

Re McKimm

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

Malcolm Joseph McKimm

2010 IIROC 41

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

Heard: August 19, 2010 in Calgary, Alberta
Decision: August 30, 2010
(7 paras.)

Hearing Panel:

John D. James (Chair), William J. Welton (Panel Member), James Ross (Panel Member)

Appearances:

Elsa Renzella, Enforcement Counsel
Peter Leveque, for Malcolm McKimm

DECISION AND REASONS

¶ 1 By virtue of a Settlement Agreement between the Investment Industry Regulatory Organization of Canada ("IROC") and Malcolm Joseph McKimm ("McKimm") both parties put forward settlement based on McKimm's admission to the following contravention of IROC Rules, Guidelines, IDA By-Law's, Regulations or Policy's.

"From 2002 to 2007 inclusive, the respondent engaged in outside business activities without prior knowledge or consent of his member firm, contrary to IDA By-law 29.1 and Dealer Member Rule 29.1"

¶ 2 Pursuant to the settlement agreement, IROC and McKimm agreed to the following terms of settlement,
" a) A fine in the amount of \$50,000
b) IROC costs in the sum of \$5,000 to be made by McKimm."

¶ 3 This panel accepts the very clear proposition that if the terms of settlement fall within a reasonable range the panel should accept the settlement and the panel shall not substitute its discretion for that of the staff of IROC. The only issue therefore is whether or not the proposed terms of settlement fall within a reasonable

range.

¶ 4 Facts that underlie the settlement agreement are relatively straight-forward and involve the following admissions by McKimm.

- From approximately 2002 to 2007, McKimm was conducting outside business activities while employed at Wolverton Securities Limited ("Wolverton").
- The outside business activities primarily involved drafting, assisting and/or reviewing business plans and assisting, negotiating and/or arranging for financing for individuals and businesses some of whom/which were also Wolverton clients
- Some of his outside business activities were conducted through a company known as MD Associates International Inc. of which McKimm and his wife were sole directors
- McKimm conducted some of this outside business at the Wolverton office and used his Wolverton e-mail address.
- McKimm admitted to IROC staff that he introduced friends and clients to various lenders and assisted them with business plans and occasionally received compensation for his efforts. He also admitted that he did not disclose said activity or compensation to Wolverton.
- The remuneration received for McKimm's outside activity was paid either by the individual/company for whom/which he provided the service or by the financial institutions as a fee for referring clients.
- The amount of remuneration for these outside business activities was approximately \$49,000.

¶ 5 In determining whether the posed sanction fall within a reasonable range the panel reviewed both the general and specific Dealer Member Disciplinary Sanction Guidelines. We accept that there were not insignificant aggravating circumstances with respect to the contravention including the fact that the activities were not an isolated course of conduct but rather were conducted over a period of several years, that the compensation received was not nominal and that some of the business activity was conducted onsite at Wolverton and using their resources. We also acknowledge that there were very significant mitigating circumstances. In particular, important to **the decision** that none of the underlying conduct in terms of the outside business activity was illegal or offensive in any way. In addition, there was no harm to any client that no complaint received in relation to the outside business activity.

¶ 6 While the sanction guidelines make reference to disgorgement of profits received from the outside business activity we are satisfied that the amount of the fine proposed takes into account the issues surrounding disgorgement. Additionally, while recommended sanctions also deal with the possibility of periods of suspension and/or periods of strict or close supervision, we are advised that McKimm is no longer in the industry and has not been for at least the past two year and that those considerations do not apply in the circumstances.

¶ 7 We are of the view that taking all the factors into consideration the terms of settlement are within fair range and we accept them.

Dated at Calgary in the Province of Alberta 30th of August, 2010

John D. James (Chair)

William J. Welton (Panel Member)

James Ross (Panel Member)

* * * * * **SETTLEMENT AGREEMENT** * * * * *

I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent, Malcolm McKimm, 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 Malcolm McKimm.
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:
 - a) From 2002 to 2007, inclusive, the Respondent engaged in outside business activities without the prior knowledge or consent of his Member firm, contrary to IDA By-law 29.1 and Dealer Member Rule 29.1.
8. Staff and the Respondent agrees to the following terms of settlement:
 - a) A fine in the amount of \$50,000.
9. The Respondent agrees to pay costs to IIROC in the sum of \$5,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

10. 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

11. Over several years, the Respondent was providing business advice and consultation to certain business acquaintances, friends and his clients at his employer Dealer Member firm, Wolverton Securities Ltd (“Wolverton”). At times he would receive fees or compensations for the services provided. The Respondent failed to disclose and obtain the necessary approval from Wolverton.

