

Re Prodigy Wealth Management Corp

IN THE MATTER OF:

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

AND

PRODIGY WEALTH MANAGEMENT CORP

2009 IIROC 51

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

Heard: November 18, 2009 at Vancouver B.C.

Decision: November 18, 2009

(13 paras.)

Hearing Panel:

Stephen D. Gill (Chair), Jim Harkness, Bob Sutherland

Appearances:

Lorne Herlin, Enforcement Counsel for IIROC

No-one appearing on behalf of the Respondent

REASONS FOR DECISION

¶ 1 In accordance with the Rules, a Hearing Panel of the Investment Industry Regulatory Organization of Canada (“IIROC”) was convened on November 18, 2009 in accordance with Rule 15 of the IIROC Dealer Member *Rules of Practice and Procedure* (the “Rules”) to review a Settlement Agreement negotiated between the Enforcement Department of IIROC and Prodigy Wealth Management Corp. (“Prodigy” or the “Respondent”) pursuant to Rule 20.35 of the IIROC Rules. The hearing commenced at 10:00 a.m. and enforcement counsel advised the Panel that he had spoken to the President of the Respondent who stated that he would not be attending the Hearing.

¶ 2 Enforcement counsel produced a copy of the Settlement Agreement for review by the Panel (Exhibit 1), a copy of the Settlement Agreement is attached to these Reasons.

Statement of Facts

¶ 3 The Settlement Agreement contains a Statement of Facts agreed to by IIROC staff and the Respondent and it is convenient to set them forth:

13. Effective September 28, 2004, the Respondent became a member of the Investment Dealers Association of Canada (the IDA). The Respondent’s only office is located in Kelowna, British Columbia.
14. On June 1, 2008, the Respondent became an IIROC Dealer Member.
15. Dwight Allen Stirrett (Stirrett) is the President, Chief Executive Officer

(CEO), and Ultimate Designated Person (UDP) of the Respondent. Through a holding company, Stirrett is the sole owner of the Respondent.

16. Stirrett is the registered representative who is responsible for all of the Respondent's client accounts.

17. On March 6, 2009, an IIROC hearing panel accepted a Settlement Agreement (the March 2009 Settlement Agreement) in which Stirrett, among other things, admitted that he failed to observe high standards of conduct in the transaction of his business and engaged in business conduct which was unbecoming or detrimental to the public interest, contrary to IDA By-law 29.1 and IIROC Dealer Member Rule 29.1 when:

a) facts were misrepresented to clients and employees of the Respondent in a May 31, 2007 letter which gave a false reason for him being absent from the Respondent's office for a period of two months during the summer of 2007; and

b) he failed to adequately attend to his business as a registered representative; his supervisory duties as President, CEO and UDP of the Respondent; and to the business of the Respondent between October 2008 and December 2008.

18. Pursuant to the March 2009 Settlement Agreement, Stirrett's registration is subject to strict supervision for an indefinite period of time.

Failure to Have a Chief Compliance Officer (CCO)

19. Pursuant to IIROC Dealer Member Rule 38 an IIROC Dealer Member must designate an individual who is approved under IIROC's rules to perform the functions of the CCO.

20. The CCO must, among other things, do the following:

(i) establish and maintain policies and procedures for assessing compliance with regulatory requirements by the IIROC Dealer Member and individuals acting on its behalf;

(ii) monitor and assess compliance by the IIROC Dealer Member, and individuals acting on its behalf, with regulatory requirements; and

(iii) report to the UDP as soon as possible if the CCO becomes aware of any circumstances indicating that the IIROC Dealer Member, or any individual acting on its behalf, may be in non-compliance with regulatory requirements.

21. Effective September 15, 2009, the Respondent's CCO resigned. Since that time the Respondent has not had a CCO and it has not been able to retain a suitable candidate to serve as CCO.

22. Due to the fact that the Respondent does not have a CCO in place, it is unable to maintain the necessary compliance infrastructure to satisfy regulatory requirements. As a result, IIROC directed the Respondent to transfer all client accounts and the assets held therein to another IIROC Dealer Member.

23. With prior notice to its clients and with no cost to them, effective November 2, 2009, the Respondent transferred all of its client accounts to Canaccord Capital Corporation (Canaccord) or if instructed by a client, to another

IIROC Dealer Member. Immediately prior to the transfer, the Respondent was an Introducing Broker which had a Type 2 Introducing Broker/Carrying Broker relationship with Pinnacle Correspondent Services, a division of Canaccord.

24. Between September 15, 2009 and November 2, 2009, compliance oversight, including the strict supervision of Stirrett, reverted to the Chief Financial Officer on an interim basis.

