

Re Voncina

IN THE MATTER OF:

**The Dealer Member Rules of the Investment Industry Regulatory
Organization of Canada (IIROC)**

and

**The By-Laws of the
Investment Dealers Association of Canada (IDA)**

And

Gary Voncina

2010 IIROC 46

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

Heard: September 23, 2010 at Calgary, Alberta
Decision: October 22, 2010
(28 paras.)

Hearing Panel:

Alan V.M. Beattie, Q.C. – Chair
Donald Milligan – Industry Representative
Grant Mutch – Industry Representative

Appearances:

Kathryn Andrews, for the Association
J. Barrie Marshall, for the Respondent
The Respondent did not attend

HEARING PANEL DECISION (SETTLEMENT AGREEMENT)

INTRODUCTION

¶ 1 A Settlement Agreement was entered into dated July 16, 2010 between Gary Voncina (“the Respondent”) and the Investment Industry Regulatory Organization of Canada (“IIROC”) 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.

¶ 2 In the Settlement Agreement the Respondent admits to contraventions (below). The Settlement Agreement contains a complete Statement of Facts, a description of the Contraventions and the Terms of Settlement. It is stated that the Settlement Agreement is subject to acceptance by the Hearing Panel and if the Panel accepts the Settlement Agreement, the Respondent waives his right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal. IIROC and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

¶ 3 A Settlement Hearing Book was provided in advance of the Hearing by IIROC to the Respondent and members of the Hearing Panel.

STATEMENT OF FACTS

¶ 4 The Statement of Facts in the Settlement Agreement includes:

Factual Background

Respondent's Registration History:

11. Voncina was an approved person with TD Evergreen from March 2001 to June 2002. He was approved as a Registered Representative ("RR") with TD Waterhouse Canada Inc. ("TDW") from July 2002 to February 2007. Currently he is not registered as an approved person with IIROC.

IDA investigation:

12. IDA received a Notice of Termination for Voncina in February 2007 from TDW. At this time Voncina was at the Calgary 8th Avenue branch of TDW. IDA's investigation then commenced and continued during 2009 upon receipt of a complaint from a Voncina client.
13. The Notice of Termination raised the allegations of discretionary trading and personal payments made to clients by Voncina.

Client MS: personal financial dealings:

14. MS was a long time client of the Respondent. Voncina met him through another client IE. IE was a family friend of MS and had trading authorization over MS's accounts. MS had a joint account with his wife.
15. In the summer and fall of 2005, Voncina had purchased a number of shares of Winmax Trading Corporation for MS's account. MS said the trades were not authorized. Voncina said that both the purchases and later sale of Winmax were authorized by MS and/or IE.
16. MS had complained about the Winmax purchases. Voncina discussed a private settlement with MS in the early summer of 2006, regarding the disputed Winmax trades. This settlement was verbal. On or about June 10, 2006, Voncina paid MS by way of cheque given to IE in the amount of \$20,000, payable to IE. Voncina indicated that when he had done so, that IE told him he still owed MS another \$26,000.
17. Voncina also gave MS a stock certificate for 19,395 shares of Borealis Exploration Limited at an approximate value of \$10 per share to hold as collateral until Voncina could give him the \$26,000.
18. Winmax was sold in 2007 at a loss. Voncina did not tell TDW about the settlement or payments.

Client ME: personal financial dealings and unauthorized trades:

19. ME was a client of the Respondent. ME was married to IE, who had been a client of Voncina's for over 20 years. IE did not have trading authority over ME's account.
20. On or about May 26, 2006, the Respondent bought 1,500 shares of Gluskin Sheff & Associates Inc. for ME's account, at a price of \$18.50, for a total of \$27,750.
21. On or about June 6, 2006, the Respondent bought 25,000 shares of Silver Eagle Mines Inc. in ME's account, at a price of \$1.25, for a total of \$31,250.
22. Neither of these transactions were authorized by ME. Voncina discussed the Silver Eagle trade with IE, who told him that he wanted to speak with ME first. Voncina then made the trades without speaking to ME.

23. After the trades had been made, the Respondent told IE that he would pay the difference if the share prices decreased. The Gluskin Sheff and Silver Eagle Mines shares were sold in June 2006, further to the client's instructions. The amount of the loss was \$9,635. Voncina compensated ME \$9,635 on or about June 27, 2006, by way of a cheque payable to her in that amount.

