Re Dundee Securities

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

and

Dundee Securities Corporation

2013 IIROC 57

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

Heard: December 4, 2013 at Toronto, Ontario
Decision: December 4, 2013

Hearing Panel:
Edward T. McDermott, Chair, Robert J. Guilday and F. Michael Walsh
Appearances:
Mr. David McLellan - Senior Enforcement Counsel
Mr. David Di Paolo - Counsel for the Respondent

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 Transitional 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, Dundee Securities Corporation ("Dundee") pursuant to a written agreement dated December 4, 2013, which document was filed with this Hearing Panel.

¶ 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 contained an admission on the part of the Respondent that it had contravened the provisions of the Investment Dealers Association of Canada ("IDA") By-Law 1300.2(a) and Policy No. 2 (respectively now known as IIROC Dealer Member Rules 1300.2(a) and 2500). The specific contraventions to which the Respondent admitted were agreed to be as follows:

> The Respondent admits to the following contraventions of IIROC Dealer Member Rules, Guidelines IDA By-Laws, Regulations or Policies:
>
> (a) Between approximately May, 2006 and April, 2008, the Respondent failed to effectively exercise its supervisory responsibilities concerning the management of the accounts of clients, RH and JH, contrary to IDA By-Law 1300.2(a) (now known as IIROC Dealer Member Rule 1300.2(a)) and Policy No. 2 (now known as IIROC Dealer Member Rule 2500);
>
> (b) Between approximately August, 2007 and April, 2008, the Respondent failed to effectively exercise its supervisory responsibilities concerning the management of the accounts of clients, JR and ER, contrary to IDA By-Law 1300.2(a) (now known as IIROC Dealer Member Rule 1300.2(a)) and Policy No. 2 (now known as IIROC Dealer Member Rule 2500).

¶ 5 The Respondent also confirmed that it was subject to the jurisdiction of IIROC pursuant to the Administrative and Regulatory Services Agreement between the IDA and IIROC effective June 1, 2008.

¶ 6 As can be seen from the foregoing, the essence of the contraventions to which the Respondent has admitted is that Dundee failed to discharge its responsibilities to supervise and oversee the management of the accounts of four of its clients who were being serviced by a registered representative of the Respondent in a sub-branch office in Regina, Saskatchewan in circumstances where the registered representative was also the branch manager.

¶ 7 The terms of the Settlement Agreement presented to this Hearing Panel contained a penalty provision whereby Enforcement Staff ("Staff") and the Respondent had agreed that the Respondent would pay a fine to IIROC in the sum of $110,000 and an additional amount for costs in the sum of $10,000.

¶ 8 The Hearing Panel then proceeded to give careful consideration to the Settlement Agreement and the submissions of the parties in support of such agreement. At the conclusion of the hearing, the Panel recessed the hearing in order that it could deliberate on the information and submissions that had been made to it. The Hearing Panel subsequently advised the parties that it was prepared to accept the Settlement Agreement on the terms proposed and proceeded to execute and record its acceptance of such Agreement.

¶ 9 The following constitutes the reasons for such decision of this Hearing Panel which led it to conclude that the Settlement Agreement provided an appropriate response to the contraventions of the IDA By-Laws and IIROC Dealer Member Rules to which the Respondent has admitted guilt under the terms of the Settlement Agreement.

THE ROLE OF THE HEARING PANEL

¶ 10 Under the provisions of Rule 20.36, this Hearing Panel may either accept or reject the Settlement Agreement. It is not open to us to rewrite, alter or amend the terms of the agreement which has been negotiated

between the parties. We are also restricted to a consideration of the factual agreements recorded in the terms of the Settlement Agreement unless the parties agree to provide us with additional facts.