25. The Respondent intends to resign its IIROC membership and IIROC has initiated the resignation process.

26. Due to the Respondent's intent to resign its IIROC membership, it does not plan to fill the position of CCO.

Contraventions

¶ 4 In paragraph 27 of the Settlement Agreement, the Respondent admits that since September 15, 2009 it failed to designate an individual who was approved under IIROC's rules to perform the functions of the CCO, contrary to IIROC Dealer Member Rule 38.

Terms of Settlement

¶ 5 In the Settlement Agreement, the Respondent agreed to the following terms of settlement:

- a. The Respondent's IIROC membership is immediately suspended; and
- b. The Respondent shall immediately cease dealing with the public.

¶ 6 It is further noted in the Settlement Agreement that the terms of settlement will not in any way impair the Respondent's ability to communicate with its service providers to resolve any client complaints, or to provide information regarding the transfer of its client accounts to Canaccord. It should be noted that effective November 2, 2009 the Respondent transferred all of its client accounts.

Decision

¶ 7 Enforcement counsel, in his submissions, took the Panel through the relevant rules, the Settlement Agreement, and several relevant authorities. After adjourning to deliberate, the Panel announced that it was unanimous in accepting the Settlement Agreement.

Reasons

¶ 8 Enforcement counsel referred to the decision of *Re Clark* [1999] I.D.A.C.D. No. 40, and particularly the following passage which we adopt:

It was submitted by staff and accepted by the panel that its role under By-law 20.26 is not the same as its role under By-law 20.10 following a hearing. In considering a settlement under By-law 20.26 the panel should not simply substitute its discretion for that of staff who negotiated the settlement. The panel must be cognizant of the importance of the settlement process and should not interfere lightly in a negotiated settlement. In our view, as a result, panels must also be careful in using previous settlements as precedent. The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a hearing where similar findings are made.

¶ 9 Enforcement counsel also referred to the decision of *Re Milewski* [1999] I.D.A.C.D. No. 17 and the following passages, which we adopt:

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.

This understanding is reflected in paragraph 20.26 of the By-laws which authorizes the District Council to “accept”, rather than approve, a settlement agreement. In each case a District Council must determine appropriateness, but the standards applicable to its doing so on a settlement hearing differ from those in a contested hearing. Thus, the penalties imposed under settlement agreements, while relevant to a District Council exercising its discretion to penalize, provide only limited assistance in a hearing like this one.

¶ 10 Enforcement counsel also referred us to the decision in *Re Standards Securities Capital Corporation* [2009] IIROC No. 38, which in very similar circumstances the penalty that was agreed upon in the settlement was identical in its material parts to the penalty agreed to here. In our view the penalty agreed upon in this Settlement Agreement is within a reasonable range of appropriateness.

¶ 11 The primary goal of securities regulation is protection of the investor: *Pezim v. British Columbia (Superintendent of Brokers)* [1994] 2 S.C.R. 557 per Iacobucci J. at paras. 59, 68. In the Panel’s view the Settlement Agreement and the penalty imposed thereby is in the public interest and will protect investors. As is noted in the Settlement Agreement, the Respondent intends to resign its IIROC membership, and IIROC has initiated the resignation process. Effectively, the Respondent has ceased doing any business. In the Panel’s view, the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement. Also, in our view, the Settlement Agreement will foster confidence in the integrity of IIROC, and will foster confidence in the regulatory process of IIROC.

¶ 12 In conclusion, having considered the authorities, and the foregoing circumstances, and having carefully reviewed the Settlement Agreement, the Panel concluded that it would accept the Settlement Agreement.

¶ 13 These Reasons may be signed in counterpart.

Dated at Vancouver, British Columbia, this 18th day of November, 2008.

Stephen Gill, Chair

Jim Harkness, Panel Member

Bob Sutherland, Panel Member

* * * * *

SETTLEMENT AGREEMENT

I. Introduction

1. The Enforcement Department Staff (Staff) of the Investment Industry Regulatory Organization of Canada (IIROC) has received a referral from IIROC's Registration Department regarding Prodigy Wealth Management Corp. (the Respondent).
2. Staff's review of the referral disclosed matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1 (the Hearing Panel).

II. Joint Settlement Recommendation

3. 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 IIROC's Dealer Member *Rules of Practice and Procedure*.
4. The Settlement Agreement is subject to acceptance by the Hearing Panel.
5. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
6. 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.
7. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
8. 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 referral.
9. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
10. 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.
11. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

III. Statement of Facts

(i) Acknowledgment

12. 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

13. Effective September 28, 2004, the Respondent became a member of the Investment Dealers Association of Canada (the IDA). The Respondent's only office is located in Kelowna, British Columbia.
14. On June 1, 2008, the Respondent became an IIROC Dealer Member.

