

Re Denischuk

IN THE MATTER OF:

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

and

Denis Denischuk

2016 IIROC 54

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

Heard: December 8, 2016

Decision: December 8, 2016

Written Reasons: December 22, 2016

Hearing Panel:

The Honourable Thomas R. Braidwood, Q.C., Chair and Douglas J. Stewart

Appearances:

Stacy Robertson, Enforcement Counsel

Denis Denischuk - Self-Represented

REASON FOR DECISION

¶ 1 The Parties have entered into a Settlement Agreement and this hearing is brought pursuant to IIROC Dealer Member Rule 8200 and 8203 to determine whether or not the Settlement Agreement should be approved. The Parties have unanimously agreed that the hearing can be conducted by only two panel members.

A. OVERVIEW

¶ 2 The Settlement Agreement provides that the Respondent admits that between November 2003 and February 2013, the Respondent failed to fully and properly supervise the activities of a registered representative, Alberto “Bob” Tassone, contrary to Dealer Member Rule 38.4.

¶ 3 The IIROC Staff and the Respondent have agreed to the following penalties as provided in the Settlement Agreement:

- (a) the Respondent must pay a fine in the amount of \$14,000.00;
- (b) the Respondent is to be suspended from any and all supervision registration capacities with IIROC for 30 days; and
- (c) the Respondent is to pay costs to IIROC of \$1,000.00.

Role of Hearing Panel on Settlement Hearings

¶ 4 In *Re: Deutsche Bank Securities Ltd.* 2013 IIROC 07, the Hearing Panel articulated its duty upon a settlement hearing as follows:

“It is clear from jurisprudence emanating from the Courts and from Hearing Panels of IIROC, Investment Dealers Association and the Mutual Fund Dealers Association, that our task is not to

decide whether, in this case, we would have arrived at the same decision as that reached by the parties. Rather, our duty is to determine whether the penalty is a reasonable one and that it meets the objectives of the disciplinary process which are to maintain the integrity of the investment industry.”

¶ 5 Or, as put by Winkler, J. (albeit in another context) in *Gilbert v. CIBC*, [2004] O.J. 4260:

“There is a presumption of fairness when a proposed class settlement negotiated at arms-length... is presented to the Court for approval. A Court will only reject a proposed settlement when it finds that the settlement does not fall within a range of reasonableness.

The Test to be applied is whether the settlement is fair and reasonable... This allows for a range of possible results and there is no perfect settlement. Settlement is a product of compromise, which by definition necessitates give and take.”

¶ 6 The role of a hearing panel considering a settlement agreement was also discussed in *Re: Clark* [1999] I.D.A.C.D. No. 40 at p. 4 as follows:

“In considering a settlement under By-Law 20.26, the panel should not simply substitute its discretion for that of staff who negotiated the settlement. The panel must be cognizant of the importance of the settlement process and should not interfere lightly in a negotiated settlement. In our view, as a result, panels must also be careful in using previous settlements as precedent. The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a hearing where similar findings are made.”

¶ 7 As was submitted by Counsel, these comments provide the Parties some significant latitude in negotiating a settlement that may take many factors into account including the time and expense of a liability hearing and the availability and convenience of witnesses, particularly clients who may have already suffered significant losses.

Summary of the Agreed Upon Facts

¶ 8 The Settlement Agreement relates to the period of time from November 2003 to September 2004 when the Respondent was the Branch Manager of the Delta Branch of Global Securities and from September 2004 to February 2013 when the Respondent worked at the same Delta office location which became Raymond James’ Branch in September 2004.

¶ 9 The Delta office location had approximately 5 Registered Representatives and one staff member during the relevant time period. Mr. Tassone was a Registered Representative at the Delta office during the period from November 2003 to February 2013. The Respondent was the supervisor of Mr. Tassone during the relevant period of time at both Global Securities and Raymond James in the Delta branch office.

¶ 10 As the Branch Manager of the Delta office, the Respondent was aware that Mr. Tassone was involved with JED Energy Ventures which was an investment pool with other investors in gas wells in Oklahoma, U.S. He failed in his supervisory duties to make adequate enquiries about that investment, the nature and extent of Mr. Tassone’s involvement and whether it was an outside business activity that required his approval or his firm’s Compliance Department’s approval or should have been disclosed to IIROC’s registration department.

