

Re Hashmi

IN THE MATTER OF:

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

and

Yousef Hashmi

2017 IIROC 41

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

Heard: July 20, 2017 in Charlottetown, PEI

Decision: July 20, 2017

Written Reasons: August 14, 2017

Hearing Panel:

Gerard Mitchell, Chair, Roland Coffill and David Smith

Appearances:

Kathryn Andrews, Senior Enforcement Counsel

Maureen Doherty, for the Respondent

REASONS FOR DECISION ON SETTLEMENT AGREEMENT

¶ 1 After a hearing pursuant to sections 8215 and 8428 of the Consolidated Enforcement, Examination and Approval Rules of IIROC that took place on July 20th, 2017 the Panel unanimously agreed to accept a settlement agreement entered into by IIROC and the Respondent on June 7th, 2017. A copy of the agreement is annexed to these reasons for accepting it.

¶ 2 The settlement agreement addresses allegations that the respondent effected unauthorized trades in clients' accounts contrary to IIROC Dealer Member Rule 29.1.

¶ 3 The agreed facts are set forth in Part III of the Settlement Agreement.

¶ 4 The parties jointly recommend that the Panel accept the settlement agreement.

¶ 5 A jointly recommended settlement agreement should not be rejected unless it is clearly unreasonable or, would bring the administration of IIROC Rules into disrepute or, would otherwise be contrary to the public interest. See: **Re Ast**, 2012 IIROC 38; **Re MacEachern**, 2014 IIROC 37; and **Re Bugden**, 2017 IIROC 30. See also: **R. v. Anthony-Cook**, 2015 SCC 43, [2016] 2 S.C.R. 204 in which the Supreme Court of Canada spoke about the benefits of joint submissions and the deference due them. In that case the Court ruled that a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

¶ 6 In the settlement agreement before the Panel for consideration the Respondent admits that between July 2008 and December 2015 while employed by Scotia Capital Inc. as a Registered Representative he effected multiple unauthorized trades in six clients' accounts, contrary to IIROC Dealer Member Rule 29.1. Most of the trades were in options.

- ¶ 7 The Respondent should have discussed the trades with the clients and obtained their consent before effecting the trades.
- ¶ 8 The clients were aware trades were taking place on their accounts but did not know that the Respondent was required to obtain instructions from them before making the trades. Two of the clients were in their 60s.
- ¶ 9 The Respondent was not licensed to operate discretionary accounts and he was not registered as a portfolio manager.
- ¶ 10 The clients suffered no harm resulting from the unauthorized trades made by the Respondent and none of the trades he effected would have been unsuitable for any of them.
- ¶ 11 The harm caused by the Respondent's conduct was to the reputation and integrity of the investment industry marketplace.
- ¶ 12 The Respondent's misconduct was serious, intentional and, happened on numerous occasions over several years.
- ¶ 13 His method of doing business was detrimental to the public interest and did not conform to the high standard required of him under IIROC Dealer Member Rule 29.1.
- ¶ 14 The Respondent has acknowledged his wrong doing and accepted responsibility for his conduct by entering into the settlement agreement. He has no previous disciplinary history.
- ¶ 15 The Respondent has not been an IIROC registrant since May 1, 2016.
- ¶ 16 Under the terms of the settlement agreement the Respondent has agreed to accept the following penalties: (a) a fine of \$25,000 (which includes disgorgement of commissions earned); (b) a one year suspension from registration with IIROC in any capacity; (c) a requirement that he successfully re-write the Conduct and Practices Examination within 12 months of any re-registration with IIROC and; (d) a requirement that he undergo 6 months of close supervision upon any re-registration with IIROC. He has also agreed to pay costs of \$2,500.
- ¶ 17 The penalties imposed under the agreement are consistent with IIROC Sanction Guidelines. They meet the objectives of general and specific deterrence. They are commensurate with the conduct of the Respondent and they serve to protect the reputation of the industry, the integrity of the marketplace and the investing public.
- ¶ 18 Furthermore, the penalties agreed to are within the range of those imposed previously in cases involving similar types of misconduct. See: **Re Ast**, *supra*; **Re Tersigni**, (2016) IIROC 19; **Re Smith**, (2014) IIROC 16; **Re Kemke**, (3013) IIROC; **Re Karez**, (2010) IIROC 22; and **Symonds (re)**, [2007] I.D.A.C.D. No. 17. In the **Re Smith** case, *supra*, the penalties included a \$50,000 fine, 2 years suspension and close supervision for 1 year. However, the respondent in that case had a previous disciplinary history. In the other 5 cases there was no disciplinary history and the penalties included fines ranging from \$20,000 to \$35,000.
- ¶ 19 All in all, the Panel believes the settlement agreement proffered in this case provides for a disposition of the matter that (a) is well within the range of reasonableness, (b) does not bring the administration of IIROC Dealer Member Rules into disrepute and, (c) is not in any way contrary to the public interest.
- ¶ 20 The Panel therefore accepts the settlement agreement and as a result the sanctions imposed under it are now deemed to have been imposed under section 8215(7) of the Consolidated Enforcement, Examination and Approval Rules of IIROC.

Dated this 14th day of August 2017.

