

Re Munro

IN THE MATTER OF:

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

and

Andrew McDougall Munro

2016 IIROC 47

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

Heard: October 14, 2016 in Toronto, ON

Decision: October 14, 2016

Reasons: November 28, 2016

Hearing Panel:

Mark Sandler, Chair, Ron Smith and Guenther Kleberg

Appearances:

Natalija Popovic, Enforcement Counsel

Robert Brush, for Andrew McDougall Munro

Andrew McDougall Munro

DECISION ON THE MERITS

¶ 1 On October 14, 2016, the hearing panel convened to consider a Settlement Agreement arrived as between Mr. Munro and Staff. After we reviewed the Settlement Agreement, and heard from counsel, we gave brief oral reasons reflecting our acceptance of the Settlement Agreement. Here are our written reasons for doing so. In large measure, they track what we said earlier.

¶ 2 Within the Settlement Agreement, the Respondent has admitted to two contraventions:

- the first being that from 2005 to 2012, he failed to use due diligence to learn the essential facts relative to certain of his clients, contrary to IIROC Dealer Member Rule 1300.1(a)
- the second being that from 2007 to 2012, he failed to ensure that recommendations that he made for certain of his clients were suitable for them contrary to IIROC Dealer Member Rule 1300.1(q)

¶ 3 The facts are fully outlined in the Settlement Agreement which will be affixed to our reasons. But, in brief, the overview of the facts that are agreed upon are as follows:

- The Respondent failed to know his client, CM, who was born in 1936 and had limited investment knowledge. He updated her Know Your Client forms to reflect 30 percent and subsequently 40 percent high risk tolerance, but this did not reflect her true investor profile and tolerance for high risk, which had previously been limited to “1 percent aggressive”.
- The evidence also discloses that the Respondent failed to know his clients, JS and RS, who were

born in 1920 and 1927, respectively, when he updated their Know Your Client forms for their joint accounts to reflect inaccurate liquid assets and net worth amounts. Further, the joint accounts at no time matched one another in respect of these amounts.

- As well, the Know Your Client forms for the joint accounts reflected a high risk tolerance ranging from 30 percent for both accounts from 2006 to 2010, to 10 percent in 2011 for one of the accounts.
- The Respondent could not recall the basis for allocating this amount of high risk tolerance to these clients' accounts. It did not accord with the clients' actual risk tolerance.
- As well, the Respondent made unsuitable recommendations to all of the clients described above - CM, JS, and RS -- when he sold certain of their mutual fund units in order to purchase segregated fund contracts. He thereby incurred redemption fees and also committed his clients to new Deferred Service Charge schedules. He later sold those segregated fund contracts, again incurring redemption fees in order to purchase new mutual fund units or fresh DSC schedules.
- More detailed particulars of the two contraventions are found at paragraphs 15 to 40 of the Settlement Agreement.

¶ 4 Based upon all of the agreed upon facts, we are satisfied that Enforcement Staff have demonstrated, to the requisite degree of proof, that the contraventions took place as alleged.

¶ 5 Accordingly, we look to what the appropriate penalty is in these circumstances. We know that Mr. Munro has been registered with IIROC and its predecessor, the Investment Dealers Association, as a Registered Representative with Edward Jones since August 2001. We also know that he has had no prior discipline history. It is apparent from the Settlement Agreement that, with the assistance of very experienced counsel, he has cooperated with his regulator in dealing with these contraventions. Those are significant facts that mitigate the penalty that might otherwise be imposed.

¶ 6 We have instructed ourselves as a matter of law as to how to deal with settlement agreements. In the context of criminal proceedings, a joint submission as to penalty is not to be rejected by a trial judge unless the proposed disposition would bring the administration of justice into disrepute or otherwise be contrary to the public interest. The same high deference to joint submissions and settlement agreements exists within the administrative or regulatory context. That high level of deference advances the public interest by promoting certainty of disposition, encouraging full cooperation between the parties, and ultimately resulting in more efficient and timely hearings.

¶ 7 The assessment of penalty is discretionary. There can be a range of reasonable outcomes in each case. Where the proposed disposition, agreed upon by the parties, falls within the range of reasonable outcomes, the hearing panel should not decline to accept it simply because it might have favoured another reasonable disposition.

