

Re Reid & Reid

IN THE MATTER OF:

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

and

**Christopher Mark Reid
David John Reid**

2020 IIROC 04

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

Heard: August 7, 2019 in Montreal, Quebec

Decision: August 7, 2019

Reasons for Decision: February 12, 2020

Hearing Panel:

Edward W. Keyes, Q.C., Chair, Daniel Houle, John Ballard

Appearance:

Fanie Dubuc, Enforcement Counsel

Marie-Nöel Rochon, Counsel for the Respondents

REASONS FOR DECISION ON ACCEPTANCE OF SETTLEMENT

Introduction

¶ 1 On June 15, 2019, a Settlement Agreement was entered into between the Investment Industry Regulatory Organization of Canada (“IIROC”) and the Respondents Christopher Mark Reid and David John Reid in accordance with Sections 8215 and 8428 of the Consolidated Enforcement Examination and Approval Rules of IIROC. The Settlement Agreement was presented to this Hearing Panel at a Hearing conducted in Montreal, Quebec on August 7, 2019. The Hearing Panel received a Book of Authorities submitted by IIROC, which contained the proposed Settlement Agreement, relevant IIROC Rules, Disciplinary Guidelines and a number of previous hearing panel decisions.

¶ 2 Regarding the Respondent David John Reid (“David Reid”), the proposed Settlement Agreement provided that he pay a fine of \$40,000, be prohibited from approval with IIROC for a period of 30 months effective March 2018, when he ceased to be an Approved Person, submit to a period of 12 months of close supervision upon re-approval with IIROC, successfully re-write the Conduct and Practices Handbook (“CPH”) course prior to re-approval with IIROC, and pay costs in the amount of \$2,500.

¶ 3 Regarding the Respondent Christopher Mark Reid (“Christopher Reid”), the proposed Settlement

Agreement provided that he pay a fine of \$30,000, be prohibited from approval with IROC for a period of 16 months effective March 2018, when he ceased to be an Approved Person, submit to a period of 6 months of close supervision upon re-approval with IROC, successfully re-write the CPH course 6 months prior to re-approval with IROC, and pay costs in the amount of \$2,500.

¶ 4 After considering the oral and written submissions of Counsel for IROC and the Respondents and after deliberating, the Hearing Panel decided to approve and sign the Settlement Agreement with written reasons to follow. The reasons of the Hearing Panel are set out below together with a copy of the Settlement Agreement attached as Appendix "A".

The Contraventions

¶ 5 The contraventions alleged by IROC and admitted to by the Respondents as set out in the Settlement Agreement are as following:

- 1) Between 2012 and early 2018, while a Registered Representative with BMO Nesbitt Burns Inc., the Respondent David John Reid engaged in discretionary trading in clients' accounts without the accounts having been preauthorized and accepted as discretionary accounts, contrary to Dealer Member Rule 1300.4 and 1300.5; and
- 2) Between 2014 and early 2018, while a Registered Representative with BMO Nesbitt Burns Inc., the Respondent Christopher Mark Reid engaged in discretionary trading in clients' accounts without the accounts having been preauthorized and accepted as discretionary accounts, contrary to Dealer Member Rule 1300.4 and 1300.5.

Summary of the Facts

¶ 6 The Respondent Christopher Reid was approved as a Registered Representative in 2010 when he started with BMO Nesbitt Burns Inc. ("BMO"). The Respondent David Reid was approved as a Registered Representative with IROC and its predecessor the Investment Dealers Association in 1981 and was the BMO Branch Manager in Saint John, New Brunswick from 1991 to October 2016. Both were employed with BMO at the time of their dismissals in March 2018.

¶ 7 Between 2011 and February 2018, the Respondents worked as a team at BMO with David Reid being responsible for developing business and maintaining client relationships. Christopher Reid concentrated on the analytical work of establishing buy or sell recommendations according to their clients' investment portfolios. It was David Reid's responsibility to contact clients to obtain their authorization for the trades before Christopher Reid executed any such trades. During the 2000's up until their dismissals in March 2018, David Reid assisted in part by Christopher Reid developed a client base of a little over 100 clients who held approximately \$150 million in assets.

