

Re Dahl

IN THE MATTER OF:

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

and

Sherman Roger Dahl

2017 IIROC 07

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

Heard: October 28 and November 4, 2016 in Vancouver, BC

Decision: November 4, 2016

Written Reasons: February 6, 2017

Hearing Panel:

Wade Nesmith, Chair, Michael Johnson and Richard Thomas

Appearances:

Lorne Herlin, Senior Enforcement Counsel

Robert Cooper, QC, for Sherman Roger Dahl

SETTLEMENT HEARING DECISION

¶ 1 This matter came before the Panel as a result of a Settlement Agreement (the “Agreement”) between Sherman Roger Dahl (“Dahl” or the “Respondent”) and the Investment Industry Regulatory Organization of Canada (“IIROC”). A copy of the Agreement is attached to this decision. The Panel heard submissions from Enforcement Counsel, Mr. Herlin and from Mr. Cooper, counsel for the Respondent. Following submissions on October 28, 2016, the Panel requested further submissions on penalty which were delivered on November 4, 2016, after which the panel approved the Agreement, with reasons to follow. These are the reasons.

¶ 2 The facts in this matter are not in dispute and are set out in the attached Agreement and will not be reproduced here in any detail. They involve Mr. Dahl’s actions in respect of 5 clients that resulted in breaches of IIROC Rules including Dealer Member Rule 1300.1(q) relating to suitability, Dealer Member Rules 29.1 and 1300.1(a) relating to failing to update account information after a material change in circumstances and Dealer Member Rule 1300.4 relating to unauthorized discretionary trading. These activities started in 2006 and stopped in 2014. Losses in the 2 accounts relating to the unsuitable recommendations totaled less than \$400,000. It is unclear whether there were any losses associated with the discretionary trading. The Panel was advised that a confidential settlement was reached with the clients involved in the suitability counts, to which Mr. Dahl contributed.

¶ 3 Mr. Dahl was first employed in the industry in 1993 and remained in the industry until 2016. Save for these incidents, his record appears unblemished. His focus for investment purposes was relatively high risk growth stocks.

¶ 4 The offences committed by Mr. Dahl highlight the essence of a registered representative's duty; i.e., to make suitable recommendations for a client in accordance with that individual client's objectives and risk tolerance, and to obtain instructions before implementing any trade on behalf of a client. These duties are of fundamental importance to this relationship and to the integrity of the markets and Mr. Dahl has admitted to failing to perform them.

¶ 5 Following submissions on October 28, 2016, the Panel was invited to approve the Agreement. While the Panel was in agreement with counsel on the majority of the terms in the Agreement, it raised questions concerning the term found in Paragraph 56(b) wherein Mr. Dahl agreed to a prohibition from applying for registration in any capacity with IIROC for a period of 12 months. In particular, the Panel pointed out that none of the cases submitted by Counsel in support of the Agreement referenced a term of suspension of greater than 6 months. In the result, the Panel invited Counsel to make further submissions regarding the matter of suspension and it was agreed that the Hearing would reconvene on November 4, 2016.

¶ 6 During the continuation of the Hearing on November 4, 2016, the Panel was provided with cases that reinforce the principle enunciated in *Re Milewski* [1999] I.D.A No. 17 (making it clear that a Panel should not interfere with a negotiated settlement unless it clearly falls outside a reasonable range of appropriateness), a principle clearly supported by the Panel, as well as several cases where periods of suspension for conduct bearing some similarity to Mr. Dahl's conduct resulted in suspensions of greater than 1 year. With those cases in hand, the Panel approved the Agreement.

¶ 7 When making his submissions in support of the Agreement and the period of suspension from registration, Mr. Cooper argued that in his view, there is a difference between a suspension imposed on a person currently registered (which has the effect of terminating employment in the industry, temporarily and sometimes permanently even if the suspension is for a relatively short period of time) and imposing a period of suspension from application for registration on a person who has already left the industry. His view appeared to be that in the former case, where even a short suspension could be catastrophic to a person's employment prospects, a panel should be more careful about issuing suspensions and when it feels a period of suspension is appropriate, it should consider shorter periods of time.

