

Re Cornacchia

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

ANTONIO CORNACCHIA

2010 IIROC 9

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

Heard: February 24, 2009

Decision: March 4, 2010

(10 paras.)

Hearing Panel:

Terrance Sweeney, Chair

Donald (Sandy) Grant, Member

Leo Ciccone, Member

Appearance:

Kathryn Andrews, Enforcement Counsel, Investment Industry Regulatory Organization of Canada

Antonio Cornacchia, unrepresented

DECISION AND REASONS

¶ 1 The Respondent and IIROC entered into a Settlement Agreement, attached, dated February 4, 2010. The Hearing Panel conducted a Settlement Hearing on February 24, 2010 in Toronto, Ontario. Ms. Andrews, as counsel for IIROC, tendered a book of documents, including the Settlement Agreement, a copy of By-law 29 of IIROC, a copy of the Disciplinary Sanction Guidelines of the predecessor of IIROC, dated January 2006, extracts from the Disciplinary Sanction Guidelines and a number of reported cases.

¶ 2 IIROC alleges that, during 2005 to 2006, the Respondent's behaviour constituted conduct unbecoming contrary to By-law 29.1.

¶ 3 The specific allegations are set forth in paragraph 18 of the Settlement Agreement, as follows:

There are three main issues with respect to the Respondent's conduct:

- (a) using a client's cheque for an improper purpose;
- (b) transferring funds from clients' accounts to various other client accounts, without the

clients' full understanding or consent; and

(c) causing a bank account to be opened without the client's knowledge or authorization.

¶ 4 Ms. Andrews urged the Hearing Panel to accept the penalty, agreed with the Respondent, of a permanent ban on approval of registration in any capacity with IIROC notwithstanding the lack of at least a minimum fine of \$25,000.00 as suggested in the Disciplinary Sanction Guidelines.

¶ 5 Ms. Andrews listed the following mitigating circumstances in support of the recommended sanction:

- (a) The Respondent derived no personal benefit from his transgressions;
- (b) The Respondent had no previous history of problems with IIROC;
- (c) The Respondent cooperated fully in the investigation;
- (d) There was no issue of coercion of clients;
- (e) The Respondent showed remorse for his actions;
- (f) The Respondent was suffering from a medical condition during the relevant period as detailed in paragraphs 47 to 49 in the Settlement Agreement; and
- (g) The Respondent's employer made the clients whole in respect of their losses.

¶ 6 Paragraph (g) was not in the Settlement Agreement. Mr. Ciccone, during the Hearing, had asked if the Respondent's clients had been reimbursed for their losses. Ms. Andrews looked into the question during a break and provided the information in paragraph (g) on the resumption of the Hearing.

¶ 7 Ms. Andrews submitted that, in these circumstances, the penalty fell within the range of appropriateness and adequately would protect the investing public, IIROC, and the integrity of the securities markets while severely punishing the Respondent.

¶ 8 Mr. Grant, for the Hearing Panel, asked why IIROC was not demanding costs from the Respondent. He pointed out that if costs were not awarded against the Respondent, they would have to be borne by the other Members of IIROC. Ms. Andrews responded by saying that the Respondent had cooperated early on in the investigation and had, thus, substantially shortened the time and cost of the investigation.

¶ 9 The Respondent was not represented by counsel. The Hearing Panel, accordingly, was concerned that he was fully aware of the consequences of his agreeing to the Settlement Agreement. The Chair and each Panel Member asked the Respondent questions on this point. The Hearing Panel is satisfied that the Respondent is fully cognizant of the nature and quality of his actions in this regard.

¶ 10 In light of the foregoing, we find that the Settlement Agreement and the proposed penalty contained therein is reasonable and adequately protects the industry and the public and will prevent a repetition of the condemned activity. The Hearing Panel, accordingly, accepts the Settlement Agreement attached.

Dated at Toronto, this 4th day of March 2010.

Terrance Sweeney, Chair

Donald (Sandy) Grant, Member

Leo Ciccone, 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 Antonio Cornacchia (“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. 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.
5. The Settlement Agreement is subject to acceptance by the Hearing Panel.
6. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
7. 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.
8. 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.
9. 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.
10. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
11. 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.
12. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

III. Statement of Facts

13. 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.

Registration History:

14. The Respondent was a registrant with the IDA from September 2001 until October 2006. Currently he is not registered as an approved person with IIROC.
15. The events in question took place during 2005 and 2006, while the Respondent was employed as a Registered Representative at offices of TD Waterhouse Canada Inc, the Member firm (“TDW”), located in Woodbridge, Ontario.

Background:

16. The Respondent would provide investment advice to his TDW clients and would often refer clients to the TD Canada Trust (the “bank”) staff located at the same premises, for banking advice. He in turn from time

to time would receive client referrals from the bank.