¶ 11 The approach of a Hearing Panel to this process has been succinctly captured in the following excerpt from the case of *Re Raymond James Ltd.*, 2013 LNIIROC 3:

> ***Appropriateness of Penalty***
>
> **7** Past decisions of Hearing Panels determining whether or not to accept a settlement agreement are of assistance. In *Milewski* [1999] I.D.A.C.D. No. 17, Bulletin No. 2605, August 5, 1999, and *Re: Bereskin* [2010] IIROC No. 37 the test for a Hearing Panel to use in determining whether or not to accept the sanctions contained in a settlement agreement was one which considered a number of criteria. These criteria include whether or not the agreed upon sanctions strike a reasonable balance between fairness to the respondent in the circumstances but at the same time encouraging the prevention of a repetition of the acknowledged offense; and the need to protect the investing public, the industry membership, the integrity of the disciplinary process, and the integrity of the securities markets.
>
> **8** In addition, the Hearing Panel should determine whether or not a penalty clearly falls outside a 'reasonable range of appropriateness'. If in the opinion of the Hearing Panel the penalty falls outside this reasonable range, the Hearing Panel should not accept the settlement agreement. Otherwise it should do so. The rationale behind this approach is that a Hearing Panel should be cognizant of the settlement process and should not interfere in a negotiated settlement by attempting to substitute its discretion for that of the parties.

¶ 12 Based upon the material filed it is accordingly our responsibility to review the Settlement Agreement in order to satisfy ourselves that the penalty falls within a reasonable range of appropriateness for the offence in the circumstances recorded in the Settlement 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.

¶ 13 It is in light of these considerations that this Hearing Panel undertook a review of the Settlement Agreement placed before us on December 4, 2013 and concluded that the Agreement should be accepted.

CONTRAVENTION

¶ 14 Based upon the facts set forth in the terms of the Settlement Agreement, it seems clear that clients RH/JH and JR/ER were senior, retired couples who had become clients of Kenneth Gareau, a registered representative in a sub-branch office of the Respondent in Regina, Saskatchewan.

RH AND JH

¶ 15 The agreed upon facts indicated that in May 2006, this couple (who were seniors) met Mr. Gareau and opened a new account with Dundee. The new client account documentation recorded that the couple had an income of $40,000; "good" investment knowledge; investment objectives of 100% capital appreciation and risk tolerance of 100% medium.

¶ 16 In point of fact, after a lifetime of farming, these clients decided to retire and sold their farm and equipment for approximately $1,000,000. They planned to use $225,000 of that money to build a new house in Saskatchewan and to invest the remaining funds in low risk investments in order to supplement the government retirement payments they would receive from the Canada Pension Plan ("CPP") and Old Age Security program ("OAS"). They had no additional significant sources of income.

¶ 17 The couple had minimal investment knowledge and their primary objective was to preserve their capital. They accordingly had a low risk tolerance in order that they could rely on their investments for some income which would be supplementary to the basic government retirement income plans.

¶ 18 Subsequently, in July 2006, additional investment accounts were opened through the registered representative including a joint margin account, a corporate margin account and individual RRSP accounts all

of which contained similar income information, investment objectives and risk tolerance parameters as had been set forth in the original account.

¶ 19 The Respondent, acting through its head office compliance officers (who were serving in a Tier 1 supervisory capacity) approved the new client application forms ("NCAFs") for these accounts (including the use of margin) without any documented questions or inquiries as to whether they were appropriate in light of the circumstances of these clients.

¶ 20 In the result, RH/JH then deposited funds or securities into these accounts in the amount of approximately $1,215,000.

¶ 21 Over the course of the next two years the registered representative (Mr. Gareau) recommended that the clients purchase the following investments:

(a)	Equity based mutual funds	$1,266,000
(b)	Limited Partnership Units	$ 170,000
(c)	Hedge Fund	$ 100,000
(d)	Dundee REIT; Dundee Wealth Inc.	$ 58,000
	Total	$1,594,000

¶ 22 Mr. Gareau also recommended that the clients borrow significant amounts on margin in order to purchase a life insurance policy (which he arranged to be sold to them) and certain Limited Partnership Units. He also recommended that they place a line of credit against their newly acquired house equal to almost 90% of the value of the residence. The money raised by proceeding in this manner was used to purchase equity mutual fund investments. There was also extensive use of margin in a number of the investment accounts.

