

# Re Sojka

IN THE MATTER OF:

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

**and**

**Henry Sojka**

2016 IIROC 33

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

Heard: August 18, 2016  
Decision: September 14, 2016

**Hearing Panel:**

Winton Derby, Q.C., Chair, Bradley Doney and David Duquette

**Appearances:**

Lorne Herlin, Enforcement Counsel, IIROC

The Respondent did not appear and was not represented

---

## REASONS FOR DECISION

---

¶ 1 The purpose of the hearing was to determine whether the Respondent, Henry Sojka (the Respondent) who at all material times was a Registered Representative, committed the following contraventions that are alleged by the Staff of The Investment Industry Regulatory Organization of Canada (IIROC):

**Count 1**

Between March 2009 and May 2011, Sojka failed to use due diligence to ensure that the orders that he placed for the account of his client SF were suitable for her, contrary to IIROC Dealer Member Rule 1300.1(p) and/or 1300.1(q).

**Count 2**

Between March 2009 and May 2011, Sojka engaged in discretionary trading for the account of his client SF without the account having been approved and accepted as a discretionary account, contrary to IIROC Dealer Member Rule 1300.4.

**Count 3**

On January 6, 2016, Sojka failed to attend and give information in respect of an IIROC investigation into his conduct, contrary to IIROC Dealer Member Rule 19.5 and/or Rule 29.1.

¶ 2 At a set date hearing on April 27, 2016, we were asked to determine if IIROC effected service on the Respondent of the Notice of Hearing in this matter by registered mail in addition to other attempted deliveries. At that hearing Mr. Lorne Herlin appeared as counsel for IIROC. The Respondent did not appear and was not

represented.

¶ 3 We were referred to the Affidavit of Ms. Shannon Mathieson sworn April 21, 2016 which stated, *inter alia*,

"On March 22, 2016, by registered mail I sent an envelope that was addressed to Sojka at the last known address. The envelope contained a March 22, 2016 letter from Lorne Herlin, counsel for IIROC Staff and a copy of a Notice of Hearing, dated March 3, 2016 (the Notice of Hearing). A copy of the March 22, 2016 letter (including the Canada Post Customer Receipt) and the Notice of Hearing (collectively, the Registered Mail) ...

I am informed by reviewing the National Registration Database that the last known address that the IIROC Registration Department has on file for Henry Sojka (Sojka) is: 2424 King Albert Avenue, Coquitlam, British Columbia V3J 7E4 (the last known address)."

¶ 4 The registered mail was sent after several unsuccessful attempts to effect personal service of the Notice of Hearing on the Respondent.

¶ 5 Rule 5 of the IIROC Rules of Procedure (ROP) governs service and filing. The relevant sections are as follows:

5.2 Manner of Service – Notice of Hearing

- (b) by delivering a copy of the Notice of Hearing by registered mail to the Respondent's last known address as recorded in the Organization's Registration file;

5.3 Manner of Service – Other Documents

Where these Rules require a document other than a Notice of Hearing to be served, it may be served by mail, courier, facsimile, or by any other means effective to deliver a copy of the document.

5.4 Effective Date of Service

Service of a document is deemed effective:

- (b) if sent by mail, on the fifth day after the day of mailing;

5.5 Proof of Service

The Hearing Panel may accept proof of service of a document by a sworn statement of the person who served the document.

The Panel was satisfied that the Respondent was served with the Notice of Hearing in accordance with the ROP. We refer to *Re Puccini* (2007) I.D.A.C.D. No. 11 and *Re Ryan* 2012 IIROC 29 which also reviewed ROP 5.

¶ 6 The Respondent was notified of this hearing by a letter from IIROC Staff dated May 20, 2016, delivered to his residence by courier.

¶ 7 ROP 7.1 and 7.2 govern procedure where a respondent fails to serve a Response or attend a hearing. They state:

"7.1 Service of Response

For a discipline proceeding designated on the Standard Track, the Respondent shall serve a Response within 20 days from the effective date of service of the Notice of Hearing.

For a discipline proceeding designated on the Complex Track, the Respondent shall serve a

Response within 30 days from the effective date of service of the Notice of Hearing.

