

# Re Shamseer

IN THE MATTER OF:

**The By-Laws of the Investment Dealers Association of Canada**

**and**

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

**and**

**Savitri Shamseer**

2011 IIROC 5

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

Heard: November 11, 2010

Decision: January 24, 2011

(42 paras.)

**Hearing Panel:**

Thomas J. Lockwood, Q.C. (Chair)

Sandy Grant

Peter Bailey

**Appearances:**

Milton Chan, Counsel for IIROC

No one appearing for the Respondent

---

## DECISION AND REASONS

---

### INTRODUCTION

¶ 1 By Notice of Hearing, dated the 23rd day of September, 2010, the following Allegation was made against Savitri Shamseer (“the Respondent”):

- A. Between September 2006 and February 2007, while employed as a Registered Representative by Argosy Securities Inc., the Respondent made nineteen discretionary trades in the account of her client SR without first having the accounts approved and accepted as discretionary accounts, contrary to Investment Dealers Association Regulation 1300.4.

¶ 2 The Notice of Hearing provided that a Hearing would be held before a Hearing Panel of the Investment Industry Regulatory Organization of Canada (“IIROC”), on November 11, 2010, at IIROC Boardroom 2, 121 King Street West, Suite 1600, Toronto, Ontario, at 10:00 a.m., or as soon thereafter as the Hearing could be heard.

¶ 3 The Respondent did not appear on November 11, 2010. No one appeared on her behalf.

¶ 4 Documentary evidence was presented to the Hearing Panel showing that, on September 29, 2010, the Notice of Hearing, along with a number of other documents, were served on the Respondent at her home address, by leaving them in a sealed envelope with her husband, Meer Shamseer.

¶ 5 Subsequently, the Respondent provided written authorization for her daughter to act on her behalf. In an in-camera session, the Hearing Panel was provided details of the ensuing conversations, as well as the contents of certain correspondence between the Respondent's daughter and IIROC Enforcement Staff.

¶ 6 The conversations and correspondence made it clear that the Respondent was aware of her right to appear and defend the Allegation if she so chose.

¶ 7 Rules 7.1, 7.2 and 13.5 of the IIROC Rules of Practice and Procedure provide, in part, as follows:

“7.1 Service of Response

For a discipline proceeding designated on the Standard Track, the Respondent shall serve a Response within 20 days from the effective date of service of the Notice of Hearing.

7.2 Failure to Serve Response

If a Respondent served with a Notice of Hearing fails to serve a Response in accordance with Rule 7.1:

- (a) the Organization may proceed with the hearing of the matter as set out in the Notice of Hearing without further notice and in the absence of the Respondent; and
- (b) the Hearing Panel may, accept as proven the facts and violations alleged by the Organization in the Notice of Hearing, and may impose penalties and costs pursuant to Dealer Member Rules 20.33, 20.34 and 20.49.

13.5 Where Respondent Fails to Attend Disciplinary Hearing

Where a Respondent, having been served with a Notice of Hearing, fails to attend a disciplinary hearing, the Hearing Panel may proceed in the absence of the Respondent and may accept as proven the facts and violations alleged by the Organization in the Notice of Hearing.”

¶ 8 This proceeding was designated as “Standard Track”. No Response was served by the Respondent. The Respondent did not attend the Hearing.

¶ 9 Despite these provisions, the Hearing Panel determined that it wished to hear and consider all relevant admissible evidence.

## **THE EVIDENCE**

¶ 10 The evidence on liability was presented to the Hearing Panel in both testamentary and documentary form. The testamentary evidence was presented by Carolyn Bean, a Senior Investigator in the IIROC Enforcement Department.

¶ 11 The evidence established the following:

¶ 12 The Respondent was first registered with the Investment Dealers Association (“IDA”) as a Registered Representative on January 31, 1995. The Respondent was dismissed for cause by Argosy Securities Inc. on December 1, 2008. She has not been registered with IIROC in any capacity since December 1, 2008.

¶ 13 The registration history of the Respondent is as follows:

- January 1995 to July 1996 – Edward Jones & Co.

- December 1996 to April 1999 – Keybase Financial Group
- April 1999 to December 2001 – Argosy Private Client Group
- December 2001 to December 1, 2008 – Argosy Securities Inc.

