

# Re Jones

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**

**Catherine Deborah Jones  
(Formerly Known as Catherine Deborah Martin)**

2011 IIROC 70

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

Hearing: December 15, 2011

Decision: December 28, 2011

(8 paras.)

**Hearing Panel:**

Wade Nesmith (Chair), Robert Travers, Brian Field

**Appearances:**

Lorne Herlin, for IIROC Staff

H. Roderick Anderson, for Catherine Deborah Jones

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## DECISION

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### BACKGROUND

¶ 1 By virtue of a Notice of Hearing dated October 7, 2011, the Investment Industry Regulatory Organization of Canada (“IIROC”) commenced proceedings pursuant to Part 10 of Dealer Member Rule 20 and Section 1.9 of Schedule C.1 to Transition Rule No.1 against Catherine Deborah Jones (“Jones” or the “Respondent”).

¶ 2 Four allegations were made initially against the Respondent but for purposes of settlement, the parties have agreed to proceed on the following two counts:

**“CONTRAVENTION 1**

In November 2007, the Respondent offered to guarantee an initial investment made by her client V in May 2007, contrary to IIROC Dealer Member Rule 29.1 (formerly IDA By-law 29.1).

**CONTRAVENTION 2**

In March 2008 and June 2008, the Respondent effected discretionary orders for the account of her client V, without having V’s prior written authorization and without the account have been designated and approved as a discretionary account by her then employer Leede Financial Markets Inc. (Leede),

contrary to Dealer Member Rule 1300.4 and 1300.5 (formally (sic) IDA Regulations 1300.4 and 1300.5).”

¶ 3 By virtue of a Settlement Agreement (the “Agreement”) dated December 9, 2011 and appended hereto, IIROC Staff and the Respondent agreed to a settlement that has been placed before this panel for review and acceptance or rejection, pursuant to Dealer Member Rule 20.36. Following a review of the Agreement, submissions of and authorities referred to by counsel for both Staff and the Respondent, the Panel agreed to accept the Agreement, with reasons to follow. These are those reasons.

¶ 4 Given that the Agreement is appended to this decision, we will not enumerate the facts in any detail. In summary, the Respondent, who is currently a registered representative, admitted that she had “guaranteed” a return of a client’s original investment of \$50,000 in the event that his account was not at that level within a year of opening the account (contrary to Leede’s procedures and the Conduct and Practices Handbook (see page 1.11)), and that with the client’s knowledge, but without the proper training or authorization by her employer, she engaged in 7 individual trades on a discretionary basis.

¶ 5 The Respondent has no disciplinary history, cooperated fully with IIROC and made restitution of approximately \$35,000 to the client in respect of losses suffered by the client based on his understanding of the payment of the guarantee.

¶ 6 Staff and the Respondent agreed that the following terms would be comprise the sanctions in the matter:

- a) a \$22,500 fine;
- b) a six month period of close supervision;
- c) successful completion of the Conduct and Practices Handbook Course by July 6, 2012: and
- d) payment of costs in the amount of \$1000.

¶ 7 Counsel referred us to a series of cases starting with Re Milewski [1999] I.D.A.C.D. No. 17 that make it clear that a panel should not interfere with negotiated settlement unless it clearly falls outside a reasonable range of appropriateness. Counsel have also referred us to two cases involving conduct not dissimilar to the matter at hand, where the penalties imposed were similar to the proposed settlement. Finally, Counsel referred us to the IIROC Sanction Guideline 3.6 with respect to discretionary trading, which while not binding, provides guidance in respect of appropriate sanctions, and the proposed penalty fits within that Guideline.

## **ORDER**

¶ 8 For the reasons noted above, and in accordance with Dealer Member Rule 20.36, we hereby approve the Agreement with the terms noted in Paragraph 6 above.

