Re Wyatt

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Bonnie Wyatt

2021 IIROC 07

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

Heard: April 9, 2021 in Toronto, Ontario
Decision: April 9, 2021
Reasons for Decision: April 23, 2021

Hearing Panel:
Paul M. Moore, Q.C., Chair, Colleen Wright and Paul Bates
Appearance:
Kathryn Andrews, Enforcement Counsel
James Camp, for Bonnie Wyatt
Bonnie Wyatt (absent)

REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT

Settlement Hearing

¶ 1 This was a settlement hearing commenced by a Notice of Motion for a Settlement Hearing. It was heard on April 9, 2021 by audio-video conference with all attendees connected by video and audio. The Respondent was unable to attend because of a medical emergency but was represented by her counsel.

¶ 2 At the hearing, the Panel accepted the Settlement Agreement dated March 23, 2021 between Bonnie Wyatt as the Respondent and Enforcement Staff of IIROC.

¶ 3 A copy of the Settlement Agreement is attached to these Reasons.

Agreed facts

¶ 4 The agreed facts are set out in full in Part III of the Settlement Agreement.

¶ 5 In brief, between January 2016 and September 2018, the Respondent, a Registered Representative at Global Maxfin Capital Inc. ("GMCI"), utilized a leveraged investment strategy for clients.

¶ 6 As part of this strategy, the Respondent facilitated new investment loans for 16 clients and then purchased investments for these clients with the borrowed funds.

¶ 7 During this time, GMCI's policies and procedures indicated that new investment loans were not permitted for GMCI clients.

¶ 8 Client information forms for the 16 clients were not properly coded as leveraged accounts.

¶ 9 GMCI's policies and procedures required its Registered Representatives to ask on opening account documentation if a client had borrowed money to invest. The Respondent's client account documentation specifically indicated that certain clients (who had in fact borrowed) had not borrowed to invest. Furthermore, after the clients obtained lines of credit for the purpose of investing, the Respondent did not update their client information forms.

¶ 10 Finally, the Respondent failed to ensure that 12 of these clients' forms were accurate in that the documentation indicated 100% medium-risk tolerance when in fact the clients had 100% high-risk tolerance.

Contraventions

¶ 11 By engaging in the conduct described above, the Respondent committed the following contravention of IIROC's Rules:

a) Between January 2016 and September 2018, the Respondent failed to comply with her Dealer Member's policies and procedures by facilitating new investment loans for 16 clients, contrary to Dealer Member Rule 29.1 (prior to September 1, 2016) and Consolidated Rule 1400 (after September 1, 2016); and

b) Between August 2017 and September 2018, the Respondent failed to use due diligence to ensure that the know your client information was accurate for 12 clients, contrary to Dealer Member Rule 1300.1(a).

Agreed Penalty

¶ 12 The Respondent agreed to the following sanctions:

a) a fine of $20,000;

b) close supervision for three months;

c) successfully re-write the Conduct and Practices Handbook Examination within12 months; and

d) costs of $5,000.

Considerations

Importance of the settlement process

¶ 13 It is usually in the public interest that matters be settled where possible rather than be determined through contested hearings. The reasons for this are often that an earlier determination of a dispute is better than a later determination. Settlements are usually less expensive than contested litigation, and there is less congestion in the dispute settling system when matters are taken out of the system through settlements. Finally, where both parties agree, the result is often more palatable to the parties and society than in a contested hearing where the winner takes all.

¶ 14 For these reasons, a panel considering the acceptance of a settlement agreement will try to reach a determination of acceptance. It will recognize that settlements are often hotly negotiated with much compromise and give-and-take between the parties in order to reach an acceptable position agreeable to both parties. Furthermore, the panel will recognize that it is not privy to all the facts and the motivations and considerations that each of the parties have in coming to a solution of the dispute that is agreeable to them.

¶ 15 The parties advised us that the Settlement Agreement was arrived at through a mediation process, which they found most satisfying and helpful in bridging issues on which they were originally far apart. Mediation is a process to be encouraged and supported. Nevertheless, it is the Panel, and not the mediator or the mediation process that must decide on the acceptability of the Settlement Agreement.

Role of the panel

¶ 16 A panel considering whether to accept a settlement agreement and its agreed penalties is in a different

position than a panel determining an appropriate penalty in a contested hearing.

