

Re Comeau

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

MICHAEL COMEAU

2009 IIROC 37

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

Heard: August 17, 2009
Decision: August 18, 2009
(6 paras.)

Hearing Panel:

Patrick T. Galligan, Q.C. (Chair)
Guenther Kleberg
F. Michael Walsh

Appearances:

Andrew Werbowski, Enforcement Counsel
T. Nigel Campbell, for the Respondent

REASONS FOR DECISION

¶ 1 On August 17, 2009, this hearing panel conducted a settlement hearing pursuant to Rules 20.36 to 20.40 of IIROC Dealer Member Rules and Rule 15 of Dealer Member Rules of Practice and Procedure.

¶ 2 The Settlement Agreement entered into between the parties sets out comprehensively the facts which have been agreed upon between the parties, the contravention admitted by the respondent and the agreed terms of settlement. We think that it is appropriate, therefore, to quote the Settlement Agreement in its entirety:

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 Michael Comeau (“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 his 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
March 2009- Present	All Group Financial Services	Registered Representative (RR)
October 2003- March 2009	Secutor Capital Corp.	RR, Officer [Trading], Officer (Non-Trading), Vice President
April 1994 - October 2003	TD Waterhouse Inc. [Investor Advice Division]	RR, Officer [Trading], Officer [Non Trading], Investment Representative [Non-Retail]

18. At all material times Comeau operated a partnership together with NE, another RR, at Secutor.
19. At all material times, MC and NE maintained accounts for the following clients under their joint code;
- 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.

Comeau Becomes a Registered Shareholder of Gray Wolf Shares

- 22. Prior to December 14, 2004, Comeau and NE provided their own names, and the names of certain of their family members, 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:
 - a) Comeau held approximately 20,000 preferred shares of Gray Wolf in his own name, received for no apparent consideration;
 - b) Comeau's spouse held approximately 20,000 preferred shares of Gray Wolf in her own name, received for no apparent consideration. Furthermore, two of Comeau's children held a combined total of approximately 100,000 preferred shares of Gray Wolf in their own names, received for no apparent consideration,

And

- c) NE and her spouse each held approximately 20,000 preferred shares of Gray Wolf in their own respective names, received for no apparent consideration. Furthermore, NE's four children held a combined total of approximately 200,000 preferred shares of Gray Wolf in their own names, received for no apparent consideration.

Comeau's Other Secutor Clients Purchase Gray Wolf Debentures from Trinity / IPIN

- 25. From or about December 2004 to February 2005 Comeau and NE completed trades for approximately 24 of their other joint code Secutor clients on a solicited basis for purchases of Gray Wolf debentures with a market value of approximately \$ 1.025 Million.
- 26. The trade activity was such that the other joint code Secutor clients of Comeau & NE were exclusively on the buy side of Gray Wolf transactions; and Trinity and IPIN were exclusively on the sell side of the same transactions.

IV. CONTRAVENTIONS

27. The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:
1. In or about December 2004 to March 2005 Comeau, 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 he placed himself in a conflict of interest when he became a registered shareholder of securities, of an issuer, transferred to him by his client for no apparent consideration and then sold securities of the same issuer held by the same client to several of his other clients, contrary to IIROC Rule 29.1.

V. MITIGATING & AGGRAVATING FACTORS

28. Comeau and Staff of IIROC agree that the following mitigating and aggravating factors apply in this case:

Mitigating

- The Respondent has no disciplinary history;
- The Respondent did not understand that he had become a shareholder of Gray Wolf at the relevant time;
- The Respondent received no profit from the Gray Wolf securities registered in his and family members' names as none were sold and eventually became virtually worthless.

Aggravating

- The Respondent had approximately 18 years of experience in the industry;
- The Respondent earned commissions of approximately \$5000.

VI. TERMS OF SETTLEMENT

29. The Respondent agrees to the following terms of settlement:
- (i) A fine in the amount of \$15,000, an amount equal to three times the profit made by the Respondent by reason of the contravention; and
 - (ii) Close Supervision for a period of 12 months
30. The Respondent acknowledges that but for his recent successful completion of equivalent credit worthy continuing professional education through the Canadian Securities Institute, a requirement of passing the CPH examination would have formed part of the terms of settlement.
31. The Respondent shall pay a portion of Staff's costs of this proceeding in the amount of \$2000.00
32. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement
33. 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 Toronto in the Province of Ontario , this 29th day of July , 2009.

“Witness signature”

Witness

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 30th day of July , 2009

“Michael Comeau”

Michael Comeau

“Witness signature”

Witness

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

“Natalija Popovic”

Natalija Popovic

¶ 3 Upon the completion of the representations made on behalf of the parties, we retired to consider our decision. After deliberation we decided that we should accept the Settlement Agreement. We resumed the hearing, announced to the parties that we had accepted the Settlement Agreement and that very brief reasons would follow. These are those reasons.

¶ 4 During the course of the hearing, members of the hearing panel raised with counsel the fact that there appeared to be some inconsistency between certain of the circumstances set out in paragraph 24 of the Settlement Agreement and one of the circumstances set out in paragraph 28 thereof. We received the benefit of submissions from each counsel with respect to the matter. Because, in our view, a hearing panel is bound by the facts which are agreed to by the parties, we do not think it appropriate to discuss the apparent inconsistency any further. A hearing panel is empowered, by Rule 20.36(1), either to accept or to reject the settlement agreement which has been presented to it by the parties. That is its sole task.

¶ 5 The test which we must apply, upon a settlement hearing, is well settled. It is articulated in the frequently cited decision of *Re Milewski*, [1999] I.D.A.C.D. No. 17, at page 11:

Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. 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 public interest benefits of the settlement process in its consideration of specific settlements.

¶ 6 Upon the application of that test to the facts which have been agreed to by these parties, we are unable to say that the proposed settlement falls outside of a reasonable range of appropriateness. We are, therefore, obliged to accept the Settlement Agreement.

Dated this 18th day of August 2009.

Patrick T. Galligan, Q.C., Chair
Guenther Kleberg, Member
F. Michael Walsh, Member