¶ 8 We invited Mr. Herlin to comment on this view. He indicated that when considering the appropriateness of a period of suspension, the position of Staff is that it makes no such distinction.

¶ 9 The issue raised is an interesting one, but it was not fully argued before the Panel. The Panel is aware of some of those decisions of other panels and securities commissions dealing with the need to take care when imposing a period of suspension on a registrant and the need to be cognizant of the effect of such a suspension on a particular registrant's circumstances. However, the issue does not need to be resolved in the context of this decision and we leave it to be dealt with by another panel at another time.

¶ 10 Accordingly, we approve the Agreement.

Dated at Vancouver, British Columbia this 6 day of February, 2017.

Wade Nesmith

Chair

Michael Johnson

Richard Thomas

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 the Respondent, Sherman Roger Dahl (Dahl).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff and Dahl 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, Dahl agrees with the facts as set out in Part III of this Settlement Agreement.

Overview

4. Dahl made recommendations for the investment accounts of his clients KA and RH which were not suitable for them given their personal and financial circumstances.
5. He failed to update the account information for his clients KA and VB when their personal and financial circumstances materially changed.
6. Dahl also engaged in discretionary trading in the accounts of his clients GE and LE, without the accounts having been approved and accepted as discretionary accounts.

Dahl's Registration History

7. Dahl first began working as a Registered Representative in 1993.
8. From 1993 to 2001, he was employed by Merrill Lynch Canada Inc. (Merrill Lynch).
9. In 2001, Dahl began working as a Registered Representative at the Vernon, British Columbia business location of National Bank Financial Ltd. (NBF).
10. In January 2015, Dahl began a leave of absence from NBF.
11. In June 2016, Dahl ceased being a Registered Representative.

Client – KA

12. Between January 2008 and February 2009, KA opened a cash account (the Cash Account), a Registered Retirement Savings (the RRSP Account) Account, and a Tax Free Savings Account (the TFSA) at NBF.
13. At all material times, Dahl was the Registered Representative who was responsible for the Cash Account, the RRSP Account, and the TFSA (collectively, the KA Accounts).
14. The New Client Application Form (NCAF) that KA completed in January 2008 and which applied to the KA Accounts indicated that:
 - she was 30 years old;
 - she did not have any dependents;
 - she was employed as a probation officer on a full time basis;
 - her investment knowledge was good;
 - her annual income was \$49,000;

- she had \$500,000 of liquid assets and \$280,000 of fixed assets; and
- her liabilities were \$140,000.

15. Further, the NCAF stated that KA's investment objectives were:

- Investment horizon 10 years or more
- Types of portfolio Maximum growth
- Risk factor Very high

16. Dahl never updated KA's NCAF.

Activity in the KA Accounts

17. In or around January 2008, KA deposited approximately \$270,000 into her account. KA had inherited the funds from her mother.

18. Dahl recommended that KA purchase shares of companies which had a relatively small market capitalization. At all material times most of the holdings in KA Accounts were in high risk securities.

19. In or around September 2010, KA lost her job due to ongoing health issues.

20. As result, KA frequently withdrew funds from the Cash Account in order to pay for her mortgage and other living expenses.

21. In February 2014, when her Cash Account could no longer support her withdrawals, KA began to de-register funds from the RRSP Account.

22. As detailed in the following table, due to both the decline in market value and her withdrawals, by December 2014 KA's Cash Account and TFSA Account were of negligible value:

Account	Value of Assets as of September 30, 2010	Total Deposits	Total Withdrawals	Value of Assets as of December 31, 2014
Cash Account	\$165,594	\$17,110	\$175,054	\$1,615
RRSP Account	\$27,734	\$41,757	\$12,087	\$23,706
TFSA	\$9,466	\$0	\$4,677	\$998

23. Dahl became aware that KA was not steadily employed and she advised him that she was taking active steps to locate new employment, however due in part to ongoing health issues, she was unable to obtain full time employment.

Unsuitable Recommendations in the KA Accounts

24. The purchase of high risk securities became unsuitable for KA when her personal and financial circumstances materially changed due to her health issues and her inability to obtain full time employment.