¶ 8 Starting in 2012, David Reid began proposing to his clients a discretionary account called Managed Model Portfolios (the "Model Portfolio"). By 2018, 80% of his clients were in Model Portfolio accounts. Initially, David Reid did not advise Christopher Reid that he had offered discretionary account management to his clients. In 2014, Christopher Reid observed that large volumes of trade tickets were being submitted by David Reid for execution and upon questioning, David Reid acknowledged to Christopher Reid that he had not been contacting all of the clients before submitting the trade tickets for execution. Despite this, the Respondents agreed to continue the discretionary trading in their clients' accounts. David Reid had never been approved to manage discretionary accounts, and Christopher Reid had only been approved to do so in October 2017. None of the client accounts in which discretionary trades were executed had been authorized as discretionary accounts.

¶ 9 Although the Respondent David Reid was in frequent contact with his clients to discuss the Model Portfolio products developed by BMO and to make adjustments in the Model Portfolio accounts to replicate BMO's analysts recommended changes to Model Portfolios, he did not obtain his clients consent before executing any trades to affect changes in the Model Portfolio accounts.

¶ 10 In order to avoid detection of the discretionary trading by BMO Compliance Department, the Respondents would space out the trades over the course of a number of months. Between 2014 to early 2018, the Respondents executed, on average, 150 discretionary trades per month totalling at least 7,000 discretionary trades during this period. Fortunately, the Respondents discretionary trades were consistent with the client investment profiles and did not result in any losses.

Analysis and Decision

¶ 11 The issue for this Hearing Panel was whether to accept or reject the Settlement Agreement. We have no authority to alter the Settlement Agreement in any manner.

¶ 12 In *Re Milewski*, [1999] I.D.A.C.D. No. 17, a District Council considered whether to accept a settlement agreement between a registered representative and the Investment Dealers Association, the predecessor to IIROC. The allegations were that a registered representative had sold investments to clients that were inappropriate given the clients' stated investment objectives. The penalty proposed was a substantial fine plus disgorgement of commissions. The District Council approved the settlement. The hearing panel there stated that the test to be applied to determine whether it should accept a settlement agreement was the following:

Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. 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.

¶ 13 In light of the above, this Hearing Panel's role is not to determine the appropriate penalty on the same basis as we might have if we were making an initial determination with respect to penalty. We must determine, in light of the agreed to contraventions of the Rules and Regulations, whether the penalties agreed to in the Settlement Agreement are within a range of appropriateness. In considering same, we are aware of the requirement not only to consider the individual circumstances of the Respondents, but also the overall public policy objectives that hearing panels must consider when determining appropriate actions for breaches of the Rules and Regulations of IIROC.

¶ 14 In their submissions to the Hearing Panel, Counsel made reference to IIROC's Sanction Guidelines and referred the Panel to a number of previous IIROC decisions including:

Re Pace 2019 IIROC 11, March 20, 2019

Re Bazilinsky 2018 IIROC 13, March 2, 2018

Re Hartner 2018 IIROC 8, January 31, 2018

Re Yaskiw 2017 IIROC 19, April 4, 2017

Re Tersigni 2016 IIROC 19, April 6, 2016

Re Smith 2016 IIROC 15, April 20, 2016

Re Thai 2016 IIROC 6, December 15, 2015

Re Biron 2012 IIROC 4, February 8, 2012

Re Janetts 2010 IIROC 23, May 18, 2010

Re Karcz 2010 IIROC 22, May 18, 2010

¶ 15 In deciding to accept the Settlement Agreement in this case, we were guided by the comments and principles outlined by the numerous hearing panels in the decisions cited above. Our task was to determine in light of the admitted contraventions, whether the penalties agreed to in the Settlement Agreement were within the range of appropriateness while at the same time, balancing the individual circumstances of the Respondents with the overall policy goals and objectives of protecting the integrity of the market and maintaining high standards in the securities industry.

