

Re Karcz

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

JEAN-PAUL KARCZ

2010 IIROC 22

Investment Industry Regulatory Organization of Canada
for and in the name of the Investment Dealers Association of Canada
Hearing Panel (Québec District Council)

Hearing: April 29, 2010
Decision: May 18, 2010
(20 pars.)

Hearing Panel:

Claude Bisson, Chair
Jean A. Élie
Yves Julien

Appearances:

Me Sébastien Tisserand, for IIROC
Me Sébastien C. Caron, for Jean-Paul Karcz

DECISION ON SETTLEMENT AGREEMENT

¶ 1 On March 11 and April 5, 2010, the parties signed a Settlement Agreement in accordance with By-laws 20.35 to 20.40, and Rule 14 of the Rules of Practice and Procedure of IIROC.

¶ 2 In this Agreement, the Respondent admits to the following misconduct:

“(a) During the period of December 12, 2007 to August 12, 2008, inclusively, while registered for less than two years as a representative (retail) with unrestricted practice in the employ of Dundee Securities Corporation, an IIROC-regulated firm, the Respondent executed 842 discretionary trades in the accounts of eight (8) clients, without the accounts having been previously approved as discretionary accounts, contrary to the

provisions of IIROC Rule 1300.4 and Standard C of the Conduct and Practices Handbook.”

¶ 3 In the agreement submitted to us, the Respondent accepts the following penalties:

- “ a) A fine of \$20,000; and
- b) Successful completion of the Conduct and Practices Handbook examination within 12 months from the effective date of this Settlement Agreement; and
- c) A twelve(12)-month period of strict supervision by his employer, an IIROC-regulated firm, from the effective date of this Settlement Agreement. A strict supervision report in accordance with IIROC rules shall be submitted monthly by the firm; and
- d) The Respondent agrees to pay IIROC costs in the amount of \$15,000;”

¶ 4 On or about August 31, 2007, the Respondent was registered with the Investment Dealers Association of Canada (IDA) as a representative of a full service dealer.

¶ 5 Since that same date, the Respondent has been employed as a duly registered representative with Dundee Securities Corporation (Dundee), an IIROC-regulated firm, which kept him in its employ, while issuing him a letter of reprimand on November 4, 2008, but with no other penalty. This was pursuant to the transactions that gave rise to the present matter.

¶ 6 Although the Respondent had experience in the financial field, as an educator and advisor, first in France and then in Canada, he had never worked as a representative in the securities industry prior to 2007.

¶ 7 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 the IDA and IIROC, which came into force June 1, 2008, the IDA has retained IIROC to provide the necessary services for the IDA to carry out its regulatory functions;.

¶ 8 The investigation that led to the complaint against the Respondent revealed that on numerous occasions, beginning on December 12, 2007, the Respondent had, over the course of several months, executed discretionary trades in the accounts of several clients, whereas the generic letters of instruction (mandate) did not meet all of the requirements of Regulation 1300.5; also, the Respondent had not obtained Dundee’s authorization to effect trades in discretionary accounts and had not completed the two years of experience required to make such trades.

¶ 9 By acting in this manner, the Respondent infringed Regulation 1300.4 which stipulates:

" No person, other than a partner, director, officer or registered representative (other than a registered representative (mutual funds) or (non-retail)) who has been approved as such pursuant to the applicable By-laws of the Association, shall effect trades for a customer in a discretionary account and any such permitted trades shall only be effected if: :

- (a) the prior written authorization has been given by the customer to the Member and accepted by the Member in compliance with Regulation 1300.5; and;
- (b) the account has been specifically approved and accepted in writing as a discretionary account by the designated director, partner, officer, branch manager, futures contract principal or futures contract options principal, as the case may be, who authorized the opening of the account,

and provided that any such person permitted to effect discretionary trades shall have actively dealt in, advised in respect of or performed analysis with respect to the securities or commodity futures contracts or options which are to be traded on a discretionary basis for a period of two years. "

¶ 10 Also, the Respondent did not comply with the professional conduct imposed on him by Standard C of the Conduct and Practices Handbook, which is entitled *Professionalism*:

"*Client Orders*: Every client order must be entered only at the client's direction unless the account has been properly constituted as a discretionary or managed account pursuant to the applicable regulatory requirements."

