

Re Keenan

IN THE MATTER OF:

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

and

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

Harrison Fitzgerald Keenan

2013 IIROC 29

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

Heard: May 15, 2013

Decision: May 15, 2013

Hearing Panel:

Mr. Frederick Webber (chair), Ms. Debbie Archer and Ms. Mary Savona (members)

Appearances:

Ms. Natalija Popovic, Counsel for IIROC

Mr. Harrison Fitzgerald Keenan, the Respondent

Mr. David Hausman and Ms. Shelley Babin, Counsel for the Respondent

HEARING PANEL DECISION AND REASONS

¶ 1 As a result of a Settlement Agreement, which is attached to these reasons, entered into between IIROC and the Respondent, a Settlement Hearing was conducted on May 15, 2013 in Toronto pursuant to the IROC Dealer Member Rules. The Hearing Panel received and considered oral submissions from IIROC counsel and Respondent's counsel and the IIROC Settlement Brief containing the Settlement Agreement, relevant IIROC Rules and disciplinary sanction guidelines and certain decisions of previous Hearing Panels.

¶ 2 The contraventions alleged by IIROC and admitted by the Respondent are set out in the Settlement Agreement and are as follows:

- (a) From on or about May 2010 to July 2011 the Respondent signed certain of his clients' names on investment related documents and passed the signatures off as the clients' own, and thereby engaged in conduct unbecoming or detrimental to the public interest, contrary to IIROC Rule 29.1.
- (b) From on or about May 2011 to March 2012 the Respondent engaged in discretionary trading in the accounts of one of his clients contrary to IIROC Rules 1300.4 and 1300.5.

¶ 3 The Sanctions agreed to in the Settlement Agreement are:

- (a) A fine in the amount of \$25,000;
- (b) Disgorgement of profits of \$4398.97;

- (c) Suspension of 2 months; and
- (d) Strict supervision for 5 months, with reporting requirements to be made internally with his member firm.

¶ 4 The salient facts are set out in the Settlement Agreement attached hereto and need not be repeated in these reasons. In summary:

- (a) The Respondent signed the names of four of clients to investment related documents and passed the signatures off as the clients'; he believed he had the clients' permission to do so;
- (b) The Respondent completed several trades for one of his clients without her prior authorization. He did not specifically discuss the trade with the client until after the fact, although he believed he had the client's permission to trade on her behalf.

¶ 5 Under IIROC Rule 20.36, at the conclusion of a settlement hearing, the Panel may either accept or reject the proposed settlement. The proper approach to this issue is set out in *Re Milewski*, [1999] I.D.A.C.D. No.17, contained in IIROC's Settlement Brief:

“A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.”

This principle has been followed in a number of cases, including *Re Portfolio Strategies Securities Inc.*, 2012 IIROC 36, *Re Gaudet*, 2010 IIROC 29 and *Re Bereskin*, 2010 IIROC 37, contained in the IIROC Settlement Brief. This Panel agrees with the statement from *Re Milewski* and has followed it in this case.

¶ 6 Given the standard of “reasonableness”, it is the responsibility of this Panel to determine whether the penalties set forth in the Settlement Agreement strike a reasonable balance between fairness to the Respondent in the circumstances and the need to protect the investing public, the industry membership, the integrity of the discipline process, the integrity of the securities markets and prevention of a repetition of the offense.

¶ 7 The actions which the Respondent has admitted, viz. signing clients names and passing them off as the clients own contrary to IIROC Rule 29.1, and unauthorized discretionary trading contrary to IIROC Rules 1300.4 and 1300.5 are serious infractions which merit serious sanctions from the standpoint of both specific and general deterrence. On the other hand both counsel point to a number of mitigating factors which are set forth in paragraphs 23-35 of the Settlement Agreement. IIROC counsel also referred the Panel to a number of cases with similar fact situations, contained in the Settlement Brief, for guidance in determining the appropriate sanction in this case.

¶ 8 Both counsel took the position that the sanctions agreed to in the Settlement Agreement will achieve specific and general deterrence. Respondent's counsel also took the position that the cooperation by the Respondent with his firm's investigation and that of IIROC is an important message for the industry.

