Re Faber

IN THE MATTER OF:

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

and

Kathryn Faber

2014 IIROC 14

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

Heard: February 26, 2014 at Toronto, Ontario
Decision: March 26, 2014

Hearing Panel:
Edward T. McDermott, Chair, Debbie Archer and Guenther W.K. Kleberg
Appearances:
Kathryn Andrews, Senior Enforcement Counsel
Johanna Braden, Counsel for Kathryn Faber

REASONS FOR DECISION

INTRODUCTION

¶ 1 This Hearing Panel was constituted pursuant to Part 10 of Dealer Member Rule 20 and Section 1.9 of Schedule C.1 to Transition Rule No. 1 of the Investment Industry Regulatory Organization of Canada ("IIROC").

¶ 2 The purpose of this hearing was to determine whether the Hearing Panel was prepared to accept or reject the terms of a Settlement Agreement which had been entered into by IIROC and the Respondent Kathryn Faber pursuant to a written agreement dated February 6, 2014, a copy of which, for ease of reference, is attached as a schedule to these Reasons for Decision.

¶ 3 Upon receiving this document the Hearing Panel satisfied itself that the terms of the Settlement Agreement contained all of the requirements as set forth in Rule 14.1 of IIROC's *Rules of Practice and Procedure* which provides as follows:

> **14.1 Contents of Settlement Agreements**
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> A Settlement Agreement pursuant to Dealer Member Rule 20.35 shall be in writing, signed by or on behalf of the parties and contain:
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> (a) a statement of the violations admitted to by the Respondent with reference to specific Dealer Member Rules, or any applicable statutory provisions;
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> (b) a statement of the relevant facts;
>
> (c) a statement of the penalties and costs to be imposed upon the Respondent;
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> (d) a statement that the Respondent waives all rights to any further hearing, appeal and review;

(e) a statement that the Settlement Agreement is conditional upon the acceptance of the Hearing Panel; and

(f) such other matters not inconsistent with subsections (a) to (e).

¶ 4 The terms of the Settlement Agreement contained an admission on the part of the Respondent that she had contravened the provisions of IIROC Dealer Member Rule 29.1 by forging client signatures on various account documentation for three clients thereby engaging in conduct unbecoming or detrimental to the public interest. Dealer Member Rule 29.1 provides as follows:

> 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.

¶ 5 The penalties which have been agreed to under the terms of the Settlement Agreement and which counsel for IIROC and the Respondent submit should be accepted by this Hearing Panel are as follows:

(a) A fine in the amount of $15,000;

(b) Suspension of the Respondent from registration with IIROC in any capacity for a period of two months; and

(c) The Respondent is to re-write the CPH examination within six months following any return to the Industry.

¶ 6 In addition the Respondent has agreed to pay costs to IIROC in the amount of $1,000.

¶ 7 The Hearing Panel received and gave careful consideration to the Settlement Agreement and the submissions of the parties in support of accepting such an agreement. At the conclusion of the hearing, the Panel recessed the hearing in order that it could deliberate on the information and submissions that had been made to it. The Hearing Panel subsequently advised the parties that it was prepared to accept the Settlement Agreement on the terms proposed and proceeded to execute and record its acceptance of such agreement with the reasons for this decision to be subsequently delivered to the parties in writing.

¶ 8 The following accordingly constitutes the reasons for such decision of this Hearing Panel which led it to conclude that the Settlement Agreement provided an appropriate response in the circumstances of this case to the contravention of the Dealer Member Rules to which the Respondent has admitted guilt.

THE ROLE OF THE HEARING PANEL

¶ 9 Under the provisions of IIROC's Rule 20.36, it is open to this Hearing Panel to either accept or reject the Settlement Agreement tendered upon us by the parties. It is not a question of whether the agreed-upon penalties are ones which this Panel would have imposed had the matter come before us for determination at a hearing. It is also not open to us to amend, re-write or alter the terms of the agreement reached between the parties.

¶ 10 It is however our fundamental responsibility to be satisfied that the penalties set forth in the agreement are within a reasonable range of appropriateness in the circumstances set forth in the agreed-upon statement of facts.

