

# Re Rebeck

IN THE MATTER OF:

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

**and**

**Daryl Michael Rebeck**

2017 IIROC 26

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

Heard: March 23, 2017 in Vancouver, BC

Decision: March 23, 2017

Written Reasons: May 2, 2017

## **Hearing Panel:**

Catharine Esson, Chair, Brian Field and Alexandra Williams

## **Appearances:**

Lorne Herlin, Enforcement Counsel

Lisa Ridgedale, for Daryl Michael Rebeck

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## **REASONS FOR DECISION**

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¶ 1 On March 23, 2017, IIROC convened a hearing to allow the Hearing Panel to consider whether to accept the Settlement Agreement attached to these Reasons as Schedule A. Counsel for both parties made oral submissions at the hearing in support of the Settlement Agreement.

¶ 2 The Panel advised the parties at the hearing that it would accept the Settlement Agreement, with reasons to follow. These are the reasons for that decision.

¶ 3 It was discovered after the hearing that the word ‘any’ was inadvertently omitted from subparagraph 46(b) of the Settlement Agreement. That subparagraph was intended to read “prohibition of approval in any capacity for 6 months”. It should be read that way.

¶ 4 This case involves a fairly egregious case of unsuitable investment advice involving a vulnerable couple’s retirement funds and resulting in large losses to the couple. The facts are set out in the Settlement Agreement.

¶ 5 In addition to those facts, the parties advised the Hearing Panel at the Settlement Hearing that:

- There was a civil lawsuit relating to this matter which was settled with funds paid by the Respondent;
- The Respondent was prepared to settle this matter with IIROC from the outset of the investigation and entered into a settlement quickly; and
- Both IIROC Staff and the Respondent considered the conduct in question to be negligent as opposed to wilful.

¶ 6 Pursuant to IIROC Rule 8215(5), the Hearing Panel’s jurisdiction in a settlement hearing is to accept or reject the agreed upon penalty. We agree with previous panels that a hearing panel should accept a settlement agreement unless it considers the penalty to “clearly fall outside a reasonable range of appropriateness” (Re Johnson [2012] IIROC 19; Re Wood 2014 IIROC 50; Re: Milewski [1999] IDACD No. 17).

¶ 7 We were referred to and considered IIROC’s Sanction Guidelines and three previous decisions of hearing panels considering settlements involving respondents who had given inappropriate advice to one or a small number of older clients, resulting in significant losses for the clients (Re: Birkeland 2015 IIROC 14; Re Jones 2015 IIROC 05; Re Martens 2013 IIROC 40).

¶ 8 The hearing panel considers the agreed upon penalty to be towards the lower end of the reasonable range of appropriateness, given the seriousness of the admitted misconduct. An egregious failure to make suitable investment recommendations put the retirement assets of vulnerable clients at risk. That risk materialized, causing the clients to experience substantial losses. Conduct such as this damages both the clients and the reputation of the securities industry. It warrants strong denunciation.

¶ 9 The panel has taken into account, however, that there are substantial mitigating factors in this case. Most notably, the Respondent has paid to settle the civil dispute with the clients and settled this matter with IIROC early in the investigation process. These facts suggest that the Respondent has taken responsibility for the harm he caused and that the clients have, at least in part, been compensated. Civil and regulatory settlements advantage the legal system and should be encouraged.

¶ 10 In all of the circumstances, the panel concluded that the penalty does not fall outside the range of reasonableness and therefore accepted the Settlement Agreement.

Dated at Vancouver, B.C. this 2<sup>nd</sup> day of May, 2017.

Catharine Esson

Chair

Brian Field

Alexandra Williams

## Appendix A

### 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 Daryl Michael Rebeck (the 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. WB and his wife MB opened up a number of accounts with the Respondent in order to invest WB’s

inheritance. At that time they were both in their sixties and they had virtually no experience with investing.

5. During their retirement, they planned on living off the interest and dividends which the invested inheritance generated and to maintain most of the principal so that WB's children could inherit it.
6. The recommendations which the Respondent made for the accounts, which included the extensive use of margin, were not suitable for WB and MB in light of, among other things, their age, employment status, investment knowledge, and financial circumstances.
7. WB and MB incurred significant losses which were magnified due to the use of margin.

