

Re Taggart

IN THE MATTER OF:

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

and

The By-Laws of the Investment Dealers Association of Canada

and

Glenn Arthur Taggart

2013 IIROC 24

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

Heard: May 2, 2013
Decision: May 8, 2013

Hearing Panel:

Martin L. Friedland, C.C., Q.C. (Chair), Debbie Archer, D.W. (“Sandy”) Grant

Appearances:

Natalija Popovic, IIROC Senior Enforcement Counsel
Shelley Babin, for the Respondent

DECISION AND REASONS

INTRODUCTION

¶ 1 The staff of the Investment Industry Regulatory Organization of Canada (“IIROC”) and the Respondent, Glenn Arthur Taggart, entered into the attached Settlement Agreement, dated December 7, 2012. The settlement was 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.

¶ 2 The Settlement Agreement was presented to the Hearing Panel for acceptance on May 2, 2013.

¶ 3 In the Settlement Agreement the Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:

“Between 2005 and 2008, Taggart engaged in discretionary trading in the accounts of three related clients without first having the accounts approved and accepted as discretionary accounts, contrary to IDA Regulation 1300.4 and 1300.5 (IIROC Dealer Member Rules 1300.4 and 1300.5 after June 1, 2008).”

¶ 4 Staff and the Respondent agreed to the following terms of settlement: “a fine of \$15,000” and the payment of costs to IIROC ‘in the sum of \$3,000”.

¶ 5 At the end of the hearing the Panel approved the Settlement Agreement. These are our reasons for doing so.

FACTUAL BACKGROUND

¶ 6 The Respondent was employed in a registered capacity in the investment industry since September 1996. From August 1999 to December 2010, the Respondent was employed as a registered representative by Dundee Securities Corporation and its successor DWM Securities Inc. In 2008, he became an IIROC registrant. Throughout this period he was a branch manager and in June 2005 obtained registration as a portfolio manager. He is now employed as a registered representative with another firm.

¶ 7 Over a three year period – from 2005 to 2008 – the Respondent engaged in discretionary trading for three related individuals with the consent of those persons, but without obtaining the necessary prior written authorization from the clients and his firm. Although the Respondent was qualified to engage in discretionary trading, he did not follow the required procedures with these three clients.

¶ 8 There was a total of just under 100 trades in about half a dozen accounts for these clients. The total commission received by the Respondent from these trades was about \$1,200.

¶ 9 The three clients were a husband and wife and the wife's father. He would see the husband and wife on social occasions. The Respondent had general discussions with the clients prior to the transactions, but failed to confirm the time and price of the precise trades with the clients. The attached Settlement Agreement describes the factual background more fully.

CONTRAVENTION OF IIROC AND IDA RULES AND REGULATIONS

¶ 10 Such discretionary trading is contrary to IIROC and IDA Rules and Regulations, unless various steps have been taken, including written consent from the client, disclosure to the registered representative's firm, and supervision of the trading. The IIROC and IDA Rules are similar. IIROC Dealer Member Rule 1300.4 states:

1300.4. A Registered Representative may not exercise discretionary authority over a customer account unless:

- (a) the Dealer Member has designated a Supervisor or Supervisors to be responsible for discretionary accounts;
- (b) the customer has given prior written authorization in compliance with Rule 1300.5;
- (c) a Supervisor designated under subsection (a) has approved the account as a discretionary account and recorded that approval;
- (d) the Registered Representative authorized to effect discretionary trades for the account has actively dealt in, advised on or performed analysis for a period of two years with respect to all types of products which are to be traded on a discretionary basis; and
- (e) the account is maintained at the Dealer Member of the Registered Representative.

¶ 11 Rule 1300.5 sets out requirements for the prior written authorization by the client, including a provision that the authorization should normally be for no more than twelve months. Rule 1300.6 provides for review of the financial performance of each discretionary account by a Designated Supervisor at least monthly.

¶ 12 12. The above requirements are to protect the client. IIROC's Dealer Member Disciplinary Sanction Guidelines (March 2009) states (section 3.6):

“Obtaining proper approval to designate an account as discretionary or managed is not automatic. The process of approval is required to ensure that only properly qualified registrants trade in the accounts. These designated accounts are also subject to greater supervision. Discretionary trading without the proper authorization is therefore not subject to the safeguards that form part of the approval process, and puts the clients' accounts at greater risk.”