¶ 11 IIROC By-law 29.1 stipulates that participants in the securities industry, including the representative (which is what that Respondent was at the material time), shall "observe high standards of ethics and conduct in the transaction of their business," which the Respondent did not do by not observing the rules concerning the discretionary account.

¶ 12 In this matter, the mandates, in the form of letters given to the Respondent by his clients, were never disclosed to Dundee, nor filed in the records of the latter which was therefore unable to approve them – and which it could not have done anyway given the condition unfulfilled by the Respondent regarding the two years of experience.

¶ 13 Such misconduct negatively affects the investors' perception of the integrity of the profession, and undermines their confidence in the industry's processes and in the role of the financial representative. Any penalty imposed by a hearing panel must have as its aim the protection of the investor, by helping to prevent of a repeat of the blameworthy conduct.

¶ 14 Thus, it is important that representatives comply in all points with the regulations respecting discretionary accounts. By prescribing that these accounts be formally approved by a senior executive of a dealer member and be executed only by experienced representatives, the applicable regulations impose strong supervision on these accounts and therefore mitigate the risk for the customers.

¶ 15 Elsewhere, with regard to mitigating factors, it may be noted that that all of the clients concerned had given the Respondent generic letters of instruction (mandate) (albeit, they had not been approved in accordance with the applicable regulations), that none of them filed a complaint, and that the Respondent did not benefit unduly from the trades in question, his remuneration being solely based on a fixed percentage (applied monthly) of the sums entrusted to the Respondent's management.

¶ 16 In addition, as mitigating factors, it may be noted that the Respondent, when apprised of the regulations, did not challenge the allegations against him and, moreover, cooperated fully in the investigation. Furthermore, he has no disciplinary history.

¶ 17 It was also revealed at the hearing that the clients received transaction statements within two days, as well as monthly statements of account, which is in accordance with industry standards and shows that the Respondent was not hiding what he was doing.

¶ 18 We have examined the jurisprudence that was submitted to us, as well as the guidelines which, though not imperative, may serve as a guide.

¶ 19 Taking all of these elements into account, the Hearing Panel considers reasonable the penalties that are the subject of the Settlement Agreement, which is appended to this decision.

¶ 20 Indeed, the role of a Hearing Panel is not to substitute its own judgment for the settlement proposed by the parties, but solely to verify its reasonableness.

¶ 21 **FOR THESE REASONS:**

The Hearing Panel accepts the Settlement Agreement reproduced below and gives effect to it on the date of this Decision.

MONTRÉAL, this 18th day of May 2010

Claude Bisson, Chair

*** * * * * 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 Jean-Paul Karcz ("**the Respondent**").
2. The Investigation was commenced by Enforcement Department Staff of the Investment Dealers Association of Canada ("**IDA**") prior to May 30, 2008.
3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc.;
4. Pursuant to the *Administrative and Regulatory Services Agreement* between the IDA and IIROC, which came into force June 1, 2008, the IDA has retained IIROC to provide the necessary services for the IDA to carry out its regulatory functions;
5. The Investigation disclosed matters for which the Respondent may be disciplined by a Hearing Panel appointed pursuant to Part C of Schedule C.1 to Transition Rule No. 1 of IIROC ("**the Hearing Panel**");

II. JOINT SETTLEMENT RECOMMENDATION

6. The Respondent consents to be subject to the jurisdiction of IIROC;
7. Staff of IIROC 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 Rule 20.35 to 20.40 inclusive, and Rule 15 of the Rules of Practice and Procedure;
8. The Settlement Agreement is subject to acceptance by the Hearing Panel;
9. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel ("**the effective date of the Settlement Agreement**");
10. 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;
11. 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;
12. 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;
13. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel;

14. 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;
15. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement;