¶ 11 The following excerpts from previously decided cases as recorded in the decision of *Re Ast* (2012 IIROC 38) set forth the parameters of the Hearing Panel's decision making processes when reviewing a Settlement Agreement presented to us by the parties to the dispute:

> **Standard for Reviewing a Settlement Agreement**
>
> **13** The standard for reviewing a Settlement Agreement was well-stated in a recent Pacific District hearing, Re Johnson (2012 IIROC 19), where the panel stated:
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> > 'The test applicable to a decision whether to accept or reject a settlement is well-known. Simply put, a panel should accept such an agreement unless it considers the penalty provided for clearly to fall outside a reasonable range of appropriateness.'
>
> **14** There are many similar statements. See, for example, Re Jiwa and Hoffar (2012 IIROC 9), which adopted an earlier IDA decision, stating: 'It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.' Another recent example is Re Trapeze Capital (2012 IIROC 25), where the panel states:
>
> > 'It is clear from jurisprudence emanating from the courts and from Hearing Panels of IIROC, Investment Dealers Association and the Mutual Fund Dealers Association, that our task is not to decide whether, in this case, we would have arrived at the same decision as that reached by the parties. Rather, our duty is to determine whether the penalty is a reasonable one and that it meets the objectives of the disciplinary process which are to maintain the integrity of the investment industry.'
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> **15** And, finally, see the statement in Re Rotstein and Zackheim (2012 IIROC 27):
>
> > 'Based upon this material it is our responsibility to review the agreement in order to satisfy ourselves that it falls within a reasonable range of appropriateness to the offence and circumstances recorded in the agreement and that there is nothing in the agreement which would be contrary to the public interest or bring the administration of the Rules of IIROC into public disrepute. If we are satisfied that the Settlement Agreement does not offend these principles then it should be accepted.'

¶ 12 This Hearing Panel endorses and adopts the above noted standard for review of the penalty arrived at in a Settlement Agreement between the parties. It is accordingly in light of this regulatory and jurisprudential framework that this Hearing Panel conducted a thorough review of the Settlement Agreement placed before us in this matter and determined that the agreement should be accepted.

THE CONTRAVENTION

¶ 13 As can be seen from the facts set forth in the attached Settlement Agreement, the essence of this offence was that the Respondent, a Registered Representative at TD Waterhouse Canada Inc. ("TDW"), had been advising a family of clients since July 2009. At that time she recommended that the clients purchase Class A Units of Sun Wise Elite Plus Segregated Funds ("Class A Units"). The clients wished to have these units held in their Registered Accounts but the funds had not yet arrived at TDW from their previous Registered Representative to enable them to do this.

¶ 14 The Class A Units were an insurance product distributed by CI Investments ("CI") and had a 100% guarantee feature which was being discontinued by CI at the end of July 2009. The Respondent indicated that she checked with CI prior to purchasing the Class A Units and was advised that she could purchase them through the Non-Registered Accounts of her clients (which had sufficient funding to do so) and then swap them later when the funds arrived in their Registered Accounts. The Respondent then proceeded (in July 2009) to purchase the units in the Non-Registered Accounts with the intention of swapping them into the clients' Registered Accounts when there was sufficient funding to do so .

¶ 15 Subsequently when the money did arrive in March 2010 she attempted to swap the Class A Units into the Registered Accounts for cash. The Class A Units were in fact transferred to the RRSP Accounts and the required funds from the Registered Accounts were disbursed to the Non-Registered Accounts as well as various bank accounts of the clients.

¶ 16 CI however, then refused to process the swap and took the position that swap transactions were not allowed with segregated funds including in particular these Class A units. Any transfer of assets to the Registered Accounts would accordingly constitute a new purchase which was not permitted in light of the deadline of July 31, 2009 which had been imposed upon any further sales of these units.

¶ 17 In April 2010 however CI presented an option whereby the Respondent's clients could sell their Class A Units (presumably without reversing the swap) and purchase a new Class B policy in the Registered Accounts although the Class B Units did not contain some of the more favourable attributes of the Class A Units (i.e., a principal guarantee of only 75% compared to the 100% guarantee enjoyed by the Class A Units).

¶ 18 The Respondent was also aware that the records at TDW showed that the Class A Units were being held in the clients' Registered Accounts whereas the records of CI showed them in the clients' Non-Registered Accounts as CI had refused to process the original swap. She knew that if TDW proceeded to reconcile its records to those of CI (by reversing the original swap) the Respondent's clients would then be in an overdraft position in their Non-Registered Accounts.

