Re Arapis

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

Kostantinos Georgeos Arapis

2011 IIROC 37

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

Hearing: May 11, 2011
Decision: June 17, 2011
(17 paras.)

Hearing Panel:
Garrett Wilson, Q.C. (Chair), Eric M. Wray, Richard Thompson
Appearances:
Rob DelFrate, Enforcement Counsel
Kostantinos Georgeos Arapis, In Person

DECISION AND REASONS

¶ 1 We were constituted as a District Council (Hearing Panel) and had referred to us for consideration pursuant to By-Law 20.26 of the Investment Industry Regulatory Industry of Canada (IIROC) a Settlement Agreement between Konstantinos Georgeos Arapis (Respondent) and IIROC executed, respectively, April 8, 2011 and April 11, 2011. At the hearing of this matter in Saskatoon, Saskatchewan on May 11, 2011, both parties agreed that we were duly authorized and possessed jurisdiction to perform our function.

¶ 2 The Respondent, at all material times subject to the Rules and the By-Laws of the Investment Dealers Association of Canada (IDA) and IIROC, faced two violations, or contraventions, of the said Rules and By-Laws, as follows:

a) Contravention No. 1:

Between June 2005 and November 2005, the Respondent solicited twelve (12) clients to participate in a private placement of shares of a company in which he had an interest, which were conducted off the books and records and without the consent of his Dealer Member firm and for which he received remuneration directly from the company:

a) Thereby engaging in business conduct or practice which is unbecoming or detrimental to the public interest, contrary to IDA By-law 29.1 (now Dealer Member Rule 29.1); and

b) thereby accepting remuneration from a person other than his Dealer Member, contrary to IDA By-Law 18.15 (now Dealer Member Rule 18.15);

b) Contravention No. 2:

Between May 14, 2008 and October 31, 2008, the Respondent effected one hundred and eleven (111) option transactions in twenty-three (23) client accounts which were outside of the accounts' approved option level, thereby failing to use due diligence to ensure that the acceptance of any order for any account is within the bounds of good business practice, contrary to Dealer Member rule 1300.1(o).

¶ 3 With respect to Contravention No. 1, the Agreed Facts contained in the Settlement Agreement annexed to these Reasons, outline that the Respondent became involved with, and perhaps enamoured of, Metamedia, a corporation engaged in the production of animated digital and print content. In June 2005, while employed as a Branch Manager with a Dealer Member, he induced twelve form clients to participate in a private placement of shares of Metamedia and received a commission of $24,588 and 500 shares for so doing. The transactions were conducted off the books of his Dealer Member. Before entering into these arrangements, the Respondent had proposed the affair to his Dealer Member but, upon being advised that the firm was not equipped to accommodate the business, incorrectly assumed that he was therefore free to conduct the transactions on his own behalf.

¶ 4 At a later date, while employed with a different Member Dealer, the Respondent participated in a second private placement of shares of the same corporation, but this time the offering was conducted on the books and records of his Member Dealer. The Respondent's personal and family holdings of Metamedia rose to more than 1,200,000 shares which, we were advised, are today of minimal, if any, value.

¶ 5 With respect to Contravention No. 2, in May 2008, while employed as a Branch Manager with a Dealer Member, the Respondent became licensed to advise and trade in options, and forthwith began doing so. During the following six months he effected one hundred and eleven (111) option transactions in twenty-three (23) client accounts all of which were outside or beyond the approved option level of the accounts. One hundred and four (104) of these transactions were level 4 option trades which required the highest degree of client sophistication and investor status as defined by the Compliance Bulletin issued by his Dealer Member and which had been distributed to the Respondent.

¶ 6 When the unauthorized option trading came to the attention of his Dealer Member upon client complaint, settlement agreements were negotiated that required the Respondent to pay $30,000 in insurance deductibles. The Respondent has not since traded in options or acted as a Branch Manager. He has successfully re-written the Conduct and Practices Handbook Course.

¶ 7 As the Respondent operated a fee based income, the option trades did not result in substantial additional compensation to him and he does not appear to have profited from the trading activity.

¶ 8 The Settlement Agreement provides that the Respondent has accepted the following terms:

a) A total fine in the amount of $45,000, broken down as follows:

i. $25,000 disgorgement of profits relating to the sale of shares as outlined in Contravention 1;

ii. $10,000 fine for Contravention 1; and

iii. $10,000 fine for Contravention 2;

b) Re-write the Options Supervisors Course;

i. Upon successful completion of the Option Supervisors Course, a twelve month period of close supervision for all options trading, with monthly reports to be filed with IIROC;

ii. A prohibition from trading or advising in Level 4 Option accounts during the 12 month period of close supervision; and

iii. A 6 month suspension from acting as a Supervisor.