¶ 23 By May 2008, the clients had accumulated a margin debt of some $552,000 for which they were being charged $2,349 per month. In addition they owed $200,000 on the line of credit placed against their home.

¶ 24 As they had no other significant sources of income, the clients had to withdraw substantial amounts on a monthly basis from their investment accounts to meet living expenses but the investments recommended and acquired by the registered representative did not produce regular monthly income so that in order to enable them to withdraw these amounts, Mr. Gareau had to sell portions of the existing equity mutual funds each month.

¶ 25 In October 2008, after almost all of the world equity markets had dropped significantly, Mr. Gareau then switched the remaining equity mutual funds into money market funds. By this time however the clients had incurred realized and unrealized losses of approximately $629,750 or roughly 60% of their net investment. This compared with the TSX composite index decrease of approximately 21.6% during the same period of time.

¶ 26 In accordance with the terms of the Settlement Agreement, the Respondent acknowledges that the recommended purchases which were almost entirely equity based were not suitable for these clients who were relying on their investments for income purposes to meet their monthly living expenses. In addition, the extensive use of margin in the Investment Accounts was not suitable for clients in the circumstances of RH and JH.

JR and ER

¶ 27 These clients were also a married couple of seniors with very minimal investment knowledge who had retired in 2003, once again, after a lifetime of farming.

¶ 28 In August 2007 they opened a joint investment account and individual RRIF accounts through Mr. Gareau.

¶ 29 The NCAFs filed on their behalf were misleading and in fact wrong as they indicated that their investment knowledge was "good" and their investment objectives were "100% growth and risk tolerance of 100% medium". Their stated annual income on the forms was $15,000.

¶ 30 Their total assets consisted of their home and securities totalling approximately $198,500 which were mostly comprised of low risk interest and dividend paying securities as well as some shares of Canadian banks and balanced mutual funds.

¶ 31 Aside from these investments, their only income consisted of CPP/OAS payments of approximately $1,550 per month. They had minimal investment knowledge and their primary investment objective was to preserve their capital with a low risk tolerance as they intended to rely on their investments for supplementary income to live on.

¶ 32 After transferring their securities into the accounts opened with Mr. Gareau, Mr. Gareau proceeded to sell these investments and in October/November 2007 he recommended they use the proceeds ($197,000) to purchase equity based mutual funds, which is what occurred.

¶ 33 In accordance with the terms of the Settlement Agreement it is acknowledged that these holdings were quite unsuitable for these clients given their age, retirement status, investment knowledge and financial situation. Indeed, the clients had clearly communicated to Mr. Gareau on a number of occasions (including by a hand written letter) that they could not tolerate any losses in their investment accounts.

¶ 34 Notwithstanding these instructions, Mr. Gareau sold a 5% Bell Canada bond (against their expressed wishes) to buy unsuitable securities.

¶ 35 The Settlement Agreement also reveals that the mutual funds purchased for these clients were subject to deferred sales charges ("DSC") which was quite inappropriate for clients in their circumstances who needed to withdraw money from their accounts to fund their retirement.

¶ 36 Once again, in October 2008 after the equity markets had dropped significantly, Mr. Gareau switched their equity mutual funds into money market funds.

¶ 37 From September 2007 to February 2009 their accounts incurred losses of $64,000 or 36% of their combined portfolio.

SUPERVISION OF MR. GAREAU BY THE RESPONDENT

¶ 38 During all of the relevant periods referred to above, the primary (or "Tier 1") level of supervision was conducted by the Respondent through its compliance officers at Dundee's head office in Toronto. These officers were responsible for supervising Mr. Gareau (the sub-branch manager), approving new account applications/updates and reviewing account activity.