¶ 19 The Respondent did discuss these difficult circumstances with the clients and presented to them the various options available, including returning the Class A Units to the Non-Registered Accounts and transferring funds to the RRSPs thereby creating an overdraft in the Non-Registered Accounts or (following the option suggested by CI) selling the Class A Units in the Registered Accounts and purchasing Class B Units in those Accounts.

¶ 20 After the Respondent was unable to move CI from its position, the clients ultimately selected the latter option proposed by CI which had apparently agreed that everything was to be backdated to March 2010 (the date of the original purported swap). CI had also agreed with the Respondent that the clients would not be charged any DSC fees.

¶ 21 In order to effect the transactions however, CI advised the Respondent that the clients would have to sign new TDW and CI account documentation including an Indemnity Agreement in favour of CI. While the documentation was partially completed in late July or early August 2010, the documentation relative to the purchase and sale transactions had not been finalized and nor had the Indemnity Agreement.

¶ 22 The facts recorded in the Settlement Agreement indicate that the Respondent met with the clients at or about that time and that the clients wished to sign the documentation then available but the Respondent suggested they wait until all of the paperwork was complete.

¶ 23 In the meantime the Respondent had (since April 2010) been engaged in discussions with TDW's Segregated Funds department which was advising her that they were also not able to process the original swaps which would therefore have to be reversed in order to reconcile with CI's records. The Respondent was attempting to persuade TDW to structure the transactions so as avoid a situation where the clients' Non-Registered Accounts would be placed in an overdraft position as a result of reversing the original swap transactions from March 2010.

¶ 24 In August 2010 however, TDW proceeded to effect the reversals which had the result of placing the Non-Registered Accounts into an overdraft position. TDW's internal policies required such debits to be covered by a sell out once the debits were outstanding for two weeks. The Respondent attempted to contact the clients on several occasions during this period and left messages for them advising them of this situation as well as attempting to arrange for them to sign the required new account documentation and Indemnity Agreement. Unfortunately they did not respond to these calls.

¶ 25 While the Respondent was able to delay any sell out action by TDW for a period of time, she was still unable to contact the clients and ultimately she was advised by TDW that it could not wait any longer to move

to cover the outstanding debits in the Non-Registered Accounts.

¶ 26 Faced with this situation and in an attempt to avoid TDW selling the Class A Units to cover the overdraft in the Non-Registered Accounts, the Respondent then signed the clients' names to the various account documents set forth in paragraph 31 of the Settlement Agreement and asked her assistant to process the documents so that TDW would not sell the Class A Units.

¶ 27 With the consent of the parties, we were then advised that two days later TDW discovered the fact that the clients had not signed the required documentation and confronted the Respondent who immediately acknowledged and admitted her guilt. Shortly thereafter the Respondent was able to contact the clients who affixed their signatures to the documents within the next few days.

¶ 28 The Respondent was terminated by TDW in September 2010 and has not worked as an IIROC registrant since that time (a period of over three and one-half years).

THE NATURE OF THE OFFENCE

¶ 29 There can be no question that forgery is a very serious contravention of the provisions of Rule 29.1 as such actions create risks for the clients and the Dealer Member and brings the reputation and integrity of the capital markets into disrepute.

¶ 30 The preamble to the Dealer Member Disciplinary Sanction Guidelines published by IIROC Staff underlines the seriousness with which IIROC (and this Hearing Panel) view the offence of forgery. That passage provides as follows:

> The following principles and rules are proposed to provide a framework for assessing the gravity of a particular breach of the Dealer Member Rules, and help to determine which sanction(s) is reasonable in the circumstances.
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> …
>
> **Forgery, Dealer Member Rule 29.1**
>
> Forgery is the creation of a false document with the intent that it be acted upon as the original or genuine document.
>
> Forgery is always a serious regulatory matter because it shows that the Respondent lacks the honesty required of a professional in the securities industry. The trust and confidence between the registrant and the client is very often destroyed by the deceptive conduct on the part of the registrant. Forgery harms the Dealer Member firm as well. As a result, forgery often attracts severe sanctions. While there is no such thing as a 'minor case' of forgery, Hearing Panels may distinguish between more and less egregious examples of forgery.