Gerard Mitchell

Roland Coffill

David Smith

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 Yousef Hashmi (“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. The Respondent was employed by Scotia Capital Inc. (“Scotia”) in Charlottetown, Prince Edward Island (“PEI”) as a Registered Representative (“RR”). He effected unauthorized trades in six clients’ accounts between July 2008 and December 2015. The below clients live in PEI. The clients were aware that trades were occurring in their accounts but did not know that the Respondent was required to obtain instructions from them before effecting the trades.

Background

5. The Respondent has been working in the securities industry since 1987 and had been employed with Scotia since 1992. He has not been an IIROC registrant since May 1, 2016.
6. The Respondent has never been licensed to operate discretionary accounts nor has he ever been registered as a Portfolio Manager. He was approved for securities, options and futures trading.

Client WC

7. WC was born in 1946 and became a client of the Respondent in May 2007.
8. WC opened a margin account with options. WC’s New Account Application Form (“NAAF”) listed his investment experience as moderate, with investment objectives of 100% short term capital appreciation and 100% high risk tolerance.
9. Between July 2008 and May 2012, the Respondent effected trades in WC’s account without discussing the particulars of the trades in advance with WC.
10. WC knew that the Respondent was trading in options but the decisions as to which securities to buy or sell were made by the Respondent, who rarely spoke with WC. Approximately 90% of the trading by the Respondent in this account was in options.

Client BA

11. BA was a client of the Respondent. BA opened three personal accounts as well as a corporate account with the Respondent.
12. BA’s NAAFs listed his investment experience as moderate, with investment objectives of 100% short term capital appreciation and 100% high risk tolerance.
13. Between January 2010 and December 2015, the Respondent effected trades in BA’s accounts without discussing the particulars of the trades in advance with BA.

14. Most of the trading occurred in BA's margin account, which traded mainly in options.

Client EB

15. EB was a client of the Respondent. EB opened an account with the Respondent in 2008.

16. EB's NAAF listed his investment experience as moderate, with investment objectives of 100% short term capital appreciation and 100% high risk tolerance.

17. Between February 2010 and December 2012, the Respondent effected trades in EB's account without discussing the particulars of the trades in advance with EB.

18. Options trading accounted for over 90% of the trades made in EB's account.

Client HB

19. HB was a client of the Respondent. HB had a joint account with his wife. HB was born in 1945. HB opened the joint account in 2010.

20. HB's NAAF listed his investment experience as moderate, with investment objectives of 100% short term capital appreciation and 100% high risk tolerance.

21. Between January 2010 and December 2013, the Respondent effected trades in HB's account without discussing the particulars of the trades in advance with HB.

22. Most of the trading in HB's account was in options. HB was not contacted by the Respondent prior to orders being entered. After trades were made, he became aware of the trades and he assumed that it was acceptable for the Respondent to proceed in this manner.

Client LD and N Co.

23. LD was a client of the Respondent and was also the principal of N Co. which had a corporate account with the Respondent.

24. N Co. and LD's NAAFs listed their investment experience as moderate, with investment objectives of 100% short term capital appreciation and 100% high risk tolerance.

25. Between February 2010 and September 2013, the Respondent effected trades in the accounts without discussing the particulars of the trades in advance with LD/N Co.

26. LD was not contacted by the Respondent prior to orders being entered. The bulk of the trading in both accounts was in options. LD assumed it was acceptable for the Respondent to proceed in this manner.

Client MF

27. MF was a client of the Respondent. MF opened 3 accounts with the Respondent.

28. MF's NAAFs listed his investment experience as moderate, with investment objectives of 100% short term capital appreciation and 100% high risk tolerance.

29. Between October 2010 and August 2015, the Respondent effected trades in MF's accounts without discussing the particulars in advance with MF.

30. MF and the Respondent met approximately once a year to discuss his accounts.

Other

31. The Respondent effected multiple trades in the above clients' accounts during the relevant time period. Disgorgement of commission has been included in the amount of the fine set out below.

32. The Respondent has no previous disciplinary history.

PART IV – CONTRAVENTIONS

33. By engaging in the conduct described above, the Respondent committed the following contravention of

IIROC's Rules:

Between July 2008 and December 2015, Yousef Hashmi effected unauthorized trades in six clients' accounts, contrary to IIROC Dealer Member Rule 29.1.

PART V – TERMS OF SETTLEMENT

34. The Respondent agrees to the following sanctions and costs:
- a) A fine in the amount of \$25,000;
 - b) A one year suspension from registration with IIROC in any capacity;
 - c) To successfully re-write the Conduct and Practices Examination within 12 months of any re-registration with IIROC;
 - d) 6 months of close supervision upon any re-registration with IIROC, and,
 - e) Costs of \$2,500.
35. 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

36. 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.
37. 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

38. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
39. 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.
40. 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.
41. 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.
42. 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.
43. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
44. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full 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.

45. 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.
46. 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

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

DATED this “7” day of June, 2017.

“Witness” _____

Witness

“Yousef Hashmi” _____

Respondent Yousef Hashmi

“Ricki Newmarch” _____

Witness

“Kathryn Andrews” _____

Kathryn Andrews

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

The Settlement Agreement is hereby accepted this “20th” day of “July”, 2017 by the following Hearing Panel:

Per: “Gerard Mitchell” _____

Panel Chair

Per: “Roland Coffill” _____

Panel Member

Per: “David Smith” _____

Panel Member

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