FAILING TO ACT ON THE RED FLAGS

¶ 39 As the Settlement Agreement acknowledges, there were a number of red flags which should have attracted the attention of the Tier 1 supervisors which apparently were not identified or, if they were, adequately pursued as part of the Respondent's supervisory responsibilities. The terms of the Settlement Agreement acknowledges as follows:

> 56. There were numerous red flags with respect to the accounts of RH/JH and JR/ER (together the "Clients") for which the supervisors failed to take any meaningful action to investigate. These red flags included the following:
>
> (a) the Clients were retired;
>
> (b) the Clients' investment objectives and risk tolerance parameters were very high;
>
> (c) the Clients were holding virtually all equities, and despite their age and circumstances there were virtually no fixed income holdings; and
>
> (d) with respect to RH/JH, there was a very high use of margin.
>
> 57. Despite the presence of these red flags, the supervisors:
>
> (a) Failed to use due diligence to ensure that the clients' stated investment objectives

and risk tolerances were consistent with their true financial situation, investment knowledge, investment objectives and risk tolerances;

(b) Failed to question the trading activity in the accounts and whether the trades and holdings were suitable for the Clients;

(c) Failed to make inquiries into the suitability of the extensive use of margin by RH/JH; and

(d) Failed to give due regard to the risks to the Clients, and allowed Gareau to pursue a highly aggressive strategy which was not suitable for the Clients and ultimately resulted in substantial realized and unrealized losses when the market declined.

¶ 40 Based upon the foregoing agreed upon facts, it is the conclusion of this Hearing Panel that the contraventions alleged against the Respondent, which have been acknowledged by it in accordance with the terms of the Settlement Agreement, have been established and do indeed warrant a significant response in order to serve as a deterrent to the Respondent and others from engaging in any form of similar misconduct or failing to discharge their obligation to supervise the opening of new accounts and account activity in accordance with their responsibilities under the terms of the IDA By-Laws and corresponding IIROC Rules.

THE PENALTY

¶ 41 Both Enforcement Staff and the Respondent urge this Panel to accept their joint recommendation that a fine in the amount of $110,000 be paid by the Respondent to IIROC, as well as costs in the amount of $10,000.

¶ 42 In considering the appropriateness of this penalty, the Hearing Panel has taken into account the importance of impressing on members of the Industry that constant and ongoing diligence is required in order to discharge their obligations to properly supervise the opening of new accounts and ongoing account activity in order to identify and act upon situations which create obvious red flags and which, if not pursued, might well result in significant detriment to members of the investing public. Accordingly, the element of deterrence is foremost in our minds in considering the penalty which both parties urge us to adopt in this particular case.

¶ 43 We are also however cognizant of the fact that there are a number of mitigating factors which should and do impact upon the amount of the penalty to be imposed in these circumstances. This Hearing Panel has accordingly taken into account the following mitigating circumstances which were present in this particular case and which have persuaded us that in all of the circumstances the penalty proposed is indeed responsive to the serious nature of the contraventions and appropriate in all of the circumstances.

(a) The Hearing Panel was not advised of any prior record of regulatory discipline against the Respondent in circumstances involving a contravention of their duty to provide appropriate supervision for the accounts and account activities of their clients;

(b) Both of the aggrieved clients received some compensation for their losses including, in the case of RH/JH, a contribution of some $75,000 from the Respondent.

(c) There was no element of manipulation or deceit on the part of the Respondent. There was also no evidence brought before this Hearing Panel that the situation involved repeated, pervasive or systemic contraventions of the Dealer Member Rules by the Respondent including the obligation under the Rules to supervise the management of its clients' accounts.

(d) By entering into this Settlement Agreement and acknowledging it fell well short of its responsibilities under the Dealer Member Rules to adequately supervise its clients' accounts and account activities, the Respondent has acknowledged and accepted its responsibility to ensure that appropriate procedures and review standards are in place in order to ensure that it fully discharges its obligations in this respect in the future.