¶ 31 While these Guidelines are not binding on a Hearing Panel, we are of the view that acts of forgery will generally command a strong disciplinary response in order to act as a deterrent to this Respondent and to others who might engage in a similar form of misconduct. We are also however cognizant of the fact that different circumstances may mandate different responses depending upon the existence of any aggravating or mitigating factors.

¶ 32 It is against this backdrop that this Hearing Panel has considered the agreed upon penalty in light of the particular circumstances of this matter.

MITIGATING FACTORS

¶ 33 This Hearing Panel was advised by both counsel through the terms of the Settlement Agreement of a number of factors which in our view serve to ameliorate the penalty which might otherwise be imposed on the Respondent.

¶ 34 These factors include the following:

(a) The Respondent has been engaged as a Registered Representative since 1995 (a span of 15½

years) prior to her termination by TDW. During that time she had no prior disciplinary record.

(b) While the misconduct involved three separate clients, they were members of a related family and the forged transactions occurred all at the same time and for the same reasons. It was not therefore conduct which was repeated over an extended period of time.

(c) When first confronted by TDW regarding the forgery, the Respondent immediately admitted the conduct, acknowledged it was wrong and was forthright in her responses to TDW.

(d) The Respondent provided her complete cooperation to IIROC in the investigation and prosecution of this matter.

(e) Of some significance is the fact that the Respondent did not embark upon this misconduct for personal gain nor did she receive any. Her sole motive was to assist her clients in order that they would not have the holdings in their Non-Registered Accounts sold by reason of the overdraft position which had been created for them without their knowledge.

(f) The clients had, in fact, prior to the creation of the forged documents, been quite willing to sign the required documentation to effect the solution that they had agreed upon with the Respondent. In addition, immediately after the Respondent was confronted by TDW, she was able to successfully contact the clients who were quite willing and in fact did execute new documentation under their own signature. There was accordingly no loss or detriment to the clients as a result of the Respondent's actions and no complaint was filed about her by the clients.

(g) As a result of her actions, the Respondent was, in September 2010, terminated from her employment with TDW. While she initially tried to obtain another position in the Industry she was unable to do so. She has accordingly not worked as an IIROC registrant since the time of her termination and has in fact (as we were advised with the consent of both counsel at the hearing) been out of the Industry for over three and one-half years.

(h) While the Settlement Agreement does not specifically reference whether or not the Respondent expressed remorse for her actions, during the course of the hearing and with the consent of both counsel, we were advised that she was fully and completely remorseful. The Respondent attended the hearing and the Panel is satisfied that the Respondent acknowledges and sincerely regrets her misconduct and realizes the risks it created for her clients, Dealer Member and the Capital Markets.

¶ 35 Aside from the serious nature of the offence itself, this Hearing Panel is not aware of any aggravating factors which might counterbalance or override the mitigating factors set forth above.

COMPARABLE DECISIONS

¶ 36 Senior Enforcement Counsel presented the Hearing Panel with a number of comparable decisions all of which we have carefully reviewed. As counsel submitted, these cases reflect the fact that while forgery is always regarded as a serious offence, in assessing the reasonableness of the penalty agreed upon, the Hearing Panel may distinguish between more or less egregious examples of forgery.

¶ 37 In our view, the case of *Re Gee* [2004] IDACD No. 58, is particularly relevant to the instant proceeding. In that case the Hearing Panel noted that the Sanction Guidelines recommended a minimum fine of $25,000 for forgery. The Panel however was persuaded that in the context of the circumstances of that case such a fine was inappropriate and accordingly issued a $5,000 fine in the following terms:

> **6** The Disciplinary Sanctions Guidelines approved by the Association in January 2003 (the 'Guidelines') expressly consider forgery to be a violation of Association Bylaw 29.1 which (i) mandates the observance of 'high standards of ethics and conduct' in the transaction of business and (ii) enjoins business conduct or practice that is unbecoming or detrimental to the public interest.

7 Forgery is inconsistent with high standards of ethics and conduct, and is unbecoming or detrimental to the public interest. It is reprehensible and cannot be condoned. Even if the guidelines did not specifically address the subject we would hold the same view. Nothing that we say is intended to qualify that view in any way.

