Re Harris

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

James Robert Harris

2021 IIROC 08

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

Heard: May 4, 2021 in Regina, Saskatchewan via videoconference
Decision: May 4, 2021
Reasons for Decision: May 12, 2021

Hearing Panel:
Daniel Ish, Q.C., Chair, Claude Tétrault and Eric Wray
Appearance:
David McLennan, Senior Enforcement Counsel
Patrick D. Fitzpatrick, Respondent's Counsel

REASONS FOR DECISION

INTRODUCTION

¶ 1 At a Settlement Hearing on May 4, 2021, Enforcement Staff of the Investment Industry Regulatory Organization of Canada ("IIROC") and Counsel for James Robert Harris (the "Respondent") jointly recommended that the Hearing Panel accept the attached settlement agreement agreed to by the Respondent on April 12, 2021 (the "Settlement Agreement"). The settlement agreed to by IIROC and the Respondent was effected in accordance with the provisions of Section 8215 of the IIROC Consolidated Enforcement, Examination and Approval Rules (the "Rules"), with the Settlement Hearing constituted in accordance with the provisions of Section 8203 of the Rules, and held in accordance with the Rules of Practice and Procedure as set out in Rule 8400.

¶ 2 The Hearing Panel received and considered oral submissions from IIROC Enforcement Counsel and the Respondent's Counsel, and received and considered the IIROC Settlement Book containing copies of:

- The Settlement Agreement
- Extracts from the Rules
- Dealer Member Rule 1300.1(a) and (q)
- IIROC Sanction Guidelines dated February 2, 2015
- Selected IIROC Hearing Panel decisions.

¶ 3 The Hearing Panel accepted the Settlement Agreement at the hearing with reasons to follow. The

following are our reasons for the decision.

TERMS OF SETTLEMENT

¶ 4 The Settlement Agreement contains the agreement of the Respondent and IIROC Staff that:

(a) The Respondent acted contrary to Dealer Member Rule 1300.1(a) by failing to use due diligence and learn and remain informed of the essential facts relative to his client between December 2012 and July 2017; and

(b) the Respondent acted contrary to Dealer Member Rule 1300.1(q) by failing to use due diligence to ensure that investment recommendations were suitable for his client between December 2012 and July 2017.

¶ 5 Dealer Member Rule 1300.1(a) and (q) provide:

(a) Each Dealer Member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted.

(q) Each Dealer Member, when recommending to a customer the purchase, sale, exchange or holding of any security, shall use due diligence to ensure that the recommendation is suitable for such customer based on factors including the customer's financial situation, investment knowledge, investment objectives and risk tolerance.

¶ 6 As a result of these contraventions, the Settlement Agreement confirms that the Respondent and IIROC Staff have agreed to the following sanctions and costs:

(a) a fine in the amount of $25,000;

(b) disgorgement of fees and commissions in the amount of $15,000;

(c) a 30 day suspension from registration in any capacity with IIROC; and

(d) costs in the amount of $2,500.

¶ 7 The Respondent agreed, upon acceptance of this Settlement Agreement by the Hearing Panel, to pay the amounts referred to above within 30 days unless otherwise agreed between IIROC Staff and the Respondent.

STATEMENT OF FACTS

¶ 8 The Settlement Agreement contains facts and allegations agreed to by IIROC Staff and the Respondent. A summary of these facts follows.

Overview

- The Respondent was a Registered Representative in Regina, Saskatchewan, responsible for the accounts of his client, LP.
- LP was a retired widow with limited investment knowledge, and a vulnerable, long-term client of the Respondent. After her retirement in 2011, she relied on withdrawals from her investment accounts for part of her monthly living expenses.
- At all times, none of LP's investment accounts were discretionary or managed accounts, and thus her prior approval was required before executing trades.
- Between December 2012 and July 2017 (the "relevant period"), LP suffered losses of approximately $116,000 which represented a 23% net loss of her initial investment.
- IIROC Staff focused their review on the relevant period and have not reviewed account activity

prior to 2012.

- During the relevant period, the Respondent was a Registered Representative with PI Financial Corp. in Regina, Saskatchewan. He left PI Financial Corp. in August 2017 and is not currently a registrant with a Dealer Member and does not presently intend to seek to re-register with IIROC in the future.

