

Re Dean

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

Todd Robert Dean

2010 IIROC 43

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

Heard: August 27, 2010
Decision: August 27, 2010
(13 paras.)

Hearing Panel:

The Honourable Mary M. Hetherington (Chair), David Duquette, Peter McWilliams

Appearances:

David McLellan, Faye Emmanuel, Enforcement Counsel
Robert Brush, Counsel for Mr. Dean

REASONS FOR DECISION OF A SETTLEMENT HEARING PANEL

INTRODUCTION

¶ 1 The staff of the Investment Industry Regulatory Organization of Canada (IIROC) and Todd Robert Dean entered into a Settlement Agreement pursuant to Rule 20.35 of the IIROC Dealer Member Rules. The Settlement Agreement was then brought before this Hearing Panel pursuant to Rule 20.36 of the Rules. That Rule provides that a Hearing Panel may accept or reject a Settlement Agreement.

¶ 2 As indicated above, Mr. McLellan and Ms. Emmanuel appeared as enforcement counsel for IIROC. Mr. Dean appeared in person. His counsel, Mr. Brush, appeared by telephone.

At the outset it was agreed that the hearing should proceed *in camera*.

SETTLEMENT AGREEMENT

¶ 3 The Settlement Agreement was signed by Mr. Dean on the 21st of June, 2010, and by IIROC staff on the 7th of July, 2010. It is attached to these Reasons for Decision and marked as Appendix A.

Facts

¶ 4 In the Settlement Agreement IIROC staff and Mr. Dean agreed on the following facts.

¶ 5 Mr. Dean was employed as a mutual funds salesperson from January of 1994 to June of 2001, first with Capital Management Group and then with Investors Group. He was employed as a registered representative by TD Securities Inc. and TD Waterhouse Canada from June of 2001 to May of 2008. He was then employed as a registered representative by Mackie Research Capital Corporation from May of 2008 to July of 2009. Mr. Dean is not currently employed with any IIROC Dealer Member firm.

¶ 6 Mr. Dean has no previous disciplinary history with the Investment Dealers Association of Canada (IDA) or with IIROC.

¶ 7 In the Settlement Agreement Mr. Dean, as the respondent, made the following admissions:

Count 1

In 2005, the Respondent, while a Registered Representative with TD Waterhouse Canada Inc., forged the signatures of five of his clients, M.C., D.T., J.T., R.E., and S.W., on client account documentation, which is conduct unbecoming a registrant and detrimental to the public interest, contrary to IDA By-law 29.1.

Count 2

In February 2008, the Respondent, while a Registered Representative with TD Waterhouse Canada Inc. (TDW), misled TDW and the IDA when responding to an anonymous complaint by providing false information to TDW and the IDA in respect of forging client signatures, which is conduct unbecoming a registrant and detrimental to the public interest, contrary to IDA By-law Rule 29.1.

Particulars of these counts are contained in Part III of the Settlement Agreement.

Terms of Settlement

¶ 8 Mr. Dean, again as the respondent, agreed to the following terms of settlement:

- a) A Fine in the amount of \$30,000;
- b) The Respondent shall be prohibited from reapplying for registration with IIROC until July 31, 2010, at which time he may reapply for registration with IIROC;
- c) As a condition of re-approval in any capacity, the Respondent shall successfully complete the Conduct and Practices Handbook examination; and
- d) As a condition of re-approval in any capacity, the Respondent shall be subject to a period of one year of strict supervision.

Mr. Dean also agreed to pay a portion of the costs of the staff of IIROC in the amount of \$10,000.

DECISION OF HEARING PANEL

¶ 9 Mr. McLellan referred the Panel to the case of *Re Milewski*, [1991] I.D.A.C.D. No. 17, Bulletin No. 2605, in which the Ontario District Council described the role of a District Council considering a settlement agreement as follows:

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 Panel accepts that the role of a Settlement Hearing Panel is the same as that of a District Council considering a settlement agreement.

¶ 10 Mr. McLellan also referred the Panel to decisions of other Hearing Panels. In particular he made reference to the decisions of a Disciplinary Hearing Panel, [2009] IIROC No. 6, and the Alberta Securities

Commission, 2009 LNABASC 388, 2009 ABASC 490, in the case of *Re Lamontagne*.

