

Re Jensen

IN THE MATTER OF:

THE DEALER MEMBER RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AND

THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

VICTORIA JENSEN

2009 IIROC 24

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

Heard: May 7, 2009
Decision: May 7, 2009
(10 paras.)

Hearing Panel:

Mr. Frederick Webber (chair), Mr. Sandy Grant and Mr. Robert Guilday

Appearances:

Ms Natalija Popovic, Mr. Andrew Werbowski , Enforcement Counsel
Mr. Ryan Azotini, Respondent's Counsel

REASONS FOR DECISION

1. As a result of a Settlement agreement entered into between IIROC and the Respondent, a Settlement Hearing was conducted on May 7, 2009 in Toronto pursuant to the IROC Dealer Member Rules. The Hearing Panel received and considered oral submissions from IIROC counsel and IIROC's Book of Documents containing the Settlement Agreement, relevant IIROC Rules and disciplinary sanction guidelines and decisions of previous Hearing Panels.
2. The contraventions alleged by IIROC and admitted by the Respondent are set out at page 5 of the Settlement Agreement and are as follows;

“ In or about December 2004 to May 2005 Jensen, as a Registered Representative of a Member of IIROC, engaged in business conduct or practice which is unbecoming or detrimental to the public interest in that she became a registered shareholder of securities of an issuer for no apparent consideration, and subsequently permitted a non-registrant to perform “know your

client” obligations for approximately four clients for whom she purchased securities of the same issuer, contrary to IIROC Rule 29.1.

3. The issue for the panel was whether to accept or reject the proposed settlement. This panel accepts as applicable in this case, the statement in the decision *Re Milewski*, [1999] I.D.A.C.D. No.17, contained in IIROC’s book of documents;

“A district Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the publicinterest benefits of the settlement process in its consideration of specific settlements.”
4. Given the standard of “reasonableness”, it is the responsibility of this panel to determine whether the penalties set forth in the Settlement Agreement strike a reasonable balance between fairness to the Respondent in the circumstances and deterrence of a repetition of conduct of the type under consideration.
5. The facts which give rise to the breach of the IIROC Rules are set forth in the Settlement Agreement and may be summarized as follows. At all material times the Respondent was a Registered Representative of Secutor Capital Management Corp. (Secutor). On or about December 14 2004 approximately 50,000 preferred shares of Gray Wolf Capital Corporation (Gray Wolf) were registered in Jensen’s name, for no apparent consideration, and approximately 500 preferred shares of Gray Wolf were registered in the name of her partner (subsequently her spouse) for no apparent consideration. . At all material times Gray Wolf was a high risk investment. In or about February and March 2005 Jensen received 6 client referrals from JR, a non-registrant, of whom 4 became her clients (the JR Clients). The purpose of the referrals was so that Jensen could facilitate the purchase of Gray Wolf preferred shares and debentures for the JR Clients. Jensen purchased, on an unsolicited basis Gray Wolf preferred shares with a market value of approximately \$80,000 and Gray Wolf debentures with a market value of approximately \$105,000 for the JR clients. Subsequently, substantial losses were incurred by the JR Clients on these securities.
6. Jensen admitted to IIROC staff, in regard to the JR Clients, that:
 - a. she did not meet with any of the JR Clients in person;
 - b. she supplied JR and a company controlled by JR (PPSI) with blank Secutor account opening documents including New Client Application Forms(NCAFs);
 - c. she received completed NCAFs directly from JR and PPSI for the JR clients;
 - d. she purchased Gray Wolf securities for the JR clients on an unsolicited basis;
 - e. the JR Clients had formulated the intention to purchase Gray Wolf before she opened their accounts;
 - f. JR arranged for each client to call her with instructions to purchase Gray Wolf;
 - g. When the JR Clients called and instructed her to purchase Gray Wolf, she simply asked them if they were “comfortable with the risks involved” but made no other know your client inquiries; and
 - h. She did not counsel these clients as to risks involved with the investments in Gray Wolf and even though it was not clear to her what service JR was providing to the JR Clients, she made no inquiries of JR.
7. It was IIROC Counsel’s position that penalties in this case needed to be severe enough to act as a deterrent to future breaches of the IIROC Rules not only for the Respondent, but for the industry in general. However she also pointed to the following mitigating factors in this case:

- Jenset fully cooperated with IIROC's investigation;
- Jenset was not enriched by her misconduct;
- Jenset has no prior disciplinary record;
- Jenset acknowledged her misconduct and demonstrated remorse throughout the disciplinary process;
- Jenset was 25 years old at the time of the misconduct and relatively new to the investment business;
- Jenset was relying on her superiors who were purchasing Gray Wolf shares for some of their clients which led Jenset to believe that the investments in Gray Wolf were safe;
- When Jenset supplied JR and PPSI with the blank NCAFs, she believed that these forms would be forwarded to the JR Clients for completion;
- After receiving the completed, or in some cases, partially completed NCAFs from JR and PPSI, Jenset called the clients to review the KYC information and complete any missing information;
- There is no evidence of any RSP stripping in relation to Jenset's conduct; and
- At the time in question, Jenset did not fully appreciate how she and her partner became shareholders in Gray Wolf for no apparent consideration, but IIROC staff have subsequently advised that their status as Gray Wolf shareholders was based on instructions provided by the president of Gray Wolf to the transfer agent for Gray Wolf.