Investigation:

17. The investigation commenced as a result of a Notice of Termination submitted by TDW in the late fall of 2006. The Notice of Termination indicated allegations of unauthorized transfers between client accounts.

Issues:

18. There are three main issues with respect to the Respondent's conduct:

- (a) Using a client's cheque for an improper purpose;
- (b) transferring funds from clients' accounts to various other client accounts, without the clients' full understanding or consent; and
- (c) causing a bank account to be opened without the client's knowledge or authorization.

(a) Using client JCP's cheque for improper purpose:

19. JCP was a client of the bank and a client of the Respondent's at TDW. She had been a client at TDW since 2002. At all material times she was in her 50's. She had an RSP account and a cash account with the Respondent.

20. In November 2005, the Respondent used a cheque signed by JCP in order to make a payment to another TDW client, as set out below.

Client SY:

21. The Respondent had a client named SY. SY had complained about an RSP transfer that had not been completed. The Respondent did not tell his branch manager about SY's complaint. In November 2005, the Respondent told SY that he would receive \$10,107 for his inconvenience.

22. In early November 2005, the Respondent obtained a cheque from JCP which he explained was for a short term loan to SY in the amount of \$10,107. JCP wrote the amount and that it was payable to SY. JCP then signed the cheque. On or about November 15, 2005, the Respondent made arrangements for the funds of \$10, 107 to be deposited into SY's TDW account.

23. JCP and SY did not know each other. According to the Respondent, JCP thought this cheque was for a short term loan to SY.

(b) Transfers from client accounts to other client accounts:

Background:

24. The Respondent had a husband and wife client ("the H's") who had died prior to the events in question. Their son RH was not a client of the Respondent. RH was the executor of his mother's estate and had dealt with the Respondent previously in that capacity. RH had complained to the Respondent because he was not receiving funds from his parents' estate quickly enough.

The transfer from JCP to RH:

25. On or about February 16, 2006, in order to satisfy RH, the Respondent made arrangements to transfer \$50,000 from his client JCP's bank account to RH's bank account, via a bank general ledger account.

26. On or about March 24, 2006, the Respondent made arrangements to transfer approximately \$101,975, by way of draft, out of JCP's bank account directly into RH's bank account, on the same day.

The transfer from RH to MM/CT:

27. On or about July 12 2006, the Respondent caused a draft in the amount of \$163,541 to be issued from the RH bank account, payable to TDW.

28. On or about July 31, 2006, the Respondent made arrangements for the draft of \$163, 541 to be deposited to

the bank's general ledger account. From there the Respondent made arrangements for the funds of \$163,541 to be transferred to a TDW joint account held by the Respondent's clients MM/CT.

29. The Respondent then effected the following two transactions from the MM/CT TDW account (which funds originally came from client JCP's account):
- (i) On or about August 11, 2006: the Respondent caused a transfer of \$12,750 into MM and CT's joint bank account;
 - (ii) On or about August 11, 2006, the Respondent caused a transfer of \$3,946 into MM's TDW RRSP account;

Other transfers from JCP bank account to other TDW client accounts:

30. During January to June 2006, the Respondent made arrangements to transfer the following amounts from his client JCP's bank account to four of his other TDW client accounts, as described below:
- i. January 2006: \$7,781 to client LFD Inc.
 - ii. March 2006: \$10,027 to client PC
 - iii. May 2006: \$10,133 to client MS
 - iv. June 2006: \$7,000 to clients CP/CP

Client LFD Inc:

31. LFD Inc. was a client of the Respondent. LF was the principal. In June 2005, \$500,000 had been transferred into the LFD Inc. account at TDW. LF asked the Respondent to invest these funds in a GIC. This was not done until November 2005. LF had complained to the Respondent that he had lost some interest during the time period when he thought the GIC had been invested, but in fact, the Respondent had delayed in completing the transaction. The Respondent told LF that he would credit him for the lost interest. He and LF agreed on the amount.
32. On or about January 16, 2006, in order to compensate LF, the Respondent made arrangements to have \$7,781 transferred from JCP's bank account to a TD internal general ledger account. He then made other arrangements to transfer \$7,781 from the internal general ledger account to LFD Inc's TDW account, on the same day.
33. JCP did not know LF. She did not know that this amount was being transferred out of her account into LFD Inc's account. The Respondent did not make any efforts to ensure that JCP was reimbursed for these funds.

Client PC:

34. The Respondent had a client named PC. In 2005, PC was waiting for funds to be transferred from another financial institution. He complained to the Respondent when this transfer was not done in a timely manner.
35. On or about March 31, 2006, in order to satisfy PC, the Respondent made arrangements for \$10,027 to be transferred from JCP's bank account to client PC's TDW account, via an internal TD general ledger account. PC's TDW account received these funds on the same day.
36. PC thought that these were the funds that had been transferred, but in fact, these funds were from JCP's bank account. JCP and PC did not know each other and JCP did not authorize this transfer.

