

Re Coccimiglio

IN THE MATTER OF:

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

and

Francesco Coccimiglio

2019 IIROC 27

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

Heard: October 8, 2019

Decision: October 8, 2019

Reasons for Decision: November 7, 2019

Hearing Panel:

Deborah Ansell, Chair, Tim Pryor and Zahra Bhutani, Panel Members

Appearance:

April Engelberg, Enforcement Counsel

Ellen Bessner for Francesco Coccimiglio

Francesco Coccimiglio (Present)

REASONS FOR DECISION

¶ 1 On August 15, 2019, IIROC Enforcement Staff and the Respondent signed a Settlement Agreement regarding facts in respect of which the Hearing Panel could impose disciplinary sanctions on the Respondent.

¶ 2 The issue is whether the Panel should accept or reject the proposed settlement.

¶ 3 The contraventions alleged by IIROC, and admitted to by the Respondent in the Settlement Agreement, attached to this Decision to form an integral part hereof, are as follows:

Between September 2017 and March 2018, the Respondent engaged in personal financial dealings with a client, contrary to Dealer Member Rule 43.

¶ 4 A summary of the agreed facts, set out in detail in the attached Settlement Agreement, includes:

(a) The Respondent became Registered Representative for a client JP in July 2012 and developed a relationship with him;

(b) The Respondent transferred JP's account in June 2017 from his responsibility to TD Waterhouse

Canada (“TDW”) Inc.’s direct investing brokerage in order to become JP’s Power of Attorney for Personal Care and for Property;

(c) After JP was no longer the Respondent’s Registered Representative, the Respondent borrowed \$200,000 interest-free from JP;

(d) The Respondent assisted JP with transferring the funds from JP’s direct investing account to JP’s bank account, from which JP wrote a cheque to the Respondent;

(e) The Respondent did not disclose the Power of Attorney or the loan to his Dealer Member;

(f) JP became uncomfortable with the Power of Attorney, which he revoked on January 20, 2018. The Respondent repaid the loan in full on March 1, 2018.

¶ 5 The agreed penalties were:

(a) Fine of \$25,000;

(b) Costs of \$1000.

¶ 6 If the Settlement Agreement was accepted by the Hearing Panel, the Respondent agreed to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and the Respondent.

¶ 7 The Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement. First, the agreed penalties had to be within an acceptable range taking into account similar cases. Second, the agreed penalties had to be fair and reasonable. Third, the agreed penalties should serve as a deterrent to the respondent and to the industry, *Re Donnelly* 2016 IIROC 23.

¶ 8 We reviewed six precedent cases submitted by Enforcement Counsel and compared the agreed penalties in the Settlement Agreement with the types of settlements presented in those cases. We also reviewed the facts and circumstances of this particular Settlement Agreement before us. Further, we reviewed Part II of the IIROC Sanction Guidelines that sets forth the key factors to consider when determining appropriate sanctions.

¶ 9 We concluded that the agreed penalties were within an acceptable range based, on precedents. Further, the settlement would serve as a specific and general deterrent. Finally, the settlement is fair and reasonable. Therefore, we accepted it.

Dated at Toronto, Ontario this 7 day of November 2019.

Deborah Anshell

Tim Pryor

Zahra Bhutani

SETTLEMENT AGREEMENT

PART 1 – 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 Francesco Coccimiglio (“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. This matter involves the Respondent’s conduct in relation to JP, who was at all material times a client of TD Waterhouse Canada Inc. (“TDW”). The Respondent became JP’s Registered Representative in July 2012.
5. The Respondent transferred JP’s account in June 2017 from his responsibility to TDW’s direct investing brokerage in order to become JP’s Power of Attorney for Personal Care and for Property. Once JP was no longer the Respondent’s Registered Representative, the Respondent borrowed \$200,000, interest-free, from JP. The Respondent assisted JP with transferring the funds from JP’s direct investing account to JP’s bank account, from which JP wrote a cheque to the Respondent. The Respondent did not disclose the Power of Attorney or the loan to his Dealer Member.
6. JP became uncomfortable with the Power of Attorney, which he revoked on January 20, 2018. The Respondent repaid the loan in full on March 1, 2018.

Background

7. The Respondent was a Registered Representative at TDW from 2007 until his resignation on April 30, 2018. The Respondent is currently employed as a Registered Representative at Hampton Securities Limited.