(e) We were advised that the Respondent has been very cooperative with IIROC and its Staff throughout the course of this proceeding and accordingly that is certainly a matter to be taken into account in assessing the appropriateness of the penalty which has been agreed to by the

parties.

¶ 44 On the other side of the equation however we have also taken note of the fact that this situation for each of the client families concerned was allowed to continue over a reasonably prolonged period of time without it coming to the attention of or being subject to the intervention of the Respondent's Tier 1 compliance personnel. One would have expected that in circumstances where there was no direct supervision on the ground in a distant sub-branch, even greater diligence would have been applied in reviewing accounts being opened and/or managed by a branch manager in the position of Mr. Gareau particularly in the face of so many obvious red flag warnings which should have generated a quick and probing response from the Dealer Member had its supervisory systems been operating properly.

¶ 45 We have also noted the fact that these clients who were retired farmers with very little knowledge or sophistication in the world of investments, were quite vulnerable in the context of their relationship with the registered representative Mr. Gareau upon whom they placed great reliance. In the context of their total assets and personal circumstances, the losses sustained by them can only be considered to be substantial although, as indicated above, they did receive reimbursement for some of their losses (approximately $500,000 in the case of RH and JH).

¶ 46 Although not bound to do so, this Hearing Panel has also taken into account IIROC's Disciplinary Sanction guidelines which suggest a minimum fine for a Dealer Member of $50,000 for an offence of this nature.

¶ 47 We have also reviewed the various case authorities submitted by counsel for IIROC, including in particular the case of *Re CIBC World Markets Inc.*, 2012 IIROC 57, where the Hearing Panel approved a Settlement Agreement involving a fine of $85,000 plus costs of an additional $10,000 against a Dealer Member for a similar charge of failing to supervise contrary to the Dealer Member Rules.

DECISION

¶ 48 In the result, after reviewing all of the relevant factors canvassed in this decision, this Hearing Panel has concluded that a fine of $110,000 payable to IIROC, plus costs in the amount of $10,000, is an appropriate and reasonable response in the circumstances of this particular case, as such penalties support the objectives of the disciplinary process, serve as both a general and specific deterrent for the misconduct committed and give appropriate weight to the mitigating circumstances raised on behalf of the Respondent.

¶ 49 Accordingly, in all of the circumstances, we believe that the penalty agreed upon is within a reasonable range of appropriateness for the offences committed in the circumstances of this case and the Settlement Agreement has accordingly been accepted by this Hearing Panel and is binding and enforceable effective on the date it was endorsed by this Hearing Panel (December 4, 2013).

DATED this 18th day of December 2013.

Edward T. McDermott

Chair

Robert J. Guilday

Industry Representative

F. Michael Walsh

Industry Representative

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent, Dundee Securities Corporation, consent and agree to the settlement of this matter by way of this settlement agreement ("the Settlement Agreement").

2. The Enforcement Department of IIROC has conducted an investigation ("the Investigation") into the conduct of Dundee Securities Corporation.

3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.

4. The Respondent consents to be subject to the jurisdiction of IIROC.

5. 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

6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.

7. The Respondent admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, IDA By-Laws, Regulations or Policies:

   a) Between approximately May, 2006 and April, 2008, the Respondent failed to effectively exercise its supervisory responsibilities concerning the management of the accounts of clients, RH and JH, contrary to IDA By-Law 1300.2(a) (now known as IIROC Dealer Member Rule 1300.2(a)) and Policy No. 2 (now known as IIROC Dealer Member Rule 2500);

   b) Between approximately August, 2007 and April, 2008, the Respondent failed to effectively exercise its supervisory responsibilities concerning the management of the accounts of clients, JR and ER, contrary to IDA By-Law 1300.2(a) (now known as IIROC Dealer Member Rule 1300.2(a)) and Policy No. 2 (now known as IIROC Dealer Member Rule 2500).