¶ 11 This Panel has also taken into consideration the IIROC Dealer Member Disciplinary Sanction Guidelines. The opening paragraph of these Guidelines reads as follows:

The following principles and rules are proposed to provide a framework for assessing the gravity of a particular breach of the Dealer Member Rules, and help to determine which sanction(s) is reasonable in the circumstances.

The recommended sanctions for forgery are:

- a minimum fine of \$25,000 for an approved person;
- suspension of, or a permanent ban on, approval;
- re-writing of the Conduct and Practices Handbook examination.

The recommended sanctions for misrepresentation are:

- a minimum fine of \$15,000 for an approved person;
- disgorgement of any benefit received as a result of the misrepresentation;
- in egregious cases, a permanent ban on approval.

¶ 12 The Panel is of the view that the penalties provided for in the Settlement Agreement are appropriate in the circumstances of this case. In coming to this conclusion it has taken into consideration the following facts agreed upon by the staff of IIROC and Mr. Dean:

- In 2005 Mr. Dean forged the signatures of five clients. In three cases the signatures were on forms that reduced fees or reimbursed fees to the clients.
- None of the clients suffered a direct loss as a result of the forgeries.
- Late in 2007 the IDA received an anonymous complaint against Mr. Dean. On the 4th of February, 2008, he responded to the complaint in a letter to TDW. At his request a copy of the letter was provided to IDA. In that letter he said that he had never forged a client signature.
- Mr. Dean was later questioned and admitted one forgery.
- On the 12th of May, 2008, TDW terminated Mr. Dean's employment.
- On September 30, 2008, Mr. Dean admitted to a member of the staff of IIROC that he had forged clients' signatures on the five occasions referred to in the Settlement Agreement.
- Mr. Dean entered into the Settlement Agreement which is before the Panel on the 21st of June, 2010.
- He has no previous disciplinary history with IDA or IIROC.
- According to Mr. Dean he has suffered financial and other consequences as a result of his misconduct.
- He is not currently registered with IIROC in any capacity.

¶ 13 The Hearing Panel was of the view that the penalties provided for in the Settlement Agreement were such as to deter Mr. Dean and others from contravening the Rules of the IDA. It was satisfied that these penalties sufficed to protect the investing public. The Hearing Panel therefore accepted the Settlement Agreement pursuant to Rule 20.36 of the IIROC Dealer Member Rules on the 27th of August, 2010. The members of the Hearing Panel indicated their acceptance by signing the Settlement Agreement on that date.

DATED THIS 20th DAY OF SEPTEMBER, 2010.

The Honourable Mary M. Hetherington, Chair

David Duquette, Member

Peter McWilliams, Member

SETTLEMENT AGREEMENT

I. Introduction

1. The Enforcement Department Staff (“Staff”) of the Investment Industry Regulatory Organization of Canada (“IIROC”) have conducted an investigation (“the Investigation”) into the conduct of *Todd Robert Dean* (“the Respondent”).
2. The Investigation was commenced by Enforcement Department Staff (“IDA Staff”) of the Investment Dealers Association of Canada (“IDA”) prior to May 30, 2008. 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.
3. 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

4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. 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 the Dealer Member Rules of Practice and Procedure.
6. The Settlement Agreement is subject to acceptance by the Hearing Panel.
7. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
8. 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.
9. 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.
10. 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.
11. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
12. 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.
13. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

III. Statement of Facts

Acknowledgment

14. 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.

Factual Background

(i) General

- (i) On March 20, 2008, IDA Staff received a ComSet memo filed by TD Waterhouse Canada Inc. (TDW) detailing a complaint about the Respondent by his client, M.C.
- (ii) On or about March 14, 2008, TDW imposed business sanctions on the Respondent.
- (iii) TDW conducted an internal investigation and discovered an irregular client signature in the M.C. account file.
- (iv) The Respondent was questioned and admitted to TDW that he forged the signature of M.C. on an Advantage Account Application form allowing for the reduction of an account management fee from 1.75% to 1.00%.
- (v) The Respondent’s employment was terminated by TDW on May 12, 2008.
- (vi) On or about May 12, 2008, the IDA received a Notice of Termination (NOT) regarding the Respondent. The NOT stated that the Respondent had been dismissed for cause for forging a client signature.
- (vii) Staff opened an investigation into the Respondent’s conduct on July 10, 2008 and interviewed him on September 30, 2008 and May 5, 2009.

