

Re Orr

IN THE MATTER OF:

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

and

Clinton James Orr

2020 IIROC 16

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

Heard: December 3, 2019 in Winnipeg, Manitoba
Decision: December 3, 2019
Reasons for Decision: June 16, 2020

Hearing Panel:

Richard L. Yaffe, Q.C., Chair, Bruce Henderson and Eric Wray

Appearance:

David McLellan, Senior Enforcement Counsel
Peter Mueller, for Clinton James Orr
Clinton James Orr (present)
Danny Choy, IIROC Staff (Investigation)

DECISION ON ACCEPTANCE OF SETTLEMENT

INTRODUCTION

¶ 1 The purpose of this hearing was to decide whether to accept a proposed Settlement Agreement between IIROC staff and the Respondent. The Respondent changed client contact information before he moved to another firm, in order to mislead his former firm and gain a competitive advantage. He also made false and misleading statements to IIROC staff. The Hearing Panel considered the terms of the proposed Settlement Agreement pursuant to Rule 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC (“Consolidated Rules”). The recommended settlement reflects the totality of the Respondent’s misconduct, is within the reasonable range of appropriateness, and fulfills the purpose of maintaining high standards of conduct in the securities industry and protecting market integrity. The Settlement Agreement is attached to this Decision as Appendix A. The Hearing Panel accepted the terms of the Settlement Agreement for the reasons that follow.

BACKGROUND

¶ 2 The Respondent was a Registered Representative and Portfolio Manager at National Bank Financial Inc.

(“NBF”) from August, 2008 until May, 2018.

¶ 3 The Respondent deliberately changed 455 client telephone numbers for approximately 394 (or 72%) of his clients in the NBF database. The Respondent did this in the six-month period leading up to his departure from NBF, in anticipation of leaving NBF. He did this with a view to impeding NBF’s ability to communicate with his clients.

¶ 4 In May, 2018 the Respondent resigned from NBF to accept a position as a Registered Representative and Portfolio Manager with Cannacord Genuity Corp.

¶ 5 The Respondent’s actions impeded NBF’s ability to communicate with the Respondent’s clients both before and after his departure from NBF.

¶ 6 After the Respondent resigned from NBF in May, 2018, NBF filed a Notice of Termination with IIROC. The Notice stated that the Respondent had changed client telephone numbers in the NBF database.

¶ 7 In June, 2018 the Respondent wrote a letter to IIROC Registration staff in response to the Notice of Termination. In the letter, the Respondent denied that most of the inaccurate information in the NBF database resulted from the changes he had made in the NBF database.

¶ 8 In an interview with IIROC Enforcement staff in April, 2019, the Respondent told staff that only a small percentage of the changes were made deliberately in order to slow NBF’s ability to contact the clients. The Respondent claimed that most of the changes were made to correct outdated information and not to gain a competitive advantage over NBF.

ANALYSIS

¶ 9 The Hearing Panel must decide whether to accept or reject the proposed settlement, and whether the proposed settlement terms are reasonable. In doing so, the Hearing Panel is guided by the principle set out in *Milewski (Re)* [1999] IDACD No. 17 that a panel “...will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.”

CHANGING CONTACT INFORMATION

¶ 10 The Respondent deliberately logged in to the NBF database and changed client information for his own benefit. He did this in order to make it more difficult for NBF to contact his clients, and with a view to giving himself a competitive advantage in securing the clients as his own when he moved firms.

¶ 11 Although there was no indication of client harm, the inability of NBF to contact clients had the potential of causing client harm.

¶ 12 The actions of the Respondent amounted to engaging in conduct unbecoming and contravened Consolidated Rule 1400 *Standards of Conduct*.

FALSE OR MISLEADING STATEMENTS TO IIROC STAFF

¶ 13 The Respondent’s explanations to IIROC staff about the nature and extent of his changes to the NBF internal database were false and misleading.