8. Staff and the Respondent agrees to the following terms of settlement:

9. The Respondent shall pay a fine to IIROC in the sum of $110,000.00.
The Respondent agrees to pay costs to IIROC in the sum of $10,000.00.

III. STATEMENT OF FACTS

(i) Acknowledgment

10. 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

11. Clients RH/JH, and JR/ER, were both senior, retired couples and not sophisticated investors. RH/JH and JR/ER were clients of Kenneth Gareau, a Registered Representative in a sub-branch office of the Respondent, Dundee Securities Corporation ("Dundee") (as it was then named) located in Regina, Saskatchewan.

12. JR/ER's accounts contained investment objectives and risk tolerance parameters which were not accurate in light of their age, investment knowledge, employment status and financial situation. With respect to both RH/JH, and JR/ER, their holdings were not suitable for their circumstances.

13. Between approximately May, 2006 and April, 2008, Dundee was performing Tier 1 supervisory functions of Gareau through its compliance officers at its head office in Toronto.

14. Dundee failed in its supervisory duties as its compliance officers approved the account forms for JR/ER with objectives that were too risky, and failed to make inquiries into the suitability of trades in the accounts of JR/ER and RH/JH.

Respondent

15. At all material times, the Respondent was a duly registered member firm of the IDA and its successor, IIROC.

Registered Representative

16. Kenneth Gareau was a Registered Representative with Dundee in a sub-branch office in Regina, Saskatchewan.

17. On September 26, 2011, following a disciplinary hearing, an IIROC Hearing Panel found that Gareau had acted contrary to Dealer Member Rule 29.1 because he had failed to accurately record risk tolerance and investment objectives on new client account forms ("NCAFs") for clients RH/JH and JR/ER, and that he had acted contrary to Dealer Member Rule 1300.1(q) because he had made unsuitable recommendations for clients RH/JH and JR/ER. In addition, the Hearing Panel found that he had acted contrary to IDA By-Law 29.1 because he conducted a transaction against the expressed wishes of JR/ER.

18. The Panel, finding that Gareau had failed to accurately record risk tolerance and investment objectives on NCAFs for clients RH/JH relates to a time period which is outside the relevant supervision period of May, 2006 to April, 2008 ("Relevant Period").

Supervision

19. During the Relevant Period, Gareau was the Branch Manager of his sub-branch. He was supervised by compliance officers located at the Respondent's head office in Toronto, who were acting in a Tier 1 capacity during the Relevant Period. In or about May, 2008, a new local Branch Manager in Saskatchewan was appointed as a Tier 1 supervisor over Gareau.

20. In order to conduct Tier 1 supervision, the Respondent's compliance officers were required to review and approve NCAFs and client account updates, as well as review daily and monthly trading summary reports.

Clients RH/JH

21. Clients RH/JH, born in 1942 and 1946, are a retired couple and were not sophisticated investors.

22. In or about May, 2006, after a lifetime of farming, RH/JH sold their farm and equipment and retired with slightly more than $1 million from that sale. They planned to use approximately $225,000 of that money to build a new house in Fort Qu'appelle, Saskatchewan to live in and invest the remaining funds in low risk investments to augment retirement payments they would receive from the Canada Pension Plan ("CPP") and the Old Age Security Program ("OAS").

<u>New Accounts</u>

23. In May, 2006 they met Gareau and opened a new account. The NCAF for this account states that the couple had an income of $40,000, "good" investment knowledge and investment objectives of 100% capital appreciation, and risk tolerance of 100% medium.

24. At that time, RH/JH did not have a significant source of income apart from approximately $7,000 per year from CPP. They had minimal investment knowledge, and their primary investment objective was preservation of capital with low risk tolerance. They intended to rely on their investments for income.

25. In July, 2006 additional new investment accounts were opened — a joint margin account; a corporate margin account; and individual RRSP accounts (together the "Investment Accounts"). The Investment Accounts all contained similar investment objective and risk tolerance parameters, as well as income information.