Failure to Update NCAF

25. KA's inability to obtain full-time employment and her ongoing health issues resulted in material changes to her personal and financial circumstances. Dahl should have updated KA's client account information, which he failed to do.

Client – RH

26. Beginning in 1996, RH and his wife opened investment accounts with Dahl at Merrill Lynch. At that time RH was 56 years of age and had recently retired from his employment as a cabinet maker.
27. In 2001, RH and his wife's investment accounts were transferred to NBF when Dahl began working there.
28. In or about December 2003, RH's wife died and RH became the owner of all the assets in the accounts at NBF which had been in his wife's name.
29. In 2006, RH obtained a loan, secured by a mortgage on his home in the amount of approximately \$198,000. Certain of the proceeds were used to pay off certain credit card debts.
30. RH deposited the remaining loan proceeds into his investment accounts with NBF.
31. By 2007, RH had the following investment accounts at NBF:
 - a margin account (the Margin Account);
 - a Registered Retirement Investment Fund account (the RIF Account); and
 - a Registered Education Savings Plan Account (the RESP Account) which had 4 designated beneficiaries (collectively, the RH Accounts).
32. The client information update which RH completed in April 2007 and which applied to the RH Accounts indicated that:
 - he was 66 years old;
 - he did not have any dependents;
 - he was retired;
 - his investment knowledge was excellent;
 - his annual income was \$50,000; and
 - he had \$780,000 of liquid assets and \$600,000 of fixed assets.
33. RH's annual income was derived from his pensions and all of his liquid assets were held in his accounts at NBF.
34. Further, RH's client information update stated that his investment objectives were:
 - Investment horizon 10 years or more
 - Types of portfolio Maximum growth
 - Risk factor Very high
35. RH's actual investment knowledge was limited.

Activity in the RH Accounts

36. Dahl recommended that RH purchase shares of companies which had a relatively small market capitalization. At all material times most of the holdings in RH Accounts were in high risk securities.
37. RH withdrew a significant amount of funds from the RH Accounts on a regular basis. These withdrawals included funds which he de-registered from the RESP Account.
As set out in the following chart, due to the decline in the market value and withdrawals, by April 2013 RH's Margin Account and the RESP Account were of negligible value:

Account	Value of Assets as of April 30, 2007	Deposits	Withdrawals	Value of Assets as of April 30, 2013
Margin Account	\$281,712	\$164,525	\$327,563	\$2,321
RESP Account	\$93,199	\$5.00	\$41,301	\$845
RIF Account	\$408,525	\$0	\$127,285	\$114,375

38. In May 2013, RH closed the RH Accounts.

Unsuitable Recommendations in RH Accounts

39. Dahl failed to adequately disclose to RH the attributes of certain recommended investments, in light of RH's actual investment knowledge.

40. The purchase of certain high risk securities was not suitable for RH in his circumstances taking into account his actual level of investment knowledge, his financial circumstances, and the fact that he used borrowed funds to invest.

Client – VB

41. VB was referred to Dahl by a former work colleague of her husband RB. At that time, VB was working and RB had recently retired.

42. VB and RB were not pleased with the performance of their investment accounts which were at another firm. VB wanted to use their investments for travel and for other expenses that she anticipated incurring during their retirement years.

43. On June 23, 2005, VB and RB opened the following accounts at NBF:

- a Registered Retirement Savings Plan account in the name of VB;
- a Registered Retirement Investment Fund account in the name of RB (the RB RIF Account); and
- a joint account in the name of VB and RB.

44. In 2008 VB retired.

45. In 2012, RB became ill. VB arranged a meeting with Dahl to advise him of these circumstances. No changes were made to RB's and VB's account documentation after that meeting.

46. In July 2013, RB died. Shortly, thereafter Dahl became aware of RB's death.

47. Following the death of RB, the RB RIF Account experienced loss and volatility.

Failure to Update VB's Account Information

48. The death of RB was a material change of VB's personal and financial circumstances. Therefore, Dahl should have updated VB's client account information, which he failed to do.