¶ 13 In *Re Shamseer* (2011 IIROC 5), a case involving discretionary trading, the Panel stated:

“In *Re Wenzel* [2005] A.S.C.D No. 153, the Alberta Securities Commission stated that ‘when a person effects a securities transaction for a client without obtaining from the client, in advance, specifics as to

four elements of the transaction – quantity, security, price and timing – that person is exercising ‘discretion’.

Whenever registrants exercise discretion in clients’ accounts, they are making decisions on behalf of clients. These decisions could, and often do, have a profound impact on these accounts. These decisions may, and often do, give rise to conflicts of interest between the clients and the registrants.

The purpose of IDA Regulation 1300.4, and the current IIROC Dealer Member Rule 1300.4, is to protect the interest of the clients by imposing a regime of a heightened level of scrutiny and supervision.”

TERMS OF SETTLEMENT

¶ 14 IIROC Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

¶ 15 As stated above, Staff and the Respondent agree to the following terms of settlement:

“a) a fine in the amount of \$15,000; and

b) costs to IIROC in the sum of \$3,000.”

STANDARD FOR REVIEWING A SETTLEMENT AGREEMENT

¶ 16 The standard for reviewing a Settlement Agreement was well-stated in a recent Pacific District hearing, *Re Johnson* (2012 IIROC 19), where the panel stated:

“The test applicable to a decision whether to accept or reject a settlement is well-known. Simply put, a panel should accept such an agreement unless it considers the penalty provided for clearly to fall outside a reasonable range of appropriateness.”

¶ 17 There are many similar statements. See, for example, *Re Jiwa and Hoffar* (2012 IIROC 9), which adopted an earlier IDA decision, stating: “It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.” Another recent example is *Re Trapeze Capital* (2012 IIROC 25), where the panel states:

“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.”

See also *Re Portfolio Strategies Securities* (2012 IIROC 36) which also note “that the settlement process is an important one which should be encouraged and supported.” And, finally, see the statement in *Re Rotstein and Zackheim* (2012 IIROC 27):

“Based upon this material it is our responsibility to review the agreement in order to satisfy ourselves that it falls within a reasonable range of appropriateness to the offence and circumstances recorded in the 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.”

OUR DECISION

¶ 18 We are satisfied, to use the language in the *Rotstein and Zackheim* case, that the penalties proposed in the Joint Settlement Agreement is within a reasonable range of appropriateness to the offence and circumstances recorded in the attached 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.

¶ 19 The penalty proposed is consistent with the March 2009 IIROC Dealer Member Disciplinary Guidelines, section 3.6, on discretionary trading. It is also consistent with other recent discretionary trading cases: see *Re*

Beck (2012 IIROC 41); *Re Ast* (2012 IIROC 38); *McErlean* (2012 IIROC 12); *Re Biron* (2012 IIROC 4); *Re Jones* (2011 IIROC 70); *Re Shamseer* (2011 IIROC 5); *Re Bardsley* (2010 IIROC 15); and *Re Karcz* (2010 IIROC 22).

¶ 20 The Respondent admits that he did not follow the proper procedures and that the rules relating to discretionary trading are important. The Settlement Agreement acknowledges in the agreement that “discretionary trades can have profound impact on the accounts and may give rise to conflicts of interest between clients and the registered representatives.”

¶ 21 There is no suggestion that the trades were not suitable for the clients or that he did not keep them informed of how he was handling their transactions. The clients were aware of the Respondent’s discretionary trading and, as the Settlement Agreement states, they “did not object to Taggart entering transactions on their behalf and informing them of the specifics of execution after the fact. They were not aware of the regulatory requirement to have their account designated as discretionary or managed accounts.”

¶ 22 The procedure followed was not for the personal financial advantage of the Respondent. As stated above, the total compensation that the Respondent received from these trades was about \$1,200. This was not wilful, dishonest, egregious, conduct. It should be treated as conduct towards the low end of the continuum of improper conduct for breach of the discretionary trading rules. Nevertheless, it is improper conduct, and should be taken seriously by registrants. Counsel for the Respondent notes in her submission to us that the Respondent acknowledges the seriousness of the conduct.

¶ 23 It should be noted that the Respondent has had a clean record with the regulatory authorities since entering the profession in 1996.

¶ 24 Finally, the Respondent has fully co-operated with IIROC’s investigation and admits his wrongdoing.

¶ 25 The Panel therefore accepted the Settlement Agreement and gave effect thereto as of May 2, 2013.