#### **The Respondent's Work History**

8. Between December 1999 and November 2013, the Respondent worked as a Registered Representative at the Vancouver head office of Canaccord Genuity Corp. (Canaccord).
9. He has not been an IIROC Approved Person since November 2013.

#### **The Clients - WB & MB**

10. WB and MB are a married couple.
11. WB was self-employed as a landscape installation contractor.
12. MB was a homemaker.
13. WB anticipated receiving a substantial inheritance. As a result in or around August 2009, he met with the Respondent to discuss ways to invest his inheritance. At that time, WB was 63 years old and MB was 64 years of age.

#### **Opening of Accounts at Canaccord**

14. Ultimately, WB, opened the following investment accounts at Canaccord:
  - in August 2009, a Canadian Dollar Margin Long Account, an US Dollar Margin Long Account, a Canadian Dollar Cash Account, and an US Dollar Cash Account;
  - in December 2009, a Canadian Dollar Managed Account and a US Dollar Managed Account; and
  - in August 2010, a fee-based Joint Canadian Dollar Margin Long Account and a fee-based Joint US Dollar Margin Long Account with MB(collectively, the B Accounts).
15. At all material times, the Respondent was the Registered Representative who was responsible for the B Accounts.

#### **Deposit of Funds into the B Accounts**

16. In total, WB inherited approximately US \$295,194 worth of securities and US \$1,085,056 in cash all of which was deposited into the B Accounts as follows:
  - approximately US \$295,194 worth of primarily blue chip securities was deposited in December 2009;
  - approximately US \$1,085,056 was deposited in January 2010, shortly thereafter, WB transferred out US \$466,000; and
  - \$440,000 was deposited in August 2010.
17. Virtually all of the deposits into the B Accounts derived from WB's inheritance.

### **Activity in the B Accounts**

18. Most of the orders that the Respondent placed on behalf of the B Accounts occurred in the Canadian Dollar Margin Long Account (the Canadian Margin Account) and the fee-based Joint Canadian Dollar Margin Long Account (the Joint Canadian Margin Account). There was limited activity in the other non-managed accounts.

### **Account Opening Documentation for the Margin Accounts**

19. The Account Information Form (AIF) that WB completed in August 2009 in order to open the Canadian Margin Account indicated that WB's:
- approximate annual income was \$100,000;
  - estimated net liquid assets were \$900,000;
  - estimated net fixed assets were \$1,100,000;
  - liabilities were \$130,000;
  - investment experience was "none"; and
  - investment objectives were: 50% preservation of capital – low risk and 50% income – low to medium risk.
20. Similarly, the AIF that WB and MB completed in August 2010 for the Joint Canadian Margin Account indicated that their:
- approximate annual income was \$100,000;
  - estimated net liquid assets were \$900,000;
  - estimated net fixed assets were \$1,100,000;
  - liabilities were \$130,000;
  - investment experience was "none"; and
  - investment objectives were: 50% income – low to medium risk and 50% moderate growth - medium risk.

### **Change in Investment Objectives for the Margin Accounts**

21. In August 2010, the investment objectives for the Canadian Margin Account were changed to:
- 50% short term trading – medium to high risk; and
  - 50% speculative - high risk.
22. In September 2010, the investment objectives for the Joint Canadian Margin Account were changed to:
- 60% moderate growth – medium risk;
  - 30% short term trading – medium to high risk; and
  - 10% speculative – high risk.
23. However, these revised investment objectives were inconsistent with the clients' actual objectives. At all times, WB considered the inheritance to be his retirement nest egg. WB and MB intended to live off the interest and dividends which the invested inheritance generated and to maintain most of the principal so that WB's children could inherit it. At all times, the Respondent was aware that WB and MB required the inheritance to fund their retirement.
24. In or around 2010, WB retired. Between 2010 and 2014, he withdrew funds from the B Accounts on a

regular basis.

