

Re Jannetta

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

JAMES JANNETTA

2010 IIROC 23

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

Hearing: January 27, 2010

Decision: May 18, 2010

(24 paras.)

Hearing Panel:

Thomas Kormylo, Chair

Walter Silicz

Gregory Ozechowsky

Appearances:

Charlene McLaughlin, Enforcement Counsel, for the Investment Industry Regulatory Organization of Canada

The Respondent did not appear and was not represented by Counsel

REASONS FOR DECISION

¶ 1 A hearing panel (the "Panel") of the Investment Industry Regulatory Organization of Canada ("IIROC") was convened on January 27, 2010 pursuant to Part 10 of By-law 20 of the Investments Dealers Association of Canada ("IDA") and Section 1.9 of Schedule C.1 to Transition Rule No. 1 made pursuant to By-law 13.1 of IIROC, to preside over a Standard Track Discipline Proceeding Hearing regarding James Jannetta (the "Respondent") in accordance with Rule 6.2 of Part 10 of the IIROC Dealer Member Rules of Practice and Procedure (the "Rules").

Background

¶ 2 IIROC counsel advised the Panel that the Notice of Hearing dated December 7, 2009 (the "Notice of Hearing") was served upon the Respondent 45 days prior to the date of the Hearing in accordance with the Rules and filed, as an exhibit in the proceedings, evidence acceptable to the Panel, confirming that such notice had been properly served.

¶ 3 IIROC counsel also advised the Panel that no response to the Notice of Hearing had been served by the

Respondent on IIROC as required by Rule 7.1 and that by virtue of the Respondent failing to file a response in accordance with Rule 7.1, IIROC is entitled to proceed with the hearing of the matter as set forth in the Notice of Hearing without further notice to and in the absence of the Respondent.

¶ 4 IIROC counsel further advised the Panel that:

- (a) in accordance with Rule 7.2, the Panel may, accept as proven, the facts and violations alleged by IIROC in the Notice of Hearing and may impose penalties and costs pursuant to By-laws 20.33, 20.34 and 20.49; and
- (b) in accordance with Transition Rule No. 1 adopted by IIROC and the IDA, the Panel has jurisdiction to hear and decide matters relating to enforcement proceedings commenced by the IDA prior to June 1, 2008.

¶ 5 The Panel reviewed the Notice of Hearing, considered the submission of IIROC counsel and examined the exhibits filed by IIROC counsel, to the extent considered by the Panel to be necessary in order to reach a decision on this matter, and concluded that it had jurisdiction to hear and decide the matter as described in the Notice of Hearing and impose the penalties as set forth below and that in connection therewith it was entitled to and does accept as proven the facts and violations alleged by IIROC in the Notice of Hearing.

Facts and Contraventions

¶ 6 The facts relating to the matter before the Panel are set forth in the Notice of Hearing. The rules, regulations, by-laws and policies, which the Respondent is alleged to have contravened, are also set forth in the Notice of Hearing. Accordingly, there is no necessity to repeat all the facts in the decision document. However, it is important for the Panel to identify those facts, including those in respect of each violation, that it considered material and relevant to the penalties imposed by the Panel in respect of the misconduct of the Respondent.

General

¶ 7 IIROC counsel advised the Panel or the summary of facts in the Notice of Hearing confirm, that:

- (a) there has been no regulatory issues with the Respondent prior to the transactions that gave rise to the matters that are the subject of this Hearing and confirmed that no additional regulatory matters have arisen since that time and December, 2008, the date the Respondent left the industry;
- (b) no complaints regarding this matter or any other matter involving the Respondent have ever been received by the Respondent's employers since he became registered with the IDA as a Registered Representative ("RR") in March, 1999;
- (c) the Respondent cooperated during the course of the investigation and attended at an interview with IIROC counsel and admitted his misconduct with respect to all alleged violations;
- (d) the Respondent failed to cooperate or respond to the Notice of Hearing;
- (e) the Respondent did not personally benefit from any of the transactions giving rise to these proceedings, apart from the usual trading commissions;
- (f) none of the Respondent's clients suffered any financial loss as a result of the Respondent's misconduct;
- (g) the period of misconduct for the most part took place over a 10 month period from January - October, 2006; and
- (h) the Respondent was not qualified to act as a Portfolio Manager.