¶ 9 The Respondent agrees to pay costs to IIROC in the sum of $5,000.

¶ 10 In considering the facts and circumstances that gave rise to the Contraventions, the Panel noted that the Respondent advanced more rapidly in acquired responsibilities than he did in knowledge and understanding of his duties and obligations as a regulated member of IIROC. Both Contraventions occurred when the Respondent was acting as a Branch Manager and, in effect, supervising himself.

¶ 11 The Panel also noted that the total experience has been of considerable cost to the Respondent, some $80,000 in all, including the $30,000 paid to settle the claims arising out of the unauthorized options trading. His loss respecting his personal investment in Metamedia is regarded as collateral but nonetheless educational.

¶ 12 The Respondent appeared without counsel and he advised the Panel that he had represented himself throughout the negotiations leading to the Settlement Agreement. In response to inquiry, he assured the Panel that he was fully satisfied that he had been fairly treated by IIROC counsel at all times and that he regarded the terms he had agreed to as reasonable and entirely warranted by his conduct.

¶ 13 It is seldom that a settlement that has been worked out by competing litigants will not be accepted by the presiding tribunal. It is a fundamental and established principle that the parties are far better able to identify and protect their interests than a third party. Some additional care is necessitated in situations where an individual party is unrepresented. IIROC, through counsel Mr. DelFrate, urged us to accept the terms of the Settlement Agreement and the Respondent concurred.

¶ 14 While recognizing the principle that settlements should not be lightly disregarded, these matters are of a pseudo-penal nature and the Panel is charged with the responsibility of considering the interest of the non-represented third party, the public interest. This has been endorsed many times and was recently well-stated by an IIROC hearing panel, in a situation that also involved an unrepresented respondent, as the need to determine if the penalties "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 offence."[1]

¶ 15 Mr. DelFrate presented us with a document entitled *Dealer Member Disciplinary Sanction Guidelines,* a compilation by IIROC staff of principles enunciated in a number of previous sentencing decisions of this nature. The *Guidelines* have no legislative or by-law sanction or approval, but are very useful in setting forth the range of penalties that has been found to be appropriate.

¶ 16 We have no difficulty in concluding that the terms of the Settlement Agreement presented to us are fully appropriate to the circumstances here and well within the established range of penalties. Accordingly, the said Settlement Agreements is hereby accepted.

¶ 17 We advised the parties at the hearing on May 2, 2011, of the above decision. As required by By-Law 20.29, these are our reasons for the decision.

Garrett Wilson, Q.C. Chair

Eric M. Wray, Member

Richard Thompson, Member

SETTLEMENT AGREEMENT

I. INTRODUCTION

1 *Re Bereskin,* (2010) IIROC No. 37, para. 5.

1. IIROC Enforcement Staff and Kostantinos Georgeos Arapis (the "Respondent"), 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 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:

   a) Contravention 1:

      Between June 2005 and November 2005, the Respondent solicited twelve (12) clients to participate in a private placement of shares of a company in which he had an interest, which were conducted off the books and records and without the consent of his Dealer Member firm and for which he received remuneration directly from the company:

      i. thereby engaging in business conduct or practice which is unbecoming or detrimental to the public interest, contrary to IDA By-law 29.1 (now Dealer Member Rule 29.1); and

      ii. thereby accepting remuneration from a person other than his Dealer Member, contrary to IDA By-law 18.15 (now Dealer Member Rule 18.15);

   b) Contravention 2:

      Between May 14, 2008 and October 31, 2008, the Respondent effected one hundred and eleven (111) option transactions in twenty three (23) client accounts which were outside of the accounts' approved option level, thereby failing to use due diligence to ensure that the acceptance of any order for any account is within the bounds of good business practice, contrary to Dealer Member rule 1300.1(o).

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

   a) A total fine in the amount of $45,000, broken down as follows:

      i. $25,000 disgorgement of profits relating to the sale of shares as outlined in contravention 1;

      ii. $10,000 fine for contravention 1; and

      iii. $10,000 fine for contravention 2;

   b) Re-write the Options Supervisors Course;

   c) Upon successful completion of the Options Supervisors Course, a twelve month period of close supervision for all options trading, with monthly reports to be filed with IIROC;

   d) A prohibition from trading or advising in Level 4 Option accounts during the 12 month

period of close supervision; and

e) A 6 month suspension from acting as a Supervisor.

