

Re Haller

IN THE MATTER OF:

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

and

Kurt Andrew Haller

2017 IIROC 08

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

Heard: January 20, 2017 at the City of Toronto

Oral Decision: January 20, 2017

Written Decision: February 1, 2017

Hearing Panel:

Fred Chenoweth, Chair, Shaine Pollock and Peter Dymott

Appearances:

Sally Kwon, Enforcement Counsel of the Investment Industry Regulatory Organization of Canada

The Respondent was personally in attendance and represented himself

REASONS FOR DECISION

Introduction

¶ 1 A Hearing Panel of the Investment Industry Regulatory Organization of Canada (“IIROC”) was convened on January 20, 2017 in accordance with Section 8428 and Section 8125 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, to review a Settlement Agreement (“Settlement Agreement”) dated December 23, 2016 negotiated between the Enforcement Department of IIROC (“Staff”) and Kurt Andrew Haller (“Respondent”).

¶ 2 The Settlement Agreement was submitted to the Hearing Panel for its acceptance or rejection. After considering the material filed and the joint submissions of Staff and the Respondent, the Panel unanimously accepted the Settlement Agreement and issued an order accordingly. These are the Panel’s reasons for doing so.

The Allegations

¶ 3 In the Settlement Agreement, the Respondent admits the following contraventions of IIROC Rules:

- (a) Between June 2010 and April 2014, the Respondent made a number of recommendations to WC to purchase primarily high risk securities in his Cash Account. These recommendations were unsuitable for WC given WC’s investment objectives and risk tolerances. The holdings in WC’s Cash Account were excessively concentrated in the energy and mining sectors at various times through this period.

- (b) Furthermore, between January 2012 and December 2012, the Respondent traded excessively in WC's Cash Account for the sole purpose of generating additional commissions and without benefit to WC.

Statement of Facts

¶ 4 The Respondent first became registered as a registered representative in the investment industry in August 1986. The Respondent has not been registered with IROC since April 2015, when he resigned from employment with Argosy Securities Inc. ("Argosy").

WC

¶ 5 WC is currently an 89 year old widower and a retired engineer. WC and his late wife, BC, became clients of the Respondent in the late 1980's.

¶ 6 WC (and BC) followed the Respondent from Prudential Bache through to Argosy. WC opened two accounts with the Respondent at Argosy; namely, the Cash Account and a registered account.

¶ 7 WC generally left investment decisions to BC until in or around 2008, when BC moved to an assisted living facility. After that time, WC generally left investment decisions to the Respondent.

¶ 8 WC trusted the Respondent. WC relied on and accepted the Respondent's recommendations for the investments in his Cash Account.

(1) Unsuitable Recommendations

¶ 9 When WC opened his Cash Account and registered account at Argosy in September 2008, he was 81 years old. The Respondent completed one New Account Application Form ("NAAF") applicable to all of WC's accounts for WC to sign. The NAAF indicated that, for both the Cash Account and registered account, WC's investment objective was "Growth", with a planned allocation of 50-100% in medium to medium-high risk equities, and up to 30% in high risk "Aggressive Investments".

¶ 10 At all material times, an "Aggressive Investment" was defined by Argosy as an investment "with very high risk of loss, including junior and venture stocks, limited partnerships, junk bonds, low grade preferred shares and distressed securities."

¶ 11 WC's 2008 NAAF set out an investment objective and a risk tolerance that was too aggressive for WC given his personal circumstances. At all material times, WC wanted 75% of his investments to be held in blue-chip securities, and no more than 25% of his investments to be exposed to medium risk.

¶ 12 On June 3, 2010, the Respondent completed a NAAF update applicable to all of WC's accounts for WC to sign. No changes were made to WC's investment objective and risk tolerance for the Cash Account. WC's 2010 NAAF continued to indicate an investment objective and a risk tolerance that was too aggressive for WC given his personal circumstances.

¶ 13 BC passed away on August 28, 2010. The Respondent did not complete a NAAF update for the Cash Account at that time.

¶ 14 The Respondent knew or ought to have known that the investment objectives and risk tolerances indicated on WC's 2008 and 2010 NAAF's in respect of the Cash Account did not reflect WC's true investor profile.

¶ 15 The next NAAF update that the Respondent completed for WC to sign was on June 5, 2013, and was applicable to all of WC's accounts. WC's 2013 NAAF indicated that WC's investment objective was "Balance", with a planned allocation of 0-70% in low to medium risk equities, and up to 20% in high risk Aggressive Investments.