¶ 17 Each needs to consider precedents and the law and, most importantly, the particular facts and circumstances of the case, including the particular circumstances of the specific respondent.

¶ 18 However, unlike a panel in a contested hearing that must set the actual penalties that appear appropriate to it, a panel in a hearing to consider a settlement agreement has only two options under IIROC rules: to accept the agreed settlement with its penalties because the panel agrees that the penalties are acceptable, or to reject the agreed settlement because the agreed penalties are not acceptable or because the panel has not been given enough information for it to come to a determination that the agreed penalties are acceptable.

¶ 19 A panel considering whether to accept a settlement agreement cannot substitute for the agreed penalties those penalties that it might prefer to have in the circumstances. However, the parties can always be invited by the panel to provide additional information that the panel believes it needs in order to come to a favourable decision; and the parties may choose to provide it. Or indeed, the parties may agree to changes in the agreed penalties to meet what the panel believes is required for an acceptance, in order to avoid a rejection by the panel. But the panel cannot impose a change unilaterally.

¶ 20 In the final analysis, a panel will accept a settlement agreement where it is in the public interest to do so, as will almost always be the case where the panel is satisfied regarding the following three considerations.

Three Considerations

¶ 21 The Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement. First, the agreed penalties had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalties had to be fair and reasonable (i.e. proportional to the seriousness of the contravention taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalties should serve as a deterrent to the Respondent and to the industry.

¶ 22 To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on her of the agreed penalties.

Other Matters Considered

¶ 23 We reviewed the precedent cases submitted by Staff and compared the agreed penalties in the Settlement Agreement with the range of penalties in the cases. In doing this, we also reviewed the unique facts and circumstances of each case and compared and contrasted them with the unique facts and circumstances of the Settlement Agreement before us.

¶ 24 We considered the suggestions in the IIROC Sanction Guidelines.

¶ 25 Paragraph 15 of the Settlement Agreement states: “During the relevant period there was a repeated turnover of certain compliance and supervision staff at GMCI. Certain of these compliance and supervision staff have indicated that they were aware that the Respondent was facilitating new leverage loans for some clients and their view was that this was not prohibited by GMCI’s policies and procedures.” We did not give any weight to this fact because a failure of compliance and supervision staff of a Dealer Member is no excuse for contraventions committed by a Registered Representative.

¶ 26 The Respondent has no prior disciplinary history.

¶ 27 There was no evidence of any harm to the clients.

¶ 28 The bank that arranged the lines of credit and/or loans did not provide the Respondent with referral fees.

¶ 29 The Registration Subcommittee of the Ontario District Council of IIROC imposed Strict Supervision

terms and conditions on the Respondent, effective December 22, 2020.

These terms and conditions will remain in place until the conclusion of the current regulatory proceedings against the Respondent. Upon conclusion of the current regulatory proceedings, her sponsoring firm may apply to have the terms and conditions amended or removed. Upon receiving the removal request, the Registration Subcommittee will consider whether it is appropriate to have the terms and conditions removed considering both the removal request and IIROC Registration Staff's recommendation on the removal request.

Conclusion

¶ 30 Enforcement Staff submitted that we should accept the Settlement Agreement on the basis that it was proportionate, protective and preventative.

¶ 31 We determined that the agreed penalties were within an acceptable range based on precedents, would serve as a specific and general deterrent, and were fair and reasonable. Accordingly, we concluded that the Settlement Agreement was proportionate, protective and preventative, as submitted by Staff, and that it was in the public interest that we accept it.

Dated at the City of Toronto, in the Province of Ontario, this 23 day of April, 2021.

Paul M. Moore

Colleen Wright

Paul Bates

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada ("IIROC") will issue a Notice of Motion to announce that it will hold a settlement hearing to consider whether, pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, a hearing panel ("Hearing Panel") should accept the settlement agreement ("Settlement Agreement") entered into between the staff of IIROC ("Staff") and Ms. Bonnie Wyatt (the "Respondent").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

PART III – AGREED FACTS

3. For the purposes of this Settlement Agreement, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

Overview

4. Between January 2016 and September 2018, the Respondent, a Registered Representative at Global Maxfin Capital Inc. ("GMCI"), utilized a leveraged investment strategy for clients. As part of this strategy, the Respondent facilitated new investment loans for sixteen clients and then purchased investments for these clients with the borrowed funds. During this time period, GMCI's Policies and Procedures Manuals indicated that new investment loans were not permitted for GMCI clients.

