

Re Toh

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

Weng Lok Toh

2011 IIROC 51

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

Hearing: June 20, 2011 in Calgary, Alberta
Decision: September 26, 2011
(11 paras.)

Hearing Panel:

John D. James (Chair), Jim Ross, Peter McWilliams

Appearances:

David McLellan, Enforcement Counsel
Weng Lok Toh, on his own behalf

PENALTY DECISION

Introduction

¶ 1 Pursuant to a settlement agreement (the “Settlement Agreement”) the Respondent Weng Lok Toh (“Toh”) admitted that he had breached Investment Dealers’ Association (“IDA”) By-Law 29.1 by engaging in conduct unbecoming or detrimental to the public interest. The specifics of the admitted contravention are:

In or about May, 2008, the Respondent engaged in personal financial dealings with clients when he received (through his wife) approximately \$122,275.00 from two clients without disclosing these financial dealings to his firm and thereby engaged in conduct unbecoming or detrimental to the public interest contrary to IDA By-Law 29.1

Joint Settlement Recommendation

¶ 2 Staff and Toh jointly recommended the imposition of the following sanctions:

- a) Two year prohibition of registration from Investment Industry Regulatory Organization of Canada (“IIROC”);
- b) Toh agrees to pay a fine to IIROC in the amount of twenty thousand dollars (\$20,00.00);

- c) As a condition of re-approval in any capacity, Toh shall successfully complete the IIROC Conduct and Practices Handbook examination;
- d) As a condition of re-approval in any capacity, Toh shall be subject to a period of one year strict supervision with reports to be filed with IIROC.

Factual Background

¶ 3 The admitted facts are unique. In summary, Toh received funds in the aggregate amount specified above from two different clients of the firm he was employed with as a Registered Representative (“RR”). While Toh was an employee and an RR at the time he received the funds he had not actually performed any work for his employer during the previous 18 months as a result of a serious motor vehicle accident in China which resulted in Toh incurring significant costs for specialized medical treatment in Asia.

¶ 4 The Settlement Agreement indicated that the funds provided by the two clients were as a gift or loan to Toh in appreciation of an investment opportunity that he had brought to his clients. There was no further information provided concerning the purpose or terms of the payments to Toh or whether any of the funds had been returned to the clients. In January 2010 Toh made a voluntary assignment in bankruptcy and he remains unemployed and on long term disability.

¶ 5 The Hearing Panel was provided no further details about the monies advanced by the two clients. No documents, evidencing either of the transactions, were produced and the only details provided about the two clients were that Toh had known them and their families for some time and that they were relatively sophisticated investors.

Adjudication

¶ 6 This Hearing Panel adopts the principle enunciated in *Milewski I.D.A.C.D. No. 17 (1999)* in relation to the treatment of joint settlement proposals such as that put forward here. We accept that, unless the proposed penalties clearly fall outside the range of appropriateness we should adopt and impose the settlement. The policy reasons for this are well known and need not be repeated here. The only question we need concern ourselves with then is whether the penalties jointly submitted fall within the range of appropriateness.

¶ 7 Counsel for IIROC provided what we accept as a good summary of the aggravating and mitigating circumstances. In doing so he referenced both the general principles from the Dealer Member Disciplinary Sanction Guidelines as well as those principles specifically applicable to undisclosed personal business dealings with a client that are referenced in the Guidelines. As aggravating factors counsel pointed to Toh’s ten years experience in the industry as an RR, as well as the significant sums of money involved.

¶ 8 In mitigation, counsel pointed to the very difficult personal circumstances of Toh, both at the time the funds were advanced and at the time of the Settlement Hearing. He had been seriously injured in a motor vehicle accident and was subject to overwhelming medical bills from treatment in Asia where the accident had occurred. The two clients involved were long time friends of Toh and were relatively sophisticated investors. The advancement of the funds on the two occasions in question was not part of any larger pattern or scheme and there was no evidence of any other illegality in relation to the use of the funds by Toh.

¶ 9 We also note that every indication is that Toh cooperated with IIROC throughout the investigation and there is no indication of any prior disciplinary history.

¶ 10 Frankly, our only concern in reaching our decision on penalty was that the joint proposal might be overly harsh, given the circumstances of Toh and the activity involved. The fine goes well beyond the minimum of \$10,000.00 provided for in the Recommended Sanctions relating to undisclosed personal business dealings with a client. However, mindful of the principle we are to follow in relation to joint settlement proposals we are satisfied that the proposal falls within the range of appropriateness and we should not interfere.