¶ 14 On December 19, 2006, the Respondent was disciplined by the IDA for, *inter alia*, discretionary trading. [see *Re Shamseer*, [2007] I.D.A.C.D. No. 2].

¶ 15 In December of 2006, the Respondent entered into a Settlement Agreement in which she admitted that, between February 19, 2002, and December 5, 2003, she conducted discretionary trades in a client account without the account being specifically approved and accepted, in writing, as a discretionary account, contrary to the Association Regulation 1300.4. She further admitted that, during the same period, she failed to use due diligence to ensure that trades conducted in the same client account were suitable for the client.

¶ 16 On December 19, 2006, the Hearing Panel assessed the following penalties against the Respondent:

- (a) a fine in the amount of \$40,000;
- (b) disgorgement of commissions in the amount of \$2,100;
- (c) strict supervision for 12 months;
- (d) successful completion of the Conduct and Penalties Handbook examination within 6 months of the effective date of the Settlement Agreement; and
- (e) costs in the amount of \$3,000.00.

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

¶ 18 S.R. became a client of the Respondent in December of 2002. At that time, she was in her mid-fifties, single and retired. Her New Client Application Form identified her as an individual with “good” investment knowledge. Her investment objectives were 25% short term, 25% medium term and 50% long term. She identified herself as having a “100% medium” risk tolerance.

¶ 19 The Respondent was aware that S.R. would be traveling, outside of North America, between September of 2006 and February of 2007. Prior to S.R. leaving, the Respondent met with her and discussed her investments.

¶ 20 S.R. did not give written authorization to the Respondent to exercise discretionary authority over her account. S.R.’s account was never approved by Argosy Securities Inc. (“Argosy”) as a discretionary account.

¶ 21 Between September of 2006 and February of 2007, the Respondent executed nineteen trades in S.R.’s account without client authorization. During this period of time, the Respondent did not communicate with S.R. to confirm the trades prior to their execution.

¶ 22 Subsequent to her return, S.R. complained to Argosy about unauthorized discretionary trading in her account.

¶ 23 The position of the Respondent was that, despite having admitted to discretionary trading in the Settlement Agreement of December 2006, she did not fully appreciate the meaning of her prior misconduct until the latter part of October 2007.

¶ 24 The Hearing Panel noted that, despite this statement, a number of unauthorized transactions were conducted by the Respondent in the account of S.R. during the months of November and December of 2006 and January and February of 2007.

## THE LAW

¶ 25 IDA Regulation 1300.4 provides as follows:

“1300.4. No person, other than a partner, director, officer or registered representative (other

than a registered representative (mutual funds) or (non-retail) who has been approved as such pursuant to the applicable By-laws of the Association, shall effect trades for a customer in a discretionary account and any such permitted trades shall only be effected if:

- (a) the prior written authorization has been given by the customer to the Member and accepted by the Member in compliance with Regulation 1300.5; and
- (b) the account has been specifically approved and accepted in writing as a discretionary account by the designated director, partner, officer, branch manager, futures contract principal or future contracts options principal, as the case may be, who authorized the opening of the account,

and provided that any such person permitted to effect discretionary trades shall have actively dealt in, advised in respect of or performed analysis with respect to the securities or commodity futures contracts or options which are to be traded on a discretionary basis for a period of two years.”

¶ 26 In *Re Wenzel* [2005] A.S.C.D. No. 153, the Alberta Securities Commission stated that “when a person effects a securities transaction for a client without obtaining from the client, in advance, specifics as to four elements of the transaction – quantity, security, price and timing – that person is exercising “discretion”.”

¶ 27 Whenever registrants exercise discretion in clients’ accounts, they are making decisions on behalf of clients. These decisions could, and often do, have a profound impact on these accounts. These decisions may, and often do, give rise to conflicts of interest between the clients and the registrants.

¶ 28 The purpose of IDA Regulation 1300.4, and the current IIROC Dealer Member Rule 1300.4, is to protect the interests of the clients by imposing a regime of a heightened level of scrutiny and supervision.

¶ 29 As was recently stated by an IIROC Hearing Panel: “. . . it is important that representatives comply in all points with the regulations respecting discretionary accounts. By prescribing that these accounts be formally approved by a senior executive of a dealer member and be executed only by experienced representatives, the applicable regulations impose strong supervision on these accounts and therefore mitigate the risk for the customers.”

