hearing, appeal and

review;

(e) a statement that the Settlement Agreement is conditional upon the acceptance of the Hearing Panel; and

(f) such other matters not inconsistent with subsections (a) to (e).

¶ 4 The terms of the Settlement Agreement contain an admission on the part of the Respondent that he had contravened the provisions of IIROC Dealer Member Rule 29.1 by misappropriating client funds and providing false account statements to some of his clients during the period April 2009 to December 2012, thereby engaging in conduct unbecoming or detrimental to the public interest. Dealer Member Rule 29.1 provides as follows:

> 29.1 Dealer Members and each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii or as may be prescribed by the Board.
>
> For the purposes of disciplinary proceedings pursuant to the rules, each Dealer Member shall be responsible for all acts and omissions of each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member; and each of the foregoing individuals shall comply with all rules required to be complied with by the Dealer Member.

¶ 5 The penalties which have been agreed to under the Terms of Settlement and which counsel for IIROC and the Respondent submit should be accepted by this Hearing Panel are as follows:

(a) A permanent ban on registration with IIROC in any capacity; and

(b) Payment of a fine by the Respondent in the amount of $400,000.

¶ 6 In addition the Respondent has agreed to pay costs to IIROC in the amount of $10,000.

¶ 7 The Hearing Panel gave careful consideration to the Settlement Agreement and the submissions of the parties in support of accepting such an agreement. At the conclusion of the hearing, the Panel reserved its decision in order to deliberate on the information and submissions that had been made to it.

¶ 8 The following accordingly constitutes the reasons for the decision of this Hearing Panel which led it to conclude that penalties set forth in the Settlement Agreement provided an appropriate response in the circumstances of this particular case to the contravention of the Dealer Member Rules to which the Respondent has admitted guilt.

THE ROLE OF THE HEARING PANEL

¶ 9 In the recent decision of *Re Faber*, 2014 IIROC 14 (CanLII), the panel commented on the role of a Hearing Panel in considering a Settlement Agreement in the following terms:

> 9. Under the provisions of IIROC's Rule 20.36, it is open to this Hearing Panel to either accept or reject the Settlement Agreement tendered upon us by the parties. It is not a question of whether the agreed-upon penalties are ones which this Panel would have imposed had the matter come before us for determination at a hearing. It is also not open to us to amend, re-write or alter the terms of the agreement reached between the parties.
>
> 10. It is however our fundamental responsibility to be satisfied that the penalties set forth in the agreement are within a reasonable range of appropriateness in the circumstances set forth in the agreed-upon statement of facts.

11. The following excerpts from previously decided cases as recorded in the decision of *Re Ast* (2012 IIROC 38) set forth the parameters of the Hearing Panel's decision making processes when reviewing a Settlement Agreement presented to us by the parties to the dispute:

> **Standard for Reviewing a Settlement Agreement**
>
> **13** The standard for reviewing a Settlement Agreement was well-stated in a recent Pacific District hearing, Re Johnson (2012 IIROC 19), where the panel stated:
>
> > 'The test applicable to a decision whether to accept or reject a settlement is well-known. Simply put, a panel should accept such an agreement unless it considers the penalty provided for clearly to fall outside a reasonable range of appropriateness.'
>
> **14** There are many similar statements. See, for example, Re Jiwa and Hoffar (2012 IIROC 9), which adopted an earlier IDA decision, stating: 'It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.' Another recent example is Re Trapeze Capital (2012 IIROC 25), where the panel states:
>
> > '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.'
>
> **15** And, finally, see the statement in Re Rotstein and Zackheim (2012 IIROC 27):
>
> > 'Based upon this material it is our responsibility to review the agreement in order to satisfy ourselves that it falls within a reasonable range of appropriateness to the offence and circumstances recorded in the agreement and that there is nothing in the agreement which would be contrary to the public interest or bring the administration of the Rules of IIROC into public disrepute. If we are satisfied that the Settlement Agreement does not offend these principles then it should be accepted.'