Penalties Imposed

¶ 11 The penalties proposed in the Settlement Agreement and which we impose are as follows:

- a) Two year prohibition of registration with IIROC;
- b) A fine of twenty thousand dollars (\$20,000.00) payable to IIROC;
- c) As a condition of reapproval in any capacity the Toh shall successfully complete the Conduct and Practices Handbook examination; and
- d) As a condition of reapproval in any capacity the Toh shall be subject to a period of one year of strict supervision with reports to be filed with IIROC.

Dated at Calgary in the Province of Alberta, 26th of September, 2011.

John D. James (Chair)
Jim Ross (Panel Member)
Peter McWilliams (Panel Member)

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

I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent, Weng Lok Toh, 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 Weng Lok Toh (“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:
 - i) In or about May, 2008, the Respondent engaged in personal financial dealings with clients when he received (through his wife), approximately \$122,275.00 from two clients without disclosing these financial dealings to his firm and thereby engaged in conduct unbecoming or detrimental to the public interest, contrary to IDA By-Law 29.1.
8. Staff and the Respondent agrees to the following terms of settlement:
 - i) Two year prohibition of registration from IIROC;
 - ii) The Respondent agrees to pay a fine to IIROC in the amount of twenty thousand dollars (\$20,000);
 - iii) As a condition of re-approval in any capacity, the Respondent shall successfully complete the Conduct and Practices Handbook examination;

- iv) As a condition of re-approval in any capacity, the Respondent shall be subject to a period of one (1) year of strict supervision with reports to be filed with IIROC.

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

Overview

11. While employed as a Registered Representative with Blackmont Capital Inc. (“Blackmont”), the Respondent received funds from two clients totaling approximately \$122,275.00 (payable through two cheques to his wife) without disclosing these financial dealings to his firm.

Background

12. The Respondent began working as a Registered Representative (“RR”) in 1998 with National Bank Financial. In 2003, he began working with First Associates Investments Inc. (later Blackmont).
13. In November, 2006 the Respondent suffered serious injuries in a motor vehicle accident in China. As a result, in the years following the accident he periodically received disability benefits and was not working. However, at all material times to the contraventions admitted to herein, the Respondent was employed as a RR with Blackmont.
14. In May, 2009, the Respondent was terminated from his employment with Blackmont.
15. The Respondent has advised that since his accident in 2006, he has incurred significant costs for specialized medical treatment in Asia.
16. In January, 2010, the Respondent made a voluntary assignment in bankruptcy. He is currently on long term disability and is not employed.

Personal Financial Dealings

17. Staff opened an investigation into the Respondent’s conduct on April 14, 2009. In December, 2009, the Respondent provided written statements to Staff in response to written interrogatories sent to him by Staff.
18. The Respondent has admitted that he received a cheque from his client, DC, in the amount of \$78,000.00 dated May 2, 2008, payable to his wife but for his benefit.
19. The Respondent has admitted that he received a cheque from his client, GC, in the amount of \$44,275.00 dated May 9, 2008, payable to his wife but for his benefit.
20. In total, the Respondent has admitted that he received a total of \$122,275.00 from his clients, DC and GC, without disclosing these financial dealings to his firm, Blackmont.
21. The Respondent has stated that the purpose of the funds were as a gift or loan in appreciation of an investment opportunity that he had brought his clients, in view of his financial difficulties. There is no promissory note evidencing a loan.
22. The Respondent has admitted that he engaged in personal financial dealings with his clients without disclosing these financial dealings to his firm.

IV. TERMS OF SETTLEMENT

23. 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.
24. The Settlement Agreement is subject to acceptance by the Hearing Panel.
25. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
26. 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.
27. 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.
28. 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.
29. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
30. 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.
31. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
32. 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 20th day of June, 2011.

“Witness signature”

Witness

AGREED TO by Staff at the City of Calgary in the Province of Alberta, this 20th day of June, 2011.

“Witness signature”

Witness

“Respondent’s signature”

Respondent

“David McLellan”

David McLellan

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 20th day of June, 2011, by the following Hearing Panel:

Per: **“John James”**

Panel Chair

Per: **“Jim Ross”**

Panel Member

Per: **“Peter McWilliams”**

Panel Member

