

Re Hirani

IN THE MATTER OF:

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

and

Shafique Hirani

2018 IIROC 42

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

Heard: September 24, 2018 in Calgary, Alberta
Decision: September 24, 2018
Written Decision: November 2, 2018

Hearing Panel:

Alan Beattie, Q.C., Chair, William Welton and Bradley Whyte

Appearance:

Tayen Godfrey, Enforcement Counsel for IIROC

Jonathan Kroft, Counsel for the Respondent

Shafique Hirani, the Respondent

REASONS FOR DECISION

INTRODUCTION

¶ 1 The Investment Industry Regulatory Organization of Canada (“IIROC”), after a lengthy investigation, issued to Mr. Hirani (“the Respondent”) a Notice of Hearing and Statement of Allegations, both dated November 29, 2017. The Respondent filed a Response to Notice of Hearing dated January 11, 2018. A hearing on the merits was scheduled for September 24-28, 2018. The Respondent, by Notice of Motion filed August 7, 2018, sought production from his former employer of thousands of emails which had been in the Respondent’s possession but were required to be turned over by him. The Panel heard arguments by Counsel for the Respondent and Enforcement Counsel for IIROC and issued our Reasons for Decision dated September 4, 2018. It was our decision not to order additional production of the documents, but to reserve jurisdiction, on the Respondent’s Motion, to hear submissions from both Counsel at the hearing on the merits on whether, and which documents, should be produced, which may be identified with some specificity as being “likely relevant”. Just prior to the commencement of the hearing on the merits on September 24, 2018, we were advised that the parties were in the process of finalizing a Settlement Agreement and we were requested to proceed with a hearing as to whether we should accept the Settlement Agreement. We proceeded with that hearing on September 24, 2018, heard arguments of the parties and issued our decision accepting the Settlement Agreement.

¶ 2 The Settlement Agreement, dated September 24, 2018, signed by the Respondent, IIROC Enforcement Counsel and the Panel Members is attached to these Reasons for Decision. (See the Settlement Agreement for the background and circumstances of this case.)

CONTRAVENTIONS AND SUMMARY OF PARTICULARS

¶ 3 The Respondent, in the Settlement Agreement, has admitted to the following contraventions of IIROC's Rules:

Count 1

Between February 20, 2015 and April 16, 2015, the Respondent failed to use due diligence to learn and remain informed of the essential facts in regard to approximately 365 of his clients, contrary to Dealer Member Rule 1300.1(a).

Count 2

Between February 20, 2015 and April 16, 2015, the Respondent dealt with the personal information of his clients in a manner that was unbecoming and detrimental to the public interest, and inconsistent with high standards of ethics, contrary to Dealer Member Rule 29.1.

¶ 4 The Respondent admits, regarding Count 1, that in the course of transferring his accounts from Investors Group Financial Services Inc. to Investors Group Securities Inc. ("IG Securities"), he permitted or directed his team to fill in, on 364 client account forms, identical investment profiles. In some cases, the profiles were filled in using account forms that had been previously signed by clients. The clients' account forms raised issues about internal consistency with stated investment profiles.

¶ 5 The Respondent admits, regarding Count 2, that after being suspended by IG Securities, he instructed one of his team members to upload client information to a Dropbox account, which resulted in a lack of control over his clients' personal information. The use of Dropbox and the portable storage service contravened IG Securities' security policies, which required both IG Securities and the clients to provide prior approval of the Respondent's use of any third party storage services. The Respondent did not seek such approval.

SUBMISSIONS OF IIROC

¶ 6 Mr. Godfrey, Enforcement Counsel for IIROC, provided the Panel with a "Settlement Hearing Book", which included (1) IIROC Dealer Member Rule 1300.1(a) ("Supervision of Accounts") and Rule 29.1¹ ("Business Conduct"); (2) IIROC Rules of Practice and Procedure Rules 8203 ("Hearings"), 8215 ("Settlement and Settlement Hearings") and 8428 ("Settlement Hearings"); (3) IIROC Sanction Guidelines; and (4) Case Law:

Phillips (Re), 2015 LNIIROC 20 (IIROC Hearing Panel, Manitoba District)

Groome (Re), 2013 LNIIROC 28 (IIROC Hearing Panel, Québec District)

Morrison (Re), 2011 LNIIROC 44 (IIROC Hearing Panel, Alberta District Council)

Milewski (Re), 1999 I.D.A.C.A. No. 17 (IIROC Hearing Panel, Ontario District Council).