Dated at Toronto this 8th day of May, 2013.

Martin L. Friedland, C.C., Q.C., Chair

Debbie Archer

D.W. Sandy Grant

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent, Glenn Arthur Taggart, 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 Glenn Arthur Taggart.
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 is 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 Rules, Guidelines, IDA By-Laws, Regulations or Policies:

Between 2005 and 2008, Taggart engaged in discretionary trading in the accounts of three related clients without first having the accounts approved and accepted as discretionary accounts, contrary to IDA Regulations 1300.4 and 1300.5 (IIROC Dealer Member Rules 1300.4 and 1300.5 after June 1, 2008).

8. Staff and the Respondent agrees to the following terms of settlement:
 - a) a fine in the amount of \$ 15,000.
9. The Respondent agrees to pay costs to IIROC in the sum of 3,000.

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

Overview

11. Taggart, a registered portfolio manager who is licensed to provide discretionary trading in approved accounts, exercised discretion in respect to time and price in the accounts of three related clients even though the accounts were not designated as discretionary or managed accounts. Specifically, he would from time to time, effect securities transactions without first confirming the time and price of the trades with these clients.

Taggart's Registration History

12. Taggart has been employed in a registered capacity in the investment industry since September 1996. On June 1, 2008, Taggart became a regulated person of IIROC.
13. From August 1999 to December 2010, he was employed as a registered representative by Dundee Securities Corporation and its successor DWM Securities Inc ("Dundee"). He obtained registration as an associate portfolio manager in September 2002, and as a portfolio manager in June 2005. Furthermore, he served as a branch manager throughout his employment with Dundee.
14. Between December 2010 and April 2012, the branch in which Taggart worked at was subject of numerous acquisitions by various IIROC member firms. Since April 2012, Taggart has been employed as a Registered Representative by Burgeonvest Bick Securities Limited.

Discretionary Trading in the Accounts of BW, DW and JL

15. BW and DW, a married couple, opened a number of accounts with Taggart in January 2005. BW was a social acquaintance of Taggart prior to becoming a client. They were in their mid-fifties when they opened their accounts. Their accounts were not held jointly, and they did not formally provide trading authorization over their accounts to each other.
16. DW's father, JL, and DW opened a joint margin account with Taggart in June 2007. JL was in his 80s when the account was open. DW had JL's Power of Attorney over the account. Taggart had minimal contact with JL, and communicated primarily with DW regarding the account. JL passed away in June 2008. BW was the executor of JL's estate.
17. While Taggart's registration allowed him to maintain managed accounts and discretionary accounts, the accounts of BW, DW and JL were neither designated nor approved as such by Dundee. At no point did Taggart obtain these clients' written authorization for discretionary trading.

18. On a number of occasions, Taggart exercised time and price discretion in the accounts of BW, DW and JL. He effected securities transactions in their accounts, following previous discussions with BW, without confirming the details of the trades with them at the time of their execution. On these occasions, Taggart would provide information about specific issuers to BW and DW, and recommended specific securities to BW during their frequent social encounters. During their social encounters, Taggart would obtain general agreement from BW or DW to invest in the recommended securities without confirming the time and price of purchase.
19. BW and DW were often advised of the final details of transactions after execution. On some occasions, Taggart sought instructions from BW for transactions in DW's accounts.
20. BW and DW did not object to Taggart entering transactions on their behalf and informing them of the specifics of execution after the fact. They were not aware of the regulatory requirement to have their account designated as discretionary or managed accounts.
21. Discretionary trades can have profound impact on the accounts and may give rise to conflicts of interest between clients and the registered representatives. To enable proper supervision by Member firms, registrants must obtain written authorization from the clients in question and written approval from their firms prior to exercising discretion in client accounts.

IV. TERMS OF SETTLEMENT

22. 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.
23. The Settlement Agreement is subject to acceptance by the Hearing Panel.
24. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
25. 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.
26. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
27. 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.
28. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
29. 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.
30. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
31. 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 6th day of December, 2012.

"Witness"

Witness

"Glenn Arthur Taggart"

Glenn Arthur Taggart, Respondent

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 7th day of December, 2012.

“Witness”

Witness

“Milton Chan”

Milton Chan

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 2nd day of May, 2013,

by the following Hearing Panel:

Per: “Martin L. Friedland”

Panel Chair

Per: “D.W. (“Sandy”) Grant”

Panel Member

Per: “Debbie Archer”

Panel Member

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