### **Managed Accounts Used to Fund the Margin Accounts**

25. Between February 2010 and March 2010, the Respondent used a large portion of WB's inheritance to invest in various managed funds that were held in the Canadian Dollar Managed Account and the US Dollar Managed Account (the Managed Accounts). In particular, \$785,642 and US \$200,000 were transferred from WB's other accounts at Canaccord to the Managed Accounts and invested as follows:

<b>Date</b>	<b>Managed Fund</b>	<b>Amount Invested</b>
February 4, 2010	Barometer Capital Management Fund	\$320,100
February 11, 2010	Barometer High Income Fund	\$104,700
March 4, 2010	Barometer High Income Fund	\$154,125
March 4, 2010	Scheer Rowlett Canadian Equity Fund	\$102,750
March 4, 2010	AGF International Equity Fund USD	US \$100,000
March 4, 2010	Legg Mason International Equity USD	US \$100,000
March 5, 2010	CC&L Income & Growth Fund	\$103,967

26. The above-noted managed funds generated a positive rate of return.
27. In order to provide the necessary margin for the Canadian Margin Account and the Joint Canadian Margin Account, between March 2011 and August 2012, the Respondent sold some of the managed funds that were held in the Managed Accounts.
28. By December 2011, the total value of the holdings in the Managed Accounts was just \$149,114.
29. By August 2012, the total value of the holdings in the Managed Accounts was zero because all of the holdings had been sold and the proceeds were transferred to the Canadian Margin Account and/or the Joint Canadian Margin Account.

### **Activity in the Canadian Margin Account**

30. Between June 2010 and November 2013, the Respondent primarily bought and sold shares of resource companies for the Canadian Margin Account.
31. Further, as detailed in Schedule "A", between May 2011 and March 2013 a large portion of the holdings in the Canadian Margin Account were concentrated in the shares of Bellatrix Exploration Ltd.

### **Use of Margin in the Canadian Margin Account**

32. Due to the use of margin, from June 2010 to August 2010 and from December 2010 to January 2011, the Canadian Margin Account had a negative value because the market value of the holdings was less than the amount that was borrowed to purchase them.
33. Further, between June 2010 and March 2013, the Canadian Margin Account incurred approximately \$34,094 in daily interest charges due to the use of margin.

### **Losses in Canadian Margin Account**

34. Between June 2010 and November 2013, the Canadian Margin Account incurred a loss of approximately \$138,295 which was comprised of a realized loss of \$85,596 and an unrealized loss of \$52,699.
35. In May 2014 at WB's request, all the remaining holdings in the Canadian Margin Account were sold and the account was closed.
36. The recommendations which the Respondent made for the Canadian Margin Account including his recommendation to use margin were not suitable for WB given his age, financial situation, investment knowledge, investment objectives, and risk tolerance level.

#### **Activity in the Joint Canadian Margin Account**

37. From August 2010 to November 2013, the Respondent used margin to buy and sell shares of companies for the Joint Canadian Margin Account. Many of them were resource and real estate companies.
38. Virtually all of the purchases that the Respondent made for the Joint Canadian Margin Account were for new issue shares. For the most part the purchases and then sales of the new issue shares occurred within a relatively short period of time.
39. As noted above, the stated account objectives for the Joint Canadian Margin Account dictated that 60% of the holdings in the account should have been invested in moderate growth – medium risk securities. However, as detailed in Schedule "B" between August 2010 and November 2013, most of the holdings in the Joint Canadian Margin Account were actually invested in short term trading – medium to high risk and speculative - high risk securities.

#### **Use of Margin in the Joint Canadian Margin Account**

40. Due to the use of margin, from February 2013 to November 2013, the Joint Canadian Margin Account had a negative value because the market value of the holdings was less than the amount that was borrowed to purchase them.
41. Further, between October 2010 and November 2013, the Canadian Margin Account incurred approximately \$83,759 in daily interest charges due to the use of margin.

#### **Losses in Joint Canadian Margin Account**

42. Between August 2010 and November 2013, the Joint Canadian Margin Account incurred a loss of approximately \$655,246 which was comprised of a realized loss of \$495,037 and an unrealized loss of \$160,389.
43. In May 2014, all the remaining holdings in the Joint Canadian Margin Account were sold and the account was closed.
44. The recommendations which the Respondent made for the Joint Canadian Margin Account including the recommendation to use margin were not suitable for WB and MB given their age, financial situation, investment knowledge, investment objectives, and risk tolerance level.

### **PART IV – CONTRAVENTIONS**

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

#### **Count 1**

Between 2010 and 2013, the Respondent failed to ensure that the recommendations that he made for the account of WB were suitable for him, contrary to IIROC Dealer Member Rule 1300.1(q).