¶ 10 Similarly, in the case of *Re Portfolio Strategies Securities*, 2012 IIROC 36, the Hearing Panel capsulized the standard of review of a settlement agreement as follows:

> 9. 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. We cite from the recent decision of the Hearing Panel in *Re CIBC World Markets Inc.*, [2011] IIROC No. 38:
>
> > 13 Finally, hearing panels will not lightly interfere with a negotiated settlement. As was said in *Re Milewski*, [1999] IDACD No. 17,
> >
> > > … 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.
> >
> > 14 Or, as put by Winkler J. (albeit in another context) in *Gilbert v. CIBC*, [2004] O.J.

4260:

> There is a presumption of fairness when a proposed class settlement negotiated at arms length … is presented to the court for approval. A court will only reject a proposed settlement when it finds that the settlement does not fall within a range of reasonableness.
>
> The test to be applied is whether the settlement is fair and reasonable … This allows for a range of possible results and there is no perfect settlement. Settlement is a product of compromise, which by definition, necessitates give and take.
>
> 15 In our view, the settlement, negotiated as it was by the parties assisted by capable counsel, does not clearly fall "outside a range of appropriateness" and it should therefore be, and was, accepted by the panel.

10. We share the opinion expressed by the hearing panel in *Re Vorstadt*, [2012] IIROC that the settlement process is an important one which should be "encouraged and supported".

¶ 11 This Hearing Panel also endorses and adopts the above noted statements of the Standard of Review for the penalty arrived at in the Settlement Agreement between the parties to this proceeding and has reviewed the instant Settlement Agreement in the context of these parameters and made a determination that it should be accepted.

THE CONTRAVENTION

¶ 12 The terms of this Settlement Agreement reveal that over a prolonged period of time (between 2009 and 2012) the Respondent, while a Registered Representative with Assante Capital Management Limited ("Assante") made use of two discount brokerage accounts previously opened in his own name with other Dealer Member firms in order to deposit funds of over $2.5 million received from numerous clients (over 15) for the purpose of conducting trades on their behalf outside the scope of his relationship with Assante. The clients knew he would be trading for them through these personal accounts but were unaware of what he planned to invest in or what trading strategies he would use with their money.

¶ 13 The Respondent's intention in setting up this off-line vehicle was to have the ability to run the accounts independently in order to make up for losses previously sustained by these clients in other accounts over previous years.

¶ 14 All of the clients (some of whom were elderly and a number of whom had known him for years) had placed their trust in the Respondent and many of them redeemed Mutual Funds with Assante in order to provide Melville with the proceeds of such redemption. The Respondent also asked a number of clients to redeem registered investments in order to provide him with the proceeds to invest in the manner that he had constructed. Many of the clients were unaware that such actions would create adverse tax consequences for them and none of them knew he would be making unauthorized withdrawals of significant amounts of their funds from the accounts (some of which was for his own benefit) or that he would provide a number of them with false and misleading account statements.

¶ 15 As it turned out, Melville (who was trading options and carrying out other risky trading strategies) was unable to realize his goal of increasing the value of the accounts through trading in accounts registered in his personal name. He however continued to deposit funds received from clients into those accounts and used them to try and recover his losses.

¶ 16 In addition, he then proceeded to withdraw some of the funds in the accounts without authorization. While the Settlement Agreement did not disclose what use was made by Melville of the withdrawals, it did reveal that he withdrew monies from the accounts between April and September 2011 when he personally withdrew at least $20,000 per month from such accounts as well as at various other times during the period between 2010 and 2012 with the result that the accounts became severely depleted. The clients had no

knowledge of and had given no authorization for such withdrawals.

