

Re Bereskin

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

Michael Jeffrey Bereskin

2010 IIROC 37

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

Heard: August 27, 2010 in Toronto ON
Decision: August 27, 2010
(10 paras.)

Hearing Panel:

Mr. Frederick Webber (chair), Mr. Richard Austin and Mr. Michael Walsh

Appearance:

Mr. Milton Chan, Enforcement Counsel
Respondent appeared in person

HEARING PANEL DECISION

¶ 1 As a result of a Settlement Agreement entered into between IIROC and the Respondent, a Settlement Hearing was conducted on August 27, 2010 in Toronto pursuant to the IROC Dealer Member Rules. The Hearing Panel received and considered oral submissions from IIROC counsel and IIROC's Book of Documents containing the Settlement Agreement, relevant IIROC Rules and disciplinary sanction guidelines and certain decisions of previous Hearing Panels.

¶ 2 The contraventions alleged by IIROC and admitted by the Respondent are set out in the Settlement Agreement and are as follows;

“Between November 2004 and February 2008, while employed as a Registered Representative by Blackmont Capital and its predecessor First Associates Investments Inc., the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to one client, LFT, contrary to IDA Regulation 1300.1(a) (now IIROC Dealer Member Rule 1300.1(a))”.

¶ 3 The salient facts can be summarized as follows. The Respondent was first registered as a Registered Representative with the IDA in February 2003. In 2004, the Respondent opened a trading account for a family

trust. He received a copy of the trust agreement, which states that all decisions of the trust must be made with the consent of two of the three trustees. The Respondent did not understand the terms of the trust agreement and forwarded it to his firm's new accounts group for review, but made no further inquiries about the terms of the trust. Relying solely on the representations of one of the trustees who held himself out as having the authority to instruct the Respondent on behalf of the trust, over the following three and a half years, the Respondent accepted trading instructions from only one of the trustees without communicating with the others trustees, contrary to the terms of the trust.

¶ 4 The issue for the Panel was whether to accept or reject the proposed settlement. This Panel accepts as applicable in this case, the statement in the decision *Re Milewski*, [1999] I.D.A.C.D. No.17, contained in IIROC's book of documents:

“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.”

¶ 5 Given the standard of “reasonableness”, it is the responsibility of this Panel to determine whether the penalties set forth in the Settlement Agreement strike a reasonable balance between fairness to the Respondent in the circumstances and the need to protect the investing public, the industry membership, the integrity of the discipline process, the integrity of the securities markets and prevention of a repetition of the offense.

¶ 6 As confirmed by the cases cited by IIROC Counsel and contained in the Book of Documents, and as stated in the Dealer Member Disciplinary Sanction Guidelines, “the ‘Know Your Client’ rule is of paramount importance for the securities industry. All registrants must make diligent and business-like efforts to learn and record the essential financial and personal circumstances, and the investment objectives of each client. Knowing your client is a fundamental ongoing obligation that a registrant is required to meet in order to be able to act in the best interests of his/their clients”. This Panel agrees with that statement.

¶ 7 After hearing from both IIROC Counsel and the Respondent, it is clear to this panel that the due diligence regarding “know your client” was inadequate. Although he was relatively inexperienced and sent the trust document to his compliance department, he failed to follow up to understand who had the authority to give instructions under the trust agreement. He should not have relied solely on the assurances of the trustee from whom he was taking instructions, that he had the authority to do so.

¶ 8 On the other hand, no losses were suffered by the trust as a result of the actions of the Respondent, the Respondent cooperated in the inquiry and sought early settlement, he did not profit from his actions, he was inexperienced and had relied on his compliance department to provide its guidance, he has no prior or subsequent disciplinary history, and his were acts of omission which do not reflect on his integrity.

¶ 9 The Settlement Agreement provided that the Respondent would pay a fine of \$10,000

¶ 10 The Hearing Panel agreed that the terms of the Settlement Agreement were reasonable given the nature of the misconduct, the need for deterrence, the mitigating factors and the Sanction Guidelines. Accordingly the Settlement Agreement was accepted by the Panel

Dated as of the 27th day of August 2010.