8. The Respondent agreed to the following terms of settlement:

- a. A fine of \$10,000;
- b. Close supervision for 12 months;
- c. Successful completion of the Conduct and Practices Handbook examination within 12 months from the effective date of the Settlement Agreement.
- d. Jenset would pay a portion of the staff's costs of this proceeding in the amount of \$600;
- e. Unless otherwise stated, any monetary penalties and costs imposed on the Respondent are payable, and other terms of the settlement shall commence, immediately upon the effective date of the Settlement Agreement.

9. It was agreed by the parties that Jenset would be commencing maternity leave shortly and that the time frames set out in the terms of settlement would be adjusted so that the two not run concurrently.

10. The Hearing panel agreed that the terms of the Settlement Agreement were reasonable given the nature of the misconduct, the need for deterrence and the mitigating factors. Accordingly the Settlement Agreement was accepted by the Panel

Dated as of the 7th day of May 2009.

Frederick Webber- Chair
Sandy Grant-Member
Robert Guilday- Member

* * * * *

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Enforcement Department Staff (“Staff”) of the Investment Industry Regulatory Organization of Canada (“IIROC”) has conducted an investigation (“the Investigation”) into the conduct of *Victoria Jensen* (“the Respondent”).
2. The Investigation was commenced by Enforcement Department Staff (“IDA Staff”) of the Investment Dealers Association of Canada (“IDA”) prior to May 30, 2008. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the *Administrative and Regulatory Services Agreement* between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.
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. The Respondent consents to be subject to the jurisdiction of IIROC.
5. Staff and the Respondent consent and agree to the settlement of these matters by way of this settlement agreement (“the Settlement Agreement”) 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.
6. The Settlement Agreement is subject to acceptance by the Hearing Panel.
7. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
8. 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.
9. 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.
10. 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.
11. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
12. 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.
13. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

III. Statement of Facts

(i) Acknowledgment

14. 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

Registration History

15. On June 1, 2008, the Respondent became a regulated person of IIROC.
16. At all material times, the Respondent was employed as Registered Representative (RR) in the Toronto office of Secutor Capital Management Corp. (Secutor), a Member of IIROC.
17. The following is the Registration history of the Respondent:

Dates	Employer	Designation
June 2005- Present	Wellington West Capital Inc	RR
October, 2003- June, 2005	Secutor Capital Corp. (Secutor)	RR
December 2002-October 2003	<u>TD Waterhouse Canada Inc.</u> <u>[Investment Advice</u> <u>Division]/The Toronto-</u> <u>Dominion Bank</u>	RR
2001/08-2002/12	<u>BMO Nesbitt Burns</u>	RR

Background

18. At all material times, Jensen was employed at Secutor and performed administrative duties for two RRs, MC and NE, who operated in a partnership at Secutor. As well, Jensen had her own book of clients.
19. During the material time, MC and NE maintained accounts for the following clients;
- i) 1516412 Ontario Inc. a company whose president, PM, was a stock promoter who acted for a company called Gray Wolf Capital Corporation (Gray Wolf), and which actively traded in Gray Wolf securities;
 - ii) Trinity Capital Corporation (Trinity), a Turks and Caicos company that allegedly provides investment advice and which, prior to December 2004, held all of the outstanding debentures and preferred shares of Gray Wolf;
- and

iii) IPIN Ltd. an Ontario company that allegedly provides consulting services, and which as of January 2005 held Gray Wolf debentures with a market value of approximately \$550,000 received from Trinity for no apparent consideration.

20. At all material times Gray Wolf was a company with limited resources, no operating track record and few assets of value; the president of Gray Wolf was PD. It was a high risk investment listed on the Canadian Trading and Quotations Systems Inc. stock exchange (CNQ).
21. In or about December 2004 Trinity deposited Gray Wolf Class B preferred shares, with a market value of approximately \$4.8 Million, together with Gray Wolf debentures with a market value of approximately \$6.1 Million into its account with MC and NE at Secutor.

Jenset Becomes a Registered Shareholder of Gray Wolf Shares

22. Prior to December 14, 2004, Jenset provided her own name and the name of her partner (now spouse), to and at the request of, PM and/or PD.
23. The names were allegedly provided for the purposes of fulfilling a regulatory requirement for 200 shareholder names in order to obtain a public listing for Gray Wolf. On or about December 17 and 21, 2004, Gray Wolf preferred shares and debentures, respectively, were listed and commenced trading on the CNQ.
24. On or about December 14, 2004, PD instructed the transfer agent for Gray Wolf to re-register certain of the preferred shares of Gray Wolf held by Trinity with the subsequent result, *inter alia*, that:
 1. Approximately 50,000 preferred shares of Gray Wolf were registered in Jenset's own name, for no apparent consideration.
 2. Jenset's partner, who subsequently became her spouse, had approximately 500 preferred shares of Gray Wolf registered in his own name, for no apparent consideration.