(ii) Background of the Respondent

(viii) The Respondent has been duly registered and approved as follows:

Registration Issue Date	Registration Termination Date	Employer	Registration Category
2008/05	2009/07	Mackie Research Capital Corporation	Registered Representative (Retail)
2002/07	2008/05	TD Waterhouse Canada Inc.	Registered Representative (Retail)
2002/03	2002/06	TD Securities Inc. (Alberta)	Registered Representative
2001/06	2002/06	TD Securities Inc. (Ontario)	Registered Representative
1994/11	2001/06	Investors Group	Sales Person – Mutual Funds
1994/01	1994/10	Capital Management Group	Sales Person – Mutual Funds

- (ix) On June 1, 2008, the Respondent became a regulated person of IIROC. The Respondent is currently not employed with any IIROC Dealer Member Firm.

Summary of Events

(i) Client Signatures

- 24. In the course of the IDA investigation, Staff identified irregular client signatures in certain of the Respondent’s client account files at a TDW branch located in Markham, Ontario.
- 25. When Staff interviewed the Respondent, he admitted to forging five client signatures as follows:
 - a) The signature of M.C. on an Advantage Account Application form dated April 13, 2005;
 - b) The signature of D.T. on a Mutual Funds Sales Practices Client Disclosure Statement dated November 1, 2005;
 - c) The signature of J.T. on a Mutual Funds Sales Practices Client Disclosure Statement dated November 1, 2005;
 - d) The signature of R.E. on a Client Information Update Form dated June 2, 2005; and
 - e) The signature of S.W. on a Client Information Update Form dated May 4, 2005.
- 26. Three of the forgeries were on forms that reduced fees or reimbursed fees to the client.
- 27. The aforementioned clients did not suffer a direct financial loss as a result of the forgeries.

(ii) False Statement

27. On or about November 28, 2007, the IDA was in receipt of an anonymous complaint that detailed certain allegations against the Respondent.
28. On or about February 4, 2008, the Respondent prepared and provided a letter (the response letter) to TDW in reply to the anonymous complaint. The Respondent also requested that a copy of the response letter be provided to the IDA.
29. In the response letter, the Respondent denied having ever forged a client signature.
30. During his 2008 interview with Staff, the Respondent admitted that his statement in the response letter, regarding his never having forged a client signature, was false.

(iii) Other

31. The Respondent has no previous disciplinary history with the IDA or IIROC.
32. According to the Respondent, the Respondent has suffered financial and other consequences as a result of the aforementioned misconduct.
33. The Respondent is not currently registered with IIROC in any capacity.

IV. Contraventions

34. The Respondent admits to the following contraventions of IIROC Rules, IDA By-Laws, Regulations or Policies:

Count 1

In 2005, the Respondent, while a Registered Representative with TD Waterhouse Canada Inc., forged the signatures of five of his clients, M.C., D.T., J.T., R.E., and S.W., on client account documentation, which is conduct unbecoming a registrant and detrimental to the public interest, contrary to IDA By-law 29.1.

Count 2

In February 2008, the Respondent, while a Registered Representative with TD Waterhouse Canada Inc. (TDW), misled TDW and the IDA when responding to an anonymous complaint by providing false information to TDW and the IDA in respect of forging client signatures, which is conduct unbecoming a registrant and detrimental to the public interest, contrary to IDA By-law Rule 29.1.

VI. Terms of Settlement

34. The Respondent agrees to the following terms of settlement:
 - a) A Fine in the amount of \$30,000;
 - b) The Respondent shall be prohibited from reapplying for registration with IIROC until July 31, 2010, at which time he may reapply for registration with IIROC;
 - c) As a condition of re-approval in any capacity, the Respondent shall successfully complete the Conduct and Practices Handbook examination; and
 - d) As a condition to re-approval in any capacity, the Respondent shall be subject to a period of one year of strict supervision.
35. The Respondent shall pay a portion of Staff's costs of this proceeding in the amount of \$10,000.00.
36. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
37. 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 Calgary, in the Province of Alberta, this 21st day of June, 2010.

“Witness signature”
Witness

“Todd Dean”
Todd Robert Dean

Respondent

AGREED TO by Staff at the City of Calgary in the Province of Alberta, this 7th day of July, 2010.

“Witness signature”
Witness

“Faye Emmanuel”
Faye Emmanuel
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 27th day of August, 2010, by the following
Hearing Panel:

Per: “Mary Hetherington”
Panel Chair
Per: “David Duquette”
Panel Member
Per: “Peter McWilliams”
Panel Member

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