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

A. Registration History

11. Between October 2000 and December 15, 2005, the Respondent was registered as a Registered Representative (Retail) at a Saskatoon, Saskatchewan branch of Assante Capital Management Inc. ("Assante"). The Respondent was also registered as a Branch Manager for Assante from August 25, 2003 until December 15, 2005.

12. Between December 20, 2005 and November 28, 2009, the Respondent was registered as a Registered Representative (Retail) at a Saskatoon, Saskatchewan branch of Raymond James Ltd. ("Raymond James"), a Dealer Member of IIROC. On June 6, 2007, the Respondent completed the Options Supervisors Course. He subsequently became registered as a Branch Manager from June 22, 2007 until November 28, 2009. From May 9, 2008 until November 28, 2009, the Respondent was also registered as a Registered Representative Options (Retail).

13. Since January 25, 2010, the Respondent has been registered as a Registered Representative at a Saskatoon, Saskatchewan branch of Canaccord Genuity Corp., a Dealer Member of IIROC. As a term and condition of his registration with Canaccord, the Respondent is restricted from performing any supervisory functions and restricted from conducting any options trading.

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

B. Metamedia Capital Corp.

15. Metamedia purports to be a media company focusing in the production of animated, digital and print content. Metamedia focuses in the marketing and sale of integrated solutions in IPTV, Video on Demand and Video Conferencing arena, animated content and media technologies.

16. In early 2004, several clients of the Respondent introduced him to one of Metamedia's products, a magazine aimed at individuals of Greek descent. The Respondent soon thereafter became an ad hoc consultant to Metamedia. The Respondent's activities included:

i. Marketing magazine subscriptions in Saskatchewan;

ii. Reviewing Metamedia's marketing plans;

iii. Providing feedback on the magazine's acceptance and articles;

iv. Assisting viewers on its IPTV demo;

v. Participating and sponsoring community events to increase Metamedia's profile;

vi. Referring potential investors to Metamedia; and

vii. Organizing investor seminars in both Saskatoon and Regina.

17. The Respondent did not receive any remuneration as a result of the ad hoc consulting activities listed above. As such, he did not declare his involvement with Metamedia to Assante.

18. In June 2005, Metamedia conducted a financing by way of private placement of up to 2,500,000 common shares at a price of $1.00 each.

19. At that time, the Respondent approached a vice-president at Assante about participating in the private placement. He was advised that Assante was not set up to accommodate this type of business. The Respondent misinterpreted this to mean that he was free to participate on his own.

20. The Respondent solicited and recommended the investment in the Metamedia via the private placement to twelve of his clients. The Respondent has advised that these clients were high net worth individuals and met the "accredited investor" exemptions available under the Securities Act. In total, the clients invested approximately $250,000 in the Metamedia private placement.

21. The Metamedia purchases were not processed through the books and records of Assante. As a result, Assante was not able to assess the viability of the product nor were they able to assess the suitability of the purchases, thereby exposing both the clients and the Dealer Member to potential harm.

22. In total, Metamedia raised $1,145,880 by way of the private placement.

23. In addition to recommending the investment in Metamedia to his clients, the Respondent, at the request of Metamedia, agreed to use his private company, Axia Investment Services Ltd. ("Axia") to accept and redistribute a finder's fee to other individuals who promoted the offering. The Respondent has advised that Axia had no other active business operations.

24. In November 2005, Metamedia paid Axia a finder's fee of $114,588 consisting of $62,588 in cash and 52,000 shares. This represented a 10% commission on the total amount raised through the private placement.

25. In accordance with instructions received from Metamedia, the Respondent redistributed a portion of the finder's fee to 15 unregistered individuals located in British Columbia and Alberta who promoted the shares to other investors. The Respondent retained $24,588 and 500 shares as his commission. This was the only compensation from Metamedia that the Respondent had received outside of Assante.

26. In addition to the 500 shares retained as part of his commission, the Respondent, after the initial private placement, purchased additional shares in Metamedia, either on the market or by way of other offerings. By December 2008, the Respondent advised that his household position in Metamedia was over 1,200,000 shares.