RA Account

¶ 8 Count 1

During the period January to October 2006, the Respondent, a RR with MF Global Canada Co.

(formerly Man Financial Canada Co.)("MF Global"), a Member of the IDA, engaged in discretionary trading in the client account of R.A., without the client's prior written authorization, without proper approval to affect trades for clients in discretionary accounts, and without the client accounts having been accepted and approved in writing as discretionary accounts by the Member firm, contrary to IDA Regulation 1300.4 and 1300.5.

- The misconduct occurred over a 10 month period and involved 331 trades.
- A verbal agreement with the client regarding the trading was acknowledged and the trades were ratified by the client.

¶ 9 Count 2

During the period May 2005 to October 2006, the Respondent, a RR with MF Global, a Member of the IDA, failed to accurately record and/or update the client investment objectives and risk tolerance relating to the client account of R.A., contrary to IDA Regulation 1300.1(a).

- The misconduct occurred over an 18 month period and involved 114 trades.
- A verbal agreement with the client regarding the trading was acknowledged and the trades were ratified by the client.

¶ 10 Count 3

In and around March 2006, the Respondent, a RR with MF Global, a Member of the IDA, engaged in conduct unbecoming a registrant in that he arranged for the client R.A. to take a monetary loss with a promise for future compensation arising from the Respondent's trading error, contrary to IDA Bylaw 29.1.

- The \$757.00 trading error was disclosed by the Respondent to his employer and acknowledged by the client.
- Arrangements to compensate the client were not disclosed to the employer.

AD Account

¶ 11 Count 4

During the period January to October 2006, the Respondent, a RR with MF Global, a Member of the IDA, engaged in discretionary trading in the client account of A.D., without the client's prior written authorization, without proper approval to effect trades for clients in discretionary accounts, and without the client accounts having been accepted and approved in writing as discretionary accounts by the Member firm, contrary to IDA Regulation 1300.4 and 1300.5.

- The misconduct occurred over a 10 month period and involved 114 trades.
- A verbal agreement with the client regarding the trading was acknowledged and the trades ratified by the client.

¶ 12 Count 5

During the period August 2006 to October 2006, the Respondent, a RR with NF Global Canada Co., a Member of the IDA, failed to accurately record and/or update the client investment objectives and risk tolerance relating to the client account of A.D., contrary to IDA Regulation 1300.1(a).

- The misconduct occurred over a 3 month period.
- A verbal agreement with the client regarding the trading was acknowledged and the trades ratified by the client.

SL Account

¶ 13 Count 6

During the period January to March 2006 and October 2006, the Respondent, a RR with MF Global, a Member of the IDA, engaged in discretionary trading in the client accounts of S.L., without proper approval to effect trades for clients in discretionary accounts, and without the client accounts having been accepted and approved in writing as discretionary accounts by the Member firm, contrary to IDA Regulation 1300.4 and 1300.5.

- The misconduct occurred over an 8 month period and involved 82 trades.
- A verbal agreement with the client regarding the trading was acknowledged and the trades ratified by the client.

AP Account

¶ 14 Count 7

During the period March, September, and October, 2006, the Respondent, a RR with MF Global, a Member of the IDA, engaged in discretionary trading in the client account of A.P., without proper approval to effect trades for clients in discretionary accounts, and without the client accounts having been accepted and approved in writing as discretionary accounts by the Member firm, contrary to IDA Regulation 1300.4 and 1300.5.

- The misconduct occurred over a 3 month period and involved 7 trades.
- The proposed trading was discussed in advance with the client and the client acknowledged same and ratified the trades.