24. Voncina did not tell TDW about the incident or the compensation.

Client GS: personal financial dealings:

25. GS was a client of the Respondent. GS was not happy with a March 2004 purchase of 3,000 units of Retrocom REIT at \$10.77 per unit. GS says that he did not authorize this transaction. Voncina told IDA staff that the trade was authorized.

26. When GS complained, Voncina agreed in January 2006 to compensate him for the original purchase price of the Retrocom units.

27. During 2006, Voncina paid GS approximately \$11,900 by way of a personal cheque.

28. Voncina did not tell TDW about this incident or the compensation to GS.

Discretionary trading: client HM:

29. HM had been a client of the Respondent for over 20 years. She was a widow. HM and/or her family members had various accounts with the Respondent over time. At the material time, HM had an RRSP account with the Respondent, which was converted into a RRIF account in December 2005 ("HM account #1").

30. From January 2005 until August 2005 there was very little activity in HM account #1. In September 2005, HM traded a number of junior and small cap companies such as Keeper Resources Inc., Railpower Tech Corp., QCC Techs Inc., Romarco Minerals Inc., QGX Ltd. and Mace Security Intl.

31. From the fall of 2005 until January 2007, the HM account #1 continued to trade actively.

32. The above trades were not authorized by HM although she and the Respondent did discuss some details at infrequent meetings, such as the direction her account should be going and other matters. The Respondent would enter the trades he thought appropriate for her but would not obtain her approval prior to each and every trade. The Respondent told IDA staff that HM was aware that the Respondent was trading in this manner in her account.

Previous settlement agreement:

33. Voncina and the IDA entered into a settlement agreement in May 2000, in which Voncina agreed that he had engaged in off book transactions regarding a company known as Nebex, while he was an officer and director of Nebex. He paid a \$5,000 fine, rewrote the CPH and paid costs of \$500., as indicated in IDA Bulletin #2726.

Co-operation with investigation:

34. Voncina co-operated with the investigation and prosecution of this matter.

CONTRAVENTIONS

¶ 5 The Settlement Agreement includes:

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

(a) COUNT 1

During May and June of 2006, Voncina made two unauthorized trades in client ME's account, which conduct was unbecoming a registrant and/or detrimental to the public interest, contrary to By-law 29.1 of the IDA.

(b) COUNT 2

During 2006, Voncina engaged in personal financial dealings with clients MS, ME and GS, without disclosing same to his Member firm, which was conduct unbecoming a registrant and/or detrimental to the public interest, contrary to IDA By-law 29.1.

(c) COUNT 3

From the fall of 2005 to January 2007, Voncina engaged in discretionary trading in client HM's account, contrary to IDA Regulation 1300.4.

TERMS OF SETTLEMENT

¶ 6 The Settlement Agreement includes:

8. Staff and the Respondent agree to the following terms of settlement:

- (a) A fine of \$15,000.
- (b) Suspension for 15 months
- (c) 8 months supervision upon any return to the industry
- (d) Re write the Conduct and Practices Handbook upon any return of the industry

9. The Respondent agrees to pay costs to IIROC in the sum of \$500.

43. The suspension referred to in paragraph 8(b) shall commence on the date that this Settlement Agreement is accepted by the Hearing Panel.

SUBMISSIONS OF IIROC

¶ 7 The foregoing Agreed Statement of Facts, Contraventions and Terms of Settlement were reviewed by Ms. Andrews.

¶ 8 Ms. Andrews referred to pertinent parts of the Settlement Hearing Book. She made the following further submissions:

- 1. The Respondent had a previous disciplinary record in May 2000, and although that is an aggravating factor, it involved different circumstances and is mitigated by the passage of time.
- 2. The Respondent has compensated the clients.
- 3. The Disciplinary Sanction Guidelines of the Investment Dealers Association of Canada set out the general principles which help to determine which sanctions are reasonable in the circumstances. The Panel is familiar with the Guidelines.
- 4. The following decisions provide assistance in determining the reasonable range of penalties:

¶ 9 *Milewski* (1999) I.D.A.C.A. No. 17; Bulletin No. 2605, August 5, 1999 (Ontario District Council) - failed to use due diligence to ensure recommendations for an RRSP account were appropriate, failed to ascertain directly from a client her investment objectives, and failed to make or keep a written authorization naming the client's husband - \$20,000 fine for three contraventions, disgorge \$1,650 in commissions, and pay costs of \$1,500, strict supervision for six months, and rewrite the CPH exam.