**DATED** at Vancouver, British Columbia this 28th day of December, 2011.

Wade Nesmith, Chair

Robert Travers

Brian Field

## **SETTLEMENT AGREEMENT**

### **I. INTRODUCTION**

1. Staff of the Investment Industry Regulatory Organization of Canada (IIROC) and the Respondent, Catherine Deborah Jones (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 (IDA) 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 disclosed 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 Dealer Member Rules, Guidelines, IDA By-Laws, Regulations or Policies:

### **Contravention 1**

In November 2007, the Respondent offered to guarantee an initial investment made by her client V in May 2007, contrary to IIROC Dealer Member Rule 29.1 (formally IDA By-law 29.1).

### **Contravention 2**

In March 2008 and June 2008, the Respondent effected discretionary orders for the account of her client V, without having V's prior written authorization and without the account having been designated and approved as a discretionary account by her then employer Leede Financial Markets Inc. (Leede), contrary to IIROC Dealer Member Rules 1300.4 and 1300.5 (formally IDA Regulations 1300.4 and 1300.5).

8. Staff and the Respondent agree to the following terms of settlement:
  - a) a \$22,500 fine;
  - b) a 6 month period of close supervision; and
  - c) successful completion of the Conduct and Practices Handbook Course by July 6, 2012.
9. The Respondent agrees to pay \$1,000 in costs to IIROC.

## **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. In May 2007, the Respondent opened an account for her client V. After a few months of trading, V's account started to incur losses. In November 2007, in order to keep the account, the Respondent offered to "top up" the account. In trying to recover some of the losses, the Respondent also executed discretionary trades, with the knowledge and consent of V.

#### **The Respondent**

12. The Respondent has been employed as a registered representative since March 2001. From August 17, 2006 to October 8, 2010, she worked at Leede's Vancouver office. Since October 12, 2010, she has worked at the Vancouver office of Union Securities Ltd.

## **The Client**

13. On May 4, 2007, the Respondent met with V at Leede's Vancouver office. V was a 27 year old male. V decided to open a Canadian dollar cash account and a US dollar cash account at Leede (the V Account).
14. The New Client Application Form (NCAF) for the V Account indicated that V's:
  - estimated net worth was \$160,000;
  - risk tolerance was 25% low, 25% medium, and 50% high;
  - investment objectives were 25% long term growth, 25% short term speculative, and 50% venture speculative; and
  - investment knowledge was good.
15. The Respondent signed the NCAF and at all material times she was the registered representative who was responsible for the V Account.

## **Contravention 1: Guaranteeing Account**

16. On or about May 28, 2007, \$50,000 was deposited into the V Account.
17. By June 12, 2007, approximately \$48,100 of the \$50,000 that had been deposited into the V Account had been used to purchase securities, most of which were income trust units.
18. After the initial investment there was little activity in the V Account for a number of months.
19. In an August 31, 2007 email to the Respondent, V asked for an update regarding the performance of the V Account.
20. In a September 17, 2007 email to V, the Respondent, among other things, indicated that approximately \$49,700 of the \$50,000 had been used to purchase securities and that the market value of the securities was approximately \$44,000.
21. In a September 19, 2007 email to the Respondent, V expressed disappointment over the drop in the value of the V Account.
22. The Respondent and V then exchanged further emails and on November 8, 2007 they spoke by telephone. During the telephone conversation, V indicated that he was going to close the V Account because it had decreased in value. In response the Respondent indicated that if by the first anniversary of the opening of the V Account, V was not happy with its performance then she would "top up" the account to the initial investment amount of \$50,000. V accepted the Respondent's offer.
23. In a November 8, 2007 email to the Respondent, V confirmed the Respondent's offer to "top up" the V Account.
24. On or about November 27, 2007, V completed a Margin Agreement in order to enable the V Account to trade on margin, so that the Respondent could implement a more aggressive trading strategy to attempt to recoup the losses that the V Account had incurred.
25. In December 2007, the V Account began to trade on margin.
26. As of May 31, 2008, the assets in the V Account were worth approximately \$20,422.
27. Between April and June 2008, V contacted the Respondent on a number of occasions regarding her guarantee of the V Account.
28. In an April 6, 2008 email to the Respondent, V wrote that in May 2008 he was going to take her up on her offer to return his initial investment after one year.
29. In an April 7, 2008 email to V, the Respondent asked V to call her in order to discuss the V Account. The Respondent and V then spoke by telephone. In the course of their conversation, the Respondent

informed V that there was still a month until the one year anniversary of the opening of the V Account and she asked V to be patient.

