

Re Gibson

IN THE MATTER OF:

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

and

Stephen Gibson

2015 IIROC 28

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

Heard: July 21, 2015 in Toronto, Ontario

Decision: July 21, 2015

Written Reasons: August 19, 2015

Hearing Panel:

Julia Dublin, Chair, Terry Bourne and Charles Macfarlane

Appearances:

Kathryn Andrews, Enforcement Counsel

Cait Sainsbury, for Stephen Gibson

Stephen Gibson

REASONS FOR DECISION ON SETTLEMENT AGREEMENT

¶ 1 A Settlement Hearing was held on July 21, 2015, to accept a Settlement Agreement entered into between IIROC and the Respondent (copy attached). The Hearing Panel received and considered oral submissions from IIROC counsel and the Respondent's counsel, as well as the IIROC Settlement Book containing the Settlement Agreement, extracts from the IIROC Dealer Member Rules, the IIROC Disciplinary Sanctions Guidelines and the IIROC Staff Policy Statements re Sanctions as well as selected IIROC hearing panel decisions. At the conclusion of the hearing, the Hearing Panel accepted the Settlement Agreement.

¶ 2 The contravention of IIROC Dealer Member Rules agreed to by IIROC staff and the Respondent was that between January 2009 and May 2014, the Respondent altered or re-used client documentation, which conduct was unbecoming or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1.

¶ 3 The sanctions agreed to in the settlement agreement were:

- (a) Payment of a fine in the amount of \$30,000;
- (b) Suspension from registration in any capacity for two weeks;
- (c) Close supervision for three months upon any re-registration; and,
- (d) Rewrite the CPH within six months upon the signing of this agreement.

¶ 4 The facts are set out in paragraphs 8 to 20 of the Settlement Agreement. In summary, the Respondent was employed as a Registered Representative with Edward Jones from 2008 until he was terminated in 2014. He is currently employed by another IIROC member firm. Between 2009 and 2014 on a number of occasions the Respondent reused account documentation executed by clients to authorise a variety of transactions in the

clients' accounts instead of obtaining specific signed authorisations as required by IIROC Dealer Member Rules and Edwards Jones' internal policies. In some cases he modified original signed forms by adding information or obliterating and overwriting the original entries. Edward Jones warned the respondent in September 2012 against this practice but he continued it into 2013.

¶ 5 The Respondent has no previous disciplinary history and co-operated in the investigation. The Respondent did not sign any false client signatures. He did not benefit financially from the reuse of client documents nor did the clients experience any losses as a result. Several of the Respondent's clients were aware of and comfortable with the reuse of their signed documentation.

¶ 6 The Panel's jurisdiction under IIROC Rule 20.36 is to accept or reject the proposed Settlement Agreement at the conclusion of the hearing. The Panel was cognisant of the IIROC Disciplinary Sanction Guidelines and the principles cited in the panel decisions contained in IIROC staff's Book of Documents, as first articulated in *Re Milewski*, [1999] I.D.A.C.D. No. 17:

“A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.”

¶ 7 The Panel applied these principles and accepted the Settlement Agreement. The Panel considered that the penalties imposed were reasonably appropriate for the Respondent, given the mitigating and exacerbating factors described above. The penalties fell within a reasonable range, in view of the panel decisions brought to the Panel's attention in the Settlement Book, in particular the decision in *Re Elue*, 2014 IIROC 39, which involved alteration of signed client documentation for reasons of convenience.

¶ 8 The Panel considered the sanctions agreed to were appropriate as a matter of public interest and general deterrence. While completing all the required account documentation may seem a nuisance to some individuals, clients as well as their advisers, registered representatives must recognise the legal and regulatory significance of a client's original signature, and respect the importance of required account documentation to both clients and the member firm.

Dated at Toronto, Ontario this 19th day of August, 2015.

Julia Dublin, Chair

Terry Bourne

Charles Macfarlane

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff (“Staff”) and the Respondent Stephen Gibson (the “Respondent” or “Gibson”), consent and agree to the settlement of this matter by way of this agreement (the “Settlement Agreement”).
2. The Enforcement Department of IIROC has conducted an investigation (the “Investigation”) into the Respondent's conduct.
3. 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

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

5. The Respondent admits to the following contravention of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:
- Count 1:** Between January 2009 and May 2014, Stephen Gibson altered and/or re-used client documentation, which conduct was unbecoming or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1.
6. Staff and the Respondent agree to the following terms of settlement:
- Payment of a fine in the amount of \$30,000;
 - A suspension from registration in any capacity for two weeks;
 - Close supervision for three months upon any re-registration; and,
 - To rewrite the CPH within six months upon the signing of this agreement.
7. The Respondent agrees to pay costs to IIROC in the sum of \$1,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

8. 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

9. During 2009 to 2014, Gibson altered numerous client documents for various reasons. In most cases he modified or re-used documents which had earlier been signed by the clients and then used the modified form for subsequent transactions. Gibson did not sign any client signatures.

Background

10. Gibson was a Registered Representative employed by Edward Jones (“EJ”) from 2008 onwards, most recently at a branch located in Toronto, Ontario.
11. Gibson’s employment was terminated by EJ in June 2014. He was subsequently hired by another member firm as a Registered Representative in July 2014.