¶ 10 *Jannetta* (2010) IIROC No. 23 (Manitoba District Council) – engaged in discretionary trading over periods up to 18 months involving 660 trades and six clients – failed to accurately record and/or update the investment objectives and risk tolerance of two clients (in all the above cases verbal agreements with the clients regarding the trading were acknowledged and the trades were ratified by the client), failed to maintain required

minimum records regarding one client, and several related accounts – no personal benefit – fines on ten counts totalled \$36,500, costs \$15,000. If Respondent re-entered the industry his registration would be subject to a period of six months of close supervision and he would be required to successfully rewrite the CPH exam.

¶ 11 **Gaudet** (2010) IIROC No. 29 (Pacific District Council) – facilitated participation of clients in off-book transactions without the knowledge and consent of the Member firm - entered into personal financial dealings with client – fined \$20,000, costs \$4,000, required to successfully complete the CPH exam.

¶ 12 **Karez** (2010) IIROC No. 22 (Québec District Council) – 842 discretionary trades for eight clients without the accounts having been previously approved as discretionary accounts – fined \$20,000, costs \$15,000, successfully complete the CPH exam, 12 month period of strict supervision.

¶ 13 **Strong** (2004) I.D.A.C.D. No. 53 (Alberta District Council) – offered to compensate a client for account losses, failed to ensure that trade recommendations and use of margin were appropriate and in keeping with two clients’ investment objectives – fined \$25,000, costs \$4,500, pass the CPH exam, subject to three month period of supervision.

¶ 14 **Strocen** (2002) I.D.A.C.D. No. 6 (Pacific District Council) – two unauthorized trades in the account of a client – prohibition against approval in any capacity for six months and prohibition against approval in the capacities of manager, partner, director or officer of a Member for 24 months, fined \$15,000, costs \$10,000, pass the CPH exam, close supervision for one year.

¶ 15 **Kwok** (2010) IIROC No. 38 (Pacific District Council) – personally compensated three clients without the knowledge or consent of the Member – fined \$15,000, costs \$3,000, suspension for six months, pass the CPH exam, close supervision for 12 months.

SUBMISSIONS OF THE RESPONDENT

¶ 16 Mr. Marshall, Counsel for the Respondent, agreed with the submissions of IIROC (above). He emphasized that the Respondent has been fully cooperative in the investigation and prosecution as well as having previously cooperated with the Member. He explained that the Respondent had intended to be present at this Settlement Hearing but had to be out of the City in connection with his new position.

DECISION

¶ 17 In the Settlement Agreement the Respondent admits to the contraventions of IIROC Rules, IDA By-Laws, Regulations or Policies set out at p. 4 above.

¶ 18 The Hearing Panel accepts that the contraventions have been established.

¶ 19 **IDA By-Law No. 29** provides, in part:

BUSINESS CONDUCT

29.1 Members and each partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative and employee of a Member (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board of Directors.

....

¶ 20 The **IDA Disciplinary Sanction Guidelines**, under the heading “General Principles”, include the following:

1. Main Concerns When Determining An appropriate Penalty

As set out in *Re Derivative Services Inc.*, [2000] I.D.A.C.D. No. 26, at page 3, a Hearing Panel's main concerns in determining an appropriate penalty are:

1. Protection of the investing public;
2. Protection of the Investment Industry Regulatory Organization's membership;
3. Protection of the integrity of the Investment Industry Regulatory Organization's process;
4. Protection of the integrity of the securities markets, and
5. Prevention of a repetition of conduct of the type under consideration.

The penalty imposed in a specific proceeding should reflect the Hearing Panel's assessment of the measures necessary in the specific case to accomplish these goals, ranging from a reprimand to an absolute bar, and may take into account the seriousness of the respondent's conduct and specific and general deterrence.