30. In a June 3, 2008 email to the Respondent, V wrote that he planned to take the Respondent up on her offer to return his initial investment.
31. In a June 26, 2008 email to the Respondent, V reiterated that when he met with the Respondent in a few weeks he planned on taking her up on her offer to write a cheque for the return his initial investment of \$50,000.
32. On July 11, 2008 the Respondent and V spoke by telephone. He agreed to not exercise the guarantee at that point in time and to touch base every week or so with the Respondent.
33. In a July 14, 2008 email to the Respondent, V indicated that he had decided to exercise the Respondent's offer to return the initial investment.
34. In a July 16, 2008 email to V, the Respondent denied that she made the offer to return the initial investment.

### **Contravention 2: Discretionary Trading**

35. At no point did the Respondent obtain V's written authorization for discretionary trading and the V Account was never designated and approved as discretionary by Leede. However, at times the Respondent used her discretion to place orders on behalf of the V Account.
36. In particular, from March 10, 2008 to April 2, 2008, V was away in Costa Rica and he did not communicate with the Respondent. During this period the Respondent used her discretion to effect the following three orders on behalf of the V Account:
  - i. on March 17, 2008, the Respondent sold 400 shares of SunTeck Power Holdings Co. Ltd. (sale proceeds of \$12,185 USD);
  - ii. on March 17, 2008, the Respondent purchased 150 shares of ProShares Ultrashort Dow 30 (purchase price of \$9,110 USD); and
  - iii. on March 26, 2008, the Respondent purchased 150 shares of Yamana Gold Inc. (purchase price of \$2,620).
37. Further, on June 3, 2008 the Respondent used her discretion to effect the following four orders on behalf of the V Account:
  - i. purchased 2000 shares of Nacel Energy Corporation (purchase price of \$8,503 USD);
  - ii. sold 100 shares of Agrium Inc. (sale proceeds of \$9,035);
  - iii. sold 200 shares of Horizons BetaPro Natural Gas Bull ETF (sale proceeds of \$7,989); and
  - iv. bought 20,000 shares of Saxon Oil Co. Ltd. (purchase price of \$5,085).
38. V was aware that the Respondent was placing orders on behalf of the V Account without first consulting him in order to recoup the losses that the V Account had incurred. Given that the Respondent had offered to "top up" the V Account, he was not concerned about the discretionary trades.

### **V Complaint**

39. By letter dated July 28, 2008, V complained to Leede about the Respondent's conduct.
40. In January 2010, Leede settled with V with respect to his complaint. As a result, the Respondent paid V the sum of \$34,940 with respect to the losses suffered in the V Account.

### **Mitigating Circumstances**

41. The Respondent has no prior disciplinary history and she fully cooperated with the investigation

**IV. TERMS OF SETTLEMENT**

- 42. 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*.
- 43. The Settlement Agreement is subject to acceptance by the Hearing Panel.
- 44. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
- 45. 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.
- 46. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives her right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
- 47. 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.
- 48. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
- 49. 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.
- 50. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
- 51. 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 Vancouver in the Province of British Columbia, this 9th day of December, 2011.

**“H. Roderick Anderson”**

**Witness**

**AGREED TO** by Staff at the City of Vancouver in the Province of British Columbia, this 12th day of December, 2011.

**“Shannon Miller”**

**Witness**

**“Catherine Jones”**

**Respondent**

**“Lorne Herlin”**

**Lorne Herlin**

Senior Enforcement Counsel  
on behalf of Staff

**ACCEPTED** at the City of Vancouver in the Province of British Columbia, this 15th day of December, 2011, by the following Hearing Panel:

Per: “Wade Nesmith”

Panel Chair

Per: “Robert Travers”

Panel Member

Per: “Brian Field”

Panel Member

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