15. Dwight Allen Stirrett (Stirrett) is the President, Chief Executive Officer (CEO), and Ultimate Designated Person (UDP) of the Respondent. Through a holding company, Stirrett is the sole owner of the Respondent.
16. Stirrett is the registered representative who is responsible for all of the Respondent's client accounts.
17. On March 6, 2009, an IIROC hearing panel accepted a Settlement Agreement (the March 2009 Settlement Agreement) in which Stirrett, among other things, admitted that he failed to observe high standards of conduct in the transaction of his business and engaged in business conduct which was unbecoming or detrimental to the public interest, contrary to IDA By-law 29.1 and IIROC Dealer Member Rule 29.1 when:
 - a) facts were misrepresented to clients and employees of the Respondent in a May 31, 2007 letter which gave a false reason for him being absent from the Respondent's office for a period of two months during the summer of 2007; and
 - b) he failed to adequately attend to his business as a registered representative; his supervisory duties as President, CEO and UDP of the Respondent; and to the business of the Respondent between October 2008 and December 2008.
18. Pursuant to the March 2009 Settlement Agreement, Stirrett's registration is subject to strict supervision for an indefinite period of time.

Failure to Have a Chief Compliance Officer (CCO)

19. Pursuant to IIROC Dealer Member Rule 38 an IIROC Dealer Member must designate an individual who is approved under IIROC's rules to perform the functions of the CCO.
20. The CCO must, among other things, do the following:
 - (i) establish and maintain policies and procedures for assessing compliance with regulatory requirements by the IIROC Dealer Member and individuals acting on its behalf;
 - (ii) monitor and assess compliance by the IIROC Dealer Member, and individuals acting on its behalf, with regulatory requirements; and
 - (iii) report to the UDP as soon as possible if the CCO becomes aware of any circumstances indicating that the IIROC Dealer Member, or any individual acting on its behalf, may be in non-compliance with regulatory requirements.
21. Effective September 15, 2009, the Respondent's CCO resigned. Since that time the Respondent has not had a CCO and it has not been able to retain a suitable candidate to serve as CCO.
22. Due to the fact that the Respondent does not have a CCO in place, it is unable to maintain the necessary compliance infrastructure to satisfy regulatory requirements. As a result, IIROC directed the Respondent to transfer all client accounts and the assets held therein to another IIROC Dealer Member.
23. With prior notice to its clients and with no cost to them, effective November 2, 2009, the Respondent transferred all of its client accounts to Canaccord Capital Corporation

(Canaccord) or if instructed by a client, to another IIROC Dealer Member. Immediately prior to the transfer, the Respondent was an Introducing Broker which had a Type 2 Introducing Broker/Carrying Broker relationship with Pinnacle Correspondent Services, a division of Canaccord.

24. Between September 15, 2009 and November 2, 2009, compliance oversight, including the strict supervision of Stirrett, reverted to the Chief Financial Officer on an interim basis.
25. The Respondent intends to resign its IIROC membership and IIROC has initiated the resignation process.
26. Due to the Respondent's intent to resign its IIROC membership, it does not plan to fill the position of CCO.

IV. Contraventions

27. The Respondent admits that since September 15, 2009 it failed to designate an individual who was approved under IIROC's rules to perform the functions of the CCO, contrary to IIROC Dealer Member Rule 38

VI. Terms of Settlement

28. The Respondent agrees to the following terms of settlement:
 - a) the Respondent's IIROC membership is immediately suspended; and
 - b) the Respondent shall immediately cease dealing with the public.
29. The terms of this settlement do not in any way impair the Respondent's ability to communicate with its service providers, to resolve any client complaints, or to provide information regarding the transfer of its client accounts to Canaccord.
30. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
31. 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.
32. This Settlement Agreement may be signed in counterparts and by facsimile.

AGREED TO by the Respondent at the City of Kelowna in the Province of British Columbia, this 9th day of November, 2009.

“Witness signature”

Witness

“Respondent's signature”

Respondent

AGREED TO by Staff at the City of Vancouver in the Province of British Columbia, this 10th day of November, 2009.

“Witness signature”

“Lorne Herlin”

Witness

Lorne Herlin

Enforcement Counsel on behalf of Staff

ACCEPTED at the City of Vancouver in the Province of British Columbia, this 18th day of November, 2009, by the following Hearing Panel:

Per: “Stephen Gill”
Panel Chair

Per: “Jim Harkness”
Panel Member

Per: “Bob Sutherland”
Panel Member

Copyright © 2009 Investment Industry Regulatory Organization of Canada. All Rights Reserved.