#### **Count 2**

Between 2010 and 2013, the Respondent failed to ensure that the recommendations that he made for the

joint account of WB and MB were suitable for them, contrary to IIROC Dealer Member Rule 1300.1(q).

#### **PART V – TERMS OF SETTLEMENT**

46. The Respondent agrees to the following sanctions and costs:
- a) payment of a \$45,000 fine;
  - b) a prohibition of approval in capacity for 6 months;
  - c) a requirement that he successfully complete the Conduct and Practices Handbook course prior to being eligible for approval;
  - d) upon re-approval a 12 month period of close supervision; and
  - e) payment of \$5,000 in costs to IIROC.
47. 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**

48. 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 49 below.
49. 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**

50. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
51. 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.
52. 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.
53. 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.
54. 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.
55. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
56. 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.
57. 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.

58. 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**

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

**DATED** this 11<sup>th</sup> day of February, 2017.

“Witness” \_\_\_\_\_

Witness

“Daryl Rebeck” \_\_\_\_\_

Respondent

**DATED** this 14<sup>th</sup> day of February, 2017.

“Witness” \_\_\_\_\_

Witness

“Lorne Herlin” \_\_\_\_\_

Lorne Herlin

Senior Enforcement Counsel

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

The Settlement Agreement is hereby accepted this 23<sup>rd</sup> day of March, 2017 by the following Hearing Panel:

Per: “Panel Chair” \_\_\_\_\_

Panel Chair

Per: “Panel Member” \_\_\_\_\_

Panel Member

Per: “Panel Member” \_\_\_\_\_

Panel Member

**Schedule “A”**

**Canadian Margin Account**

<b>Month</b>	<b>% of Account Holdings in Bellatrix Exploration Ltd.*</b>
May 2011	69%
June 2011	63%
July 2011	79%
August 2011	37%
September 2011	34%
October 2011	41%
November 2011	36%
December 2011	37%

<b>Month</b>	<b>% of Account Holdings in Bellatrix Exploration Ltd.*</b>
January 2012	68%
February 2012	56%
March 2012	73%
April 2012	72%
May 2012	67%
June 2012	67%
July 2012	70%
August 2012	51%
September 2012	68%
October 2012	69%
November 2012	69%
December 2012	70%
January 2013	73%
February 2013	73%
March 2013	35%

\*Based on total market value of the account holdings, does not include any negative cash balance

### **Schedule "B"**

#### **Joint Canadian Margin Account**

<b>Month</b>	<b>Preservation of Capital Low Risk</b>	<b>Income Low-Medium Risk</b>	<b>Moderate Growth Medium Risk 60%</b>	<b>Short Term Trading Medium to High Risk 30%</b>	<b>Speculative High Risk 10%</b>
August 2010	28%			72%	
September 2010				100%	
October 2010				100%	
November 2010				100%	
December 2010				100%	
January 2011				100%	
February 2011				21%	79%
March 2011		38%		4%	58%

<b>Month</b>	<b>Preservation of Capital  Low Risk</b>	<b>Income  Low-Medium Risk</b>	<b>Moderate Growth  Medium Risk  60%</b>	<b>Short Term Trading  Medium to High Risk  30%</b>	<b>Speculative  High Risk  10%</b>
April 2011		30%		20%	50%
May 2011		31%		10%	59%
June 2011		36%		12%	52%
July 2011		39%		12%	49%
August 2011		31%		33%	36%
September 2011		25%			75%
October 2011		14%			86%
November 2011		3%		74%	23%
December 2011		3%		68%	29%
January 2012		10%			90%
February 2012		6%		37%	57%
March 2012		4%	1%	58%	37%
April 2012		5%	3%	48%	44%
May 2012		7%	3%	48%	42%
June 2012		10%	4%	27%	59%
July 2012		11%	5%	28%	56%
August 2012		7%	3%	48%	42%
September 2012		7%	2%	52%	39%
October 2012		4%	2%	69%	25%
November 2012		11%	4%	22%	63%
December 2012		7%	2%	51%	40%
January 2013		10%	3%	27%	60%
February 2013		6%	3%	40%	51%
March 2013		3%	2%	68%	27%
April 2013		4%	1%	70%	25%
May 2013		7%	2%	30%	61%