¶ 11 IIROC Rule 38.4 is the supervision rule that requires supervisors to follow all written policies and procedures of the Dealer Member and the Rules of IIROC.

¶ 12 Further, the policies and procedures of Raymond James required the prior approval of the branch manager for any outside business activities of Registered Representatives. This places a duty on the branch manager to investigate any red flags or awareness of any potential outside business of any Registered Representative and make sure proper approvals are obtained and firm compliance is involved.

Failure to Supervise

¶ 13 The Respondent was aware that Mr. Tassone was involved with an investment referred to as the JED Energy investment in or around November 2003 with his business partner, Bob Semple, who was also a Registered Representative in the Delta office at the time.

¶ 14 The JED Energy investment was a pooled investment of approximately 12 investors including Mr. Tassone and Mr. Semple. The investment was in oil and gas wells located in the United States. The investors purchased a partial ownership in the oil and gas wells through various JED Energy entities and JED Energy received distributions in accordance with its share of ownership which it then distributed to the JED Energy investors.

¶ 15 The Respondent did not know certain of the details relating to the investment including the structure, investors, the principals or administrators. He also did not know whether Mr. Tassone was simply an investor or whether he received any additional monies apart from his initial investment amount. The Respondent did not make any enquiries of Mr. Tassone or Mr. Semple about any of these details either in 2003 when he became aware of the investment or at any time thereafter.

¶ 16 In or around November 2003 when the Respondent became aware of the JED Energy investment, he did not make any inquiries about it of Mr. Tassone or Mr. Semple. The Respondent did not verify whether Mr. Tassone or Mr. Semple had notified and/or received approval from Global's Compliance Department for their participation in this company.

¶ 17 In September 2004, the Delta office changed from a Global branch office to a Raymond James branch office. The staff and all of the Registered Representatives, including Mr. Tassone and Mr. Semple, remained the same after the transition.

¶ 18 Starting in or around December 2004, bank statements from a local TD Canada Trust branch addressed to "JED Energy" were delivered to the Delta branch office of Raymond James. Initially, these bank statements were opened by the Respondent and then placed in Mr. Tassone's mail slot. After some time this task was delegated to the Respondent's assistant who performed this task under the direction of the Respondent. These bank statements continued to be received at the Delta branch up until Mr. Tassone left Raymond James in February 2013.

¶ 19 In addition to the bank statements, additional documents in the name of JED Energy were also delivered to the branch including; mail from National Registered Agents (for corporate records filings in Nevada, U.S.A), account and payment reminder statements from an accounting firm, fax correspondence from a firm of lawyers in Washington State, and Internal Revenue Service correspondence. The delivery of these documents to the Raymond James Delta branch office occurred over a time period from 2007 to 2012.

¶ 20 Beginning in December 2004, the office assistant at the Delta branch office of Raymond James assisted Mr. Tassone by mailing distribution cheques to other investors in JED Energy. Over time the assistant also assisted Mr. Tassone in stuffing and labeling the envelopes to distribute these cheques. These mailings occurred approximately every three months. The assistant noticed that some of the investors in JED Energy were also clients of the Delta office of Raymond James.

¶ 21 Several of the investors became clients of Mr. Tassone sometime after their investment in JED Energy.

¶ 22 The policies and procedures of Raymond James during the relevant period of time required notice to the firm's Compliance Department, the prior approval of the Branch Manager and prior notice to IIROC for any outside activities including but not limited to any part- or fulltime work, business relationship, consultancy, or directorship that is maintained outside the firm.

¶ 23 The Respondent was therefore aware of several red flags relating to Mr. Tassone's involvement with JED Energy.

¶ 24 The Respondent failed to fully and properly supervise these activities by failing to make any reasonable inquiries to ensure that Mr. Tassone complied with the policies and procedures of Raymond James as well as IIROC requirements.

¶ 25 In *Re: Murdoch* 2012 IIROC 23, the branch manager failed to adequately supervise an RR regarding trading activity in a client account and updates to that client’s account. The panel commented on the significance of supervisory duties at para. 22:

“The securities industry is a business of trust and confidence. Registrants must meet significant responsibilities and supervisors play an important role in protecting investors and maintaining the integrity of the capital markets. It is important for registrants and firms to appreciate that there will be significant penalties, including suspension and significant fines as a result of disciplinary action for failure to adequately supervise the activities regarding client accounts.”