¶ 7 Enforcement Counsel referred to the above Rules and Sanction Guidelines. He reminded the Panel that it is our role to either accept or reject the Settlement Agreement (*Milewski*) and urged acceptance based on the Settlement Agreement having been reached after extensive negotiations by experienced counsel. He pointed out the similarities and differences in the above case law as "goalposts, not directly on point", asserting that the penalties agreed to in the Settlement Agreement fall within the accepted concept of a "reasonable range".

¶ 8 Enforcement Counsel referenced the following aggravating factors:

(1) The Respondent had been warned on two previous occasions about using blank forms so he was put on notice about the conduct being improper.

(2) Although there were no client losses or harm, the potential for harm arising from the

¹ Rule 29.1 was repealed on September 1, 2016 (and replaced by Consolidated Rule 1400)

Respondent's lack of due diligence is a significant concern.

(3) The Respondent did not accept responsibility on a timely basis but has now done so.

¶ 9 Enforcement Counsel referred to the following mitigating factors in the Respondent's favour:

(1) He has no disciplinary record including the three years since the misconduct in issue during which he has continued to be employed as a registrant.

(2) The misconduct occurred over a relatively short period of time.

(3) There were no client losses or client harm (as contrasted with significant losses in *Groome* and *Phillips*). The concern is the potential harm to clients and to the firm.

(4) There were no issues about suitability of investments being held by clients (as contrasted with *Phillips, Groome, Morrison*).

(5) He did not benefit financially (as contrasted with *Phillips, Groome*).

¶ 10 Enforcement Counsel advised that IIROC Staff do not consider a permanent bar from approval with IIROC is warranted in this case.

SUBMISSIONS OF THE RESPONDENT

¶ 11 Mr. Kroft, Counsel for the Respondent referred to several paragraphs in the Settlement Agreement and the Sanction Guidelines. He said that while the Respondent has taken responsibility for what occurred, this is a unique case. In contrast to the cases referenced by IIROC (above), this case does not involve new clients but a very complicated, lengthy process of transferring client records from one company to another and from one regulatory regime to another. As the Settlement Agreement references, there were numerous people involved in the transition. As stated at para. 23 of the Settlement Agreement, the Respondent makes no comments regarding the involvement of his former employer, but Sanction Guidelines 17 (Supervision) and 18 (Training) are important aspects of the difficult transition process. Regarding the Dropbox charge, again, there was no harm. The Respondent acknowledges that he did not obtain the prescribed approval, but also says the employee who obtained the memory stick (which was returned) should not have had access to the storage device after the Respondent had left the firm. Mr. Kroft referred to the mitigating circumstances, which were discussed by Mr. Godfrey (above) and joined Mr. Godfrey in recommending acceptance of the Settlement Agreement by the Panel.

REASONS FOR DECISION

¶ 12 In the Settlement Agreement, the Respondent admits to the Contraventions of the stated IIROC Dealer Member Rules (set out below). The Hearing Panel accepts that the Contraventions have been established.

¶ 13 The first contravention (Count 1 above) is stated as being contrary to Dealer Member Rule 1300.1(a). That Rule is:

SUPERVISION OF ACCOUNTS

1300.1

Identity and Creditworthiness

(a) Each Dealer Member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted.

¶ 14 The second contravention (Count 2 above) is stated as being contrary to Dealer Member Rule 29.1. That Rule was:

BUSINESS CONDUCT

29.1. Dealer Members and each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member (i) shall observe

high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board.

For the purposes of disciplinary proceedings pursuant to the Rules, each Dealer Member shall be responsible for all acts and omissions of each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member, and each of the foregoing individuals shall comply with all Rules required to be complied with by the Dealer Member.