¶ 14 The Respondent initially provided false and misleading information to IIROC Registration staff in his letter responding to the Notice of Termination. The Respondent did not take the opportunity to be forthcoming with IIROC staff in the one-year period between writing his letter and being interviewed by IIROC Enforcement staff. Moreover, the Respondent was not forthcoming during his interview with IIROC Enforcement staff, when he again provided false and misleading information. The misconduct was ongoing

and deliberate.

¶ 15 The actions of the Respondent in providing false and misleading information to IIROC staff contravened Consolidated Rule 1400.

SANCTION GUIDELINES, CASES, MITIGATING FACTORS AND AGGRAVATING FACTORS

¶ 16 The Respondent has, ultimately, accepted responsibility for some of his actions and has expressed regret. He has showed that he is committed to improving himself professionally by voluntarily enrolling in and completing eight courses. These include courses on professional responsibility and conflicts of interest.

¶ 17 The Respondent has no prior disciplinary history.

¶ 18 There was no harm or loss caused to clients as a direct result of the Respondent's actions.

¶ 19 We consider the failure of the Respondent to be forthcoming with IIROC staff during the investigation of the misconduct to be an aggravating factor. There was approximately one year between the date of the Respondent's letter to IIROC Registration staff and the date of his interview with IIROC Enforcement staff, during which time the Respondent could have approached IIROC staff to correct or clarify the information he had provided in his letter. The Respondent could have provided IIROC staff with complete and accurate information in this intervening period, but he did not do so.

¶ 20 The decision in Rudensky (Re), 2018 LNIIROC 28 speaks to the meaning of "conduct unbecoming," and the expectation of "basic honesty" on the part of people in the investment industry who have occasion to control other people's money. The hearing panel in Rudensky quoted the reasons in Re Scoten: "The investment industry by necessity operates in an atmosphere of trust...between the Approved Person and his or her client, trust between the Approved Person and his or her employer, and trust between the Approved Person and IIROC staff. Where an Approved Person breaches any of these trust relationships, serious consequences should follow." [Re Scoten, 2012 IIROC 67 at para 2]

¶ 21 The sanctions recommended in the Settlement Agreement are as follows:

- a) A fine in the amount of \$22,500;
- b) A 30-day suspension from registration in any capacity with IIROC;
- c) Successful rewrite of the Conduct and Practices Handbook examination no later than 6 months after re-registration; and
- d) Costs in the amount of \$2,500.

The Settlement Agreement also stipulates that if the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between IIROC staff and the Respondent.

¶ 22 The sanctions in the proposed Settlement Agreement were determined on a global basis to reflect the totality of the misconduct.

¶ 23 The Respondent's contraventions were serious acts of conduct unbecoming, in contravention of Consolidated Rule 1400. On the basis of the submissions of IIROC Enforcement Counsel, the case law presented, Rule 8210 Sanctions for Regulated Persons other than Dealer Members, and the IIROC Sanction Guidelines, we conclude that the terms of settlement, sanctions and treatment of costs in the proposed Settlement Agreement are appropriate.

CONCLUSION

¶ 24 For the reasons set out above, we accept the Settlement Agreement.

Dated at Winnipeg, Manitoba this 16 day of June, 2020.

Richard L. Yaffe

Bruce Henderson

Eric Wray

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 Clinton James Orr (“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. Between approximately November, 2017 and May, 2018 (“Relevant Period”), the Respondent Orr, was a Registered Representative (“RR”) and Portfolio Manager (“PM”) at National Bank Financial Inc. (“NBF”), in Winnipeg. In the six months prior to his departure to another Dealer Member firm, Orr deliberately changed the client telephone contact information for approximately 394 of his clients.
5. He made the changes to gain a competitive advantage, in order to impede NBF’s ability to contact the clients following his departure.
6. In addition, Orr made false or misleading statements to IIROC Staff concerning the nature and extent of the changes.