¶ 16 A review of the facts in the above noted IIROC cases and the penalties imposed in those decisions lead us to the conclusion that the penalties in the Settlement Agreement before us are within an appropriate range. The facts of the cases were somewhat similar to the ones before us in that they involved high volumes of discretionary trades by the Registered Representatives. The penalties imposed in most of these cases were similar to those agreed to here in that they involved substantial fines, suspensions of varying lengths as well as periods of close supervision on re-entry into the investment industry.

¶ 17 The Hearing Panel also considered IIROC's Sanction Guidelines as being indicative of industry expectations and as relevant to determining the appropriate penalty for the breaches of the IIROC Rules and Regulations in question, while recognizing that they are neither exhaustive nor determinative. The factors that the Hearing Panel took into consideration in determining that the Settlement Agreement is acceptable were the following:

AGGRAVATING FACTORS

- i. The large number of discretionary trades executed by the Respondents, *i.e.* approximately 150 per month totalling at least 7,000 over four years;
- ii. The deliberate effort by the Respondents to evade the firm's compliance monitoring and detection by spacing the trades apart;
- iii. The intentional disregard for the IIROC Rules and Regulations in place regarding discretionary trading;

MITIGATING FACTORS

- iv. There were no losses or harm experienced by the clients of the Respondents;
- v. The Respondents had no previous disciplinary record with IIROC;
- vi. The Respondents admitted to their misconduct and fully cooperated with the IIROC investigation thereby avoiding the necessity of a protracted hearing process; and
- viii. The Respondents were terminated by BMO.

¶ 18 Ultimately, the Hearing Panel considered whether the proposed penalties were within an acceptable range taking into account similar decisions, are fair and reasonable and proportionate to the seriousness of the contraventions, and whether they will be a deterrent to the Respondents and the industry as a whole.

¶ 19 Taking into account all of the above, this Hearing Panel concluded that the proposed sanctions in the Settlement Agreement are appropriate to address the misconduct of the Respondents, taking into account the goal of promoting general adherence to the Rules and Regulations, the goals of the disciplinary process whose primary function is to protect the public while maintaining the integrity and reputation of the securities industry. As presented by the Parties at the Hearing, we believe the penalties imposed on the Respondents strike an appropriate balance in acting as a specific deterrent to each of the Respondents as well as a general deterrent to the industry as a whole. Therefore, the Hearing Panel finds that the sanctions as provided for in the Settlement Agreement fall within the range of appropriateness and are reasonable. Accordingly, we accepted and executed the Settlement Agreement on August 7, 2019.

Dated this 12 day of February, 2020.

Edward W. Keyes

Daniel Houle

John Ballard

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada (IIROC) will issue a notice of application to announce that a settlement hearing will be held before a Hearing Panel (the Hearing Panel) to consider whether, pursuant to Rule 8215 of IIROC's Enforcement, Examination and Approval Rules, it should accept a settlement agreement (the Settlement Agreement) between Staff of IIROC (Staff) and Christopher Mark Reid (Christopher Reid) and David John Reid (David Reid) (the respondents).

PART II - JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondents jointly recommend that the Hearing Panel accept the Settlement Agreement in accordance with the terms set forth below.

PART III – AGREED FACTS

3. For purposes of the Settlement Agreement, the Respondents agree with the facts set out in Part III of this Settlement Agreement.

Background

(i) Christopher Reid

4. The Respondent, Christopher Reid, had been approved as a Registered Representative with IIROC, since July 5, 2010.
5. Christopher Reid was employed with BMO Nesbitt Burns Inc. (BMO) in New Brunswick from July 2010 until his dismissal in March 2018.
6. Christopher Reid was approved as a portfolio manager as of October 2017, but never practiced in this capacity during the course of his employment with BMO.