¶ 17 It is also clear from the facts set forth in the Settlement Agreement that this was not a single occurrence involving a rather small amount of money. In point of fact, the funds received from clients were deposited into his personal accounts over the course of a three-year period and in one account (the "BMO Account") involved deposits of $2,158,000 and in the other account ("TDW Account") $408,000.

¶ 18 We were informed through the terms of the Settlement Agreement that as of September 2010 the value of the BMO Account had shrunk to some $77,000. The Respondent had also traded heavily in both Canadian and U.S. equities resulting in losses of approximately $282,000 between April 2009 and December 2012. As of December 2012 when the Respondent's employment was terminated by Assante, the balance in the BMO Account stood at $250,000. It was then sold out as a result of margin calls in early 2013.

¶ 19 Clearly, as Melville's unauthorized investment practices continued, the hole kept getting deeper and the value of the accounts became significantly diminished as a result of his trading losses and unauthorized withdrawals.

¶ 20 Accordingly, between July 2010 and December 2012, Melville prepared over 25 false account statements for some of his clients under the heading "Equity Trading Account" or "Assante Capital Management Ltd.". The Respondent issued the false statements to these clients in order to deceive them into believing that their investments were performing well – which was far from the truth.

¶ 21 When the misappropriations and false account statements were discovered by Assante, Meville's employment was terminated and Assante proceeded to contact his former clients. We were advised at the hearing of this matter (with the consent of both counsel) that to date Assante has paid approximately $1.85 million to former Melville clients who were injured as a result of Melville's unlawful and unethical conduct and it continues to discuss compensation with other of Melville's clients. Clearly, the consequences to Melville's Dealer Member firm were significant.

¶ 22 In addition, at the hearing of this matter and in response to a number of questions raised by the Hearing Panel members, we were advised (with the consent of both counsel after counsel for Melville had obtained his authorization) that the Respondent had in fact used the withdrawals in part to repay some of the clients (about $85,000). For the most part however, he used the proceeds to gamble in an attempt to recover the losses in the accounts for his clients. We were informed at the hearing that only about $5,000 - $10,000 was directed to Melville's personal benefit.

¶ 23 As it turned out however, his fortunes at gambling fared no better than his efforts to recover the losses for his clients through his investing strategies. In the result, as the spiral deepened, more and more unauthorized withdrawals were made resulting in approximately $2 million being removed from his clients' accounts and being gambled away in an attempt to recover the losses for the clients.

¶ 24 Both counsel were in agreement that except for the $5,000 - $10,000 he retained for his own benefit, there is no evidence that this was a scheme by the Respondent to gain profits for himself. He was, we were told, attempting to recover the losses for his clients and got caught up in the web he had created by choosing to try and accomplish this in a foolish, deceptive and unlawful manner.

¶ 25 The results were devastating for the investing clients, his Dealer Member firm and the Respondent himself. We were advised at the hearing (with the consent of Counsel) that all of the client funds the Respondent misappropriated to gamble had been lost. We were also told that Mr. Melville has not been able to obtain any form of work since his employment was terminated by Assante in December 2012 and has no funds available to help repay the clients or Assante.

¶ 26 The Hearing Panel was also advised that the Respondent has not been engaged as an IIROC registrant since the date of his termination and the terms of this Settlement Agreement, if accepted by this Hearing Panel, would provide a permanent ban on registration with IIROC in any capacity in the future.

THE NATURE OF THE OFFENCE

¶ 27 By virtue of entering into the Settlement Agreement the Respondent has agreed and acknowledged that he committed the offences of misappropriating client funds and providing false account statements to some of his clients. In the view of this Hearing Panel, these are both extremely serious offences which demand a significant response. Such actions are injurious to the investing public and threaten the integrity of the Capital Markets. Accordingly sanctions for such offences should give full consideration to the element of general deterrence while at the same time taking into account the circumstances of the particular misconduct by the Respondent and any mitigating factors that may be advanced on his behalf.

¶ 28 There can be little doubt that misappropriation of clients' funds by a Registered Representative is an extremely serious contravention of the provisions of Rule 29.1.

¶ 29 As can be seen from the preamble to the Dealer Member Disciplinary Sanction Guidelines published by IIROC Staff, IIROC itself (as well as this Hearing Panel) views the offence of misappropriation of funds in the most serious manner. That passage provides as follows:

> **14. Misappropriation of Funds: Dealer Member Rule 29.1**
>
> Misappropriation of funds is related to theft. Theft is the taking or converting of something that belongs to another without the other person's knowledge or consent. Misappropriation of funds involves knowledge or imputed knowledge of receipt of money from another person, knowledge or imputed knowledge of the direction attached to it and the intentional or unmistaken application of the funds to a purpose contrary to the direction. The dishonesty inherent in the offence lies in the intentional and unmistaken application of funds to an improper purpose.
>
> Misappropriation is one of the more serious regulatory offences and the penalty upon conviction is generally a permanent bar, with few exceptions.

¶ 30 On the facts set forth in this particular Settlement Agreement, as augmented by the additional information provided (with the consent of counsel) at the hearing, it is agreed that more than $2 million was withdrawn without authorization from the accounts of clients by the Respondent Mr. Melville and lost by him through gambling.

¶ 31 We also are advised from the Agreed Statement of Facts that the Respondent attempted to cover up the deteriorating performance of the clients' accounts by sending out false statements to a number of clients over a prolonged period of time.

¶ 32 It is in these circumstances that this Hearing Panel has given full consideration to the agreed upon penalty in light of the particular circumstances of this matter.

THE PENALTY

¶ 33 Both Enforcement Staff and the Respondent, by entering into the Settlement Agreement have requested this Hearing Panel to accept their joint recommendation that a permanent ban on registration with IIROC in any capacity be imposed upon the Respondent, and that he be required to pay a fine in the amount of $400,000 as well as costs to IIROC in the amount of $10,000.

¶ 34 Clearly such conduct calls for an extremely serious response and we are unanimously in agreement that a permanent ban on registration with IIROC is fully warranted.

¶ 35 We have noted in particular that these offences involved numerous incidents of misconduct over a prolonged period of time and resulted in significant economic loss to both the clients and the Respondent's Dealer Member firm. We are also cognizant of the fact that a number of the clients were elderly and all of them placed their complete trust in the Respondent to deal with their affairs in an honest and appropriate manner. They can all be considered as vulnerable members of the investing public who had their money misappropriated by their trusted advisor who then proceeded to compound his offence by trying to deceive them into believing everything was in order by sending them knowingly false account statements.

¶ 36 We have also taken note of a number of other decisions of hearing panels supporting a finding of a

permanent bar on the Respondent from approval with IIROC where there is a finding that the Registrant committed a fraud or theft on a client.

¶ 37 A number of these decisions were recently reviewed by the chair of this panel in the case of *Re Ramsay*, 2013 IIROC 41, in the following terms:

> **37**. In *Re Evans*, [2007] I.D.A.C.D. No. 53, a Hearing Panel found that the Respondent (who was also dually employed by CIBC and CIBC-ISI) had misappropriated $55,500 from the account of a widow who had a bank account and an investment account with the bank, both of which were serviced by the Respondent. The Respondent was also found to have engaged in unauthorized trading. In imposing a total bar from membership in the Association the Hearing Panel stated as follows:
>
> > **9.** We are satisfied on the evidence, much of which is admissions by the Respondent, that Charges i, ii and iii have been proved. The Respondent used his fiduciary position with the Bank to defraud an elderly customer for his own financial gain. This type of so-called white-collar crime is every bit as egregious as the conduct of a common bank robber.
> >
> > …
> >
> > **13.** In addressing penalty, consideration must be given to precluding a repetition of the type of conduct under consideration. That can only be accomplished by a total bar from membership in the Association. The investing public must be protected. Only strong sanctions can protect the integrity of the securities markets.
>
> **38** Similarly in the case of *Re Ryan*, 2012 LNIIROC 29, the Hearing Panel had found that the Respondent had misappropriated almost $1,000,000 from accounts under his supervision with the ultimate beneficiary of the misappropriation being the Respondent or his friends and relatives. In upholding a permanent bar of the Respondent the Hearing Panel provided as follows:
>
> > **8** It is clear that the misappropriation of clients' funds is conduct unbecoming of a registered representative and detrimental to the public interest.
> >
> > **SANCTIONS**
> >
> > **9** IIROC has requested that the Respondent be permanently barred from being a member of Investment Dealers Association of Canada, a fine in the amount of $1.7 million representing disgorgement of $1.5 million plus an additional $200,000 and costs of $7,500.
> >
> > **10** We agree that the Respondent should be permanently barred from being a registered representative of the IDA. Since we find that the total funds that were misappropriated were over $970,000 we think this a more appropriate figure on which to base the fine. We impose a fine of $1 million. We agree with IIROC's submission that an order for costs in the amount of $7,500 be made against the Respondent.
>
> **39** In the case of *Re Schoer*, [2011] IIROC No. 33, it was found that the registrant fraudulently induced clients and others to provide funds so that he could pay off other clients and individuals that he owed money to and misrepresented such payments as being for genuine investments. He was found to have defrauded his clients of at least $190,000.
>
> **40** In upholding a permanent bar for life from registration by IIROC, the Hearing Panel stated as follows:
>
> > **45** Mr. Schoer's violations were intentional and pre-meditated. His schemes included unrecorded transactions, promissory notes and fraudulent promises with numerous cheques directed to individuals as well as himself. In a Ponzi-like fashion, cheques were

induced from new clients to pay off pending obligations to other existing clients – others written by Mr. Schoer himself were usually NSF.

46 Mr. Schoer is a contemptible individual who preyed on gullible and vulnerable people who trusted him. He deserves the harshest punishment which this Hearing Panel can assess. The members of the Hearing Panel trust that by imposing the appropriate penalty in this case, public confidence in the securities industry will be maintained. Moreover, they hope that the penalty will deter others in the securities industry from engaging in such discreditable conduct.

41 Permanent bans were similarly imposed in the following cases involving the misappropriation of funds from clients by a registered representative and an Approved Person: *Re Ahn*, 2011 LNIIROC 31; *Re Dennis*, 2011 LNIIROC 35; *Re Dass*, 2009 IIROC 22.

¶ 38 In addition to the foregoing decisions, Enforcement Counsel has also drawn to our attention the following cases where a permanent ban from acting in a registered capacity with IIROC (or the IDA) was imposed or approved as part of a Settlement Agreement together with fines ranging between $80,000 and $1,500,000 (including disgorgement of the misappropriated funds). See *Re Mackay*, [2005] IDACD No. 14; *Re Binnington*, [2004] IDACD No. 30; *Re Ramsay*, 2013 IIROC 41; *Re Dennis*, OSC July 31, 2012; *Re Ryan*, 2012 IIROC 29; *Re Pawar*, 2012 IIROC 58; *Re Rao*, 2011 IIROC 12; and *Re Ahn*, 2011 IIROC 31.

¶ 39 While there is no doubt in our minds that a permanent bar on registration with IIROC is necessary and appropriate, this Hearing Panel has given anxious consideration to the appropriateness of the amount of the fine ($400,000) agreed to in the Settlement Agreement which we are asked to approve.

¶ 40 Frankly, at the outset of this hearing, there was a question in the minds of the members of this panel whether the amount of the fine might be excessive as we had no concrete information as to how much had been misappropriated (except for approximately $120,000 between April and September 2011) or what use it was put to. Subsequently, however, (with the consent of both counsel) we were advised during the hearing that the amount of the unauthorized withdrawals was in excess of $2 million and most of it was used in gambling forays with the objective of recouping the losses incurred in the clients' accounts.

¶ 41 Once these additional facts were placed before this Hearing Panel, it caused us to pause in order to reflect on whether the amount of the fine for which our approval was sought was in the circumstances, sufficient to serve as an appropriate deterrent to protect the investing public and the integrity of IIROC's processes and the security markets.

¶ 42 We accordingly reviewed and considered the aggravating factors present in this case which include the following:

- the unauthorized misappropriations (some of which were for the Respondent's own personal benefit) occurred on numerous occasions over a prolonged period of time and were premeditated;
- the Respondent in some cases attempted to conceal the results of his misconduct by causing false monthly statements to be sent to some of his clients in an attempt to deceive them into believing that the performance of their investments with him was better than was actually the case;
- a number of the clients affected by his actions were elderly and vulnerable and all had placed great trust and confidence in the Respondent in entrusting their monies to him;
- the losses caused by his misconduct caused significant harm to the clients and his Dealer Member firm.

¶ 43 These are factors which have to be taken into account by this Hearing Panel in order to ensure that the sanctions agreed to in the Settlement Agreement are within a reasonable range of appropriateness for the misconduct committed so that they will serve as a deterrent to this Respondent and others who may be inclined to act in a similar manner.

¶ 44 In considering the penalties set forth in the Settlement Agreement, we have also taken into account and recognized that the primary purpose of a penalty should be prevention rather than punishment (*Re Mills*, [2001] I.D.A.C.D. No. 7, April 17, 2001 at p. 3).

¶ 45 In response to further questions raised by the Hearing Panel, both counsel referred to and emphasized the various mitigating factors reflected in the Settlement Agreement and urged us in all of the circumstances to approve the agreed upon terms of settlement.

¶ 46 In considering this issue, we have noted that the Respondent had a long history of some 25 years in the Investment Industry with no previous disciplinary record or allegation of wrong doing and that he provided his full cooperation to both Assante and IIROC during the investigation and prosecution of this matter (as well as expressing genuine remorse for his misconduct). Indeed, we were informed that he voluntarily contacted IIROC during the investigation process to provide them with full disclosure and a personal written statement (which we are told by counsel for IIROC is quite unusual).

¶ 47 We were also advised that these incidents have taken a terrible toll on Mr. Melville's life to the point where he has had to seek serious medical intervention and ongoing medical care. He has a spouse and young family but has not been able to gain employment at any occupation since his termination by Assante and the particulars and publication of this decision will make that task even more difficult. He is in desperate financial circumstances and, we are told, while he would like to repay some of the losses sustained by his clients, he is simply unable to do so. In short, his life and ability to earn a livelihood and support his family have been significantly damaged and impaired as a result of his misconduct.

¶ 48 Faced with the mitigating factors referred to above and in light of the submissions of counsel and the standard of review applicable to a Settlement Agreement as set forth earlier in this decision, this Hearing Panel after weighing all of the relevant considerations is accordingly prepared to approve the Settlement Agreement placed before us as being within a reasonable range of appropriateness in all of the circumstances. In our view, the penalties referred to are significant and when viewed in light of the mitigating factors advanced on his behalf and the disastrous impact the Respondent's actions have had on his life (as recorded in these reasons for decision), we believe the penalties agreed to should serve as a significant deterrent to others who might be inclined to engage in similar conduct.

CONCLUSION

¶ 49 In the result, after taking into account the serious nature of these offences and the mitigating factors advanced on behalf of the Respondent as well as comparable precedents presented to us, we find that the penalty recommended by Senior Enforcement Counsel and counsel for the Respondent of a permanent ban on registration of the Respondent with IIROC in any capacity and payment to IIROC of a fine by the Respondent in the amount of $400,000 together with costs in the amount of $10,000 support the objectives of the disciplinary process and serve as a deterrent to others for the misconduct committed as well as giving appropriate weight to the mitigating circumstances advanced on behalf of the Respondent.