Client MS:

37. The Respondent had a client named MS. Her son complained to the Respondent that he (the Respondent) had not changed the nature of the investments in his mother's portfolio earlier as had been agreed upon.

The Respondent did not discuss this complaint with his branch manager.

38. On or about May 16, 2006, the Respondent made arrangements for the transfer of \$10,133 from JCP's bank account to an internal general ledger account and from there to MS's TDW account.
39. MS thought these funds were compensation due to the Respondent's failure to effect a transaction in a timely manner. JCP did not know MS nor did she know that her funds were being used to pay MS.

Client CP:

40. The Respondent had a client named CP. He and his wife had a joint account with the Respondent. CP had complained about his mortgage rate and the Respondent had told him he would ensure that he received some compensation for a difference in interest rates. The Respondent told IDA staff that he did not want to lose CP's business.
41. On or about June 30, 2006, the Respondent caused \$7,000 to be transferred from JCP's bank account to CP's TDW account, via a general ledger account at the bank, all on the same day.
42. JCP did not know CP nor did she authorize this transfer.

(c) account opened without authorization:

43. In early August 2006, the Respondent caused a bank account to be opened in client CT's name, without CT's knowledge or consent ("the phony CT account").
44. On or about August 17, 2006, the Respondent made arrangements to transfer \$36,848 from the joint MM/CT TDW account (described above) into the phony CT account. On or about September 11, 2006, the Respondent made arrangements to transfer \$35,000 from the joint MM/CT TDW account into the phony CT account.

Transactions without clients' understanding or consent:

45. All of the above transactions were made without the full knowledge or consent of any of the clients. JCP believed that the Respondent was facilitating legitimate transactions for her or was not aware of them. Other clients thought funds they had received were interest payments, transfers from other institutions or other payments made to them. MM/CT thought that the large transfers were in error and would be corrected. CT did not know that the phony CT account had been opened.
46. The Respondent told investigation staff that he did not want to lose his clients' business.

Medical reports:

47. IIROC received reports from the Respondent's therapist/ social worker and from a psychiatrist, dated November 2007 and July 2008. The psychiatrist diagnosed a generalized major anxiety disorder. It is the therapist's view that the Respondent was exhibiting symptoms of depression at the time of the misconduct.
48. Both were of the view that the Respondent was continuing to deal with ongoing suffering following the death of his mother in early 2005 after a long and difficult illness. In addition, the Respondent's grandmother was hospitalized and died in the summer of 2006.
49. The reports indicate that at the time, the Respondent was under a great deal of stress and was trying to impress his superiors. The Respondent was remorseful with respect to the events in question.

Other:

50. The Respondent asked bank staff to transfer funds, he did not force or coerce any person into doing so.
51. The Respondent understands that given the penalty in this matter, that he will be prohibited from working with IIROC in a registered capacity in the future.
52. The Respondent did not benefit personally as a result of the conduct set out above.
53. He has been fully co-operative in the investigation and prosecution of this disciplinary matter. The

Respondent's admissions made at his interview with investigation staff substantially shortened the time and costs of the investigation.

54. The Respondent has no previous disciplinary history with the IDA or IIROC.

IV. Contraventions

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

Count 1: On or about November 2005, the Respondent used a cheque signed by client JCP for an improper purpose, namely to pay another TDW client, thereby constituting conduct unbecoming, contrary to IDA By law 29.1.

Count 2: During January to August 2006, the Respondent transferred funds from various client accounts to other client accounts, without the clients' full knowledge or consent, thereby constituting conduct unbecoming, contrary to IDA By law 29.1.

Count 3: On or about August 2006 the Respondent caused an account to be opened without client CT's knowledge or consent, thereby constituting conduct unbecoming, contrary to IDA By law 29.1.

V. Terms of Settlement

56. The Respondent agrees to a permanent ban on approval of registration in any capacity with IIROC.

57. Given the above circumstances, no fine or costs are to be paid by the Respondent.

58. The ban indicated in paragraph 56, together with any restrictions or other terms of the Settlement Agreement shall commence on the date that the Settlement Agreement is accepted by the Hearing Panel.

AGREED TO by the Respondent at the City of Toronto, in the Province of Ontario, this 4th day of February, 2010.

"Witness signature"

Witness

AGREED TO by Staff at the City of Toronto, in the Province of Ontario, this 4th day of February, 2010.

"Witness signature"

Witness

"Antonio Cornacchia"

antonio cornacchia

"Kathryn Andrews"

Kathryn andrews

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

ACCEPTED this 24th day of February, 2010, by the following Hearing Panel:

Per: "Terrance Sweeney"

Panel Chair

Per: "Leo Ciccone"

Panel Member

Per: "Donald (Sandy) Grant"

Panel Member