Frederick Webber, Chair

Richard Austin

Michael Walsh

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent, Michael Jeffrey Bereskin, consent and agree to the settlement of this matter by way of this settlement agreement (“the Settlement Agreement”).
2. The Enforcement Department of IIROC has conducted an investigation (“the Investigation”) into the conduct of Michael Jeffrey Bereskin (“the Respondent”).
3. 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.
4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. 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

6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
7. The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:

Between November 2004 and February 2008, while employed as a Registered Representative by Blackmont Capital and its predecessor First Associates Investments Inc., the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to one client, LFT, contrary to IDA Regulation 1300.1(a) (now IIROC Dealer Member Rule 1300.1(a)).

8. Staff and the Respondent agrees to the following terms of settlement:
 - a) fine in the amount of \$10,000.

III. STATEMENT OF FACTS

i. Acknowledgment

9. 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. Overview

10. In 2004, the Respondent opened a trading account for a family trust. He received a copy of the trust agreement, which states that all decisions of the trust must be made with the consent of two of the three trustees. Relying solely on the representations of one of the trustees who held himself out as having such authority, the Respondent failed to perform the necessary due diligence in order to learn the terms of proper authority over the account. In the following three and a half years, the Respondent accepted trading instructions from only one trustee without communicating with the other trustees, contrary to the terms of the Trust.

iii. The Respondent

11. The Respondent was first registered with the IDA as a Registered Representative in February 2003. His registration history is as follows:
 - February 2003 to September 2004 – CIBC World Markets Inc.
 - September 2004 to February 2009 - First Associates Investments Inc/Blackmont Capital Inc.

- February 2009 to present - BMO Nesbitt Burns Inc.

12. On June 1, 2008, the Respondent became a regulated person of IIROC.

iv. Client LFT

13. LFT is a trust established in 1985 with three designated trustees, ML, JL, and RK. ML and JL were a married couple until 1997. RK was a family friend who ultimately was not involved in the affairs of the trust. Both ML and RK are and were, at all material times, lawyers.
14. LFT was established for the benefit of their children.
15. LFT's trust agreement prescribes that all actions of the trust "shall be determined by a majority of the Trustees for the time being in office, such majority to include ML as long as he is a Trustee".
16. LFT had an account at CIBC World Markets Inc. and at one of its predecessor as early as 1997. In or about November 2003, the Respondent became the Registered Representative for the LFT account.
17. The Respondent resigned from CIBC World Markets Inc. in September 2004. While he was at CIBC World Markets Inc., the Respondent did not make any trades in the LFT account.
18. In or about November 2004, the Respondent opened an account for LFT at First Associates Investment Inc. At or about that time, the Respondent received a copy of LFT's trust agreement. He did not understand the legal terminology of the agreement and forwarded it to his firm's new account group for review. The Respondent admitted that he "relied exclusively on First Associates new account group to advise (him) on... what was required from there in the Way of further documentation and approvals." Throughout the time that he was the registered representative for the account, he made no further inquiries with compliance about the terms of the trust agreement. Management at his member firms never advised the Respondent that he was not adhering to the terms of the Trust Agreement.
19. In opening the account for FLT at First Associates Investment Inc., the Respondent did so based only on ML's instruction and not further to the authorization or instruction of JL or RK.
20. Between March 2005 and February 2008, the Respondent conducted twelve transactions in the LFT account base solely on the instruction of ML, contrary to the terms of the trust.
21. In opening the account for LFT at First Associates Investment Inc. and in conducting the twelve transactions on the strength of only ML's instructions and authorization, the Respondent relied on ML's repeated representations that ML had the authority to direct the opening of the account for LFT and the full authority to provide instructions on the account, which the Respondent did not appreciate any of the other trustees took issue with.
22. The Respondent has no previous discipline history and cooperated throughout with IIROC in addressing this matter.

IV. TERMS OF SETTLEMENT

23. This settlement is agreed upon 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.
24. The Settlement Agreement is subject to acceptance by the Hearing Panel.
25. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
26. 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.

27. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
28. 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.
29. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
30. 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.
31. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
32. 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.

AGREED TO by the Respondent at the City of Toronto in the Province of Ontario, this 20th day of July, 2010.

“Witness signature”

Witness

“Michael Bereskin”

Michael Jeffrey Bereskin

RESPONDENT

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 9th day of August, 2010.

“Witness signature”

Witness

“Milton Chan”

Milton Chan

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

ACCEPTED at the City of Toronto in the Province of Ontario, this 27th day of August, 2010, by the following Hearing Panel:

“Fred Webber”

Per: _____

Panel Chair

“Richard Austin”

Per: _____

Panel Member

“Michael Walsh”

Per: _____

Panel Member

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