¶ 8 We have reviewed the proposed penalty here. While we are all of the view that it falls on the lighter end of the scale, we are satisfied that it does fall within the range of reasonable outcomes available to us. Accordingly, we are prepared to accept it. In our view, it meets the ends of specific and general deterrence, sends the appropriate message to the profession and to the public as a whole, and takes into consideration all of the relevant principles that inform the imposition of penalty. These include, but are not limited to, the need to protect the public, and promote confidence in the industry, the markets and in existing enforcement processes.

¶ 9 Accordingly, we agree that a global fine of \$25,000 is appropriate. This exceeds the amount that was gained by Mr. Munro as a result of the contraventions, thereby promoting one important objective: disgorging any unjust enrichment as a result of misconduct. Although each case is unique, this fine does fit within the range of fines imposed in analogous circumstances.

¶ 10 Second, we accept that Mr. Munro should be required to successfully rewrite the Conduct and Practices

Handbook exam within 12 months of the making of this order. Third, he is to pay costs to IIROC in the sum of \$5,000.

¶ 11 We are grateful to counsel for their assistance in this matter.

Dated at Toronto this 28th day of November, 2016.

Mark Sandler, Chair

Ron Smith

Guenther Kleberg

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff (“Staff”) and the Respondent, Andrew McDougall Munro, (“the Respondent” or “Munro”) 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 conduct of Munro.
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 contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

Count 1 From 2005 to 2012 the Respondent failed to use due diligence to learn the essential facts relative to certain of his clients, contrary to IIROC Dealer Member Rule 1300.1(a).

Count 2 From 2007 to 2012 the Respondent failed to ensure that recommendations that he made for certain of his clients were suitable for them, contrary to IIROC Dealer Member Rule 1300.1 (q).

6. Staff and the Respondent agree to the following terms of settlement:
 - a) A global fine of \$25,000, inclusive of disgorgement; and
 - b) A requirement to successfully re-write the Conduct and Practices Handbook exam within 12 months of the acceptance of this Settlement Agreement.
7. The Respondent agrees to pay costs to IIROC in the sum of \$5,000. The fine and costs shall be paid pursuant to a schedule that has been agreed upon by the parties.

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

A. Overview

9. The Respondent failed to know his client CM, who was born in 1936, and had limited investment knowledge. He updated her KYC forms to reflect 30% and subsequently 40% high risk tolerance but this did not reflect her true investor profile and tolerance for high risk, which had previously been limited to 1% aggressive
10. The Respondent failed to know his clients JS and RS, born in 1920 and 1927 respectively, when he updated their KYC forms for their joint accounts to reflect different liquid assets and net worth amounts. Further, the joint accounts at no time matched one another in respect of these amounts.
11. Further, at times the KYCs for the joint accounts reflected a high risk tolerance ranging from 30% for both accounts from 2006 to 2010; to 10% in 2011 for one of the accounts. The Respondent could not recall the basis for allocating this amount of high risk tolerance to these clients' accounts.
12. The Respondent made unsuitable recommendations to his clients CM, JS and RS wherein he sold certain of their mutual fund units in order to purchase segregated fund contracts. He thereby incurred redemption fees and also committed them to new deferred service charge ("DSC") schedules.
13. He later sold those segregated fund contracts again incurring redemption fees in order to purchase new mutual fund units on fresh DSC schedules.

B. Registration History

14. Munro has been registered with IIROC, and its predecessor the IDA, as a Registered Representative since August 2001 with Edward Jones ("EJ").