5. New Client Application Forms for the sixteen clients set out in the attached Schedule A, were not properly coded as leveraged accounts. Furthermore, following February 2017, GMCI's policies and procedures were revised to require its Registered Representatives to ask on opening account documentation if a client had borrowed money to invest. After February 2017, however, the

Respondent's client account documentation specifically indicated that certain clients had not borrowed to invest. After the clients obtained lines of credit for the purpose of investing, the Respondent did not update their KYCs.

6. Furthermore, the Respondent failed to ensure that twelve of these clients' new account application forms were accurate, in that the documentation indicated 100% medium risk tolerance. This rating was inaccurate, as the clients' risk tolerance was 100% high risk. This documentation was not updated by the Respondent while at GMCI.

Background

7. The Respondent was employed as a Registered Representative at GMCI between July 2015 and July 2019. The Respondent has been working as a Registered Representative at Integral Wealth Securities Limited ("Integral") since July 29, 2019.

GMCI's Policies and Procedures

8. In 2015 and 2016, GMCI's policies and procedures stated that no new leveraged accounts would be approved by GMCI. GMCI did allow clients with pre-existing leveraged investments to transfer those investments into GMCI. These pre-existing accounts were coded "02Q" and were subject to increased monitoring.

9. Both the 2015 and 2016 manuals stated that:

> No new leveraged accounts will be approved by GMCI, under any circumstance. Previously existing leveraged accounts will be subject to heightened monitoring by the Branch Manager/Supervisor responsible to perform suitability reviews on all new transactions entered into an account associated with a registered employee/agent of GMCI. On the branch level, monthly statements are received by the Branch Manager/Supervisor from B2B Bank, the primary provider of previously existing leveraged investment loans provided to our clients.

10. In 2016, GMCI required additional documentation regarding the use of leverage prior to opening any leveraged account that contained previously purchased investments.

11. On May 27, 2016, GMCI sent a compliance notice to its Registered Representatives which outlined the "leverage package" that was now required to be submitted to a Branch Manager and the Compliance Department, prior to opening any leveraged account which contained investments purchased previously.

12. A number of criteria were to be reviewed to determine if the pre-existing leveraged account was suitable for the GMCI client, such as time horizon of five years or more, at least some long term investment objectives, at least some high risk tolerance and other criteria.

13. Effective December 31, 2016, all accounts coded as leveraged were to be restricted from buying and selling activity until a current leveraged account package was submitted to a Branch Manager and the Compliance department.

14. GMCI's policies and procedures manual dated February 22, 2017 (the "2017 Manual") indicated that additional documentation was required for pre-existing investment loans. The 2017 Manual indicated that GMCI did not allow any new investment loans. The 2017 Manual was in place up until the time of the Respondent's departure from the firm in July 2019.

15. During the relevant period there was a repeated turnover of certain compliance and supervision staff at GMCI. Certain of these compliance and supervision staff have indicated that they were aware that the Respondent was facilitating new leverage loans for some clients and their view was that this was not prohibited by GMCI's policies and procedures.

GMCI Attestation Forms

16. In 2016 and 2017, the Respondent signed attestation forms indicating that she understood and agreed to comply with GMCI's policies and procedures. By email dated December 27, 2017, the Respondent was reminded of the firm's policies and procedures. The Respondent did not sign the 2018 annual attestation form.

Facilitation of Investment Loans

17. The Respondent opened accounts for sixteen clients for which she recommended an investment strategy of borrowing to invest and facilitated investment loans or lines of credit to purchase securities, between January 2016 and September 2018 (the "Relevant Period").

18. Schedule A lists sixteen clients for whom the Respondent facilitated new investment loans and purchased securities during the Relevant Period.

19. The Respondent recommended that the clients obtain a line of credit or investment loan from a bank, and often to refinance their mortgage. She then invested all or part of the proceeds in various securities. The Respondent told Staff that many of her clients were using this leveraged investment strategy.