The Clients and documents altered

12. Over a number of years, Gibson modified client documentation in various ways for nineteen clients (collectively the “Clients”), as seen in the charts below.
13. The following chart indicates client initials, Gibson’s actions and the type of document altered or re used:

Date	Client	Action by Gibson	Type of Document
May 2014	SA	<ul style="list-style-type: none"> re used a signed form to transfer a second account 	Account Transfer in
January-March 2014	JC	<ul style="list-style-type: none"> re used a signed form for trading authority on two other accounts 	Trading Authorization
July 2013	BB	<ul style="list-style-type: none"> re used a signed form for a second account 	Trading Authorization

Date	Client	Action by Gibson	Type of Document
July 2013	JB	<ul style="list-style-type: none"> gave instructions to write in new relinquishing institution name and address and re used a signed form for a separate account number 	Account Transfer in
April 2013	LB	<ul style="list-style-type: none"> re used signed form for another account 	Trading Authorization
February - September 2012	PM's numbered company	<ul style="list-style-type: none"> re used signed form for additional cash transfers between client's corporate account and personal account. Changed dates and dollar amounts. 	Transfer- non registered-internal form
February 2011	BK	<ul style="list-style-type: none"> re used a transfer form to facilitate a second transfer 	Account Transfer in-reg acct
December 2011	SR	<ul style="list-style-type: none"> client wanted to withdraw funds and facilitated this over time 	RRSP withdrawal forms
2010 to 2013 inclusive	MD + SD	<ul style="list-style-type: none"> re used a signed form to make subsequent contributions. Changed dates and withdrawal amounts. 	reg'd or TFSA contribution, some LOA
2009 to 2012	JA	<ul style="list-style-type: none"> re used signed form for another account 	Account Transfer in-reg acct
2010-2011 inclusive	MB	<ul style="list-style-type: none"> changed name of relinquishing institution also changed some dates 	Account Transfer in reg acct
2010, 2013	VB	<ul style="list-style-type: none"> changed name of relinquishing institution, as well as dates 	Transfer in Transfer in- reg acct

14. According to the Respondent, for the Clients listed in the following chart, EJ requested that he correct the relinquishing institution address on various Account Transfer in forms. Gibson did so by modifying the address on the original form, rather than by asking the client to sign a new form with the revised address information.

Date	Client	Action by Gibson	Type of Document
2009	MB	<ul style="list-style-type: none"> changed name of relinquishing institution also changed some dates 	Account Transfer in reg acct
2010, 2011	FB	<ul style="list-style-type: none"> removed account number, dates and transfer instructions 	Account Transfer in-reg account
2009	VB	<ul style="list-style-type: none"> changed name of relinquishing institution, as well as dates 	Transfer in Transfer in- reg acct
2009	LA	<ul style="list-style-type: none"> kept in pending file, then changed transfer type 	Account Transfer in

Date	Client	Action by Gibson	Type of Document
2009 to 2012	JA	<ul style="list-style-type: none"> removed "O" and inserted "300" for fee charge changed dates, relinquishing institution and transfer type instructions re used signed form in pending file for later transaction 	Repositioning of mutual fund assets Switch Account Transfer in-reg acct
July 2011	IS	<ul style="list-style-type: none"> relinquishing institution changed at Gibson's request 	Transfer in- reg acct
August 2011	BK	<ul style="list-style-type: none"> added different relinquishing institution and changed dates 	Account Transfer in-reg acct
2011	CVE	<ul style="list-style-type: none"> transfer type changed to "partial" 	Account Transfer in-reg acct
2012	RS	<ul style="list-style-type: none"> added different relinquishing institution information 	Account Transfer in
February 2013 and December 2012	DP	<ul style="list-style-type: none"> kept a document for a transfer of a GIC in pending file for one year, then used it. Dates changed at Gibson's request. 	Account Transfer in

Prior warning

- Gibson was warned by EJ in September 2012 about re-using client documentation. This warning resulted from several incidents involving his client PM's numbered company account and transfers of funds.
- EJ warned Gibson after he re-used a transfer form that had been previously signed by his client PM. Gibson completed the dollar amount to be transferred from a corporate account to a personal account, as well as the dates, on various occasions between February and September 2012.

Other

- In a couple of instances, the Respondent used white out to modify the document. This manner of alteration made it more difficult to see that the document had been revised from the original.
- There were no client losses as a result of the Respondent's actions. The Respondent did not receive any monetary benefit arising from the document alterations.
- Clients PM, LB, JB, BB and FB were aware that paperwork for their accounts was re-used for additional accounts or transactions and the Clients were comfortable with the Respondent's actions.
- The Respondent does not have any previous disciplinary history with IIROC.

IV. TERMS OF SETTLEMENT

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

24. 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.
25. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his rights under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
26. 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.
27. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
28. 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.
29. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
30. Any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on Friday July 24, 2015.

AGREED TO by the Respondent at the City of Toronto in the Province of Ontario, this 31 day of May, 2015.

“Witness” _____

“Stephen Gibson” _____

Witness

Stephen Gibson

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 21st day of July, 2015.

“Witness” _____

“Kathryn Andrews” _____

Witness

Kathryn Andrews

Senior 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 21st day of July, 2015, by the following Hearing Panel:

Per: “Julia Dublin”

Panel Chair

Per: “Terry Bourne”

Panel Member

Per: “Charles Macfarlane”

Panel Member

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