C. Failure to Know Clients

Client CM

15. In October 2004 the Respondent opened a cash account for his client CM when she was approximately 68 years of age. At that time her KYC reflected the following:

CM Account			
At Opening	Risk	Investment Objectives	Investment Knowledge
October 2004	Low 50% Medium 50%	5% cash 45% income 30% growth and income 20% growth	"very limited"

16. The Respondent subsequently updated the KYC information for CM on four occasions as follows:

CM Account			
Updates	Risk	Investment Objectives	
June 2005	Low 50% Medium 50%	0% cash 20% income 55% growth and income 25% growth	
July 2005			Only update was to "limited" investment knowledge at CM's initiative

CM Account			
Updates	Risk	Investment Objectives	
May 2006	Medium 70% High 30%	0% cash, 0% income 80% growth and income 20% growth	
January 2008	Medium 60% High 40%	0% cash 0% income 56% growth and income 43% growth 1% aggressive	

17. These changes did not reflect CM’s true investor profile.

Clients RS and JS

18. The Respondent took over two joint accounts from a previous advisor at EJ in early 2005. The accounts were for clients RS and JS; one account was established as “R&J” S and the other as “J&R” S.
19. RS was born in 1926 and JS in 1920; at the time that the Respondent took over their accounts in 2005 these clients were 78 and 84 years of age, respectively.
20. Throughout the time that the Respondent was the RR for the joint accounts, the KYC information reflected “limited” investment knowledge for both RS and JS.
21. At the time that the Respondent took over the joint accounts, the liquid assets and net worth amounts matched. In the case of both the J&R and R&J accounts, liquid assets were \$150,000 and net worth was \$350,000.
22. The Respondent updated the KYC documentation for the accounts J&R and R&J as follows:

KYC Updates	Liquid Assets	Net Worth	Investment Objectives for “Income”	Risk Tolerance
J&R				
February 2005	\$150,000	\$350,000	40%	60% Low 40% Medium
July 2005	*		30%	40% Low 60% Medium
November 2005			20%	40% Low 60% Medium
September 2006			15%	70% Medium 30% High
November 2007			0%	70% Medium 30% High
May 2010	\$500,000	\$1 Million	0%	70% Medium 30% High

KYC Updates	Liquid Assets	Net Worth	Investment Objectives for “Income”	Risk Tolerance
R&J				
September 2005	\$361,000	\$561,000	15%	20% Low 60% Medium 20% High
July 2007			0%	80% Medium 20% High
February 2008			0%	70% Medium 30% High
September 2011			10%	90% Medium 10% High
May 2013			10%	90% Medium 10% High

*Blank cells indicate no change

23. The liquid assets and net worth reflected on the KYCs of joint accounts are meant to represent the clients ‘combined figures; however the updates to the J&R and R&J KYCs were at no time consistent as between the two for the liquid assets and net worth.
24. Further, the Respondent could not recall and could not explain the reasons behind the increases in the risk tolerances for these clients to, in some cases, 30% high risk.

D. Unsuitable Recommendations

Client CM

25. The Respondent was the Registered Representative (“RR”) for CM’s account from 2004 to 2012. Over this time period he recommended the transactions as detailed below. EJ and the Respondent received compensation as a result of these purchase transactions.

Date	Purchase or Sale	Consequences for CM
October 2007	Sale of front end load mutual fund units originally purchased in November 2004.	Proceeds of approximately \$158,000.
	Purchase of segregated fund contract.	Costs of approximately \$158,000 and committed CM to new DSC schedule.
May 2008	Sale of mutual fund units originally purchased in November 2004.	Proceeds of approximately \$88,000 And DSCs of approximately \$2000.
	Purchase income plus version of same segregated fund	Costs of approximately \$88,000 and committed CM to new DSC schedule.
May 2009	Sale of mutual fund units originally purchased in September 2005.	Proceeds of approximately \$85,000 And DSCs of approximately \$3700.

Date	Purchase or Sale	Consequences for CM
	Purchase of additional segregated funds, via second deposit to same segregated fund contract originally purchased in October 2007.	Costs of approximately \$87,000; and <ul style="list-style-type: none"> • reset opportunity of the second deposit was compromised because the market value of the first deposit had declined in value to approximately \$117,000, below original purchase price of \$158,000. • in May 2011, a reset was executed, causing the first deposit to be subject to a new guaranteed maturity date ending 10 years from May 2011.
June 2012	Sale of segregated funds contract originally purchased in October 2007 and May 2009.	Net proceeds of approximately \$219,500 and DSCs of approximately \$4200.
June 2012	Purchase of new mutual fund units.	Costs of \$219,500 And committed CM to new DSC schedule
October 2012	EJ subsequently cancelled the June 2012 purchase.	DSCs of \$4200 were not reimbursed.