## 7.2 Failure to Serve Response

If a Respondent served with a Notice of Hearing fails to serve a Response in accordance with 7.1:

- (a) the Organization may proceed with the hearing of the matter as set out in the Notice of Hearing without further notice to and in the absence of the Respondent; and
- (b) the Hearing Panel may, accept as proven the facts and violations alleged by the Organization in the Notice of Hearing, and may impose penalties and costs pursuant to Dealer Member Rules 20.33, 20.34 and 20.49."

¶ 8 At the hearing we heard testimony from SF and were provided affidavit evidence from IIROC staff.

¶ 9 The Respondent began work in the securities industry in 1987. Between 2005 and October 2012, he worked as a Registered Representative at the Vancouver head office of Union Securities Inc. He has not been an IIROC approved person since October 2012.

¶ 10 On or about July 12, 2006, SF opened an investment account at Union. At the time she was 19 years' old. Her assets came from her mother's estate and the Respondent is her uncle.

¶ 11 At all material times, the Respondent was the Registered Representative responsible for the SF's account.

¶ 12 The Client Account Form for SF's account states that she is a full-time student and that her:

- annual income was zero;
- net liquid assets were \$200,000
- net fixed assets were \$200,000
- investment objectives were 70% income; 20% long term growth; 5% medium risk; and 5% venture/speculative; and
- risk tolerance level was 70% low; 25% medium; and 5% high.

¶ 13 SF testified that she did not recall the Respondent reviewing the Client Account Form with her and she signed the Form in blank.

¶ 14 Between July 12, 2006 and May 22, 2009, a total of \$678,097 was deposited into the account.

¶ 15 SF's intention was to use the funds to pay for her education, purchase a home and assist her step-brother.

¶ 16 For the first few years the account for the most part held low and medium risk securities.

### **Unsuitable Trading**

¶ 17 On March 1, 2009, the Client Account Form for the SF account was updated. Included in the changes, SF's:

- investment objectives were changed to 100% venture speculative; and
- risk tolerance level was changed to 100% high risk.

¶ 18 SF testified that she did not want to change her investment objectives or risk tolerance and signed the forms in blank.

¶ 19 Approximately 42 times between March 2009 and May 2011, the Respondent bought and sold within a

relatively short time, shares of resource companies. Many of these investments were high risk (the “Impugned Transactions”).

¶ 20 The Impugned Transactions incurred losses of \$6,984 and commission charges of \$34,554 for total losses of \$41,538 and were unsuitable for SF given her financial situation, investment knowledge, investment objectives and risk tolerance.

### **Unauthorized Discretionary Trading**

¶ 21 Between March 2009 and May 2011, the Respondent traded shares of approximately 94 different companies. The Respondent used his discretion with respect to the type of security, quantity, price and timing of these trades. SF testified that she did not give the Respondent written authorization for discretionary trading, and the account was never designated and approved as a discretionary account by Union Securities.

### **Failure to Cooperate**

¶ 22 IIROC staff did the following in an attempt to make contact with the Respondent:

- (a) On February 25, 2014, delivered a letter to his residence by registered mail informing him that it had opened an investigation into his conduct while he was employed by Union Securities (Investigation).
- (b) On June 23, 2014, left a telephone message for him at his residence requesting him to contact them. The call was not returned.
- (c) On August 8, 2014, left a voice mail message at his residence informing him that his investigatory interview had been scheduled for September 10, 2014, and requesting he contact them. There was no response.
- (d) On August 11, 2014, delivered a letter to his residence dated August 8, 2014 advising him of his investigatory interview scheduled for September 10, 2014.
- (e) Attempted to serve him personally with the August 8, 2014 letter and sent it by email.

¶ 23 The Respondent did not attend his September 10, 2014 investigatory interview.

¶ 24 On December 4, 2015, the Respondent was personally served at his residence with a letter of the same date, stating:

"Pursuant to Investment Industry Regulatory Organization of Canada (IIROC) Dealer Member Rule 19.5, you are required to attend an interview on **January 6, 2016 at 10:00 a.m. at the IIROC offices at Suite 2800-1055 West Georgia Street, Vancouver, BC** in order to answer questions regarding the IIROC investigation into your conduct.