¶ 26 In *Re: Schillaci* [2007] I.D.A.C.D. No. 6, the panel also referred to the branch manager’s failure to respond to red flags at para. 57 as follows:

“The Respondent’s actions in restricting E.L.’s trading was appropriate action but should have been taken sooner. He should also have recognized the many “red flags” which called for supervisory action, including confirming with the clients the suitability of the extent of options trading considering the high turn ratios and significant losses. The involvement (ineffective as it was) of Union’s Head Office in Vancouver, in completing and signing the Close Supervision Reports, did not excuse the Respondent from his Branch Manager supervisory responsibilities under Policy No. 2 and Regulation 1300.2.”

Penalty Considerations

¶ 27 The aggravating factors are:

- (a) Harm to his Firm and the Securities Market – The rule requiring disclosure of outside business activities is to protect the firm from any potential conflicts of interests or involvement of clients and other interested parties in investments or activities of the firm’s investment advisors. Without knowledge and approval of any outside activities the firm cannot take the appropriate action to protect clients, potential clients, the investing public and itself from issues that may arise from the activity;
- (b) This was not an isolated incident. Mail from multiple sources addressed to JED Energy Ventures was delivered to the office address over an eight year period;
- (c) The Respondent was generally aware of the outside business activity and simply failed to appreciate the significance of following up with the Registered Representative to obtain details of his involvement and obtain approval from the firm.

¶ 28 The mitigating factors in this case are as follows:

- (a) there was no financial benefit by the Respondent;
- (b) the Respondent has no prior disciplinary record with IIROC;
- (c) Raymond James instituted a new policy regarding receipt of this type of third party correspondence received at the office. Such correspondence is now sent to the compliance department for review; and
- (d) the Respondent accepted his conduct was in breach of IIROC Rules and entered into a Settlement Agreement with IIROC.

¶ 29 We were referred to cases concerning penalty and they include:

- (a) *Re: Beaudoin* 2011 IIROC 66;
- (b) *Re: Ahrens* 2014 IIROC 46; and
- (c) *Re: Vickers* 2015 IIROC 29.

B. CONCLUSION

¶ 30 As stated previously, the Respondent has accepted responsibility for his actions by accepting the settlement agreement and saving the time and expense of a contested hearing.

¶ 31 IIROC submits that the Hearing Panel should accept the Settlement Agreement in this matter which imposes a fine of \$14,000.00, a 30-day suspension from registration in any supervisory capacity with IIROC, and costs of \$1,000.00.

¶ 32 The Hearing Panel is in agreement that the Settlement Agreement as imposed be approved and the agreed penalty is affirmed.

Dated: December 22, 2016

Thomas R. Braidwood

Douglas J. Stewart

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 Denis Denischuk (“Respondent”).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

PART III – AGREED FACTS

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

Overview

4. These facts relate to the period of time from November 2003 to September 2004 while the Respondent was the Branch Manager of the Delta, British Columbia branch of Global Securities Corporation (“Global”) and from September 2004 to February 2013 while he was the Branch Manager of the Delta branch of Raymond James Ltd. (“Raymond James”).
5. The Delta office location had approximately 5 Registered Representatives and one staff member during the relevant time period. Mr. Tassone was a Registered Representative at the Delta office during the period from November 2003 to February 2013. The Respondent was the supervisor of Mr. Tassone during the relevant period of time at both Global and Raymond James in the Delta branch office.
6. As the Branch Manager of the Delta office the Respondent was aware of Mr. Tassone’s activity relating to an off-book investment. He failed in his supervisory duties to make adequate enquiries about that investment and whether it was an outside business activity that required his approval or his firm’s Compliance Department’s approval or should have been disclosed to IIROC registration department.

Registration History

7. The Respondent was registered as a Supervisor/Branch Manager and as a Registered Representative/Salesperson with IIROC during the relevant period of time.
8. The Respondent was the Branch Manager of the Delta office of Global Securities from at least

November 2003 to September 2004. He continued to be the Branch Manager of the Delta office after it transitioned to a branch office of Raymond James in September 2004 and he is currently the Branch Manager of the Delta office.

9. The Respondent has no previous disciplinary history and both he and his staff at the Branch cooperated with IIROC's investigation by attending interviews and providing documents further to IIROC's requests.