III. STATEMENT OF FACTS

(i) Acknowledgment

16. Staff and the Respondent agree with the facts set out in this section and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts;

(ii) Factual Background

17. On or about August 31, 2007, the Respondent, Jean-Paul Karcz, was registered with the Investment Dealers Association of Canada ("**IDA**") as a representative of a full service dealer;
18. Since about August 31, 2007, Jean-Paul Karcz (the "**Representative**") has been employed as a duly registered representative of Dundee Securities Corporation ("**Dundee**"), an IDA Member firm;
19. On or about December 12, 2007, the Representative obtained from client MN a generic letter of instruction ("**Mandate**") permitting him to make transactions on client MN's cash account no. 145-622A for the purchase and/or sale of North American and/or Canadian shares, and/or ETFs, and/or ADRs, and/or UltraShort ETFs, in accordance with discretionary parameters, namely the appreciation and interpretation of technical indicators by the Representative (collectively, the "**Parameters**");
20. At all material times, the Mandate was not filed in the client file at head office, and Dundee was never informed of MN's Mandate and never approved MN's cash account 145-622A as a discretionary account;
21. On or about December 20, 2007, the Representative obtained from client RH a Mandate permitting him to make transactions in client RH's cash account no 145-606A in accordance with the same Parameters;
22. At all material times, the Mandate was not filed in the client file at head office, and Dundee was never informed of RH's Mandate and never approved RH's cash account no 145-606A as a discretionary account;
23. On or about January 29, 2008, the Representative obtained from client LP a Mandate permitting him to make transactions in client LP's RRSP account no 143-571S in accordance with the same Parameters;
24. At all material times, the Mandate was not filed in the client file at head office, and Dundee was never informed of LP's Mandate and never approved LP's RRSP account no 143-571S as a discretionary account;
25. On or about March 12, 2008, the Representative obtained from client RV a Mandate permitting him to make transactions in client RV's RRSP account no 144-059S in accordance with the same Parameters;
26. At all material times, the Mandate was not filed in the client file at head office, and Dundee was never informed of RV's Mandate and never approved RV's RRSP account no 144-059S as a discretionary account;
27. On or about March 13, 2008, the Representative obtained from client JPD a Mandate permitting him to make transactions in client JPD's Canadian cash account no 145-683A ("**CAD**"), as well as in client JPD's US cash account no 145-683B ("**USD**"), the whole in accordance with the same Parameters;
28. At all material times, the Mandate was not filed in the client file at head office, and Dundee was never informed of JPD's Mandate and never approved JPD's CAD cash account no 145-683A and JPD's USD cash account no 145-683B as discretionary accounts;
29. On or about March 18, 2008, the Representative obtained from client SH a Mandate permitting him to