...We have unilaterally set the date and time of this interview and we are compelling your attendance because you have not responded to our numerous attempts to contact you since June 2014. These attempts are summarized in our September 11, 2014 letter to you, a copy of which is attached.

... Should you fail to attend the interview on January 6th or you do not contact me before that day to reschedule the interview, IIROC will initiate disciplinary proceedings against you for failure to cooperate with IIROC's investigation."

¶ 25 There was no response to the December 4, 2015 letter and the Respondent did not attend his January 6, 2016 investigatory interview. The Respondent's failure to attend the interview and provide information prevented IIROC staff from completing the Investigation.

### **Findings and Penalties**

¶ 26 Rule 13.5 of the ROP states:

"13.5 Where Respondent Fails to Attend Disciplinary Hearing

Where a Respondent, having been served with a Notice of Hearing, fails to attend a disciplinary hearing, the Hearing Panel may proceed in the absence of the Respondent and may accept as proven the facts and violations alleged by the Organization in the Notice of Hearing.

Upon making a finding of the violations as alleged in the Notice of Hearing, the Hearing Panel may immediately hear submissions of the Organization regarding an appropriate penalty and may impose such penalty, as it deems appropriate, pursuant to Dealer Member Rule 20.33 and 20.34."

¶ 27 The Respondent failed to serve a Response as required by ROP 7.1 and failed to attend this hearing although served according to the ROP.

¶ 28 Accordingly, the Panel, pursuant to ROP 7.2 and 13.5, may and does accept as proven the facts and violations alleged by IIROC in the Notice of Hearing. In addition, the Panel had the benefit of Affidavit evidence and sworn testimony.

¶ 29 In determining penalties the Panel considered IIROC's Sanction Guidelines and previous similar cases. They state:

"Part II – Key Factors in Determining Sanctions

1. The number, size and character of the transactions at issue.
2. Whether the respondent engaged in numerous acts and/or a pattern of misconduct.
3. Whether the respondent engaged in the misconduct over an extended period of time.
4. Whether the misconduct was intentional, willfully blind, or reckless with respect to regulatory requirements.
5. Extent of harm to clients or other market participants.
6. Extent of harm to market integrity or the reputation of the marketplace, or both.
7. The level of vulnerability of the injured or affected client(s).
9. Extent to which the respondent obtained or attempted to obtain a financial benefit from the misconduct (see General Principle No. 4)."

¶ 30 We find these factors relevant in considering the appropriate sanctions in this case. There were 93 transactions between March 2009 and May 2011 from which the Respondent made commissions. The transactions were not suitable given the age of his niece, her lack of experience and her vulnerability. The conduct was either intentional or reckless with respect to regulatory requirements. The failure to attend or respond to IIROC's requests harms the reputation of the industry. The only mitigating factor was the fact the Respondent had no prior disciplinary history.

¶ 31 IIROC counsel provided a summary of suitability and unauthorized discretionary trading cases decided between 2006 and 2012. The facts were similar to the facts in this matter and the cases provided guidelines for the Panel. The fines ranged from \$20,000 to \$50,000 plus suspensions and costs.

¶ 32 IIROC counsel also provided a summary of 19 cases of "failure to cooperate". In previous cases a fine of \$50,000 and costs were levied and permanent suspensions were imposed.

¶ 33 We were also provided with a Bill of Costs for this case. Total costs amount to \$48,275. IIROC seeks an award of costs of \$20,000.

¶ 34 While we acknowledge we are not bound by these precedents, the facts of this case dictate that it is appropriate to be guided by them. Accordingly, we impose the following penalties and costs on the Respondent:

1. A fine of \$50,000 for unsuitable and unauthorized discretionary trading.
2. A fine of \$50,000 for failure to cooperate.
3. Costs of \$20,000.
4. A permanent bar from approval with IIROC in any category.

Dated at Vancouver, British Columbia, this 14<sup>th</sup> day of September, 2016.

Winton Derby, Q.C., Chair

Bradley Doney

David Duquette

*Copyright © 2016 Investment Industry Regulatory Organization of Canada. All Rights Reserved.*