20. In addition, after the spring of 2016, the Respondent did not obtain the required documentation for the clients, which would have indicated to GMCI that the clients in fact, had borrowed to invest.

21. The sixteen accounts in Schedule A were not properly coded, as required by GMCI, in order to identify them as leveraged accounts.

22. Furthermore, after February 22, 2017, GMCI's revised KYCs asked: "Has the client borrowed to invest". Twelve of the clients in Schedule A had KYCs dated after February 22, 2017, that indicated they had not borrowed to invest. After the clients obtained lines of credit for the purpose of investing, the Respondent did not update their KYCs.

Failure to update client documentation

23. Twelve of the sixteen clients' KYCs indicated 100% medium risk with no high risk tolerance. These clients in actual fact had tolerance for high risk and their KYCs were not accurate. The Respondent did not update their KYCs to indicate 100% high risk while she was at GMCI.

GMCI Imposed Supervision

24. On April 3, 2019, the Respondent was advised by her firm that she was being placed under strict supervision. On June 24, 2019, GMCI advised her that she was being placed under close supervision. GMCI announced its intention to resign its membership with IIROC in May 2019. The Respondent moved to Integral on July 29, 2019.

IIROC Registration Subcommittee imposed Strict Supervision

25. Pursuant to Consolidated Rule 9207(1), the Registration Subcommittee of the Ontario District Council ("Registration Subcommittee") imposed Strict Supervision on the Respondent, effective December 22, 2020. These terms and conditions will remain in place until the conclusion of the current regulatory proceedings against the Respondent.

26. Upon conclusion of the current regulatory proceedings against the Respondent, her sponsoring firm may apply to have the terms and conditions amended or removed. Upon receiving the removal request, the Registration Subcommittee will consider whether it is appropriate to have the terms and conditions removed considering both the removal request and IIROC Registration Staff's recommendation on the removal request.

Additional factors

27. The Respondent has no prior disciplinary history.

28. There is no evidence of any harm to the clients.

29. The bank that arranged the lines of credit and/or loans has advised that they did not provide the Respondent with referral fees.

PART IV – CONTRAVENTIONS

30. By engaging in the conduct described above, the Respondent committed the following contravention of IIROC's Rules:

    a) Between January 2016 and September 2018, the Respondent failed to comply with her Dealer Member's policies and procedures by facilitating new investment loans for sixteen clients, contrary to Dealer Member Rule 29.1 (prior to September 1, 2016) and Consolidated Rule 1400 (after September 1, 2016);

    b) Between August 2017 and September 2018, the Respondent failed to use due diligence to ensure that the know your client information was accurate for twelve clients, contrary to Dealer Member Rule 1300.1(a).

PART V – TERMS OF SETTLEMENT

31. The Respondent agrees to the following sanctions and costs:

    (a) A fine in the amount of $20,000;

    (b) Close supervision for three months effective from the date of acceptance of this Settlement Agreement;

    (c) Successfully re-write the Conduct and Practices Handbook Examination within twelve months; and,

    (d) Costs in the amount of $5,000.

32. If this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and the Respondent.

PART VI – STAFF COMMITMENT

33. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against the Respondent in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of the paragraph below.

34. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

35. This Settlement Agreement is conditional on acceptance by the Hearing Panel.

36. This Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing in accordance with the procedures described in Sections 8215 and 8428, in addition to any other procedures that may be agreed upon between the parties.

37. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondent does not appear at the settlement hearing, Staff

may disclose additional relevant facts, if requested by the Hearing Panel.

38. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights under the IIROC Rules and any applicable legislation to any further hearing, appeal and review.

39. 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 based on the same or related allegations.

40. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.

41. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full of copy of this Settlement Agreement on the IIROC website. IIROC will also publish a summary of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement.

42. If this Settlement Agreement is accepted, the Respondent agrees that neither she nor anyone on her behalf, will make a public statement inconsistent with this Settlement Agreement.

43. The Settlement Agreement is effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

44. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

45. A fax or electronic copy of any signature will be treated as an original signature.

DATED this 23rd day of March, 2021.