¶ 16 Between 2010 and April 2014, the holdings in WC's Cash Account were unsuitable for WC as they

exceeded WC's true risk tolerance and the risk tolerances recorded on WC's NAAF's approximately 80% of the time. In particular,

- (a) Between June 2010 and June 2013, the holdings in WC's Cash Account that were "Medium-High/Above Average" and "High/Speculative" investments ranged approximately from 32% to 71%, for all but seven months. This exceeded WC's true risk tolerance described in paragraph 10 herein, as no more than 25% of the investments in WC's Cash Account should have been held in medium risk securities.
- (b) Between July 2013 and April 2014, the holdings in WC's Cash Account that were "Medium-High/Above Average" and "High/Speculative" investments ranged approximately from 54% to 72%. This exceeded the risk tolerance stated in WC's 2013 NAAF described in paragraph 14 herein, as no more than 20% of the investments in WC's Cash Account should have been held in high risk securities, and up to 70% should have been held in low to medium risk securities.

¶ 17 Between June 2010 and April 2014, WC sustained a loss in his Cash Account of approximately \$391,500. This loss represented more than 100% of the value of WC's Cash Account as at June 30, 2010, which at that time was approximately \$304,800.

¶ 18 Between June 2010 and April 2014, the holdings in WC's Cash Account were highly concentrated in issuers operating in the energy and mining sectors and ranged from approximately 42% to 96% of the Cash Account's holdings.

¶ 19 This persistently high level of concentration of WC's investments in energy and mining issuers was unsuitable for WC.

¶ 20 The commissions charged to WC as a result of the unsuitable trades the Respondent effected in WC's Cash Account between June 2010 and April 2014 were approximately \$59,000; the Respondent's net commissions were approximately \$29,500.

(2) Excessive Trading

¶ 21 Between January 2012 and December 2012, the Respondent executed 152 trades in WC's Cash Account.

¶ 22 During this time period:

- (a) The trades in WC's Cash Account had a total purchase value of approximately \$2,935,800, while the average value of assets in WC's Cash Account totalled approximately \$436,700. This annual turnover rate of 6.6 (total purchases/average account value) reflects a high volume of trading;
- (b) The total value of WC's Cash Account decreased by approximately \$102,900 (including approximately \$45,800 in commissions), whereas the S&P/TSX Composite Index increased by approximately 4%; and
- (c) The commission-to-equity ratio was approximately 10.5%, which also reflects a very high volume of trading.

¶ 23 The Respondent knowingly executed an excessive number of trades in order to increase his commissions without conferring a tangible net benefit to WC.

Joint Settlement Recommendation

¶ 24 Staff and the Respondent agreed to the following sanctions and costs:

- (a) Payment of a global fine in the amount of \$109,500, which includes disgorgement of net commissions in the amount of \$29,500;

- (b) A three year suspension;
- (c) Successfully re-write the Conduct and Practices Handbook course before any re-registration with IIROC;
- (d) 12 months of strict supervision upon any re-registration with IIROC; and
- (e) Costs to IIROC in the sum of \$5,000.

Terms of Settlement

¶ 25 The Panel noted that the Settlement Agreement set out certain terms of settlement to which the parties had agreed:

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 paragraph (b) below.

- (a) 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.
- (b) This Settlement Agreement is conditional on acceptance by the Hearing Panel.
- (c) 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.
- (d) 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 required by the Hearing Panel.
- (e) 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.
- (f) 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.
- (g) The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
- (h) 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.
- (i) If this Settlement Agreement is accepted, the Respondent agrees that neither he nor anyone on his behalf, will make a public statement inconsistent with this Settlement Agreement.
- (j) The Settlement Agreement is effective and binding upon the Respondent and the Staff as of the date of its acceptance by the Hearing Panel.

Discussion

¶ 26 In coming to its conclusion, the Panel considered the evidence before it including the facts set out above, the joint submissions of Staff and the Respondent and the law to which it was referred. In addition, the Panel

considered the IIROC Sanction Guidelines and in particular, the assertion of the sanction guidelines that “the primary purpose of IIROC disciplinary proceedings is to maintain high standards of conduct in the securities industry and to protect market integrity”.

¶ 27 The Panel considered the case of *Re Milewski* [1999] I.D.A.C.D. No. 17, Bulletin No. 2605, August 5th, 1999. *Re Milewski* stands for the proposition that:

“Although a settlement agreement must be accepted by a District Counsel before it can become effective, the standards for acceptance are not identical to those applied by a District Counsel when making a penalty determination after a contested hearing. ... A District Counsel considering a settlement agreement will tend not to alter a penalty that is considered 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 Counsel will reflect public interest benefits of the settlement process in its consideration of specific settlements. ...A penalty under a settlement agreement is likely to be at the low end of the spectrum in view of the fact that a settlement is negotiated, permits the Association Staff to avoid the cost of a contested hearing and guarantees them a favourable result.”