8 The Guidelines suggest a minimum fine for forgery of $25,000.

9 The Preamble to the Guidelines indicates that the suggested minimum fines are 'intended to establish the 'baseline' fine for specific offences - in other words, the lowest fine that can be expected by a respondent where there are no aggravating factors and all mitigating factors have already been taken into account.' The Preamble makes it clear, however, that notwithstanding the Guidelines, 'a lesser or greater penalty' may be appropriately imposed where the circumstances justify this.

10 Several considerations have led us to the conclusion that a fine of $25,000 is not appropriate in this case. They include:

(a) Mr. Gee made several attempts to get things right before resorting to the forgery. The agreed facts do not make it clear why on two occasions Mr. Gee's client was sent the wrong version of the document. The nature of the document suggests, however, that it is not of a kind that a registered representative would ordinarily be familiar with and that some administrative assistance and support from the employer would have been required. If that is correct, it would seem that Mr. Gee may not have received the necessary assistance, though we are not in a position to make a finding about this.

(b) Mr. Gee neither sought nor obtained any advantage (except possibly avoiding being thought 'an incompetent professional') through forging his client's signature on the document.

(c) Mr. Gee's client suffered no detriment from the forgery.

(d) Mr. Gee's client had clearly indicated his wish, intention and willingness to sign a document that accomplished what the document forged by Mr. Gee was intended to accomplish.

(e) Mr. Gee moved quickly to repair what he had done [1] (though we note that he did not move quite as quickly to inform his employer what had happened).

11 The premise of the $25,000 minimum fine provided for in the Guidelines is that forgery demonstrates a 'lack of honesty', is deceptive and frequently destructive of trust and confidence. Mr. Gee clearly wanted to complete the transfer of his client's locked-in RRSP on a timely basis and administrative confusion involved in the selection of the appropriate form had already delayed the transfer by almost 3 months. He chose a bad solution to the problem. While we do not disagree with the description of Mr. Gee's act as 'dishonest' we think that its more salient characteristic, given all of the circumstances, is that it represented an appalling lapse of judgment.

12 Mr. Gee has suffered heavily for that lapse. He was fired by his employer, and so far, and not surprisingly, has been unable to find employment in the securities industry, his occupation of choice. His 'record' is obviously going to make it more difficult for him to find gainful employment in another occupation.

13 It is for these reasons that we concluded that in all the circumstances a fine of $5,000 is more appropriate, both to Mr. Gee and as a matter of general deterrence.

¶ 38 Similarly, in the case of *Re De Long* [2005] IDACD No. 39, the Hearing Panel accepted a fine of $10,000 for an act of forgery of a signature to a client transfer form on the following basis:

8 In assessing the appropriateness of the Settlement Agreement, we are also mindful that

Guideline 1.2 recommends a 'minimum of $25,000' fine for individual registrants, together with 'in most cases a permanent ban on approval' or 'if mitigating circumstances exist, consider suspension for 3 months to 10 years'. While the penalties jointly recommended pursuant to this Settlement are significantly less than the 'minimum' provided for in the guidelines, we agree with the Reasons for Decision in Re Bell [2005] I.D.A.C.D. No. 3417 at page 9:

> 'Particularly we consider Guideline 1.2 dealing with forgery. It recommends a minimum fine of $25,000 for individual registrants and also says that in most cases a permanent ban on approval will be appropriate, but that if mitigating circumstances exist, panels should consider suspension for 3 months to 10 years. The Guidelines do not fetter the discretion of a panel to impose a lesser or greater penalty in specific circumstances. Although the $5,000 fine imposed in Re Gee is less than the minimum fine recommended by the Guidelines, the Respondent there had already endured the equivalent of a 14 month suspension by the time the fine was imposed. Bearing that in mind, we view the penalties imposed in Re Gee as generally consistent with Guideline 1.2.'

9 We further agree with the following excerpt from Re Bell at page 8:

> 'Forgery is always serious because it is unequivocally condemned because it is fundamentally dishonest and dangerous. Any act of forgery is a step onto a steep and slippery slope of deception that is always potentially harmful to clients and actually harmful to the Member firm and the securities industry as a whole. While there is no such thing as a 'minor case' of forgery, we can distinguish between more and less egregious examples of forgery.'

