

Re Prusky

IN THE MATTER OF:

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

and

Melissa Prusky

2017 IIROC 43

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

Heard: July 18, 2017
Decision: July 18, 2017
Reasons: August 22, 2017

Hearing Panel:

Paul M. Moore, Q.C., Chair, Leo Ciccone, and Peter Dymott

Appearances:

Kathryn Andrews, IIROC Senior Enforcement Counsel

Peter Tuovi, Counsel for the respondent

In attendance:

Melissa Prusky

REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT

Settlement Agreement

¶ 1 The panel accepted a settlement agreement between IIROC and Melissa Prusky, the respondent, dated June 22, 2017. A copy of the settlement agreement is attached to these reasons. The agreed facts are set out in Part III of it.

Contravention

¶ 2 The respondent admitted to the following contravention of the IIROC Dealer Member Rules:

In July 2014, she engaged in personal financial dealings with a client without her Dealer Member firm's knowledge or approval, contrary to IIROC Dealer Member Rule 43.

Agreed penalty

¶ 3 The agreed penalties were: i) a fine of \$20,000; ii) a requirement to re-write and pass the CPH within 12 months; and iii) a costs award of \$1,000.

¶ 4 The respondent's Dealer Member firm placed her under close supervision as a result of the conduct in question and this close supervision continues.

Issues considered by the panel

¶ 5 The panel determined that it had to be satisfied regarding three considerations before it could accept the settlement agreement. First, the agreed penalties had to be within an acceptable range taking into account

similar cases. Secondly, the agreed penalties had to be fair and reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalties should serve as a deterrent to the respondent and to industry. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the respondent, and the impact on her of the agreed penalties.

Importance of the settlement process

¶ 6 It is usually in the public interest that matters be settled where possible rather than be determined through contested hearings. The reasons for this are often that an earlier determination of a dispute is better than a later determination. Settlements are usually less expensive than contested litigation, and there is less congestion in the dispute settling system when matters are taken out of the system through settlements. Finally, where both parties agree, the result is often more palatable to the parties and society than in a contested hearing where the winner takes all.

¶ 7 For these reasons, a panel considering the acceptance of a settlement agreement will try to reach a determination of acceptance. It will recognize that settlements are often hotly debated with much compromise and give-and-take between the parties in order to reach an acceptable position agreeable to both parties. Furthermore, the panel will recognize that it is not privy to all the facts and the motivations and considerations that each of the parties have in coming to a solution of the dispute that is agreeable to them.

Role of the panel

¶ 8 A panel considering whether to accept a settlement agreement and its agreed penalties is in a different position than a panel determining an appropriate penalty in a contested hearing.

¶ 9 Each needs to consider precedents and the law and, most importantly, the particular facts and circumstances of the case, including the particular circumstances of the specific respondent.

¶ 10 However, unlike a panel in a contested hearing that must set the actual penalties that appear appropriate to it, a panel in a hearing to consider a settlement agreement has only two options under IIROC rules: to accept the agreed settlement with its penalties because the panel agrees that the penalties are acceptable, or to reject the agreed settlement because the agreed penalties are not acceptable or because the panel has not been given enough information for it to come to a determination that the agreed penalties are acceptable.

¶ 11 A panel considering whether to accept a settlement agreement cannot substitute for the agreed penalties those penalties that it might prefer to have in the circumstances. However, the parties can always be invited by the panel to provide additional information that the panel believes it needs in order to come to a favourable decision; and the parties may choose to provide it. Or indeed, the parties may agree to changes in the agreed penalties to meet what the panel believes is required for an acceptance, in order to avoid a rejection by the panel. But the panel cannot impose a change unilaterally.

¶ 12 In the final analysis, a panel will accept a settlement agreement where it is in the public interest to do so, as will almost always be the case where the panel is satisfied regarding the three considerations mentioned above under “*Issues considered by the panel*”.

¶ 13 In this case, the panel was satisfied on the agreed facts, and the submission of staff with which respondent’s counsel concurred, that the issues considered by the panel were fully satisfied.

Rule 43

¶ 14 IIROC Dealer Member Rule 43 provides that an employee or Approved Person of a Dealer Member must not, directly or indirectly, engage in any personal financial dealings with a client.

¶ 15 “Personal financial dealings” is defined in the rule to include acting by a Registered Representative with full or partial control or authority over the financial affairs of a client, with an exception that could have applied to the respondent: namely, that the Registered Representative discloses the arrangement to and obtains the approval in writing of, the Dealer Member prior to the transaction.

¶ 16 The respondent's Dealer Member has a policy requiring notification to and receiving prior approval of the Dealer Member, before a Registered Representative engages in personal financial dealings with a client.

¶ 17 This rule and policy were contravened by the respondent in this case.

Other factors considered by the panel

¶ 18 There was just one client, one incident, and one security in the conduct in question.

¶ 19 The respondent received no compensation for her dealings.

¶ 20 Her dealings were not motivated by taking advantage of the client and there was no deceptive conduct towards him. Indeed, the client was sophisticated and was instrumental in suggesting the arrangement.

¶ 21 There was nothing in the agreed facts or the allegation as to the respondent's conduct to suggest that the respondent was assisting the client in engaging in, or that the client was engaging in, any improper conduct such as insider trading.

¶ 22 The respondent has not been the subject of prior disciplinary proceeding by IIROC.

¶ 23 However, the conduct was harmful to the market's integrity and reputation in that it prevented the respondent's Dealer Member from supervising the conduct in question.