¶ 9 Given the serious nature of the misconduct, the need for specific and general deterrence, the mitigating factors and the Sanction Guidelines, the fact that the Respondent was represented by experienced counsel and after reviewing the cases to which the Panel was referred, the Panel agreed that the terms of the Settlement Agreement were reasonable. Accordingly the Settlement Agreement was accepted by the Panel.

Dated as of the 15th day of May 2013.

Frederick Webber- Chair

Debbie Archer-Member

Mary Savona- Member

SETTLEMENT AGREEMENT

INTRODUCTION

1. Enforcement staff of the Investment Industry Regulatory Organization of Canada (IIROC) and the Respondent, (Keenan or the Respondent) consent and agree to the settlement of this matter by way of this agreement (the Settlement Agreement).
2. IIROC's Enforcement Department has conducted an investigation (the Investigation) into Keenan's conduct.
3. The Investigation discloses matters for which Keenan may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (the Hearing Panel).

JOINT SETTLEMENT RECOMMENDATION

4. IIROC staff (Staff), and Keenan jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. Keenan admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies and the By-Laws and Regulations of the Investment Dealers Association of Canada:
 - i. From or about May 2010 to July 2011 the Respondent signed certain of his clients' names on investment related documents and passed the signatures off as the clients' own, and thereby engaged in conduct unbecoming or detrimental to the public interest, contrary to IIROC Rule 29.1.
 - ii. From or about May 2011 to March 2012 the Respondent engaged in discretionary trading in the accounts of one of his clients contrary to IIROC Rules 1300.4 and 1300.5.
6. Staff and Keenan agree to the following terms of settlement:
 - (a) A fine in the amount of \$25,000;
 - (b) Disgorgement profits of \$4,398.97;
 - (c) Suspension of 2 months; and
 - (d) Strict supervision for 5 months, with reporting requirements to be made internally with his member firm.
7. The Respondent shall pay IIROC the sum of \$5,000 in total to reflect the costs that Staff incurred in connection with this matter.

STATEMENT OF FACTS

Acknowledgement

8. Staff and Keenan agree with the facts set out in this section and acknowledge that the terms of the settlement contained in this Settlement Agreement are based on those specific facts.

A. Overview

9. The Respondent signed the names of four of his clients to investment related documents and passed the signatures off as the clients' own. The Respondent believed he had the clients' permission to do so, however on certain of the occasions he did not specifically advise these clients either before or after he had signed their names to these documents, that he had done so.
10. In addition, the Respondent completed several trades for one of these clients without her prior authorization. He did not specifically discuss the trades with the client until after the fact, although he understood that he had his client's permission to trade on her behalf and take advantage of investment opportunities even if she was not available to discuss each individual investment with him prior to

execution.

11. The Respondent acknowledges that by signing the four clients' names and executing trades without the one client's specific prior authorization, he failed to ensure that his conduct was of the high standards of ethics and professional conduct required of a registrant of IIROC.
12. Respondent further acknowledges that his conduct was unbecoming or detrimental to the public interest in that it breached the relationship of trust and confidence that exists between a registrant and his client.

B. Registration History

13. The Respondent was a registrant with Scotia Capital Inc. [Scotia] from 2004 until July 2012 when he was terminated for cause in relation to the conduct addressed herein. He is currently registered with Macquarie Private Wealth Inc., another IIROC member firm.

C. False Endorsement

a) Client SP

14. In or about June 2012 the Respondent's former client SP complained to Scotia about the trading in her account with the Respondent. SP had been the Respondent's client for approximately three years at that time.
15. The Respondent admitted to Scotia, and subsequently to IIROC, that he signed the name of his client, SP, to the following documents in respect of particular securities, and passed the signatures off as the client's own:

a) Rainy River Resources Ltd. [Rainy River]---In or about January 2011

- Subscription Agreement

b) Harte Gold Corp. [Harte Gold]---In or about July 2011

- Subscription and Renunciation Agreement for Flow Through Shares
- Accredited Investor Certificate
- Cheque Request for her account, in order to purchase the shares of this company