(ii) David Reid

7. The Respondent, David Reid, had been approved as a Registered Representative with IIROC, as well as its predecessor the Investment Dealers Association of Canada (IDA), since 1981.

8. David Reid was employed with BMO Nesbitt Burns Inc. (BMO), in New Brunswick, from January 1991 until his dismissal in March 2018. Between January 1991 and October 2016, the Respondent held the position of BMO Branch Manager in St. John, New Brunswick.
9. During the 2000s, up until his dismissal in March 2018, David Reid, assisted in part by his son Christopher Reid, developed a clientele composed of a little over a hundred clients and representing approximately \$150 million in assets.
10. Beginning in summer 2010, and over a period of approximately 18 months, Christopher Reid participated in various training programs. At the end of this training and development period towards the end of 2011, he took on a more active role on the team formed by his father and himself.
11. Between late 2011 until their dismissal in February 2018, the Respondents worked as a team and divided any tasks between them according to the following methodology: David Reid was responsible for maintaining client relationships and developing business, while Christopher Reid focused mainly on doing the analytical work and establishing buy or sell recommendations according to the clients' investment profiles. In accordance with this distribution of responsibilities, David Reid was supposed to contact the clients to obtain their authorization before the transactions were subsequently executed by Christopher Reid.

The discretionary Trading

12. Beginning in 2012, David Reid gradually proposed to clients, ultimately consisting of more than 80% of its clients in 2018, to set up some or all of their accounts into managed model portfolios (the "Model Portfolios").
13. David Reid took the initiative to offer this discretionary account management to clients and initially did not inform Christopher Reid.
14. Over the course of 2014, Christopher Reid observed that the quantity of trade tickets submitted by David Reid for execution seemed very large and he questioned the latter about whether all the clients had been contacted. David Reid acknowledged that he was not communicating with all of the clients before submitting the trade tickets for execution and told Christopher Reid of his discretionary management of client accounts. The Respondents agreed to continue to proceed in this manner.
15. David Reid was never approved to look after discretionary accounts and Christopher Reid was only approved as a portfolio manager as of October 2017. None of the client accounts in which discretionary trades were executed were ever authorized as discretionary accounts.
16. David Reid was frequently in contact by phone or in person with his clients who held accounts in which the Respondents engaged in discretionary trading. During these conversations and meetings, David Reid discussed the investment strategy with his clients in a general manner.
17. David Reid would explain to his clients the Model Portfolios products developed by BMO and how he would make adjustments in the Model Portfolios to replicate BMO's analysts' recommended changes to the BMO Model Portfolios products. However, David Reid would not obtain his clients' consent before executing the trades to change the BMO Model Portfolios products.
18. The Respondents' discretionary trades were consistent with the clients' investment profiles and did not result in any losses for the latter. Moreover, all clients involved in the Model Portfolios were in fee-based accounts.

19. The Respondents knowingly spaced out the discretionary trades over the course of months to avoid being questioned by the BMO compliance department. By not executing a large volume of trades over a short period of time, which might have been an indicator that the clients had not been contacted, the Respondents established a pattern of misconduct aimed at evading the firm's compliance monitoring.
20. The Respondents executed, over the course of period ranging from 2014 to early 2018, an average of approximately 150 discretionary trades a month in order to replicate BMO's analysts' recommended changes in the clients' Model Portfolios. The Respondents' executed at least 7000 discretionary trades in about a hundred client accounts over a period of nearly four years, although it is impossible to determine the precise number.
21. In February 2018, David Reid received a verbal complaint from a dissatisfied client. This complaint, unrelated to the discretionary trading, ultimately led to an internal investigation by the firm. The Respondents were dismissed by BMO in March 2018.
22. At the time of the complaint, David Reid voluntarily disclosed the discretionary trading.
23. During the course of the IROC Investigation, the Respondents admitted to the misconduct described above and agreed to resolve this matter by way of a settlement agreement with IROC Staff. Their admissions shortened the length of time requires to investigate this matter and led to an early resolution.