¶ 15 The IIROC Sanction Guidelines set out in Part 1 nine principles which “should be considered in connection with the imposition of sanctions in all cases”. They include:

Disciplinary sanctions are preventative in nature and should be designed to protect the investing public, strengthen market integrity, and improve overall business standards and practices.

Disciplinary sanctions should be more severe for respondents with prior disciplinary records.

For multiple violations, the total or cumulative sanction should appropriately reflect the totality of the misconduct.

Sanctions should ensure that a respondent does not financially benefit as a result of the misconduct.

¶ 16 The IIROC Sanction Guidelines set out in Part 2 a “list of key factors (to) be considered where applicable, when determining the appropriate sanctions”. There are 21 listed factors, which include “extent of harm to clients”, “the respondent’s relevant disciplinary history”, “whether the respondent accepted responsibility for and acknowledged the misconduct to his or her employer or the regulator prior to detection and intervention by the Dealer Member or the regulator”, “whether the respondent engaged in the misconduct at issue notwithstanding prior warnings...”.

¶ 17 We agree with the rationale in the *Milewski* decision (above) about panels not altering the terms of a settlement agreement unless the penalty “clearly fall(s) outside a reasonable range of appropriateness”.

¶ 18 We have reviewed the cases relied upon by IIROC Enforcement Counsel. We agree with Counsel for the Respondent that this is a unique case because of the transition process and accordingly none of the cases are similar in nature. However, they still provide, as IIROC Enforcement Counsel submitted, guidance in determining appropriate sanctions.

¶ 19 Among the cases, the most egregious conduct was in *Groome*, which involved failure to respect the Know Your Client rule and unsuitability of clients’ investments. Clients suffered significant losses. There was financial benefit to the respondent. The sanctions in the settlement agreement, which were accepted by the panel, were (a) a fine of \$65,000, (b) disgorgement of \$24,198, (c) a three-year suspension, (d) a 24 month period of strict supervision, (e) successful completion of the Conduct and Practices Handbook Course, and (f) costs of \$5,000. The extent of the misconduct in that case warranted the lengthy suspension. The nature of the misconduct in the present case, particularly having regard to the significant mitigating factors, justifies a considerably shorter period of suspension and demonstrates that the present suspension falls within the “reasonable range”.

¶ 20 The same comments apply to the *Phillips* case in which the respondent admitted that he failed to take the necessary steps to know his clients, made unsuitable investments and the clients suffered losses. The penalties were (a) a fine of \$100,000, (b) 18 months suspension, (c) 6 months close supervision, (d) rewriting the Handbook exam, and (e) \$10,000 in costs.

¶ 21 Much lighter penalties were agreed upon in *Morrison*. The respondent in that case had made unsuitable

high risk investments for substantial amounts for new clients. She admitted that she had failed to ensure the investments were suitable in relation to New Client Application Forms and that the clients did not qualify for exemptions. However, she had cautioned clients that these were high risk investments and had them sign a form which was drafted by the firm's compliance department. Penalties were (a) a fine of \$30,000 and (b) successful completion of the Handbook exam. The present case warrants significantly more severe penalties than those in *Morrison*.

¶ 22 Applying the general principles of protection of the investing public, protection of the integrity of the IIROC process, protection of the integrity of the securities market, prevention of a repetition of conduct of the type under consideration, and general deterrence, leads us to the conclusion that the penalties agreed upon between IIROC and the Respondent in the Settlement Agreement fall within the reasonable range established in the decisions, are appropriate and should be accepted. The seriousness of the misconduct warrants very significant penalties, but we have also taken into consideration the extensive mitigating circumstances referenced by Counsel, and in the Settlement Agreement, including that the Respondent had no disciplinary record in his 20-year career preceding the contraventions and the three years since the contraventions.

¶ 23 The Hearing Panel advised, at the conclusion of the Hearing, that we accepted and we signed the Settlement Agreement. We confirm that decision.