16. The Respondent advised IIROC that he believed that he had SP's permission to take the necessary steps to execute trades on her behalf and take advantage of investment opportunities even if she was not available to discuss each individual investment with him. However, on at least one occasion, he did not specifically advise SP, either before or after signing her name on these documents, that he had done so.

b) Client BK

17. BK is the Respondent's mother, and had been his client since 2009. BK has not filed a complaint against the Respondent with IIROC or with Scotia.
18. The Respondent admitted to Scotia, and subsequently to IIROC, that, he signed the name of his client, BK, to the following documents in respect of particular securities, and passed the signatures off as the client's own:

a) Rainy River--- In or about January 2011

- Subscription Agreement
- Subscriber Certificate

b) Harte Gold--- In or about May 2010

- Subscription Agreement for Units
- Accredited Investor Certificate to Harte Gold

- Certificate of Non-Solicitation
- Accredited Investor Certification to Scotia

19. The Respondent advised IIROC that he believed that he had BK's permission to sign her name to these documents. However he did not specifically advise BK, either before or after signing her name, that he had done so.

c) Clients FS & GS

20. The Respondent's clients FS & GS are a married couple and have been his clients since 2009. FS & GS have not filed a complaint against the Respondent with IIROC or with Scotia.

The Respondent admitted to Scotia, and subsequently to IIROC, that he signed the name of his clients, FS & GS, to the following documents in respect of particular securities, and passed the signatures off as the clients' own:

a) Harte Gold--- In or about May and June 2010

- Subscription Agreement for Units
- Accredited Investor Certificate to Harte Gold
- Certificate of Non-Solicitation
- Accredited Investor Certification to Scotia

c) Magellan Minerals Ltd.---In or about October 2010

- Subscription for Special Warrants-(Canadian and Non-US Subscribers)

d) Western Potash Corp.--- In or about December 2010

- Subscription Agreement

21. The Respondent advised IIROC that he believed that he had FS & GS' permission to do so and that FS & GS were aware of the nature of the documents signed.

D. Discretionary Trading for SP

22. The Respondent executed at least 10 trades for his client, SP in relation to at least five securities, without her knowledge prior to the trades. The trades, both buys and sells, ranged in value from, approximately, \$10,000 to \$68,000.

23. It was the Respondent's evidence that he understood that he had his client's permission to trade on her behalf and take advantage of investment opportunities even if she was not available to discuss each individual investment with him prior to execution.

Mitigating Factors

24. The Respondent has shown remorse and now understands his conduct violated IIROC rules.

25. He has no discipline record with IIROC.

26. He has co-operated fully with both the IIROC investigation and Scotia's internal investigation and made full and forthright admissions

27. In addition at the time of the firm's internal investigation he not only admitted to signing the name of the close friend on her documents but voluntarily admitted that he had done so also for his mother and the couple. It appears that the firm would not have known about the other clients but for these admissions.

28. He was terminated by Scotia as a result of these events.

29. He did not sign the names for personal gain or dishonest or fraudulent purposes.

30. There were a small number of clients involved, including his mother.
31. The sign offs were a matter of convenience for the clients.
32. The Respondent's evidence is that he believed he had the clients' consent to sign their names.
33. The Respondent has been under strict supervision since October 2012 with no further issues in respect of his conduct.
34. The Respondent completed a re-write of the CPH examination in January, 2013, and acknowledges that but for this recent re-writing it would have been a term of the penalty that he do so.

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 IIROC 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. The Respondent hereby waives its rights under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal in the event that the Hearing Panel accepts the Settlement Agreement.
40. If the Hearing Panel rejects the Settlement Agreement, IIROC 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. IIROC 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 Harrison Fitzgerald Keenan at the City of Toronto in the Province of Ontario, this 9th day of April, 2013.

“Witness”

“Harrison Fitzgerald Keenan”

Witness

Harrison Fitzgerald Keenan

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 9th day of April, 2013.

“Witness”

“Natalija Popovic”

Witness

Natalija Popovic

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 April, 2013, by the following Hearing Panel:

Per: “Fred Webber”

Panel Chair

Per: “Debbie Archer”

Panel Member

Per: “Mary Savona”

Panel Member

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