PART IV – CONTRAVENTIONS

24. By engaging in the conduct described above, the Respondents committed the following contraventions of IROC's Rules:
 1. Between 2012 and early 2018, while a Registered Representative with BMO Nesbitt Burns Inc., the Respondent David John Reid engaged in discretionary trading in clients' accounts without the accounts having been preauthorized and accepted as discretionary accounts, contrary to Dealer Member Rule 1300.4 and 1300.5;
 2. Between 2014 and early 2018, while a Registered Representative with BMO Nesbitt Burns Inc., the Respondent Christopher Mark Reid engaged in discretionary trading in clients' accounts without the accounts having been preauthorized and accepted as discretionary accounts, contrary to Dealer Member Rules 1300.4 and 1300.5.

PART V - TERMS OF SETTLEMENT

25. The Respondent David John Reid agrees to the following sanctions and costs:
 - a) A fine of \$40,000;
 - b) Prohibition of approval with IROC for a period of thirty (30) months, effective March 2018, when he ceased to be an Approved Person;
 - c) Twelve (12) months of close supervision in the event of reapproval with IROC;
 - d) The obligation to pass the Conduct and Practices Handbook (CPH) Course prior to reapproval with IROC; and
 - e) Costs in the amount of \$2,500.
26. The Respondent Christopher Mark Reid agrees to the following sanctions and Costs:

- a) A fine of \$30,000;
 - b) Prohibition of approval with IROC for a period of sixteen (16) months, effective March 2018, when he ceased to be an Approved Person;
 - c) Six (6) months of close supervision in the event of reapproval with IROC;
 - d) The obligation to re-write and pass the Conduct and Practices Handbook (CPH) Course within six (6) months of reregistration;
 - e) Costs in the amount of \$2,500.
27. If the Hearing Panel accepts this Settlement Agreement, the Respondents agree to pay the amounts referred to above within 30 days of such acceptance, unless otherwise agreed between Staff and the Respondents.

PART VI – STAFF COMMITMENT

28. If the Hearing Panel accepts the Settlement Agreement, Staff will not initiate any further action against the Respondents 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.
29. If the Hearing Panel accepts the Settlement Agreement and the respondents do not abide by the terms thereof, Staff of IROC may initiate proceedings against the Respondents pursuant to Rule 8200. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement.

PART VII – SETTLEMENT ACCEPTANCE PROCEDURE

30. The Settlement Agreement is subject to acceptance by the Hearing Panel.
31. The Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing held 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.
32. Staff and the Respondents 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 Respondents do not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.
33. If the Hearing Panel accepts the Settlement Agreement, the Respondents waive their right, under IROC rules and any applicable legislation, to a disciplinary hearing, review or appeal.
34. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondents may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the same allegations or to related allegations.
35. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
36. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IROC will post a full copy of this Settlement Agreement on the IROC website. IROC will also publish a summary of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement.
37. If this Settlement Agreement is accepted, the Respondents agree that neither they nor anyone on their behalf will make a public statement inconsistent with this Settlement Agreement.

38. The Settlement Agreement shall become effective and binding upon the Respondents and Staff from the date of its acceptance by the Hearing Panel.

PART VIII – SIGNATURE OF THE SETTLEMENT AGREEMENT

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

40. The fax or electronic copy of any signature will be treated as an original signature.

DATED this June 15, 2019.

“Christopher Mark Reid”

Christopher Mark Reid

Respondent

“David John Reid”

David John Reid

Respondent

DATED this June 17, 2019.

“Fanie Dubuc”

Fanie Dubuc

Enforcement Counsel,

for Staff of IIROC

The Settlement Agreement is hereby accepted this “7th” day of “August”, 20”19” by the following Hearing Panel:

Per: “Edward Keyes”

Panel Chair

Per: “John Ballard”

Panel Member

Per: “Daniel Houle”

Panel Member

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