26. The Respondent, acting through head office compliance officers in a Tier 1 supervisory capacity, approved the NCAFs for the Investment Accounts, including the use of margin, without any documented

questions or queries.

27. After the Investment Accounts were opened, RH/JH deposited funds or transferred securities into the accounts in the total amount of approximately $1,215,000.

Recommendations

28. Between approximately July, 2006 and May, 2008 through a number of large transactions, Gareau recommended RH/JH purchase the following (approximate amounts) in the Investment Accounts:

(a)	Equity based mutual funds	$1,266,000;
(b)	Limited Partnership Units	$ 170,000;
(c)	Hedge Fund	$ 100,000;
(d)	Dundee REIT; Dundee Wealth Inc.	$ 58,000
	Total	$1,594,000

Use of Margin

29. There was extensive use of margin in certain of the Investment Accounts.

30. In September, 2006, Gareau recommended RH/JH borrow $120,000 on margin from the corporate margin account to make the first annual payment on a universal life insurance policy which he arranged to be sold to them.

31. In September, 2006 RH/JH borrowed $140,000 on margin in order to purchase the Limited Partnership Units (see paragraph 28 above).

32. By the end of September, 2006 RH/JH had accumulated margin debt of $220,000.

33. In October, 2007 Gareau recommended that RH/JH establish a Home Equity Line of Credit and borrow $200,000 against the value of their newly acquired home which had been paid for with proceeds from the sale of their farm. There were no other mortgages against the home, which was valued at approximately $225,000.

34. The $200,000 was used to purchase equity mutual fund investments as described in paragraph 28.

35. By May, 2008, RH/JH had accumulated total margin debt of approximately $552,000 and were being charged $2,349 per month on that margin debt. Additionally, they owed $200,000 on the Home Equity Line of Credit.

Withdrawals

36. Because they had no other significant source of income, RH/JH withdrew amounts ranging from $4,900 - $6,100 on a monthly basis from their investment accounts for regular living expenses. But, the investments in their accounts were not income producing investments that were intended to produce the type of regular monthly income RH/JH required from their accounts. To obtain available funds to withdraw, Gareau sold portions of the existing equity mutual funds each month.

Losses

37. In October, 2008, after almost all equity markets around the world had dropped significantly, Gareau switched RH/JH's equity mutual funds into money market funds.

38. From the beginning of August, 2006 to the end of November, 2008, RH/JH's net investment in the Investment Accounts was approximately $1,046,350. Over that 28 month period they incurred realized and unrealized losses of approximately $629,750 or approximately 60.2% of their net investment, when during the same period, the TSX Composite Index decreased approximately 21.6%.

39. The losses in RH/JH's accounts were significantly increased because of the extensive use of margin debt in their accounts.

Suitability

40. The recommended purchases in the Investment Accounts, which were essentially entirely equity based, were not suitable for these clients who relied on their investments for income.

41. In addition, the extensive use of margin in the Investment Accounts was not suitable for these clients who were retired and relying on their investments for income.

Clients – JR/ER

42. JR, born in 1936, and ER, born in 1939 are a married couple with minimal investment knowledge. They retired in 2003, after a lifetime of farming.

43. In August, 2007 they opened a joint investment account and individual RRIF accounts. Their NCAFs state that their investment knowledge was "good", and their investment objectives were 100% growth and risk tolerance 100% medium. Their stated annual income was $15,000.

44. Their assets consisted of their home, as well as securities totalling approximately $198,500. These securities were mostly comprised of low risk interest and dividend paying securities. They also held some shares in Canadian banks, and balanced mutual funds.

45. At that time, their only income consisted of monthly CPP/OAS payments of approximately $1,550. They had minimal investment knowledge, and their primary investment objective was preservation of capital with low risk tolerance. They intended to rely on their investments for income.