10 In this particular case in accepting the joint recommendation of the parties we consider the facts to be indicative of a 'less egregious' instance of forgery. The act of forgery here was committed out of frustration with the intent of assisting the client and with no thought of unjust enrichment or financial benefit by or to the Respondent De Long. The Respondent here readily accepted his responsibility for the act and cooperated during the investigation and prosecution of this matter. The Respondent has no disciplinary history and has operated under close supervision for the past 18 months at his member firm and has suffered a financial setback of approximately $80,000 of lost revenue as a result of his actions. He has admitted to the inappropriateness of his conduct and has expressed remorse regarding any negative impact his conduct may have had upon the reputation of Canaccord and its business relationship with its trustee.

11 Other than the act of forgery which, as stated, is always serious, there are no aggravating factors to be considered. All of the other circumstances surrounding the acts complained of and the circumstances in relation to the Respondent himself are mitigating. In these circumstances we accept that the penalties provided for in the Settlement Agreement adequately address both the concerns expressed by the previous panel and Guideline 1.2.

¶ 39 In addition, in the case of *Re Dickson* [2013] IIROC 53, an Ontario District Hearing Panel recently accepted a Settlement Agreement involving forgery, with a number of the same mitigating factors present in this case and approved a fine in the amount of $7,500 plus a six month suspension.

¶ 40 It is to be noted that in a number of these cases, the Hearing Panels have had regard to the fact that the Respondents lost their jobs as a result of their misconduct and were out of the securities industry for a considerable period of time. This was the situation in both *Re Gee* (14 months as at time of hearing) and *Re Dickson* (also 14 months). We note that in the context of this particular case, the Respondent has already been removed from the Industry for over three and a half years which is certainly a considerable period of time.

CONCLUSION

¶ 41 In the result, after taking into account the nature of this offence and the various mitigating factors and comparable precedents presented to us we find that the penalty recommended by Enforcement Counsel and

counsel for the Respondent of a fine of $15,000 plus a two month suspension and the requirement to re-write the CPH examination within six months following any return to the Industry, fall within a reasonable range of appropriateness in the circumstances of this particular case.

¶ 42 Having said that however, we want to re-emphasize the fact that this Hearing Panel regards forgery as a very serious offence and our approval of this Settlement Agreement should not in any way be taken as a condonation of an offence of this nature. We were however impressed by the significant mitigating factors flowing in favour of the Respondent in this matter and accordingly we are all of the view that the penalty falls within a reasonable range of appropriateness in the particular circumstances of this case.

DATED this 26th day of March 2014.

Edward T. McDermott, Chair

Debbie Archer, Industry Representative

Guenther W.K. Kleberg, Industry Representative

SCHEDULE "A"

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

THE RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

AND

KATHRYN FABER

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent Kathryn Faber ("Faber" or "the Respondent"), consent and agree to the settlement of this matter by way of this settlement agreement ("the Settlement Agreement").
2. The Enforcement Department of IIROC has conducted an investigation ("the Investigation") into the conduct of the Respondent.
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 Faber 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:

   In September 2010, Kathryn Faber forged client signatures on various account documentation for three clients, thereby engaging in conduct unbecoming or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1.

6. Staff and Faber agree to the following terms of settlement:
   a) A fine in the amount of $15,000;
   b) A suspension from registration with IIROC in any capacity for a period of 2 months; and
   c) To re-write the CPH examination within 6 months upon any return to the industry.

7. Faber also agrees to pay costs to IIROC in the sum of $1,000.

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

Overview

9. Faber was a Registered Representative ("RR") at TD Waterhouse Canada Inc ("TDW") in Hamilton, Ontario. FP, DP and AP had been Faber's clients since July 2009. At that time they purchased segregated funds known as Sun Wise Elite Plus funds in their cash accounts. The plan was to swap the funds into registered accounts at a later date. Faber completed the paperwork but Sun Wise later advised Faber that the transactions had not been correctly made in their registered accounts.

10. When Faber attempted to correct the transactions in 2010 a number of events and errors occurred, with the result that new documentation had to be signed by the clients. TDW required the new documentation to be signed by the clients by August 2010 at the latest. Despite her efforts, Faber could not reach the clients to have them sign the documents prior to the deadline imposed by TDW. Faber admitted to Staff that she signed the Ps' signatures on several client documents in September 2010. Faber wanted to prevent the clients' funds being sold by TDW to cover outstanding debits in the clients' accounts.