JM Account

¶ 15 Count 8

During the period January to March 2006 and October 2006, the Respondent, a RR with MF Global, a Member of the IDA, failed to maintain required minimum records in relation to the J.M. account, in that he did not obtain a written authorization allowing for the receipt of trade instructions from a third party, contrary to Regulation 200.1(i)(c).

- The misconduct occurred over a 4 month period and involved 12 trades on instructions of the client's spouse.
- The client verbally authorized the Respondent to take instructions from her spouse and the client ratified all trades.

JP Account

¶ 16 Count 9

In and around October 2006, the Respondent, RR with MF Global, a Member of the IDA, engaged in unauthorized trading in the client account of J.P., in that he affected one (1) trade in the J.P. account without the client's prior instructions, contrary to Bylaw 29.1.

- The misconduct involved conducting 1 trade without authorization.
- The trade was ratified by the client.

KP Account

¶ 17 Count 10

In and around October 2006, the Respondent, a RR with MF Global, a Member of the IDA, engaged in unauthorized -trading in the client account of K.P., in that he affected two (2) trades in the K.P. account without the client's prior instructions, contrary to Bylaw 29.1.

- The misconduct involved conducting 2 trades on instructions from the father of the client without obtaining instructions from the client.
- The trades were ratified by the client.

Matters Considered

¶ 18 The Panel considered the above noted mitigating factors in determining the penalties imposed and whether they are within a reasonable range for and proportionate to the gravity of the misconduct of the Respondent.

¶ 19 The Panel also noted the seriousness of the misconduct and the overriding industry expectations that unauthorized trading by unqualified persons will not be tolerated. Notwithstanding that, there was no loss to clients and the trades were ratified by the clients, it is necessary for the protection of the public that the Respondent's conduct, which involved multiple incidents over a considerable period of time in blatant disregard for the rules of the industry, be appropriately dealt with in order to deter such misconduct in the industry.

Decision

¶ 20 The Panel recognized the importance of IIROC taking steps to ensure compliance by its members with the IIROC rules, guidelines, by-laws, regulations and policies, and in particular enforcing compliance with discretionary trading rules and the rules relating to updating client records.

¶ 21 The Panel acknowledges IIROC counsel's submission regarding the sanctions that IIROC Counsel considered were appropriate and necessary in the circumstances to underscore the need for representatives to take appropriate steps to protect the integrity of the industry and to protect clients.

¶ 22 The Panel consider carefully the submission of IIROC counsel regarding the imposition of fines and reviewed the Disciplinary Sanction Guidelines and the cases referred to by IIROC counsel, most of which dealt with settlement hearings. Having regarding to the foregoing and the circumstances surrounding the misconduct of the Respondent, the Panel levied the fines outlined below which it considered to be in line with industry expectations and sufficient to act as a general deterrent:

- Count 1 - \$5,000.00
- Count 2 - \$3,000.00
- Count 3 - \$3,000.00
- Count 4 - \$5,000.00
- Count 5 - \$3,000.00
- Count 6 - \$5,000.00
- Count 7 - \$5,000.00
- Count 8 - \$2,500.00
- Count 9 - \$2,500.00
- Count 10 - \$2,500.00
- **Total Fines: \$36,500.00**

¶ 23 After reviewing the documentation filed by IIROC counsel concerning costs incurred by IIROC, and after reviewing documentation filed by IIROC counsel in respect of the costs incurred in connection with this matter and after hearing submissions from IIROC counsel regarding costs, the Panel agreed that costs should be limited to \$15,000.00.

¶ 24 As well, the Panel recommended that should the Respondent attempt to re-enter the industry, provided the fines and costs imposed have been paid, the Respondent's registration should be subject to a period of 6

months of close supervision and he should be required to successfully re-write and successfully complete the Conduct and Practices Handbook Exam.

Signed this 18th day of May, 2010, by the following Discipline Panel.

Thomas J.D. Kormylo, Panel Chair

Walter N. Silicz, Panel Member

Gregory Ozechowsky, Panel Member

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