2. Disciplinary Sanctions As Deterrence

Registrants and Dealer Member firms have significant responsibilities that they must meet if investors are to be protected and market integrity maintained. Registrants who choose to act in ways that threaten the integrity of the capital markets must have the expectation that they will be held accountable through enforcement action by regulators. Sanctions should be based on the circumstances of the particular misconduct by a respondent with an aim at general deterrence.

General deterrence will follow from an appropriate decision and deter others from engaging in similar misconduct and improve overall business standards in the securities industry. This can be achieved if a sanction strikes an appropriate balance by addressing a registrant's specific misconduct, but also being in line with industry expectations. As was observed by the Hearing Panel in *Re Mills*, [2001] I.D.A.C.D. No. 7, April 17, 2001, at p. 3:

Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its Members to expect for the conduct under consideration, it may undermine the goals of the Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the District Council in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention rather than punishment.

However, an important objective of the disciplinary process is to deter future misconduct by imposing progressively escalating sanctions on "repeat offenders". For this reason, when appropriate, a District Council should consider a respondent's relevant disciplinary history in determining sanctions. Relevant disciplinary history may include (a) past misconduct similar to that at issue; or (b) past misconduct that, while unrelated to the misconduct at issue, evidences prior disregard for regulatory requirements, investor protection, or commercial integrity. Even if a respondent has no history of relevant misconduct, however, the misconduct at issue may be so serious as to justify a higher penalty.

3. Key Considerations When Determining Sanctions

The following list of factors should be considered in conjunction with the imposition of sanctions. Individual guidelines may list additional factors. This list is illustrative, not exhaustive, and the Hearing Panel should consider case-specific factors in addition to those listed here and in the guidelines. Since sanctions should be tailored to address the misconduct involved in a particular case, a penalty must be proportionate to the gravity of the misconduct and the

relative degree of responsibility of a respondent. To properly assess the gravity of specific misconduct, the decision-maker should look to a number of factors, including, but not restricted to the following:

[Hearing Panel note: The factors are listed, below, without the extensive explanatory comment related to each factor.]

- 3.1 Harm of Clients, Employer and/or the Securities Market
- 3.2 Blameworthiness
- 3.3 Degree of Participation
- 3.4 Extent to which the Respondent was Enriched by the Misconduct
- 3.5 Prior Disciplinary Record
- 3.6 Acceptance of Responsibilities, Acknowledgement of Misconduct And Remorse
- 3.7 Credit For Cooperation
- 3.8 Voluntary Rehabilitative Efforts
- 3.9 Reliance on the Expertise of Others
- 3.10 Planning and Organization
- 3.11 Multiple Incidents Of Misconduct Over An Extended Period Of Time
- 3.12 Vulnerability of Victim
- 3.13 Failure to Cooperate with the Association's Investigation
- 3.14 Significant Economic Loss to the Client and/or Member Firm

¶ 21 The **IDA Disciplinary Sanction Guidelines** contain the following “Considerations in Addition to General Principles” and “Recommended Sanctions”:

Guideline 1.10 Attempt to Settle Client Claim for Compensation – By-law 29.1

A client who has a complaint regarding the activities of an RR is entitled to a fair and unbiased determination as to the validity of that complaint. If the client's complaint is well-founded, he is entitled to present same to civil dispute resolution channels and the Member firm for compensation; and to the appropriate regulatory bodies to consider possible disciplinary action. The RR who attempts to, or does, settle a client claim deprives his client of these options, and prefers his interest over that of his client.

Considerations in Addition to General

Principles:

1. Did the RR conceal or attempt to Conceal his activity from the Member Firm?
2. Were any clients harmed by the activity and if so to what extent?
3. Was the client advised of the

Recommended Sanctions:

- Fine: Minimum of \$10,000 for individual
- Temporary suspension from acting in relevant capacity for 6 to 12 months
- Successful completion of appropriate industry program within 6 months

- prohibited nature of this activity and if so did he appreciate same?
- 4. Was the client coerced to accept the settlement offered?
- Period of close supervision for 12 to 24 months
- In egregious cases, consider permanent prohibition on approval in any capacity

Guideline 2.6 Discretionary Trading – Regulations 1300.4 & 1300.5

Discretionary trading, in and of itself, is not prohibited conduct for a registrant. The essence of the contravention relates to lack of proper written authorization by the client. A registrant cannot engage in discretionary trading unless the account has been properly designated as a “discretionary” or “managed” account, pursuant to regulations 1300.4 and 1300.5, respectively. The extent of the misconduct will vary greatly. At the low end of the spectrum, a breach of these regulations may only be minor in nature; where the client provided verbal authority to engage in discretionary trading without the proper written documentation prepared by the registrant. On the other end of the spectrum, discretionary trading can be egregious and involve elements of deception in that the registrant is not completely open and honest as to the type of trading taking place within the client’s account.