27. After joining Raymond James, the Respondent participated in a second private placement of Metamedia shares. This second offering was conducted on the books and records of Raymond James.

28. Apart from the initial private placement of Metamedia, the Respondent had advised that he has not conducted any other business off the books and records or without the consent of his Dealer Member firm.

C. Options Trading

29. On May 9, 2008, the Respondent became licensed to advise and trade in options. The Respondent solicited several clients to add options trading to their accounts.

30. In accordance with Raymond James' policies and procedures, when option trading is added to an account, the account is assigned a level that identifies the allowable option activity. The level is based on the client's intended strategy, his/her investment experience, risk tolerance, and financial capabilities. At Raymond James, the various levels of option trades are:

Level 1	Purchase options
Level 2	Purchase and sell covered options
Level 3	Purchase and sell covered/spread options
Level 4	Purchase and sell covered/spread/uncovered options

31. These option levels are substantially similar to the option levels set out in the Options Supervisors Course prepared and published by the Canadian Securities Institute.

32. On May 9, 2008, the Senior Vice-President and Chief Compliance Officer at Raymond James distributed a Compliance Bulletin to all Branch Managers, including the Respondent, regarding the firm's option levels policies. Specifically, the changes were made to better define the Raymond James' level 4 options approval and oversight practices.

33. The Compliance Bulletin states that "Level 4 options trading represents the highest risk/reward client trading possible at RJL." In order for a client account to be approved for Level 4 options trading, Raymond James required, subject to reasonable exceptions, the following suitability requirements be met:

    i. The client must have a favorable credit rating;

    ii. The client must qualify as an accredited investor (annual income in excess of $200,000, or net liquid assets in excess of $1-million);

    iii. The client must be sophisticated and have extensive options trading experience (emphasis in original);

    iv. The client must have a high risk tolerance; and

    v. The client must have sufficient net equity at Raymond James.

34. Most of the Respondent's client accounts were approved by Raymond James to trade in Level 2 options. Some of the accounts were approved to trade in Level 3 options. None of the accounts were approved to trade in Level 4 options.

35. Between May 14, 2008 and October 31, 2008, the Respondent effected one hundred and eleven (111) option transactions in twenty three (23) client accounts which were outside of the accounts' approved option level. Specifically, the Respondent effected ninety four (94) uncovered puts, ten (10) uncovered calls and seven (7) spread trades.

36. The Respondent knew or ought to have known that the 94 uncovered puts and the 10 uncovered calls trades represented level 4 option trades and were not approved for any of his clients' accounts.

37. The Respondent knew or ought to have known that the 7 spread trades represented level 3 option trades and were not approved for the client accounts in which the trades took place.

38. At the time of each of these trades, the Respondent did not understand and did not realize that the trades were outside of the accounts' option level.

39. Apart from 3 uncovered put trades that were processed in 2 client RRSP accounts in June 2008, the Respondent was not questioned by his Dealer Member on any of the trades which were outside of the accounts' approved option levels, until November 2008, when additional trades were discovered and the Respondent's option trading privileges were suspended.

40. By processing trades that were outside the account's approved option levels, the Respondent failed to ensure that the acceptance of the orders were within the bounds of good business practice.

41. The Respondent operates a fee based business. As a result, the above trades did not result in substantial additional compensation to him and he does not appear to have profited from the trading activity.

D. Client settlements

42. In November 2008, Raymond James received complaints from two of the Respondent's clients regarding the option trading in their accounts. One of the clients also complained about the investment in Metamedia. This client had purchased shares in Metamedia during the initial private placement, but also purchased additional shares during the subsequent private placement conducted through Raymond James.

43. In May and June 2009, Raymond James and the Respondent reached settlement agreements with both clients. The Respondent paid $30,000 in insurance deductibles to settle the claims.

44. The Respondent has not traded in options since December 2008 and has not acted as a Branch Manager since November 2009.

45. In July 2009, the Respondent successfully re-wrote the Conduct and Practices Handbook Course.

IV. TERMS OF SETTLEMENT

46. 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.

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

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

49. 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.

50. 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.

51. 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.

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

53. 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.

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

55. 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 Saskatoon, in the Province of Saskatchewan, this 8th day of April, 2011.

Tess Hoffman	**"Respondent's signature"**
Witness	**Respondent**
NAME:	

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 11th day of April, 2011.

Katie Trotman	**"Rob DelFrate"**
Witness	**Rob DelFrate**
Name	Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada