Re Hartner

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Ula Hartner

2018 IIROC 08

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

Heard: January 31, 2018 in Vancouver, BC
Oral Decision January 31, 2018
Written Decision: February 27, 2018

Hearing Panel:
Winton Derby, Q.C. Chair, Lloyd Costley and Johannes Van Koll
Appearances:
Lorne Herlin, Enforcement Counsel
Chilwin Cheng, Respondent's Counsel

DECISION (SETTLEMENT AGREEMENT)

MAJORITY REASONS

¶ 1 At a Settlement Hearing on January 31, 2018, the Hearing Panel was asked to accept a Settlement Agreement negotiated between the Staff of IIROC and Ula Hartner (the "Settlement Agreement"). Ms. Hartner did attend and was represented by counsel at the hearing.

¶ 2 Our task is to review the facts agreed upon by the parties and to be satisfied they are sufficient to assess the sanctions and whether the sanctions fall within a reasonable range.

¶ 3 At the end of the hearing, we advised the parties that we accepted the Settlement Agreement and would issue our decision and reasons at a later date.

¶ 4 For the reasons outlined below, we have accepted the Settlement Agreement.

¶ 5 A copy of the Settlement Agreement is attached to this Decision. It includes the following:

a. Facts, agreed to by the parties, which form the basis of the settlement;

b. Ms. Hartner's acknowledgement of the following contraventions of the IIROC Dealer Member Rules:

- Between January 2015 and May 2016, the Respondent exercised discretionary authority over the accounts of her clients GY, WR, AP, and RB; contrary to Dealer Member Rule 1300.4;
- Between January 2015 and May 2016, the Respondent engaged in excessive trading in the accounts of her clients which was not within the bounds of good business practice,

contrary to Deal Member Rule 1300.1(o);

- Between January 2015 and May 2016, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to every order, contrary to Deal Member Rule 13000.1(a).

c. Ms. Hartner's agreement to the following sanctions and costs:

i. a fine in the amount of $40,000;

ii. a suspension from registration in any capacity for 18 months;

iii. 12 months of close supervision upon approval in any capacity with IIROC; and

iv. costs in the amount of $5,000.

¶ 6 If the Settlement Agreement is accepted by the Hearing Panel, the Respondent agreed to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and the Respondent.

¶ 7 IIROC staff agreed if this panel accepts the settlement, not to 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. If the Respondent fails to comply with any of the terms of this Settlement Agreement, Staff may bring proceedings under Rule 8200 of the Consolidated Rules against the Respondent. These proceedings may be based on, but are not limited to, the facts set out Part III of this Settlement Agreement.

¶ 8 At the Settlement Hearing, submissions were made regarding our jurisdiction, the circumstances of the conduct, the relevant authorities and the appropriateness of the proposed Settlement Agreement. The parties jointly recommended that we accept the Settlement Agreement.

¶ 9 Pursuant to IIROC Dealer Member Rule 8215(5), a hearing panel's jurisdiction on a Settlement Hearing is to accept or reject the Settlement Agreement. That rule is enforced and referred to in many decisions. We refer to *Re Gill* [2015] IIROC 39 at paragraph 7:

> "The task of a hearing panel in deciding whether or not to accept a settlement agreement is not to decide whether it would have arrived at the same decision as that reached by the parties. Rather, it 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 (*Re: Deutsche Bank Securities Ltd.* 2013 IIROC 07)."

¶ 10 We also refer to *Re Deutsche Bank Securities Ltd.* 2013 IIROC 07 at paragraph 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."

¶ 11 Further, as set out in *Gill* in paragraphs 8 and 9:

> "Moreover, a hearing panel ought not to substitute its discretion for that of IIROC Staff who negotiated the agreement. The panel will be cognizant of the importance of the settlement process and will not interfere lightly in a negotiated settlement. It will be cautious in relying on previous settlements as precedential, recognizing that the settlement is the result of negotiation and compromise and an agreed penalty may often be less onerous than one imposed as a result of a contested hearing involving similar facts (*Re: Clark* [1999] I.D.A.C.D. No. 40, at p.4).

A hearing panel, in reviewing a proposed penalty, will defer to a penalty that has been agreed pursuant to a settlement process unless it finds the penalty falls clearly outside a reasonable range of appropriateness for like misconduct (*Re: Milewski* [1999] I.D.A.C.D. No. 17, at pp. 13 and 14)."

Overview

¶ 12 The Respondent first began working in the securities industry in a registered capacity in 1992.

¶ 13 From March 2003 to August 2016, she worked as a Registered Representative at a Vancouver business location of National Bank Financial Ltd.

¶ 14 The Respondent operated an options trading strategy.

¶ 15 In furtherance of the strategy, the Respondent used her discretion to place orders for her clients' accounts, even though their accounts were not designated as discretionary and she engaged in excessive trading for some of the accounts. The Respondent also failed to exercise due diligence to ensure that she had sufficient knowledge of the features and inherent risks of the strategy.

¶ 16 The clients incurred significant losses.

The Options Trading Strategy

¶ 17 The Respondent believed that the financial markets had peaked in 2015 and that they were due for a correction.

¶ 18 As a result, the Respondent utilized a bear call spread training strategy which is also known as a credit call spread (the "Strategy").

¶ 19 The Strategy involved selling (also known as writing) a call option (the short call) and buying a call option with a higher strike price (the long call) for the same underlying security. The two call options had the same expiry date.

¶ 20 The profitability of the Strategy depended on how much of the initial premium revenue for the short call was retained before the Strategy was closed out or expired. The maximum profit for that the Strategy could generate was the premium which was received from writing the short call, minus the premium that was paid for buying the long call.

¶ 21 Pursuant to the Strategy, the respondent wrote and bought call options for exchange traded funds and for individual stocks. Generally the options had a short expiration.

The Clients

¶ 22 Four clients participated in the options trading strategy recommended by Ms. Hartner. Two of the clients were sophisticated and two were "average" as described by Ms. Hartner's counsel.

¶ 23 We were advised that Ms. Hartner paid compensation in the amount of $316,000.00 of total losses of approximately $500,000.00.

¶ 24 At no point did the Respondent obtain the clients' written authorization for discretionary trading, and the Accounts were never designated and approved as discretionary by National Bank Financial Ltd., although the clients were aware that the Respondent was placing discretionary orders on their behalf.

¶ 25 The Respondent used her discretion with respect to the type of security, quantity, price and/or timing of

the orders that she placed for the Accounts.

¶ 26 The Respondent executed an excessive number of trades in order to increase her commission without conferring a tangible benefit to the clients.

¶ 27 The Respondent failed to exercise due diligence to ensure that she had sufficient knowledge of the features and risks of the Strategy:

¶ 28 When considering the IIROC Sanction Guidelines, we focused on:

- whether the misconduct was intentional, willfully blind, or reckless with respect to regulatory requirements;
- the extent of harm to clients or market participants;
- extent of harm to market integrity or the reputation of the marketplace, or both;
- the level of vulnerability of the injured or affected client; and
- the respondent's relevant disciplinary history.

¶ 29 We agree Ms. Hartner was negligent at best, brought harm to the clients, and the integrity and reputation of the marketplace. We also took note of the fact that Ms. Hartner had no prior disciplinary issues and had paid some compensation to the clients.

¶ 30 We were referred to the following decisions:

- *Re Budnik* 2011 IIROC 55
- *Re Melkonian* 2011 IIROC 62
- *Re Lann* 2013 IIROC 09

¶ 31 In this case, the parties had the benefit of experienced and competent counsel in reaching the negotiated settlement.

¶ 32 Considering the facts and sanctions of this case and the cases referred to above, we are satisfied that the sanctions agreed to are within an acceptable range.

¶ 33 We accept the Settlement Agreement.

Dated at Vancouver, British Columbia, this 27th day of February, 2018.

Winton Derby

Lloyd Costley

Johannes Van Koll

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 (the "Consolidated Rules"), a hearing panel (the "Hearing Panel") should accept the settlement agreement (the "Settlement Agreement") entered into between the staff of IIROC ("Staff") and Ula Hartner (the "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 operated an options trading strategy.

5. In furtherance of the strategy, the Respondent used her discretion to place orders for her clients' accounts, even though their accounts were not designated as discretionary and she engaged in excessive trading for some of the accounts. The Respondent also failed to know the inherent risks of the strategy.

6. The clients incurred significant losses.

The Respondent

7. The Respondent first began working in the securities industry in a registered capacity in 1992.

8. From March 2003 to August 2016, she worked as a Registered Representative at a Vancouver business location of National Bank Financial Ltd. ("National Bank Financial").

9. From November 2011 to August 2016, she was registered to trade options.

The Options Trading Strategy

10. The Respondent believed that the financial markets had peaked in 2015 and that they were due for a correction.

11. As a result, the Respondent utilized a bear call spread trading strategy which is also known as a credit call spread (the "Strategy").

12. The Strategy involved selling a call option (the short call) and buying a call option with a higher strike price (the long call) for the same underlying security. The two call options had the same expiry date.

13. The profitability of the Strategy depended on how much of the initial premium revenue for the short call was retained before the Strategy was closed out or expired. The maximum profit that the Strategy could generate was the premium which was received from writing the short call, minus the premium that was paid for buying the long call.

14. Pursuant to the Strategy, the Respondent wrote and bought call options for exchange traded funds and for individual stocks. Generally the options had a short expiration.

The Clients Who Participated in the Strategy

15. As detailed below, GY, WR, AP, and RB were clients of the Respondent who participated in the Strategy.

Client – GY

16. GY is a business executive who first became a client of the Respondent in or around 1998.

17. In early 2015, GY agreed to participate in the Strategy.

18. As a result, he updated the forms for his margin account (the GY Account) at National Bank Financial. These forms indicated that:

- he was 59 years of age;
- his investment knowledge was excellent;
- his risk level was high;

- he had 10 years of experience trading options;
- his annual income was $200,000;
- his estimated liquid assets were $1,000,000; and
- his estimated net fixed assets were $1,700,000.

Orders - GY Account

19. Between January 2015 and May 2016, the Respondent placed 935 orders for the GY Account, the vast majority of which were in relation to the Strategy.

20. Between September 2015 and February 2016, the GY Account was under margined for 53 days.

21. As a result of the orders, the GY Account lost approximately $232,196 on an initial account equity value of approximately $259,000. This loss included approximately $72,426 in commissions.

Discretionary Trading – GY Account

22. At no point did the Respondent obtain GY's written authorization for discretionary trading, and the GY Account was never designated and approved as discretionary by National Bank Financial.

23. The Respondent used her discretion with respect to the type of security, quantity, price, and/or timing of the orders that she placed for the GY Account.

24. GY was aware that the Respondent was selling and buying options on behalf of the GY Account and she provided him with a report every week by email.

Client – WR

25. WR is a business executive who was referred to the Respondent by another one of her clients.

26. In October 2015, WR opened a margin account (the "WR Account") at National Bank Financial in order to participate in the Strategy. The forms which he completed in order to open the WR Account indicated that:

- he was 49 years old;
- his investment knowledge was good;
- he had 10 years of experience trading options;
- his annual income was $600,000;
- his estimated liquid assets were $3,000,000; and
- his estimated net fixed assets were $2,000,000.

27. For most of the time that it was active, the WR Account was fee based.

Orders – WR Account

28. Between October 2015 and May 2016, the Respondent placed 624 orders for the WR Account, the vast majority of which were in relation to the Strategy.

29. As a result of these orders, the WR Account lost approximately $254,195 on cash deposits of approximately $400,000. This loss included approximately $22,101 in commissions and approximately $4,560 in managed account fees.

Discretionary Trading – WR Account

30. At no point did the Respondent obtain WR's written authorization for discretionary trading, and the WR Account was never designated and approved as discretionary by National Bank Financial.

31. The Respondent used her discretion with respect to the type of security, quantity, price, and/or timing of the orders that she placed for the WR Account.

32. WR was aware that the Respondent was selling and buying options on behalf of the WR Account and they would speak by telephone every two to three weeks.

Clients – AP & RB

33. AP and RB are a married couple who live in Saskatchewan. AP worked as a post master assistant and RB worked as a regulatory coordinator.

34. A relative of the Respondent's referred AP and RB to her. The Respondent has never met AP and RB in person.

35. In September 2015, AP and RB opened a joint margin account at National Bank Financial (the "AP & RB Account") in order to participate in the Strategy. The forms which they completed in order to open the AP & RB Account indicated that:

- AP was a 38 year old citizen of Cuba;
- AP's annual income was $40,000;
- AP's estimated liquid assets were $150,000;
- AP's estimated net fixed assets were $40,000;
- RB was a 41 year old citizen of Cuba;
- RB's annual income was $40,000;
- RB's estimated liquid assets were $150,000;
- RB's estimated net fixed assets were $50,000;
- their investment knowledge was good; and
- their risk level was high.

Orders - AP & RB Account

36. Between October 2015 and May 2016, the Respondent placed 130 orders for the AP & RB Account, the vast majority of which were in relation to the Strategy.

37. As a result of these orders, the AP & RB Account lost approximately $27,384 of the total cash deposit of $30,000. This loss included approximately $13,824 in commissions.

Discretionary Trading – AP & RB Account

38. At no point did the Respondent obtain AP & RB's written authorization for discretionary trading, and the AP & RB Account was never designated and approved as discretionary by National Bank Financial.

39. The Respondent used her discretion with respect to the type of security, quantity, price, and/or timing of the orders that she placed for the AP & RB Account.

40. AP and RB were aware that the Respondent was placing orders on behalf of the AP & RB Account.

Excessive Trading

41. The Respondent executed an excessive number of trades in order to increase her commission without conferring a tangible benefit to GY, AP, and RB.

42. The GY Account had an average account equity value of approximately $119,021. Therefore, the GY Account would have needed to yield an annualized rate of return of 48% (commissions as a percentage of the average account equity value) to reach the breakeven point, which reflects a very high volume of

trading.

43. The AP & RB Account had an average account equity value of approximately $15,745. Therefore, the AP & RB Account would have needed to yield an annualized rate of return of 131% to reach the breakeven point, which reflects a very high volume of trading.

44. Further, the Respondent usually entered the orders to sell calls and the orders to buy calls separately. As a result, the GY Account and the AP & RB Account were charged a full commission for each part of the Strategy. The Respondent had the ability to enter each sell and buy order through the trade desk as one order. Had she done so, the commissions charged to each account would have been significantly less.

Failure to Know Product

45. The Respondent failed to exercise due diligence to ensure that she had sufficient knowledge of the features and the risks of the Strategy. In particular:

i. The options that the Respondent utilized for the Strategy generally expired within a short time of being sold or bought. Therefore, they were very time sensitive investments. The Respondent failed to understand the risk that her clients could incur losses by participating in the Strategy even with a correct prediction about the direction of a particular price change if the price change did not occur in the relevant time period (i.e. before the option expired).

ii. The Respondent mainly used American-style options for the Strategy. The Respondent failed to understand that American-style options can be exercised at any time between the date of sale and the expiration date, whereas European-style options can only be exercised at maturity. Therefore by using American-style options there was the added risk of an early assignment.

iii. Generally, there was a gap between the time the Respondent entered an order to sell a call and the time she entered the order to buy the corresponding call. The Respondent failed to understand that this practice increased the risk of the Strategy because for a period of time, there was no long call to mitigate the potential loss of the short call.

iv. At times, the Respondent increased the difference in the strike price between the short call and the long call. The Respondent failed to understand that by doing so, she increased the amount of the potential loss to clients.

46. By failing to understand the product, the Respondent was unable to make her clients fully aware of the complexities and risks of the Strategy.

PART IV – CONTRAVENTIONS

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

Contravention 1

Between January 2015 and May 2016, the Respondent exercised discretionary authority over the accounts of her clients GY, WR, AP, and RB, contrary to Dealer Member Rule 1300.4.

Contravention 2

Between January 2015 and May 2016, the Respondent engaged in excessive trading in the accounts of her clients GY, AP, and RB which was not within the bounds of good business practice, contrary to Dealer Member Rule 1300.1(o).

Contravention 3

Between January 2015 and May 2016, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to every order that she placed for the accounts of her clients GY, WR, AP, and RB, contrary to Dealer Member Rule 1300.1(a).

PART V – TERMS OF SETTLEMENT

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

    a) a fine in the amount of $40,000;

    b) a suspension from registration in any capacity for 18 months;

    c) 12 months of close supervision upon approval in any capacity with IIROC; and

    d) costs in the amount of $5,000.

49. 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

50. 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.

51. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of this Settlement Agreement, Staff may bring proceedings under Rule 8200 of the Consolidated Rules 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

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

53. 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 of the Consolidated Rules, in addition to any other procedures that may be agreed upon between the parties.

54. 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.

55. If the Hearing Panel accepts this Settlement Agreement, the Respondent agrees to waive all rights under the IIROC Rules and any applicable legislation to any further hearing, appeal and review.

56. If the Hearing Panel rejects this 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.

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

58. This Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full 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.

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

60. This 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

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

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

DATED this "14" day of December, 2017.

"Witness"	"Ula Hartner"
Witness	Respondent

DATED this "18th" day of December, 2017.

"Witness	"Lorne Herlin"
Witness	Lorne Herlin Senior Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada

The Settlement Agreement is hereby accepted this "31st" day of "January", 2018 by the following Hearing Panel:

Per: "Winton Derby"
Panel Chair

Per: "Lloyd Costley"
Panel Member

Per: "Johannes Van Koll"
Panel Member