Conclusion

¶ 24 We concluded that the agreed penalties were within an acceptable range based on precedents presented to us, were consistent with IIROC's penalty guidelines, would serve as a specific and general deterrent, and were fair and reasonable. Accordingly, we concluded that the settlement agreement was in the public interest and, therefore, we accepted it.

Dated at Toronto this 22nd day of August, 2017.

Paul M. Moore

Leo Ciccone

Peter Dymott

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 Melissa Prusky ("Respondent" or "Prusky").

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. In early July 2014 Prusky co-mingled her numbered company's funds with her client HK's funds to purchase 300,000 shares of Joey New York Inc. ("Joey Inc.") for \$60,000 USD in an off book transaction. She did not tell her Dealer Member firm about this purchase transaction.

Background

5. Prusky had been an IIROC registrant since 2007. She was employed as a Registered Representative with CIBC World Markets Inc. (“CIBC WM”) in Toronto, Ontario from late 2013 until her employment was terminated by the firm in January 2016.
6. Since January 2017 Prusky has been employed as a Registered Representative with Hampton Securities Limited and is currently under close supervision with that firm.

Respondent’s numbered company

7. Prusky incorporated 2042644 Ontario Inc. (“204”) in March 2004. She was the sole officer and director of 204. Prusky states that prior to the Joey Inc. share purchase, 204 had been inactive. Prusky did not tell CIBC WM about her connection to this company when she began working at CIBC WM. She later opened a pro account for 204 at CIBC WM in December 2014 that facilitated the co-mingling of assets with her client HK, as detailed below.

Client HK

8. HK had been Prusky’s client at her previous Dealer Member firm. HK and Prusky were friends before he became her client. HK opened accounts with Prusky at CIBC WM in late 2013. He was a sophisticated, high net worth investor.

Joey New York Inc.

9. In the spring of 2014 Prusky heard about Joey Inc. from HK, who asked her for feedback on the company. Joey Inc. was an American issuer which produced womens’ skin care products.
10. Prusky reviewed the Joey Inc. products and liked them. Prusky told HK that she intended to invest \$10,000 USD to purchase shares of Joey Inc. HK told Prusky that he wanted to invest \$50,000 USD in Joey Inc. but did not want his name used.

Financial dealings with 204 and client HK

11. HK suggested co-mingling funds with Prusky to purchase shares of Joey Inc. in late June or early July 2014, using \$10,000 USD of Prusky’s funds and \$50,000 USD of HK’s funds. Prusky agreed to do so to help HK as HK did not want his name used. Prusky suggested using 204 to purchase the Joey Inc. shares and HK agreed.
12. HK provided Prusky with a cheque for \$50,000 USD which was deposited into 204’s bank account. Subsequently, on or about July 2014, 204 purchased 300,000 shares of Joey Inc. at a price of 20 cents per share, for a total of \$60,000 USD. HK knew that the shares were restricted.
13. The purchase of these shares was not transacted in HK’s account at CIBC WM or in any other investment account.

Letter Agreement

14. On or about July 3, 2014 Prusky prepared a letter agreement dated July 3, 2014 (the “Letter Agreement”) which was signed by HK and Prusky. The purpose of the Letter Agreement was to indicate that 204 owned 50,000 shares purchased for \$10,000 USD and that HK owned 250,000 shares purchased for \$50,000 USD.

Share certificate

15. In December 2014 Prusky opened a pro account for 204 at CIBC WM. In February 2015, Prusky received the Joey Inc. share certificate in 204’s name, indicating that it owned 300,000 shares of Joey Inc. This certificate was deposited into 204’s account at CIBC WM.

Firm not aware

16. Prusky did not tell her Dealer Member firm about this July 2014 purchase transaction. Furthermore,

Prusky also used a personal email account to communicate with HK and Joey Inc. in 2014, rather than using her CIBC WM email account.

17. CIBC WM's Policies and Procedures manual at the time indicated that all personal financial dealings with clients were prohibited unless authorized in writing by the firm. No such authorization was obtained by Prusky.

Firm discovery

18. These events came to light after HK erroneously sent a copy of the Letter Agreement to a successor firm of Prusky's former Dealer Member firm.
19. At CIBC WM's request, the share certificate was re-issued as two certificates in December 2015, indicating that HK owned 250,000 shares of Joey Inc. and that 204 owned 50,000 shares of Joey Inc.

Other

20. The Respondent does not have a previous disciplinary history.
21. No compensation was paid, is or may be payable, to Prusky or 204 in respect of this transaction.

PART IV – CONTRAVENTIONS

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

Count 1: In July 2014 Melissa Prusky engaged in personal financial dealings with a client without her Dealer Member firm's knowledge or approval, contrary to IIROC Dealer Member Rule 43.

PART V – TERMS OF SETTLEMENT

23. The Respondent agrees to the following sanctions and costs:
 - a) A fine in the amount of \$20,000;
 - b) To re write and pass the CPH within twelve months of acceptance of this Settlement Agreement; and,
 - c) Costs of \$1,000.
24. 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

25. 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 following paragraph.
26. 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

27. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
28. 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.
29. 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.

30. 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.
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 based on the same or related allegations.
32. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
33. 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.
34. 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.
35. 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

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

DATED this “22nd” day of June, 2017.

“Witness” _____

Witness

“Ricki Newmarch” _____

Witness

“Melissa Prusky” _____

Respondent Melissa Prusky

“Kathryn Andrews” _____

Kathryn Andrews

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

The Settlement Agreement is hereby accepted this “18th” day of “July”, 2017 by the following Hearing Panel:

Per: “Paul M. Moore, Q.C.” _____

Panel Chair

Per: “Peter Dymott” _____

Panel Member

Per: “Leo Ciccone” _____

Panel Member