11. When confronted by TDW, Faber admitted the signatures were false and obtained the clients' actual signatures on the documents within the next few days.

Background

12. At all material times Faber was a Registered Representative ("RR") at TD Waterhouse Canada Inc ("TDW") in Hamilton, Ontario. She had been registered with the IDA and then IIROC as a Retail Representative since February 1995. She joined TDW in April 2006. She also had her life insurance license at the time.

13. On June 1, 2008, the Respondent became a regulated person of IIROC. She has not been an approved person at IIROC since September 2010.

14. IIROC's investigation commenced in September 2010 when TDW terminated Faber's employment due to allegations of forgery involving the Ps' accounts.

Clients the Ps

15. Faber's three clients AP, FP and DP (collectively the "Ps") all opened both registered and cash (non-registered) accounts with Faber in July 2009. AP was born in 1938. AP's son FP was born in 1956 as was his wife DP. Their new account application forms generally indicated high net worth and investment objectives of 100% medium risk.

Purchase of Sun Wise Elite Plus

16. In July 2009 Faber recommended that the Ps purchase Class A units of Sun Wise Elite Plus Segregated Funds (the "Class A units"). The Class A units were a Sun Life insurance product distributed by CI Investments ("CI"). Faber urged the Ps to buy this product at this time because the Class A units had a 100% guarantee feature, which was being discontinued by CI at the end of July 2009.

17. The clients wished to purchase the Class A units in their registered accounts, however, monies from their registered accounts had not yet transferred to TDW from their previous registered representative by the end of July 2009. The clients had monies at TDW only in their non registered cash accounts at this time.

18. Accordingly, on July 16, 2009, AP purchased the Class A units at a cost of approximately $86,000 in her cash account. On July 31, 2009 FP and DP each purchased approximately $50,000 worth of the Class A

units in their cash accounts. The Class A units were purchased in the non-registered accounts as a temporary measure while monies were transferred to TDW.

19. According to Faber, she consulted with CI in advance of purchasing the Class A units to ensure that they could be transferred into the clients' registered accounts once funds were available. Faber says that CI advised her to purchase the Class A units in the non- registered accounts then swap them later with new forms to be signed indicating that they were now in registered accounts. According to CI, however, swap transactions are not allowed with segregated funds, in particular the Class A units in question.

Spring of 2010 events

20. The clients' monies for their registered accounts arrived in March 2010. On March 26, 2010, Faber issued instructions to swap the Class A units with the cash from registered accounts held by AP. In March 2010, approximately $50,000 in the Class A units held by FP and approximately $18,000 of the Class A units held by DP were swapped into their RRSP accounts. The Class A units were now held in the Ps' registered accounts and some funds remained in their cash accounts, while some funds were deposited to their various bank accounts.

21. On or about March 31, 2010, Faber learned that CI had refused to process the swap of the Class A units from the Ps' non- registered accounts to their registered accounts. On April 16, 2010, CI advised Faber that CI considered the swap requests to be transfers from existing non- registered policies to new registered policies. The transfer of assets was classified by CI as new purchases. CI's position was that the Ps had not purchased the Class A units before the July 31, 2009 deadline, and new purchases were not permitted.

Change to Class B funds

22. On April 16, 2010, CI advised Faber that while it would not process the transfer of the Class A units from a non-registered account to a registered account, each client could sell the Class A units and purchase a new Class B policy in their registered accounts. To effect this transaction, a new CI application form would be required.

23. In addition, Faber was aware that the records of TDW and CI did not reconcile. TDW's records showed that the Class A units were held in the clients' registered accounts. CI records showed that the Class A units were held in the clients' non-registered accounts.

24. Faber discussed the various options with the Ps, including keeping the Class A Unit units in their non-registered accounts or selling the Class A units and purchasing Class B units in their registered accounts. Faber was aware that if TDW reconciled its records to CI's records and reversed the swap, the transaction would cause the Ps' non-registered accounts to be in an overdraft position. Another factor to be considered was that the Class B units had a principal guarantee of 75% instead of the 100% guarantee of the Class A units.