¶ 50 We are accordingly of the view that the penalty agreed upon was within a reasonable range of appropriateness in all of the circumstances and the Settlement Agreement is hereby accepted by this Hearing Panel.

DATED this 23rd day of October, 2014.

Edward T. McDermott,

Chair

Lou D'Souza

Industry Representative

Stuart Livingston

Industry Representative

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent Alistair Malcolm Melville ("Melville" or the "Respondent"), 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") into Melville's conduct.

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 April 2009 and December 2012, Alistair Malcolm Melville

   (a) misappropriated client funds; and

   (b) provided false account statements to some of his clients,

   thereby engaging in conduct unbecoming or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1.

6. Staff and the Respondent agree to the following terms of settlement:

   a) a permanent ban on registration with IIROC in any capacity; and,

   b) payment of a fine by the Respondent in the amount of $400,000.

7. The Respondent agrees to pay costs to IIROC in the sum of $10,000.

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

Overview

9. Between 2009 and 2012, while Melville was a Registered Representative with Assante Capital Management Ltd. ("Assante"), several of Melville's clients gave him funds totalling more than $2 million to invest on their behalf. Melville deposited these funds into two discount brokerage accounts previously opened in his own name at two other Dealer Member firms.

10. Melville's intention was to use these accounts for active trading and to build up the accounts to make up for losses sustained by the clients in other accounts over the previous years. When Melville realized this goal could not be realized through his trading, he continued to deposit client funds into the accounts and withdrew some of the funds without authorization.

11. Melville also provided false account statements to some of these clients, showing the purported value of their accounts. Some of the affected clients were elderly, and some had known Melville for a number of years. They had all placed their trust in Melville. None of the clients were aware that Melville had used

some of their funds for his own benefit nor were they aware that the account statements that he had provided to them were false.

Background

12. At all material times Melville was registered with IIROC as a Registered Representative ("RR") and employed by Assante at a branch located in Hamilton, Ontario.

13. Melville joined Assante in September 2007. He brought many clients with him from Desjardins Financial Security Investments Inc.**,** where he had previously worked as a Mutual Fund Dealers' Association registrant.

14. Melville has not been an IIROC registrant since December 2012, when his employment was terminated by Assante.

Melville's accounts at other firms

15. In the late 1990's Melville opened an account in his own name at TD Waterhouse Discount Brokerage, the discount brokerage arm of TD Waterhouse Canada Inc.(the "TDW Account").

16. In July 2008**,** Melville opened an account in his own name at BMO InvestorLine, the discount brokerage arm of BMO (the "BMO Account").

Melville's actions

17. According to Melville, some his clients approached him and asked how their investments could be diversified. In response, he suggested that they provide him with funds that he would deposit into and trade in his personal accounts. He told his clients that this would allow him to invest in exchange traded funds and other securities on their behalf. The clients did not know which products he planned to purchase or what trading strategies he planned to employ with their funds.

18. Melville began to collect funds from approximately fifteen of his clients on this basis. Generally speaking, the clients redeemed mutual funds that they held at Assante in order to provide Melville with the proceeds. The proceeds were often provided to Melville in the form of a cheque payable to him in trust. Melville also asked clients to redeem registered investments and to provide him with the proceeds. Many of the clients were not aware that there would be adverse tax consequences resulting from those redemptions.

19. Melville deposited the client funds that he received into either the BMO Account (between April 2009 and late 2012) or the TDW Account (between March 2010 and March 2012). He then used the funds to trade options and to carry out other risky trading strategies. He also made unauthorized withdrawals of some of the funds from both accounts as he continued to try and recover losses sustained by the clients.

Amounts in issue

20. Melville deposited approximately $2 million dollars of his clients' money into the BMO Account between April 2009 and December 2012.