It should be noted however, that in cases where the client has provided verbal authority, the contravention should not be viewed simply as a paper violation. Obtaining proper approval to designate an account as discretionary or managed is not automatic. The process of approval is required to ensure that only properly qualified registrants trade in the accounts. These designated accounts are also subject to greater supervision. Discretionary trading without the proper authorization is therefore not subject to the safeguards that form part of the approval process, and puts the clients accounts at greater risk.

Consideration in Addition to General

Recommended Sanctions

Principles

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Number of unauthorized trades 2. Whether client provided verbal authority to engage in discretionary trading 3. Underlying reason for engaging in discretionary trading. (e.g. for Personal financial gain) 4. The number of clients affected 5. Period of time discretionary trading took place 6. Suitability of discretionary trades 7. Magnitude of client losses | <ul style="list-style-type: none"> • Fine: Minimum fine of \$5,000 • Disgorgement of profits • Period of Close and/or Strict supervision • Re-write of CPH • Period of suspension (in most egregious Cases involving large number of large value trades) |
|--|---|

Guideline 2.7 Unauthorized Trading – By-law 29.1

One of the five primary values set out in the Code of Ethics states that “Registrants must conduct themselves with trustworthiness and integrity, and act in an honest and fair manner in all

dealings with the public, clients, employers and colleagues.” There is a relationship of trust and confidence that exists between a registrant and client. When a registrant executes trades without the knowledge or consent of his/her client, the registrant has breached his/her ethical obligations to his client.

Considerations in Addition to General

Recommended Sanctions

Principles

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Number of unauthorized trades 2. Underlying reason for executing unauthorized trades. (e.g. for personal financial gain) 3. The number of clients affected 4. Period of time unauthorized trading took place 5. Suitability of unauthorized trades 6. Magnitude of client losses, if any | <ul style="list-style-type: none"> • Fine: Minimum fine of \$15,000 • Disgorgement of profits • Period of Close and/or Strict supervision • Re-write of CPH • Period of suspension (in most egregious cases involving large number of large value trades) |
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* * * * *

¶ 22 In applying the general principles set out above, the protection of the investing public, protection of the integrity of the IIROC process, protection of the integrity of the securities market, prevention of a repetition of conduct of the type under consideration, and general deterrence lead us to the conclusion that the penalties agreed upon between IIROC and the Respondent in the Settlement Agreement are appropriate and should be accepted. We adopt the reasoning of the Hearing Panel in *Milewski*, at p. 12:

....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.

¶ 23 Similar descriptions of the role of District Councils in considering whether settlement agreements should be accepted are found in *Strocn* and *Kwok* (both above).

¶ 24 We have taken into consideration the aggravating factor of a prior discipline (in 2000) and the factors in favour of the Respondent including that the clients were compensated and that he has cooperated in the investigation and in negotiating the Settlement Agreement.

¶ 25 The Hearing Panel advised, at the conclusion of the Hearing, that we accepted, and we signed, the Settlement Agreement. We confirm that decision.

¶ 26 The Respondent, in the Settlement Agreement, agreed to the following terms of settlement, which we have accepted as appropriate:

- (a) A fine of \$15,000.
- (b) Suspension for 15 months
- (c) 8 months supervision upon any return to the industry
- (d) Re write the Conduct and Practices Handbook upon any return to the industry

¶ 27 The Respondent has agreed to pay costs to IIROC in the sum of \$500.

¶ 28 While we consider the amount of the costs to be low we are prepared to accept the agreed amount of costs taking into account the significant price being paid by the Respondent with the 15 month suspension. The agreed costs also reflect the reduced involvement and cost for IIROC resulting from the Respondent's cooperation.

October 22, 2010

Alan V.M. Beattie, Chair

Donald Milligan

Grant Mutch

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