Registration and Employment

12. At all material times, the Respondent was employed at the Red Deer, Alberta sub-branch of Wolverton and registered with the IDA as a Registered Representative (Retail).
13. On November 1, 2007, the IDA (now IIROC) received a Notice of Termination (“NOT”). According to the NOT, the Respondent resigned for cause on October 29, 2007. The NOT also indicated that the Respondent had been conducting unauthorized business from the branch office.
14. The Respondent has not been registered with IIROC or its predecessor, IDA, since his resignation from Wolverton.
15. On June 1, 2008, the Respondent became a regulated person of IIROC.

Outside Business Activities

16. From approximately 2002 to 2007, the Respondent was conducting outside business activities while employed at Wolverton.
17. The outside business activities primarily involved drafting, assisting and/or reviewing business plans and assisting, negotiating and/or arranging for financing for individuals and businesses, some of whom/which were also Wolverton clients.
18. Some of his outside business activities were conducted through a company known as MD Associates International Inc., of which the Respondent and his wife were sole directors.
19. The Respondent conducted some of this outside business at the Wolverton office and used his Wolverton email address.
20. The Respondent admitted to IIROC staff that he introduced friends and clients to various lenders and assisted them with business plans and occasionally received compensation for his efforts. He also admitted that he did not disclose said activities or compensation to Wolverton.
21. The remuneration received for the Respondent’s outside activities was paid either by the individual/company for whom/which he provided the service or by the financial institutions as a fee for referring clients.
22. Staff obtained evidence of the following remuneration paid to the Respondent:

Date (approximate)	Services Provided	Payor or client	Amount
2002			
April 2002	Finder’s fees	CTS Ltd.	\$3,000
Nov. 2002	Business Services	CG Professional Corp.	\$5,000
2003			
March 5, 2003	Financial Services	PVS Ltd.	\$6,232
April 2, 2003	Financial Services	PVS Ltd.	\$2,020
2004			

Yr 2004	Referral fees	ATB Financial	\$3,139.90
June 29, 2004	Referral fees	Flin Flon Credit Union	\$625
July 2, 2004	Referral fees	Community Credit Union	\$1,966.82
2005			
Aug./Sept. 2005	Referral fees	Community Savings	\$690
Aug./Sept. 2005	Referral fees	Community Savings	\$575
Oct. 18, 2005	Financial Services	DG Vacuum Services	\$1,200
2006			
Yr 2006	Referral fees	ATB Financial	\$8,452.22
March 8, 2006	Referral fees	Alberta Credit Union	\$506.25
June 27, 2006	Financial Services	VR	\$12,500
2007			
February 2007	Consulting, Referral fees	PRO N2 Ltd. And related cos.	\$3,500
Total			\$49,407.19

23. Neither Wolverton nor any of its clients suffered any financial loss as a result of any of these activities.

IV. TERMS OF SETTLEMENT

24. 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.

25. The Settlement Agreement is subject to acceptance by the Hearing Panel.

26. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

27. 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.

28. 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.

29. 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.

30. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

31. 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.

32. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

33. 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 Red Deer in the Province of Alberta, this 19th day of August, 2010.

“Witness signature”
Witness

“Respondent’s signature”
Respondent

AGREED TO by Staff at the City of Calgary in the Province of Alberta, this 19th day of August, 2010.

“Witness signature”
Witness

“Elsa Renzella”
Elsa Renzella
Senior Enforcement Counsel on behalf of Staff of
the Investment Industry Regulatory Organization of
Canada

ACCEPTED at the City of Calgary in the Province of Alberta, this 19th day of August, 2010, by the following
Hearing Panel:

Per: “John James”
Panel Chair

Per: “William Welton”
Panel Member

Per: “Jim Ross”
Panel Member

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