21. Melville deposited at least $408,000 of his clients' money into the TDW Account between March 2010 and March 2012.

22. Melville's clients and the amounts deposited into his two accounts are outlined in greater detail below.

Activity and Value of the BMO Account

23. Between April 2009 and December 2012, approximately $2 million of client funds was deposited to the BMO Account. As of September 2010, the value of the BMO Account was some $77,000.

24. During this time period, Melville traded heavily in both Canadian and U.S. equities, incurring combined losses of approximately $282,000.

25. As of December 2012, the value of the assets in the BMO Account was approximately $250,000. As a result of margin calls in early 2013, the BMO Account was sold out.

Numerous withdrawals from the BMO Account

26. The client funds held in the BMO Account were severely depleted between 2010 and 2012 as a result of Melville's unauthorized withdrawals. The purpose and use of all of the withdrawals by Melville cannot be precisely ascertained. Account documents reveal, however, that between April 2011 and September 2011, Melville withdrew approximately $20,000 every month.

Client funds in the BMO Account

27. Between 2009 and December 2012, the clients below provided funds in the following amounts to Melville. Melville deposited these funds into the BMO Account:

Client Name	**Amount of Funds $**
JC and MC	300,000
LW	107,000
EJ	180,000
GJ	90,000
LH and IH	300,000
DF and AF	280,000
RB and MB	160,000
BT	40,000
DD	40,000
DP	181,000
MP	120,000
FJ	80,000
JB	150,000
DW and SW	120,000
DC	10,000
	Total funds: 2,158,000

The TDW Account

28. The following clients gave cheques to Melville in various amounts as set out below, such that a total of $408,000 was deposited into the TDW Account by Melville between March 2010 and March 2012:

Client Name	**Amount of Funds $**
LW	24,000
JB	37,000
RB/MB	10,000
DF/AF	85,000
IH/LH	20,000
JC	102,000
FJ/DJ	95,000

DW/SW	35,000
	Total funds: 408,000

Provision of false account statements

29. In the period between July 2010 and December 2012, Melville prepared over twenty five false account statements (the "False Statements"). The False Statements were provided to some of his clients. Some of the False Statements were titled "Equity Trading Account" or "Assante Capital Management Ltd." Melville provided the False Statements to mislead the clients concerning the performance of their investments and to reassure them that all was well.

Assante compensation paid to clients

30. Assante has contacted Melville's former clients, has compensated some clients and is continuing to discuss compensation with other Melville clients. As of the end of February, 2014, Assante has paid approximately $1.35 million to former Melville clients.

Mitigating Factors

31. Melville has no previous disciplinary history with the MFDA, IDA or IIROC. Melville had participated in the investment industry for approximately 25 years without any previous allegation of wrongdoing.

32. Melville co-operated with the Investigation and the prosecution of this matter. While the Investigation was on-going, Melville contacted IIROC Staff and asked to make a statement. Melville also fully co-operated with Assante's internal investigation.

33. Melville represents that he became very depressed as a result of his actions, to the point of being suicidal. He attended counselling sessions in May 2013 with a Psychotherapist.

34. Melville has expressed remorse for his misconduct and regrets his actions.

IV. TERMS OF SETTLEMENT

35. 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.

36. The Settlement Agreement is subject to acceptance by the Hearing Panel.

37. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

38. 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.

39. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.

40. 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.

41. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

42. 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.

43. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

44. 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 Hamilton in the Province of Ontario, this 24th day of July, 2014.

"Witness"

WITNESS

"Alistair Malcolm Melville"

ALISTAIR MALCOLM MELVILLE

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 31 day of July, 2014.

"Witness"

WITNESS

"Kathryn Andrews"

KATHRYN ANDREWS

Senior 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 _____ day of _____, 2014, by the following Hearing Panel:

Per: _____

Panel Chair

Per: _____

Panel Member

Per: _____

Panel Member