Jenset Accepts Client Referrals and Unsolicited Orders

25. In or about February and March 2005 Jenset received client referrals from a non-registrant, JR, who were allegedly interested in purchasing Gray Wolf securities.
26. JR is the sole director and operating mind of more than one company, including PCRM and PPSI. JR has never been a registrant of IIROC or any predecessor thereto.
27. In particular, JR referred six clients to Jenset; four of whom then became her clients (the JR Clients). The purpose of the referrals to Jenset by JR was so that she could facilitate the purchase of Gray Wolf preferred shares and debentures for the JR Clients
28. During the material time Jenset purchased, on an unsolicited basis, Gray Wolf preferred shares, with a market value of approximately \$80,000 and Gray Wolf debentures with a market value of approximately \$105,000 for the JR Clients.

29. Jense admitted to Staff of IROC as follows in regard to the JR Clients:

- a. she did not meet with any of the JR Clients in person;
- b. she supplied JR and PPSI with blank Secutor account opening documents including New Client Application Forms (NCAFs);
- c. she received completed NCAFs directly from JR and PPSI for the JR Clients;
- d. she purchased Gray Wolf securities for the JR Clients on an unsolicited basis;
- e. the JR Clients had formulated the intention to purchase Gray Wolf before she opened their accounts;
- f. JR arranged for each client to call her with instructions to purchase Gray Wolf;
- g. when the JR Clients called and instructed her to purchase Gray Wolf, she simply asked them if they were “*comfortable with the risks involved*” but made no other know your client inquiries; and
- h. she did not counsel these clients as to risks involved with the investment in Gray Wolf and even though it was not clear to her what service JR was providing to the JR Clients, she made no inquiries of JR.

30. By or about October 2005 when the JR Clients transferred out their accounts from Secutor, the Gray Wolf preferred shares had dropped in value by approximately 99%. The debentures and other securities purchased by Jense, with one exception, had also dropped in value, to a somewhat lesser degree. As a result there was a corresponding loss to the JR Clients at that time. Jense left Secutor in May 2005 so the value decreases associated with the Gray Wolf preferred shares and the debentures and other securities Purchased by Jense occurred after Jense’s departure from Secutor. The losses were incurred by the JR Clients roughly six months after Jense left Secutor.

IV. Contraventions

31. The Respondent admits to the following contraventions of IROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:

- 1) In or about December 2004 to May 2005 Jense, as a Registered Representative of a Member of IROC, engaged in business conduct or practice which is unbecoming or detrimental to the public interest in that she became a registered shareholder of securities of an issuer for no apparent consideration, and subsequently permitted a non-registrant to perform “know your client” obligations for approximately four clients for whom she purchased securities of the same issuer, contrary to IROC Rule 29.1.

V. MITIGATING FACTORS

32. Jense and Staff of IROC agree that the following mitigating factors apply in this case:

- Jense has cooperated fully with IROC’s investigation;
- Jense was not enriched by her misconduct;
- Jense has no prior disciplinary record;
- Jense has acknowledged her misconduct and demonstrated remorse throughout the entire disciplinary process;
- Jense was 25 years-old at the time of the misconduct and relatively new to the investment business;

- Jenset was relying on her superiors, NE and MC who were purchasing Gray Wolf for some of their clients which led Jenset to believe that the investments in Gray Wolf were safe;
- When Jenset supplied JR and PPSI with the blank NCAFs, she believed that these forms would then be forwarded to the JR Clients for completion;
- After receiving the completed or, in some cases, partially completed NCAFs from JR and PPSI, Jenset called the clients to review the KYC information and complete any missing information;
- There is no evidence of any RSP stripping activity in relation to Jenset's conduct; and
- At the time in question, Jenset did not fully appreciate how she and her partner (now spouse) became preferred shareholders of Gray Wolf for no apparent consideration, but Staff of IIROC have subsequently advised that their status as preferred shareholders of Gray Wolf was based upon instructions provided by PD to the transfer agent for Gray Wolf.

VI. Terms of Settlement

33. The Respondent agrees to the following terms of settlement:

- (i) A fine in the amount of \$10,000.
- (ii) Close supervision for 12 months.
- (iii) Successful completion of the Conduct and Practices Handbook examination within 12 months from the effective date of the Settlement Agreement.

34. The Respondent shall pay a portion of Staff's costs of this proceeding in the amount of \$600.00.

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

36. 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 _____ in the Province of _____, this _____ day of _____, 20____.

Witness

Victoria Jenset

AGREED TO by Staff at the City of _____ in the Province of _____, this _____ day of _____, 20____.

Witness

Natalija Popovic

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

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