- make transactions in client SH's cash account no 145-714A, in accordance with the same Parameters;
30. At all material times, the Mandate was not filed in the client file at head office, and Dundee was never informed of SH's Mandate and never approved SH's cash account no 145-714A as a discretionary account;
 31. On or about April 1, 2008, the Representative obtained from client JPT a Mandate permitting him to make transactions in client JPT's RRIF account no 145-692T in accordance with the same Parameters;
 32. At all material times, the Mandate was not filed in the client file at head office, and Dundee was never informed of JPT's Mandate and never approved JPT's RRIF account no 145-692T as a discretionary account;
 33. On or about April 15, 2008, the Representative obtained from client AH a Mandate permitting him to make transactions in client AH's cash account no 145-712A and in the latter's RRSP account no 145-712S, in accordance with the same Parameters;
 34. At all material times, the Mandate was not filed in the client file at head office, and Dundee was never informed of AH's Mandate and never approved AH's cash account no 145-712A and RRSP account no 145-712S as discretionary accounts;
 35. At all material times, the Representative executed 842 discretionary trades, without first obtaining the valid consent of the clients and Dundee, and which are detailed as follows:
 - (i) between December 12, 2007 and August 12, 2008, 127 discretionary trades in the account of MN;
 - (ii) between December 20, 2007 and August 12, 2008, 141 discretionary trades in the account of RH ;
 - (iii) between January 29, 2007 and August 12, 2008, 63 discretionary trades in the account of LP;
 - (iv) between March 12, 2008 and August 12, 2008, 69 discretionary trades in the account of RV;
 - (v) between March 13, 2008 and August 12, 2008, 110 discretionary trades in the CAD account of JPD;
 - (vi) between March 13, 2008 and August 12, 2008, 13 discretionary trades in the USD account of JPD;
 - (vii) between March 18, 2008 and August 12, 2008, 50 discretionary trades in the account of SH;
 - (viii) between April 1, 2008 and August 12, 2008, 170 discretionary trades in the account of JPT;
 - (ix) between April 15, 2008 and March 12, 2008, 99 discretionary trades in the accounts of AH.
 36. On June 1, 2008, the Representative became a Regulated Person of IIROC.
 37. On or about August 6, 2008, the branch manager in charge of supervision of the Representative at Dundee became concerned about the manner in which the Representative was soliciting and documenting his transactions, and contacted the Dundee Compliance Department in this regard;
 38. On August 12, 2008, the Dundee Compliance Department contacted the Representative by e-mail to ask him to justify the investments for the (8) clients identified and to supply documentation demonstrating that the Representative had obtained the clients' authorization for each trade;
 39. Following the investigation by the Dundee Compliance Department, the Respondent corrected the situation;
 40. On November 4, 2008, Dundee issued a letter of reprimand, but without penalty;
 41. On November 11, 2008, the IIROC Enforcement Department received a ComSet report detailing internal disciplinary action taken by Dundee against the Representative, pursuant to discretionary trades effected

in the accounts of eight (8) clients, without the accounts having been previously designated as discretionary accounts;

42. On March 23, 2009, the Representative admitted during his out-of-court interview that he had obtained the Mandates and had effected the discretionary trades in dispute;
43. To date, the eight (8) clients concerned have not complained about the discretionary trading engaged in by the Respondent.

IV. CONTRAVENTIONS

44. The Respondent admits to the following contraventions of IIROC Rules and Guidance, and IDA By-Laws, Regulations or Policies:
 - 1) During the period of December 12, 2007 to August 12, 2008, inclusively, while registered for less than two years as a representative (retail) with unrestricted practice in the employ of Dundee Securities Corporation, an IIROC-regulated firm, the Respondent executed 842 discretionary trades in the accounts of eight (8) clients, without the accounts having been previously approved as discretionary accounts, contrary to the provisions of IIROC Rule 1300.4 and Standard C of the Conduct and Practices Handbook;

V. TERMS OF SETTLEMENT

45. The Respondent agrees to the following terms of settlement:
 - a) A fine of \$20,000; and
 - b) Successful completion of the Conduct and Practices Handbook examination within 12 months from the effective date of this Settlement Agreement; and
 - c) A twelve(12)-month period of strict supervision by his employer, an IIROC-regulated firm, from the effective date of this Settlement Agreement. A strict supervision report in accordance with IIROC rules shall be submitted monthly by the firm; and
 - d) The Respondent agrees to pay IIROC costs in the amount of \$15,000;
46. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately on the effective date of the Settlement Agreement.
47. Unless otherwise stated, suspensions, prohibitions, expulsions, restrictions and other conditions or terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent, at Montréal (Québec), this 11th Day of March, 2010.

« Jean-Paul Karcz »

L'intimé Jean Paul Karcz

« Sébastien Caron »

Me Sébastien Caron

Heenan Blaikie

Representing the Respondent

AGREED TO by Staff of IIROC, at Montréal (Québec), this 5th day of April 2010.

« Witness »

« Sébastien Tisserand »

Witness

Me Sébastien Tisserand

Enforcement Counsel

IIROC

AGREED TO by the Hearing Panel, at Montréal (Québec), this 18th day of May 2010.

« Claude Bisson »

Panel Chair

« Jean Elie »

Panel Member

« Yves Julien »

Panel Member

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