¶ 28 The Panel was also guided by the decision in *Re Clark* [1999] I.D.A.C.D. No. 40, Bulletin No. 2674, December 14th, 1999, which concluded that:

“In considering a settlement under By-Law 20.26, the Panel should not simply substitute its discretion for that of staff when negotiating the settlement. The Panel must be cognizant of the importance of the settlement process and should not interfere lightly in a negotiated settlement.”

¶ 29 In coming to its conclusion, the Panel considered that the number of infractions to which the Respondent had admitted was substantial and continued over a four year period. The Panel also considered that the affected client was of advanced years and was vulnerable. Additionally, it was clear that the client WC had experienced a substantial loss in his Cash Account. On all the evidence before it, the Panel concluded that the penalty which had been agreed to by all parties in the Settlement Agreement did not clearly fall outside a reasonable range of appropriateness.

Result

¶ 30 Accordingly, for all the above reasons, the Hearing Panel, agreed to accept the Settlement Agreement herein.

Dated at Toronto, Ontario, this 1st day of February, 2017.

Fred Chenoweth, Chair

Shaine Pollock

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 Kurt Andrew Haller (the “Respondent”).

PART II – JOINT SETTLEMENT RECOMMENDATION

- 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

- For the purposes of this Settlement Agreement, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

Overview

- The Respondent was the Registered Representative responsible for the accounts of his elderly client WC, including WC’s cash account (the “Cash Account”).
- Between June 2010 and April 2014, the Respondent made a number of recommendations to WC to purchase primarily high risk securities in his Cash Account. These recommendations were unsuitable for WC given WC’s investment objectives and risk tolerances. The holdings in WC’s Cash Account were excessively concentrated in the energy and mining sectors at various times throughout this period.
- Furthermore, between January 2012 and December 2012, the Respondent traded excessively in WC’s Cash Account for the sole purpose of generating additional commissions and without benefit to WC.

The Respondent’s Registration History

- The Respondent first became registered as a Registered Representative in the investment industry in August 1986. His employment history is set out below:

Duration	Employer
August 1986 – June 1988	Bache Securities Inc.
June 1988 – July 1990	Prudential Bache
July 1990 – June 1994	Burns Fry Limited
June 1994 – August 1997	Nesbitt Burns Inc.
August 1997 – September 2001	Merrill Lynch Canada Inc. (formerly Midland Walwyn)
September 2001 – April 2004	First Associates Investments Inc. (formerly Yorkton Securities Inc. - retail division)
April 2004 – October 2007	Canaccord Capital Corporation
October 2007 – August 2008	yourCFO Advisory Group Inc.
August 2008 – April 2015	Argosy Securities Inc.

- The Respondent has not been registered with IIROC since April 2015, when he resigned from his employment with Argosy Securities Inc. (“Argosy”).

WC

- WC is currently an 89 year old widower and a retired engineer. WC and his late wife, BC, became clients of the Respondent in the late 1980s.

10. WC (and BC) followed the Respondent from Prudential Bache through to Argosy. WC opened two accounts with the Respondent at Argosy; namely, the Cash Account and a registered account.
11. WC generally left investment decisions to BC until in or around 2008, when BC moved to an assisted living facility. After that time, WC generally left investment decisions to the Respondent.
12. WC trusted the Respondent. WC relied on and accepted the Respondent's recommendations for the investments in his Cash Account.

(1) Unsuitable Recommendations

13. When WC opened his Cash Account and registered account at Argosy in September 2008, he was 81 years old. The Respondent completed one New Account Application Form ("NAAF") applicable to all of WC's accounts for WC to sign. The NAAF indicated that, for both the Cash Account and registered account, WC's investment objective was "Growth", with a planned allocation of 50-100% in medium to medium-high risk equities, and up to 30% in high risk "Aggressive Investments".
14. At all material times, an "Aggressive Investment" was defined by Argosy as an investment "with very high risk of loss, including junior and venture stocks, limited partnerships, junk bonds, low grade preferred shares and distressed securities".
15. WC's 2008 NAAF set out an investment objective and a risk tolerance that was too aggressive for WC given his personal circumstances. At all material times, WC wanted 75% of his investments to be held in blue-chip securities, and no more than 25% of his investments to be exposed to medium risk.
16. On June 3, 2010, the Respondent completed a NAAF update applicable to all of WC's accounts for WC to sign. No changes were made to WC's investment objective and risk tolerance for the Cash Account. WC's 2010 NAAF continued to indicate an investment objective and a risk tolerance that was too aggressive for WC given his personal circumstances.
17. BC passed away on August 28, 2010. The Respondent did not complete a NAAF update for the Cash Account at that time.
18. The Respondent knew or ought to have known that the investment objectives and risk tolerances indicated on WC's 2008 and 2010 NAAFs in respect of the Cash Account did not reflect WC's true investor profile.
19. The next NAAF update that the Respondent completed for WC to sign was on June 5, 2013, and was applicable to all of WC's accounts. WC's 2013 NAAF indicated that WC's investment objective was "Balance", with a planned allocation of 0-70% in low to medium risk equities, and up to 20% in high risk Aggressive Investments.