Background

7. Orr has been a RR since 2007 and a PM since 2013. He worked with NBF from August, 2008 until May, 2018, when he resigned to accept a position as a RR and PM with Canaccord Genuity Corp (“Canaccord”) in Winnipeg.

Misleading Information

8. For approximately one year prior to his departure from NBF, Orr was considering leaving the employ of NBF.

9. During the Relevant Period, in anticipation of his departure, he regularly logged into an internal NBF database that contained client contact information and changed the telephone numbers of his clients.
10. He made changes to approximately 455 telephone numbers for approximately 394 (or 72%) of his clients. Virtually all of the changes included a change to one or two of the digits in a 10-digit number.
11. In the spring of 2018, he began fielding employment proposals from several firms. He accepted a position with Canaccord and tendered his resignation to NBF in May, 2018.

False or Misleading Statements

12. In the Notice of Termination (“NOT”) filed by NBF following his resignation, NBF noted that Orr had changed client telephone numbers.
13. In a June 8, 2018 letter to IIROC Registration Staff in response to the NOT, Orr denied that the vast majority of the inaccurate information in the NBF internal database was a result of his changes.
14. In an April 2, 2019 interview with Enforcement Staff, Orr guessed that an estimated 15% to 20% of the telephone number inaccuracies were deliberate changes made by him during the Relevant Period to gain a competitive advantage over NBF, as this would slow their ability to contact his clients upon his resignation. However, he denied that the remaining changes he made to approximately 350 telephone numbers were to gain a competitive advantage. He stated that these changes were to correct dated, inaccurate information, and he was simply updating these numbers during the six months prior to leaving NBF as one or two digits of each of the telephone numbers were incorrect.
15. As a result of these changes, NBF was impeded in its ability to communicate with his clients both before and after his departure from NBF.
16. In logging into his firm’s internal database and deliberately changing client contact information for his own benefit, the Respondent engaged in conduct unbecoming contrary to Consolidated Rule 1400.
17. The Respondent’s explanations to Staff in the June 8, 2018 letter and the April 2, 2019 interview concerning the nature and extent of his changes to the internal database telephone numbers were not credible, and were false or misleading statements.
18. By changing the client contact information and making false or misleading statements to IIROC Staff, the Respondent contravened Consolidated Rule 1400.
19. The Respondent states that he sincerely regrets his actions and is committed to improving himself professionally.

PART IV – CONTRAVENTIONS

20. By engaging in the conduct described above, the Respondent committed the following contraventions of IIROC’s Rules:
 - a) Between approximately November, 2017 and May, 2018, the Respondent changed client contact information in order to mislead his firm, contrary to Consolidated Rule 1400; and
 - b) On June 8, 2018 and April 2, 2019, the Respondent made false or misleading statements to IIROC Staff, contrary to Consolidated Rule 1400.

PART V – TERMS OF SETTLEMENT

21. The Respondent agrees to the following sanctions and costs:

- a) A fine in the amount of \$22,500;
 - b) A 30 day suspension from registration in any capacity with IIROC;
 - c) Successful rewrite of the Conduct and Practices Handbook examination within 6 months of re-registration; and
 - d) Costs in the amount of \$2,500.
22. 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

23. 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.
24. 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

25. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
26. 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.
27. 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.
28. 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.
29. 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.
30. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
31. 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.
32. 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.

33. 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

34. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

35. A fax or electronic copy of any signature will be treated as an original signature.

DATED this 29th day of October 2019.

“Witness” _____

Witness

“Clinton Orr” _____

Respondent

“Witness” _____

Witness

“David McLellan” _____

David McLellan

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

The Settlement Agreement is hereby accepted this 3rd day of December, 2019 by the following Hearing Panel:

Per: “Richard Yaffe” _____

Panel Chair

Per: “Bruce Henderson” _____

Panel Member

Per: “Eric Wray” _____

Panel Member

Copyright © 2020 Investment Industry Regulatory Organization of Canada. All Rights Reserved