¶ 24 The Respondent, in the Settlement Agreement, agreed to the following terms of settlement, which we have accepted as appropriate:

- (a) a fine in the amount of \$70,000;
- (b) a suspension from acting in a registered capacity for a period of 3 months, effective November 2, 2018;
- (c) a period of close supervision for 6 months;
- (d) successfully rewrite the Conduct and Practices Handbook exam; and
- (e) pay costs to IIROC in the amount of \$15,000.

¶ 25 We consider the amount of the costs to be within the reasonable range and although they will not fully cover IIROC's costs, they reflect the reduced involvement and cost of IIROC resulting from the Respondent's cooperation in entering into the Settlement Agreement.

Dated this 2nd day of November, 2018.

Alan Beattie

William Welton

Bradley Whyte

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada ("IIROC") will issue a Notice of Motion 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 Shafique Hirani ("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.

i. Overview

4. The Respondent permitted or directed staff to fill in pre-determined investment profiles on account forms while transitioning from the Mutual Fund Dealer Association subsidiary of Investors Group to the IIROC subsidiary. In some cases this included inserting the profiles into partially completed forms that had already been signed by the clients. The Respondent also failed to take appropriate care in his storing of documents containing his clients’ personal information.

ii. Registration History

5. The Respondent is currently employed with Aligned Capital Partners Inc. and is under close supervision. His previous registration history includes:

From	To	Firm	Registration Category
August 2015	Current	Aligned Capital Partners Inc.	Registered Representative (Securities) (Retail)
February 2015	April 2015	Investors Group Securities Inc.	Registered Representative (Mutual Funds only) (Retail)
January 2006	February 2015	Investors Group Financial Services Inc.	Mutual Fund Dealer Salesperson Branch Manager (MFDA members only from September 2009 to Jan 2015)
November 1995	January 2006	Investors Group Financial Services Inc.	Mutual Fund Salesperson

6. The Respondent while a Mutual Fund Dealer Association (“MFDA”) licensed consultant had been warned by his firm about the use of blank, pre-signed account form on two previous occasions.

iii. Background

7. The Respondent was employed by Investors Group Financial Services Inc. (“IG Financial”) as a MFDA licensed consultant from November 1995 to February 20, 2015. He then moved from IG Financial to Investors Group Securities Inc. (“IG Securities”), an IIROC firm. He was an IIROC Registered Representative from February 20, 2015, until his employment was terminated by IG Securities on April 16, 2015.

8. Commencing in or about January 2014, to facilitate his moving to IG Securities, the Respondent and IG Securities began the process of completing IG Securities client application forms in advance of the Respondent becoming an IIROC Registered Representative. During this process the Respondent was assisted by a staff which included two Associate Consultants and three Assistants (the “Team”).

9. These client application forms were stored by IG Securities and intended to be used by IG Securities to open accounts once the Respondent became registered.

10. Various staff from IG Financial and IG Securities played a significant role in designing and implementing the process by which the Respondent's clients would be transferred to IG Securities. They were also involved in the hiring and training of the Respondent's Team. Many of the Team members had limited or no experience working in the financial industry.

iv. Failure to Know Clients

11. The transferring of the accounts of his IG Financial clients to the IG Securities platform involved the Respondent permitting or directing his Team to fill in the following pre-determined investment profiles for many of his client's account application forms:
 - a) Investment Knowledge: High;
 - b) Time Horizon: 6 to 10 years;
 - c) Risk Tolerance: High;
 - d) Investment Objectives: 100% long-term growth; and
 - e) Purpose of Account: Retirement Savings.
12. In some cases these profiles were filled in using account forms that had been signed by the clients before the investment profiles had been filled in.
13. As a result of the Respondent's conduct, when he became an IIROC Registrant the NCAFs for 364 of the approximately 368 clients which were transferred to IG Securities contained the following identical investment profile:
 - a) Investment Knowledge: High;
 - b) Time Horizon: 6 to 10 years;
 - c) Risk Tolerance: High;
 - d) Investment Objectives: 100% long-term growth; and
 - e) Purpose of Account: Retirement Savings.
14. In some instances, the clients' account forms set out personal and financial information that, on their face, raised issues about internal consistency with this stated investment profile. There are no allegations of unsuitability of any investments.

v. Storing client personal information in unapproved manner

15. While at IG Securities the Respondent failed to take appropriate care in his handling of his clients' personal information. In 2013 the Respondent instructed a Team member to set up an account with the cloud-based storage service Dropbox. He then had his staff routinely upload various documents to the storage server. These documents include client:
 - a) account forms;
 - b) account statements from financial institutions;
 - c) mortgage details;
 - d) life insurance summaries;
 - e) personal tax assessments; and
 - f) account statements.
16. Many of the documents contained client personal information, such as:
 - a) telephone numbers;

- b) banking information including account numbers;
 - c) home addresses;
 - d) income tax information; and
 - e) social insurance numbers.
17. By April of 2015 over 35,000 documents were uploaded to the Respondent's Dropbox account. The Respondent's continued the use of the Dropbox after he became an IIROC Registrant with IG Securities. The Respondent retained access to the Dropbox account for a period of time after his termination for the purposes of a dispute with IG Securities and to preserve ongoing access to his clients' account information.
 18. Before his employment was terminated by IG Securities, the Respondent was suspended and was prohibited from attending his office as a result of an unrelated matter. During this time he instructed one of his Team members to upload client information to the Dropbox account.
 19. The Respondent's use of Dropbox resulted in a lack of control over his clients' personal information. After the Respondent's dismissal from IG Securities, a former IG Securities employee was in possession of a portable storage device containing client documents that were the same as those found on the Dropbox account. These included documents containing clients' personal information. The portable storage device was returned to Investors Group and the information was secured and not further distributed.
 20. The use of Dropbox and the portable storage device contravened IG Securities' security policies. Under these policies, both IG Securities and the clients were required to provide prior approval of the Respondent's use of any third party storage services. The Respondent did not seek such approval.

vi. Mitigating Factors

21. No client complaints or harm have been identified as arising from the Respondent's conduct in this matter.
22. The Respondent has been working as Registrant with Aligned Capital Partners Inc. since May of 2015 with no complaints or concerns.

vii. Other

23. The Respondent is not making any admissions respecting his former employer's knowledge of or participation in the facts giving rise to the contraventions. This agreement pertains only to the Respondent's role in the matters referred to herein.

PART IV – CONTRAVENTIONS

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

Count 1

- a) Between February 20, 2015 and April 16, 2015, the Respondent failed to use due diligence to learn and remain informed of the essential facts in regard to approximately 364 of his clients, contrary to Dealer Member Rule 1300.1(a); and

Count 2

- b) Between February 20, 2015 and August 14, 2015, the Respondent dealt with the personal information of his clients in a manner that was unbecoming and detrimental to the public interest, and inconsistent with high standards of ethics, contrary to Dealer Member Rule 29.1.

PART V – TERMS OF SETTLEMENT

25. The Respondent agrees to the following sanctions and costs:
 - a) A fine in the amount of \$70,000.00;
 - b) A suspension from acting in a registered capacity for a period of three months, effective November 2, 2018;
 - c) A period of close supervision for six months;
 - d) Must successfully rewrite of the Conduct and Practices Handbook exam; and
 - e) Pay costs to IIROC in the amount of \$15,000.00.
26. 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

27. 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 the paragraph below.
28. 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

29. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
30. 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.
31. 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.
32. 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.
33. 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.
34. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
35. 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.
36. 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.
37. 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

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

DATED this 24 day of September, 2018.

“LORI WATTS”

Witness

“SHAFIQUE HIRANI”

Shafique Hirani

“NARGIS BAKHTIARY”

Witness

“TAYEN GODFREY”

Tayen Godfrey

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

The Settlement Agreement is hereby accepted this 24 day of September, 2018 by the following Hearing Panel:

Per: “ALAN BEATTIE”

Panel Chair

Per: “WILLIAM WELTON”

Panel Member

Per: “BRADLEY WHYTE”

Panel Member

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