25. After attempts by Faber to try and avoid an overdraft and to keep the Class A units for the Ps, ultimately the Ps instructed to Faber to sell the Class A units and to purchase the Class B units in their registered accounts.

July and August 2010 events

26. By the end of July 2010, Faber and CI had agreed that the sale of the Class A units in the Ps' non-registered accounts would be backdated to March 2010 (the date of the original swap), that Class B units would be purchased for the Ps' registered accounts and backdated, and that the Ps would not be charged DSC fees.

27. CI required a letter of indemnity from the Ps. CI also told Faber that the Ps needed to sign new TDW and new CI documentation to complete the transaction.

28. Faber met with the Ps in late July or early August 2010. At this time she had partially completed the TDW and CI documentation but the date of the purchase and sale transaction had yet to be finalized and the

letter of indemnity had yet to be finalized. According to Faber, the Ps wanted to sign the documentation but she did not want them to sign until all the paperwork was complete.

29. TDW's segregated funds department advised Faber in or about April 2010 that they were not able to process the initial swaps and that the swaps would have to be reversed to reconcile with CI's records. Faber and TDW argued over how to effect the transactions as Faber was trying to avoid an overdraft in the Ps' non-registered accounts. In August 2010, the reversals were effected by TDW and the reversals put the Ps' non- registered accounts into an overdraft position. According to TDW's internal policies, the outstanding debits should have been covered by sell out after two weeks. Faber left messages for the Ps advising them of these facts but they did not respond.

September 2010: Faber signed the Ps' names on various documentation

30. In August 2010, Faber made some unsuccessful attempts to contact the Ps so they could sign the new documentation. She delayed the sell out action but had not met with the clients to obtain their signatures on the new documentation by the end of August 2010. TDW would not delay the sell out any longer as the Ps' non-registered accounts had been in an overdraft position for more than two weeks. Faber explained to TDW that the debit would be cleared as soon as the Ps had signed the required account documentation. Faber informed Staff that she believed that TDW could not order the sale of the Class A units to cover the overdraft because the Class A units were supposed to be creditor proof.

31. On or about September 13th, 2010, Faber signed the following documents for the Ps:

    - Two TDW Insurance Services Segregated Fund Products New Policy Owner Forms ("TDW internal form"), dated September 7, 2010 (in AP's name);
    - Two CI Investments SunWise Elite Plus Individual Variable Annuity Contract Rapid Application Forms ("CI Rapid form"), dated September 7, 2010 (in AP's name);
    - Two TDW Internal forms, dated September 7, 2010 (in DP's name);
    - Two CI Rapid Forms, dated September 7, 2010 (in DP's name);
    - TDW Internal form, dated September 7, 2010 (in FP's name);
    - CI Rapid form, dated September 7, 2010 (in FP's name).

32. Faber then asked her assistant to process the documents so that TDW would not sell the Class A units.

33. When confronted a short time later by TDW with the false signatures for the Ps, Faber admitted it to TDW and then obtained the Ps' actual signatures on the documents within the next few days.

Mitigating Factors

34. Faber has no previous disciplinary history with the IDA or IIROC.

35. Faber co-operated with the investigation and prosecution of this matter.

36. Faber did not sign the Ps' names for the purpose of personal gain nor did the Ps suffer any financial harm as a result of Faber's misconduct.

37. The Ps did in fact sign the documents within the next few days.

38. The Ps have not filed a complaint against Faber with IIROC.

39. As a result of her actions, Faber's employment with TDW was terminated in September 2010 and she has not worked as an IIROC registrant since.

IV. TERMS OF SETTLEMENT

40. 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.

41. The Settlement Agreement is subject to acceptance by the Hearing Panel.

42. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

43. 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.

44. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives her right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.

45. 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.

46. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

47. 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.

48. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

49. 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 Brantford, this 27day of January, 2014.

"Witness"

WITNESS

"Kathy Faber"

KATHRYN FABER

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 6 day of January, 2014.

"Witness"

WITNESS

"Kathryn Andrews"

KATHRYN ANDREWS

Senior 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 26th day February, 2014, by the following Hearing Panel:

Per: "Edward T. McDermott"

Panel Chair

Per: "Debbie Archer"

Panel Member

Per: "Guenther W.K. Kleberg"

Panel Member

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