Recommendations

46. After JR/ER's existing securities were transferred in to their respective accounts in or about September, 2007, Gareau sold them. With the proceeds, between October and November, 2007, he recommended that they purchase approximately $197,000 in equity based mutual funds

Suitability

47. In effect, nearly all of the couple's liquid assets were held in equities. These holdings were not suitable for JR/ER given their age, employment status, investment knowledge and financial situation.

48. In all of their communications with Gareau, including a hand written letter dated March 7, 2008, JR/ER clearly communicated that they could not tolerate any losses in their investment accounts.

49. JR/ER were relying on regular income from their investments to supplement their CPP and OAS payments. In their joint account at the previous registered firm they held $51,000 par value of a Bell Canada bond which was paying 5% or $2,550 per year. Against JR/ER's express wishes, Gareau sold this existing security to buy unsuitable securities which paid Gareau more than $2,000 in commission.

50. All of the mutual funds purchased in JR/ER's accounts were purchased subject to deferred service changes ("DSC").

51. Such extensive use of DSC mutual funds in JR/ER's accounts was not suitable for them given their age and the fact that they needed to withdraw money from their accounts to fund their retirement.

52. In October, 2008, after almost all equity markets around the world had dropped significantly, Gareau switched JR/ER's equity mutual funds into money market funds.

53. From September, 2007 to February, 2009 JR/ER's accounts incurred losses of approximately $64,000 or 36% of their combined portfolio. During this time, the S&P/TSX Composite Index declined approximately 41%.

Supervisory Failures

54. During the Relevant Period, Tier 1 supervision of Gareau was being conducted by compliance officers at Dundee Head office in Toronto.

55. These supervisors had certain duties and responsibilities, including the supervision of Gareau, the approval of new account applications/updates, and the supervision of account activity.

56. There were numerous red flags with respect to the accounts of RH/JH and JR/ER (together the "Clients") for which the supervisors failed to take any meaningful action to investigate. These red flags included the following:

    (a) the Clients were retired;

    (b) the Clients' investment objectives and risk tolerance parameters were very high;

    (c) the Clients were holding virtually all equities, and despite their age and circumstances there were virtually no fixed income holdings; and

    (d) with respect to RH/JH, there was a very high use of margin.

57. Despite the presence of these red flags, the supervisors:

    (a) Failed to use due diligence to ensure that the Clients' stated investment objectives and risk tolerances were consistent with their true financial situation, investment knowledge, investment objectives and risk tolerances;

    (b) Failed to question the trading activity in the accounts and whether the trades and holdings were suitable for the Clients;

    (c) Failed to make inquiries into the suitability of the extensive use of margin by RH/JH; and

    (d) Failed to give due regard to the risks to the Clients, and allowed Gareau to pursue a highly aggressive strategy which was not suitable for the Clients and ultimately resulted in substantial realized and unrealized losses when the market declined.

58. In failing to adequately question the account activity in light of these red flags, the Respondent's supervisors failed to effectively perform its supervisory responsibilities.

Mitigating Factor

59. RH/JH received compensation for their losses of approximately $500,000, which included a $75,000 contribution from the Respondent. JR/ER received compensation for their losses of $6,477.62.

60. The Respondent at all times co-operated with IIROC Staff during the investigation.

IV. TERMS OF SETTLEMENT

61. 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.

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

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

64. 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.

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

66. 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.

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

68. 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.

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

70. 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 Toronto in the Province of Ontario, this 4th day of December, 2013.

"Witness"	"Moira Simo"
WITNESS	**RESPONDENT**
	Per:"Moira Simo"

AGREED TO by Staff at the City of "Toronto" in the Province of "Ontario", this 4th day of December, 2013.

"Witness"	"David McLellan"
WITNESS	**DAVID MCLELLAN**
	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 4th day of December, 2013, by the following Hearing Panel:

Per: "Edward McDermott"
Panel Chair

Per: "Robert Guilday"
Panel Member

Per: "Michael Walsh"
Panel Member