Re: *Re Karcz* [2010] IIROC No. 22, at para. 14.

¶ 30 In the case before us, the Respondent did not have written authorization from her client, S.R., to conduct discretionary trading. Her firm, Argosy, did not approve any accounts under her management as discretionary accounts. The Respondent was not permitted to exercise discretionary authority over S.R.’s account.

¶ 31 While S.R. was out of the country, and without in any way receiving instructions, the Respondent conducted trades in S.R.’s account using her own discretion as to the timing, volume and price of the transaction.

¶ 32 By so acting, the Respondent breached IDA Regulation 1300.4.

¶ 33 We find the Allegation against the Respondent to be established.

## **PENALTIES**

¶ 34 In 2006, the Respondent executed a Settlement Agreement in which she acknowledged that she had breached IDA Regulation 1300.4 when she “executed trades in the account (of the client) with discretion relating to time, price and/or quantity traded” in an account that “was not specifically approved nor accepted in writing as a discretionary account.”

¶ 35 The Respondent’s statement that, notwithstanding the execution of the Settlement Agreement, she did

not fully understand the meaning of discretionary trading until October of 2007, we find to be an aggravating factor. The Respondent admitted to breaching an IDA Regulation. When she is confronted with evidence that she had breached the same Regulation by similar conduct, her excuse is that she did not fully understand the nature and meaning of the breach the first time. This is unacceptable conduct.

¶ 36 Enforcement Staff submitted that, as the Respondent had indicated to them that she does not intend to re-enter the securities industry in a registered capacity and, in addition, because of her personal circumstances, an appropriate sanction would be a permanent prohibition from registration in any capacity, with IIROC, without the imposition of a fine.

¶ 37 We respectfully disagree with the penalties suggested. We believe that it is incumbent upon this Hearing Panel to impose penalties which reflect our view of the nature and quality of the misconduct of the Respondent but which are also consistent with the penalties imposed by other Hearing Panels in similar circumstances.

¶ 38 In this regard, we reviewed the penalties imposed in, *inter alia*, the following Decisions:

- (a) *Janiewicz (Re)* [2006] I.D.A.C.D. No. 3.
- (b) *Osman (Re)* [2007] I.D.A.C.D. No. 3.
- (c) *Symonds (Re)* [2007] I.D.A.C.D. No. 17.
- (d) *Karcz (Re)* [2010] IIROC No. 22.

¶ 39 We also reviewed the sanctions recommended by the IIROC Dealer Member Sanctions Guidelines for discretionary trading in the circumstances where there is a breach of Dealer Member Rule 1300.4.

## **PENALTIES IMPOSED**

¶ 40 Taking all relevant factors into consideration, we have, unanimously, imposed the following penalties on the Respondent:

- (a) A suspension from registration in any capacity with IIROC for a period of 6 months from the effective date of this Decision;
- (b) A fine in the amount of \$50,000.00;
- (c) Successful completion of the examination based on the Conduct and Practices Handbook Course before registration in any capacity with IIROC;
- (d) Strict supervision for a period of 12 months from the date registered with IIROC;
- (e) Close supervision for a period of 6 months commencing at the termination of strict supervision;
- (f) During the strict supervision period, the Respondent must demonstrate to the Supervisor that contact was made with clients before any orders are entered. Proof of this contact could be established by:
  - (i) telephone records,
  - (ii) personal notes taken at the time of the supervision, or
  - (iii) such other methods acceptable to the Supervisor.

## **COSTS**

¶ 41 Rule 20.49(1) of the IIROC Rules, provides as follows:

“20.49 Assessment of Costs

- (1) In addition to imposing any of the penalties set out in Rule 20.33, Rule 20.34 or Rule 20.45, the Hearing Panel may assess and order any Corporation Staff investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.”

¶ 42 We believe that, in the circumstances of this case, it is appropriate and reasonable to require the Respondent to pay a portion of the costs incurred by IIROC Staff in investigating and prosecuting the Respondent. We assess these costs at the sum of \$5,000.00 and make an Order requiring the Respondent pay same.

DATED the 24th day of January, 2011.

Thomas J. Lockwood, Q.C., Chair

Sandy Grant, Member

Peter Bailey, Member

*Copyright © 2011 Investment Industry Regulatory Organization of Canada. All Rights Reserved.*