Failure to Supervise

10. The Respondent was aware that Mr. Tassone was involved with an investment referred to as the JED Energy investment in or around November 2003 with his business partner, Bob Semple, who was also a Registered Representative in the Delta office at the time.
11. The JED Energy investment was a pooled investment of approximately 12 investors including Mr. Tassone and Mr. Semple. The investment was in oil and gas wells located in the United States. The investors purchased a partial ownership in the oil and gas wells through various JED Energy entities and JED Energy received distributions in accordance with its share of ownership which it then distributed to the JED Energy investors.
12. The Respondent did not know certain of the details relating to the investment including the structure, investors, the principals or administrators. He also did not know whether Mr. Tassone was simply an investor or whether he received any additional monies apart from his initial investment amount. The Respondent did not make any enquiries of Mr. Tassone or Mr. Semple about any of these details either in 2003 when he became aware of the investment or at any time thereafter.
13. In or around November 2003 when the Respondent became aware of the JED Energy investment, he did not make any inquiries about it of Mr. Tassone or Mr. Semple. The Respondent did not verify whether Mr. Tassone or Mr. Semple had notified and/or received approval from Global's Compliance Department for their participation in this company.
14. In September 2004, the Delta office changed from a Global branch office to a Raymond James branch office. The staff and all of the Registered Representatives, including Mr. Tassone and Mr. Semple, remained the same after the transition.
15. Starting in or around December 2004, bank statements from a local TD Canada Trust branch addressed to "JED Energy" were delivered to the Delta branch office of Raymond James. Initially, these bank statements were opened by the Respondent and then placed in Mr. Tassone's mail slot. After some time this task was delegated to the Respondent's assistant who performed this task under the direction of the Respondent. These bank statements continued to be received at the Delta branch up until Mr. Tassone left Raymond James in February 2013.
16. In addition to the bank statements, additional documents in the name of JED Energy were also delivered to the branch including; mail from National Registered Agents (for corporate records filings in Nevada, U.S.A), account and payment reminder statements from an accounting firm, fax correspondence from a firm of lawyers in Washington State, and Internal Revenue Service correspondence. The delivery of these documents to the Raymond James Delta branch office occurred over a time period from 2007 to 2012.
17. Beginning in December 2004, the office assistant at the Delta branch office of Raymond James assisted Mr. Tassone by and mailing distribution cheques to other investors in JED Energy. Over time the assistant also assisted Mr. Tassone in stuffing and labeling the envelopes to distribute these cheques. These mailings occurred approximately every three months. The assistant noticed that some of the investors in JED Energy were also clients of the Delta office of Raymond James.
18. Several of the investors became clients of Mr. Tassone sometime after their investment in JED Energy.

19. The policies and procedures of Raymond James during the relevant period of time required notice to the firm's Compliance Department, the prior approval of the Branch Manager and prior notice to IIROC for any outside activities including but not limited to any part- or full-time work, business relationship, consultancy, or directorship that is maintained outside the firm.
20. The Respondent was therefore aware of several red flags relating to Mr. Tassone's involvement with JED Energy. He failed to fully and properly supervise these activities by failing to make any reasonable inquiries to ensure that Mr. Tassone complied with the policies and procedures of Raymond James as well as IIROC requirements.

PART IV – CONTRAVENTIONS

21. By engaging in the conduct described above, the Respondent committed the following contraventions of IIROC's Rules: Between November 2003 and February 2013, the Respondent failed to fully and properly supervise the activities of an RR, Alberto "Bob" Tassone, contrary to Dealer Member Rule 38.4.

PART V – TERMS OF SETTLEMENT

22. The Respondent agrees to the following sanctions and costs:
 - a) Fine in the amount of \$14,000;
 - b) Suspension of any and all Supervision registration capacities with IIROC for 30 days; and
 - c) \$1,000 in costs.
23. 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

24. 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 25 below.
25. 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

26. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
27. 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.
28. 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.
29. 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.
30. 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.

31. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
32. 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.
33. 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.
34. 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

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

DATED this 21st day of October, 2016.

“Marcia Carbis”

Witness

“Denis Denischuk”

Denis Denischuk

Respondent

“Lorne Herlin”

Witness

“Stacy Robertson”

Stacy Robertson

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

The Settlement Agreement is hereby accepted this 8th day of December, 2016 by the following Hearing Panel:

Per: “Thomas Braidwood”

Panel Chair

Per: “Douglas Stewart”

Panel Member

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