Respondent’s Relationship with JP

8. JP is 85 years old with liquid assets of \$1.6 million. His investment knowledge is limited regarding securities. He is estranged from his family and has health issues. He does not use a computer or email.
9. The Respondent became JP’s Registered Representative in 2012 and developed a relationship with him. The Respondent spoke to JP a couple of times each week, took him to doctor’s appointments and assisted him with errands. According to JP, the Respondent was “like a son” to him.

The Respondent Transfers JP’s Account from TDW to TD Direct Investing

10. JP’s doctors had asked him to obtain a Power of Attorney (“POA”). JP, in turn, asked the Respondent to become his POA.
11. In the spring of 2017, the Respondent asked his Branch Manager about becoming a client’s POA. According to the Respondent, the Branch Manager advised that he could become a POA if the client moved to another advisor, moved to TD Direct Investing (“TDDI”), or moved to a TD Bank branch. The

Branch Manager recalls the discussion but denies giving advice, instead asserting that the Respondent never sought or obtained any further advice from her with respect to transferring JP's account.

12. In May 2017, the Respondent assisted JP with the transfer of his TDW account to a new account at TDDI by arranging the necessary documentation for JP to sign. JP signed the forms for TDDI and understood that the Respondent would no longer be his advisor. JP asserts that he did not understand that he was opening a new account.
13. In June 2017, JP's securities positions at TDW were transferred to TDDI.

Respondent Becomes JP's Power of Attorney

14. In July 2017, JP asked the Respondent to assist in completing the POA forms, making the Respondent both his POA for both Personal Care and for Property.

Respondent Borrows \$200,000 from JP

15. In September 2017, the Respondent was in the process of renovating his house, for which he had arranged a line of credit. To assist with the renovations, JP offered to loan the Respondent \$200,000 with no interest.
16. On September 30, 2017, the Respondent signed a promissory note with the terms of the loan: \$200,000 with no interest, payable in a year.
17. On October 3, 2017, the Respondent and JP together phoned TDDI to arrange a transfer of \$200,000 from JP's TDDI account to JP's TD bank account. In the recorded conversation, the Respondent identified himself by name and his TDW "log on" ID and said: "I'm with TD Private Investing Advice. I'm with a client who has a Direct Investing Account." The Respondent provided JP's account number and name. A representative from TDDI spoke directly to JP to confirm that JP understood that his securities would be sold in order to transfer the funds to JP's TD bank account.
18. On October 5, 2017, JP signed a cheque for \$200,000 payable to the Respondent and his wife. The cheque was cleared on October 10, 2017.

Termination of the POAs and Repayment of the Loan

19. JP told his neighbour about the loan and the POAs and the neighbour expressed concern about the arrangement. JP became uncomfortable with the loan and the POA. On January 20, 2018, JP revoked the POA with the assistance of a lawyer. The Respondent had never used the POA.
20. In late February 2018, JP advised the Respondent that he was no longer comfortable with the loan. The Respondent repaid the \$200,000 loan in full through a bank draft on March 1, 2018.

PART IV - CONTRAVENTIONS

21. By engaging in the conduct described above, the Respondent committed the following contraventions of IIROC's Rules:
 - (i) Between September 2017 and March 2018, the Respondent engaged in personal financial dealings with a client, contrary to Dealer Member Rule 43.

PART V – TERMS OF SETTLEMENT

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

- a) A fine in the amount of \$25,000; and
 - b) Costs in the amount of \$1,000.
23. 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

24. 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.
25. 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

26. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
27. 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.
28. 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.
29. 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.
30. 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.
31. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
32. 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.
33. 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.
34. 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

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

DATED this "15th" day of "August", 2019.

"Witness"

Witness

"Francesco Coccimiglio"

Francesco Coccimiglio

"Ricki Newmarch"

Witness

"April Engelberg"

April Engelberg

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

The Settlement Agreement is hereby accepted this "8th" day of "October", 2019 by the following Hearing Panel:

Per: "Deborah Anshell"

Panel Chair

Per: "Zahra Bhutani"

Panel Member

Per: "Tim Pryor"

Panel Member

Copyright © 2019 Investment Industry Regulatory Organization of Canada. All Rights Reserved