26. In respect of the May 2009 deposit to the same segregated fund originally purchased in October 2007, the Respondent did not consider that:

- the purchase of a second contract would have its own reset opportunities, and be unfettered by the approximate \$41,000 accrued loss in value of the first deposit; and
- by adding to the existing contract, any reset of the contract would result in the guaranteed maturity date for the first deposit restarting rather than ending on the original 10 year term from 2007.

27. As a result of the above noted transactions, CM paid a total of approximately \$9900 in DSCs on the sales, and was consequently exposed to new DSC schedules on the subsequent purchases.

28. The Respondent's rationale for the June 2012 purchase of mutual fund units was to reduce the risk of CM's portfolio by adding more fixed income though CM had a 0% income component at the relevant time.

Clients RS and JS

29. The Respondent was the RR for the R&J and J&R accounts from 2004 to 2012. Over this time period he recommended certain transactions as detailed herein. EJ and the Respondent received compensation as a result of these transactions.

a) R&J Account

30. In November 2010, the Respondent recommended the sale of approximately \$63,000 worth of a segregated fund that had been transferred into the account, of which the underlying investment was in units of a particular balanced mutual fund. This sale incurred a nominal DSC. He then purchased \$62,000 worth of the same balanced mutual fund units on a new DSC schedule.
31. In September 2012, the Respondent recommended the sale of approximately \$53,000 worth of a different segregated fund contract. The transaction triggered approximately \$700 in DSCs in order to purchase new mutual funds on a new DSC schedule.
32. EJ subsequently cancelled and corrected the September 2012 purchases to a zero percent front end commission sale; as a result the Respondent did not earn any commission from this transaction and the client did not receive reimbursement of the DSC fees.

b) J&R Account

33. In September 2012, the Respondent recommended and sold approximately \$135,000 worth of a segregated fund contract, incurring approximately \$2000 in DSCs in order to purchase new mutual fund units on a new DSC schedule.
34. EJ subsequently cancelled and corrected the September 2012 purchases to a zero percent front end sale; as a result the Respondent did not earn any commission from this transaction and the client did not receive reimbursement of the DSC fees.

c) EJ Compliance Inquiries re R&J and J&R Accounts

35. As a result of the September 2012 transactions in the R&J and J&R accounts, an EJ insurance product compliance supervisor made several queries of the Respondent.
36. In particular, the supervisor queried how these transactions benefitted these clients and raised concerns that the transactions may have incurred excessive charges for the clients.
37. In response, the Respondent indicated that he had discussed purchase options with the clients, and did not understand why he should not be paid for the transaction.
38. The supervisor ultimately concluded that based on the clients' age and circumstances the trades would be corrected to reflect a zero percent front end purchase.
39. Notwithstanding the trade corrections, RS and JS were left having incurred DSCs of approximately \$700 and \$2000 respectively in disposing of the segregated fund contracts.
40. As a result of these unsuitable recommendations and transactions for the three clients, the Respondent earned approximately \$9,800 in fees.

E. Additional Factors

41. The Respondent acknowledges that but for the fact that he has been subject to a formal enhanced oversight supervisory program since October 31, 2014, imposed by EJ, that a period of close supervision would have been included as part of the penalty herein.
42. The Respondent has not previously been the subject of IIROC disciplinary proceedings.

V. TERMS OF SETTLEMENT

43. 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.
44. The Settlement Agreement is subject to acceptance by the Hearing Panel.
45. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

46. 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.
47. 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.
48. 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.
49. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
50. 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.
51. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
52. 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 Barrie in the Province of Ontario, this 18th day of August, 2016.

“Witness”

Witness

“Andrew Munro”

Andrew McDougall Munro

AGREED TO by Staff at the City of Toronto, in the Province of Ontario, this 7th day of September, 2016.

“Dan McVicker”

Witness

“Natalija Popovic”

Natalija Popovic

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 14th day of October, 2016, by the following Hearing Panel:

Per: “Mark Sandler”

Panel Chair

Per: “Rob Smith”

Panel Member

Per: “Guenther Kleberg”

Panel Member

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