"Bonnie Wyatt"

Respondent Bonnie Wyatt

"Kathryn Andrews"

Kathryn Andrews

Enforcement Counsel on behalf of Enforcement Staff of the Investment Industry Regulatory Organization of Canada

The Settlement Agreement is hereby accepted this "9th" day of "April", 2021 by the following Hearing Panel:

Per: "Paul Moore"

Panel Chair

Per: "Colleen Wright"

Panel Member

Per: "Paul Bates"

Panel Member

SCHEDULE A

Summary of Sixteen Investment Loans Facilitated by the Respondent

Client Name	Date KYC, % risk	Investment Loan details	Date Funds Deposited	Date of Purchases
DA	Jan. 18, 2018 100% medium	$410,000 investment loan, see March 13, 2018 email to DA	$410,000 on March 12, 2018	Over $300,000 investments purchased March 15-19, 2018
NA	June 29, 2018 100% medium	$610,000 LOC, see September 19, 2018 email to NA	$610,000 on September 4, 2018	$580,000 Principal At Risk ("PAR") Notes purchased September 6 and 7, 2018
MC	March 16, 2016 100% high	$114,000 investment loan, see July 26, 2016 email to MC $90,000 investment loan, see Oct 27, 2017 email to MC	-$114,000 on July 8, 2016 -$90,000 on October 16 & 20, 2017	-$100,000 of investments July 28, 2016 -$80,000 of investments October 20-25, 2017
CD	Jan. 7, 2018 100% medium	$267,000 investment loan, see March 6, 2018 email to CD	$267,000 on March 6, 2018	$240,000 of investments purchased March 9, 2018
PD	June 2, 2017 100% medium	$250,000 investment loan, see Aug. 23, 2017 email to PD	$249,000 on August 25, 2017	$220,000 of investments purchased August 31, 2017
CRD	September 14, 2017 100% medium	$143,000 line of credit, see Nov. 7, 2017 email to CRD	$143,000 on November 7, 2017	$125,000 of investments purchased on November 9 and 10, 2017
MK	May 25, 2017 100% medium	$154,000 line of credit, see Sept. 6, 2017 email to MK	$154,000 on August 31, 2017	$135,000 of investments purchased on September 8, 2017
RK	July 28, 2018 100% medium	$235,000 investment loan, see Sept. 19, 2018 email to RK	$235,000 on September 20, 2018	$220,000 of investments purchased on September 25 and 26, 2018

Client Name	Date KYC, % risk	Investment Loan details	Date Funds Deposited	Date of Purchases
BM	December 5, 2017 100% medium	$210,000 investment loan, see April 3, 2018 email to BM	$210,000 on March 28, 2018	$195,000 of investments purchased in March 2018 and April 2018
SP and CP	April 23, 2018 100% medium	$200,000 investment loan, see July 24, 2018 email to SP	$199,500 on July 24, 2018	$200,000 of investments purchased on July 27, 30 and 31, 2018
NR	August 5, 2016 100% high	$329,000 investment loan, see August 16, 2016 email to NR	$329,000 on August 19, 2016	$300,000 of investments purchased August 29, 2016
GR	February 26, 2018 100% medium	$768,000 investment loan, see June 29, 2018 email to GR	$738,000 on June 28, 2018 and $33,000 on July 6, 2018	$735,000 of investments purchased July 5, 6, 10 and 11, 2018
LS	October 3, 2015 100% high	-$63,000 investment loan, see November 18, 2016 email to LS -April 16, 2018 email to LS re PPNs	$65,000 on January 20, 2017 $20,000 on May 7, 2018	$60,000 of investments purchased January 30 and 31, and Feb 2 and 6, 2017 $20,000 of PAR Notes purchased May 8, 2018
ST	October 23, 2017 100% medium	$200,000 investment loan, see November 29, 2017 email to ST	$199,500 on November 27, 2017	$187,000 PAR Notes purchased November 28, 2017
PW	August 27, 2015 100% high	$239,000 new investment loan, see email March 18, 2016 to PW	$239,000 on February 23, 2016	$20,000 purchased Feb 25, 2016 and $215,000 investments purchased March 10, 2016

Client Name	Date KYC, % risk	Investment Loan details	Date Funds Deposited	Date of Purchases
MM	Dec. 6, 2017 100% medium	$258,000 new investment loan, see Jan. 31, 2018 email to MM	$258,000 on January 29, 2018	$230,000 of investments purchased February 1, 2018