Clients – GE & LE

49. GE and LE are married. They were referred to Dahl by a friend.

50. In 2005, they each opened investment accounts with Dahl (the E Accounts).

51. At no point did Dahl obtain written authorization for discretionary trading from GE and LE, and the E

Accounts were never designated and approved as discretionary by NBF.

52. When GE and LE were away from Canada on holiday, Dahl placed the following nine orders for the E Accounts:

Transaction Date	Order	Quantity	Security	Proceeds/ Cost
January 19, 2011	Buy	33,000	Channel Resources Ltd	\$10,147.50
January 19 2011	Sell	3800	Pediment Gold Corp	\$10,495.90
April 27, 2011	Buy	15,000	Channel Resources Ltd.	\$4,431.58
February 21, 2012	Buy	11,000	Ethos Capital Corp	\$10,147.50
February 21, 2012	Buy	16000	Ethos Capital	\$14,745.60
February 21, 2012	Buy	1,500	Noranda Income Fund Trust Units	\$8,688.30
February 23, 2012	Sell	10,000	Northern Graphite Corp	\$20,028.50
February 28, 2012	Buy	65,000	Cedar Mountain Exploration Inc.	\$13,189.12
February 28, 2012	Buy	1,500	Noranda Income Fund Trust Units	\$8,677.05

53. Dahl used his discretion with respect to the type of security, quantity, price, and/or timing of these nine orders.

PART IV – CONTRAVENTIONS

54. By engaging in the conduct described above, Dahl committed the following contraventions of IIROC's Rules:
- Between July 2011 and December 2014, Dahl failed to use due diligence to ensure that the recommendations that he made for the accounts of his client KA were suitable for her, contrary to Dealer Member Rule 1300.1(q).
 - Between July 2011 and December 2014, Dahl failed to update the account information of his client KA after her personal and financial circumstances materially changed, contrary to Dealer Member Rules 29.1 and 1300.1(a).
 - Between September 2006 and May 2013, Dahl failed to use due diligence to ensure that the recommendations that he made for the accounts of his client RH were suitable for him, contrary to Dealer Member Rule 1300.1(q).
 - Between July 2013 and December 2014, Dahl failed to update the account information of his client VB after her personal and financial circumstances materially changed, contrary to Dealer Member Rules 29.1 and 1300.1(a).
 - Between January 2011 and February 2012, Dahl engaged in discretionary trading in the accounts of his clients GE and LE, without the accounts having been approved and accepted as discretionary accounts, contrary to Dealer Member Rule 1300.4.

PART V – TERMS OF SETTLEMENT

55. Dahl agrees to the following sanctions and costs:
- payment of a \$35,000 fine;

- b) a prohibition from applying for registration in any capacity with IIROC for a period of 12 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.
56. If this Settlement Agreement is accepted by the Hearing Panel, Dahl agrees to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and Dahl.

PART VI – STAFF COMMITMENT

57. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against Dahl 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 59 below.
58. If the Hearing Panel accepts this Settlement Agreement and Dahl fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against Dahl. 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

59. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
60. 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.
61. Staff and Dahl 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 Dahl does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.
62. If the Hearing Panel accepts the Settlement Agreement, Dahl agrees to waive all rights under the IIROC Rules and any applicable legislation to any further hearing, appeal and review.
63. If the Hearing Panel rejects the Settlement Agreement, Staff and Dahl may enter into another settlement agreement or Staff may proceed to a disciplinary hearing based on the same or related allegations.
64. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
65. 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.
66. If this Settlement Agreement is accepted, Dahl agrees that neither he nor anyone on his behalf, will make a public statement inconsistent with this Settlement Agreement.
67. The Settlement Agreement is effective and binding upon Dahl and Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 12th day of October 2016.

“Witness”

Witness

“S. Dahl”

Sherman Roger Dahl

DATED this 19th day of October 2016.

“C. Hewitt”

Witness

“L. 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 4th day of November 2016 by the following Hearing Panel:

Per: “Wade Nesmith”

Panel Chair

Per: “Richard Thomas”

Panel Member

Per: “Michael Johnson”

Panel Member

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