Excessive Risk

20. Between June 2010 and April 2014, the holdings in WC's Cash Account were unsuitable for WC as they exceeded WC's true risk tolerance and the risk tolerances recorded on WC's NAAFs approximately 80% of the time. In particular:
 - (a) Between June 2010 and June 2013, the holdings in WC's Cash Account that were "Medium-High/Above Average" and "High/Speculative" investments ranged approximately from 32% to 71%, for all but seven months. This exceeded WC's true risk tolerance described in paragraph 15 herein, as no more than 25% of the investments in WC's Cash Account should have been held in medium risk securities.
 - (b) Between July 2013 and April 2014, the holdings in WC's Cash Account that were "Medium-High/Above Average" and "High/Speculative" investments ranged approximately from 54% to 72%. This exceeded the risk tolerance stated on WC's 2013 NAAF described in paragraph 19

herein, as no more than 20% of the investments in WC's Cash Account should have been held in high risk securities, and up to 70% should have been held in low to medium risk securities.

21. Between June 2010 and April 2014, WC sustained a loss in his Cash Account of approximately \$391,500. This loss represented more than 100% of the value of WC's Cash Account as at June 30, 2010, which at that time was approximately \$304,800.

High Concentration in Energy and Mining Sectors

22. Between June 2010 and April 2014, the holdings in WC's Cash Account were highly concentrated in issuers operating in the energy and mining sectors and ranged from approximately 42% to 96% of the Cash Account's holdings.
23. This persistently high level of concentration of WC's investments in energy and mining issuers was unsuitable for WC.

Commissions from Unsuitable Trades

24. The commissions charged to WC as a result of the unsuitable trades the Respondent effected in WC's Cash Account between June 2010 and April 2014 were approximately \$59,000; the Respondent's net commissions were approximately \$29,500.

(2) Excessive Trading

25. Between January 2012 and December 2012, the Respondent executed 152 trades in WC's Cash Account.
26. During this time period:
 - (c) the trades in WC's Cash Account had a total purchase value of approximately \$2,935,800, while the average value of assets in WC's Cash Account totaled approximately \$436,700. This annual turnover rate of 6.6 (total purchases/ average account value) reflects a high volume of trading;
 - (d) the total value of WC's Cash Account decreased by approximately \$102,900 (including approximately \$45,800 in commissions), whereas the S&P/TSX Composite Index increased by approximately 4%; and
 - (e) the commission-to-equity ratio was approximately 10.5%, which also reflects a very high volume of trading.
27. The Respondent knowingly executed an excessive number of trades in order to increase his commissions without conferring a tangible net benefit to WC.

PART IV – CONTRAVENTIONS

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

Count 1: Between June 2010 and April 2014, the Respondent failed to use due diligence to ensure that recommendations were suitable for his client WC, contrary to IIROC Dealer Member Rule 1300.1(q).

Count 2: From January 2012 to December 2012, the Respondent engaged in excessive trading in his client WC's cash account which was not within the bounds of good business practices, contrary to IIROC Dealer Member Rule 1300.1(o).

PART V – TERMS OF SETTLEMENT

29. The Respondent agrees to the following sanctions and costs:
 - (a) payment of a global fine in the amount of \$109,500, which includes disgorgement of net

commissions in the amount of \$29,500;

- (b) a three year suspension;
 - (c) successfully re-write the Conduct and Practices Handbook course before any re-registration with IIROC;
 - (d) 12 months of strict supervision upon any re-registration with IIROC; and
 - (e) costs to IIROC in the sum of \$5,000.
30. 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

31. 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 paragraph 32 below.
32. 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

33. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
34. 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.
35. 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.
36. 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.
37. 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.
38. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
39. 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.
40. If this Settlement Agreement is accepted, the Respondent agrees that neither he nor anyone on his behalf will make a public statement inconsistent with this Settlement Agreement.
41. 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

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

DATED this 23rd day of December, 2016.

“Witness” “Kurt Haller”
Witness Kurt Andrew Haller

“Witness” “Sally Kwon”
Witness Sally Kwon
Enforcement Counsel on behalf of Enforcement
Staff of the Investment Industry Regulatory
Organization of Canada

The Settlement Agreement is hereby accepted this 20th ___ day of January, 2017 ___ by the following Hearing Panel:

- Per: “Frederick Chenoweth”
Panel Chair
- Per: “Shaine Pollock”
Panel Member
- Per: “Peter Dymott”
Panel Member

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