

# Bardsley (Re)

IN THE MATTER OF:

THE RULES OF THE INVESTMENT INDUSTRY REGULATORY  
ORGANIZATION OF CANADA

AND

THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

ROBERT MICHAEL BARDSLEY

2010 IIROC 15

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

Heard: March 25, 2009  
Decision: March 25, 2010  
(11 paras.)

## Hearing Panel:

J David Eaton Q.C. (Chair), Anthony Evans, Robert Crandall

## Appearance:

Elsa Renzella, IIROC Enforcement Counsel  
Arthur Doyle, for the Respondent

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## PANEL DECISION

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### 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 Robert Michael Bardsley (“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 Following the investigation, through negotiations a Settlement Agreement was reached between Staff and the Respondent. That settlement Agree was presented to this panel for approval on 25 March, 2010 at Saint John NB. The Panel approved the Settlement Agreement after deliberations and indicated that on the record at the conclusion of the hearing, stating that written reasons would follow.

¶ 4 The Settlement Agreement relates to two violations of IIROC Rules, Guidance, IDA By-Laws, Regulations or Policies as follows:

- i. From 2005 to 2008, the Respondent conducted his business consistent with the registration of a Portfolio Manager without being duly registered, contrary to IDA By-law 29.1 and Dealer Member Rule 29.1; and
- ii. On or about December 17, 2008, the Respondent made revisions, at the client's request, to a client complaint letter, which was provided to the Member firm, contrary to Dealer Member Rule 29.1.

¶ 5 The agreed facts are also set out in the Agreement at paragraphs 15 to 34 as follows:

## **Factual Background**

### **General**

15. At all material times, the Respondent was registered as a Registered Representative (Options) and branch manager and employed with BMO Nesbitt Burns Inc. ("BMO") at one of its branch offices located in Fredericton, New Brunswick. During the same relevant time period, the Respondent was also a Member of the New Brunswick District Council of the IDA and its successor IIROC.
16. Staff's investigation was initiated as a result of a ComSet entry submitted by BMO on August 25, 2008, which indicated that it was investigating the Respondent for allegations of unauthorized and discretionary trading.
17. During the course of Staff's investigation, IIROC received a Notice of Termination ("NOT") from BMO on February 24, 2009. According to the NOT, the Respondent was dismissed in good standing effective February 20, 2009.
18. The Respondent has not been registered with IIROC or its predecessor, the IDA, since his dismissal from BMO earlier this year.
19. On June 1, 2008, the Respondent became a regulated person of IIROC.

### **Conduct consistent with a Portfolio Manager**

20. The Respondent disclosed to BMO that for approximately three or four years he engaged in discretionary trading with eight clients, of whom three were family members and five were close personal friends. The clients were aware that the Respondent was purchasing securities for them without speaking with them prior to the transactions.
21. BMO and Staff never received any client complaints regarding these transactions or arrangements that these clients had with the Respondent.
22. None of these clients' accounts were designated as discretionary or managed accounts.
23. By entering into this arrangement with the clients, the Respondent effectively conducted himself as a Portfolio Manager without being duly registered as such with IIROC or its predecessor, the IDA.
24. Following the Respondent's initial interview with Staff, the Respondent took steps to voluntarily resign from IIROC New Brunswick District Council.
25. Upon completion of its own internal investigation, BMO imposed the following internal discipline measures upon the Respondent:
  - \$50,000 fine

- Removal as Branch Manager, effective Dec. 31, 2008
- Close supervision at both the Divisional and Head Office level for a minimum of six months.

### **Subsequent Complaint of BH**

26. During the course of Staff's investigation, it learned of a subsequent complaint by client BH. BH had been the Respondent's client since 2000 when his account was transferred to him from another BMO broker. BH is neither a family member nor a close friend of the Respondent.
27. In early December, 2008, at the request of BH the Respondent met with BH, who advised the Respondent that he wanted clarification concerning the substantial drop in value of his account over the last six to eight months. The Respondent encouraged BH to outline his complaint in writing in accordance with BMO's complaint handling policy.
28. At BH's request, on or about December 17, 2008, the Respondent met BH who presented him with a draft written letter of complaint, which the Respondent understood was prepared by a lawyer acting for BH.
29. The Respondent identified his concerns with the letter, namely the allegations of unauthorized trading. BH then asked the Respondent to point out the specific concerns he had in the draft letter. Accordingly, the Respondent struck out the reference to unauthorized trading.
30. BH agreed to make these changes and subsequently provided BMO a final revised complaint letter dated December 19, 2008.
31. In January 2009, BH ultimately disclosed the original draft complaint letter to the firm and his meeting with the Respondent on December 17th. The Respondent admitted to the firm that he exercised discretion in the client's account for approximately the last four years, with BH fully aware of such an arrangement.
32. BH has been compensated by BMO for the losses incurred in his account.
33. BH's account was not designated as a discretionary or managed account.
34. By entering into this arrangement with BH, the Respondent effectively conducted himself as a Portfolio Manager without being duly registered as such with IIROC or its predecessor, the IDA.

- ¶ 6 Under the terms of the Settlement Agreement the disposition agreed upon is as follows:
- i. A fine in the amount of \$25,000;
  - ii. One year suspensions from acting in any supervisory capacity with any Member;
  - iii. Four-month suspension from any registration with IIROC;
  - iv. As a condition of re-approval with IIROC, successful completion of the CPH course;
  - v. (v) The Respondent shall pay a portion of Staff's costs of this proceeding in the amount of \$5,000.00.

¶ 7 In addition to the Settlement Agreement the Panel received prior decisions of Panels supporting the agreed upon disposition. The Panel also had the benefit of submissions from counsel outlining the aggravating and mitigating factors in this case.

¶ 8 The Panel accepts Enforcement Counsel's submission that the test to be applied in deciding whether to approve the Settlement Agreement or not is one of reasonableness. Even though the disposition may not be the one that the Panel would have imposed on the agreed facts, if the disposition is reasonable under all of the

circumstances, it should be approved.

¶ 9 While the facts are not identical, the agreed upon disposition is within the range established by the prior decisions in **Re Osman** [2007] I.D.A.C.D. No. 3, and **Re Tobin** [2006] I.D.A.C.D. No.8.

¶ 10 The agreed upon disposition reasonably reflects the seriousness of the violations set out and addresses public protection should the Respondent decide to return to the industry upon the completion of the suspension.

¶ 11 The Settlement Agreement was therefore approved and signed by each Panel member.

**Dated at Saint John, New Brunswick, this 25<sup>th</sup> day March, 2010.**

J. David Eaton Q.C. Chair

Anthony Evans

Robert Crandall

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