Failure to Know the Client

- LP was a long-term client with limited investment knowledge and relied on the Respondent for his investment advice and recommendations. She was born in 1946 and lives in Saskatchewan. When the Respondent became her investment advisor, she was employed as a registered nurse, but she retired in 2011.
- Following a divorce in 1996, she received some farmland that she rented out for additional income. LP continued to own that farmland and receive rental income from it throughout the relevant period. She had previously owned some energy securities including flow-through investments.
- LP was seeking lower-risk investments that paid some income but still offered potential for growth. After her retirement, she relied on her investment accounts for part of her living expenses, and she typically withdrew approximately $1,100 per month from her investment accounts. The Respondent handled six accounts for LP.
- In December 2012, LP signed new client account forms ("NCAFs") for all six accounts. The NCAFs listed her investment knowledge as "limited".
- In May 2016, the risk tolerance and investment objectives of an RESP account were updated to 100% high risk and 100% long-term capital gains. The investment knowledge entry was left blank. There were no NCAF updates after May 2016.
- For the period of December 2012 to July 2017, the stated investment objectives of her accounts were too aggressive for LP, who had limited knowledge, and was relying on withdrawals from her investment for a portion of her income.
- The Respondent failed to learn and remain informed of the essential facts relative to LP as the stated investment objectives in her accounts were inconsistent with her true financial situation, investment knowledge, investment objectives and risk tolerance.

Suitability

- The Respondent pursued an aggressive investment strategy for LP's accounts, which involved an excessive level of risk for a vulnerable client relying on her investments for income.
- IIROC Staff's reviews indicated that:
  - (a) The majority of LP's holdings were in medium and/or high-risk investments.
  - (b) Energy sector security concentration ranged between 29% to 62% of her total portfolio in eight of the 12 periods reviewed.
  - (c) Holdings in LP's TFSA account ranged between 39% to 90% high risk, exceeding her stated high risk account parameters during the entire relevant period.
  - (d) There were minimal low risk investments in her accounts. Low risk holdings in her RRSP ranged between 1% to 10%, in her TFSA it ranged between 0.3% to 11%.
  - (e) LP had a margin account that was in a debit balance for 22 of the 57 months of the

relevant period, although it did not exceed 10% of the total securities' accounts value.

- The average total value of LP's accounts was $522,163 during the relevant period. The accounts earned total interest, dividends and distribution income of $137,062. Gross fees and commissions were $15,483. During the relevant period, LP experienced a loss of $116,564, representing 23% of her portfolio. During the same relevant period, the S&P TSX composite index increased by 23.7%.
- The holdings in LP's accounts were medium and high-risk investments concentrated in the energy sector, and presented a degree of risk, which was contrary to both her true financial and life circumstances. These holdings were not suitable for this client considering her age, financial situation, investment knowledge and experience.
- PI Financial Corp. paid LP compensation for losses in the amount of $26,405.44, which was repaid by the Respondent to PI Financial Corp.

ACCEPTANCE PRINCIPLES

¶ 9 Under IIROC Rule 8215(5), at the conclusion of a settlement hearing, a hearing panel may either accept or reject the proposed settlement. It does not have the jurisdiction to amend or alter the agreed upon sanctions. Further, it is well accepted that the role of the panel should be guided by the principles set out in *Re Milewski* [1999] IDACD No. 17. The pertinent part of the *Milewski* decision often referred to appears at page 13-14. It states:

> Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

¶ 10 In addition to the guidance provided by the *Milewski* decision, this Panel is cognizant of the considerable time that was spent between Mr. McLellan, on behalf of IIROC Staff, and Mr. Fitzpatrick, on behalf of the Respondent, in negotiating the terms of the Settlement, which in our view do consider the public interest benefits of the settlement process.

¶ 11 IIROC Enforcement Counsel summarized the principles enunciated in *Re Milewski*, and other decisions that have followed it, as providing that in making a determination under Rule 8215(5), a hearing panel is not to determine whether or not in its opinion the parties agreed upon a settlement agreement are correct or in accordance with the hearing panel's particular view of the appropriate penalty, but rather whether the penalties agreed upon in the settlement agreement come within an acceptable range of appropriateness after taking into account the general benefits to all parties of the settlement process. This approach, it was submitted, provides the parties with significant latitude in negotiating a settlement that may take many factors into account, including the time and expense of a liability hearing and the availability and convenience of witnesses, particularly clients who have already suffered significant losses.

PENALTY CONSIDERATIONS

¶ 12 In his submissions, IIROC Enforcement Counsel referred the Hearing Panel to the IIROC Sanction Guidelines and to the following decisions involving the consideration by hearing panels of contraventions involving Rule 1300.1(a) and (q). Reference was made to the conduct of the respective Respondents in those

cases and the penalties that were imposed by the hearing panels. Respondent's Counsel agreed that the decisions referred to were appropriate precedents for this Panel to consider. The decisions were:

- *Re Bodon* 2018 IIROC 12
- *Re Rochon* 2020 IIROC 3
- *Re Dion* 2017 IIROC 20
- *Re De Cicco* 2020 IIROC 7
- *Re Kassam* 2019 IIROC 25
- *Re Opaleke* 2015 IIROC 10
- *Re Gareau* 2011 IIROC 72.

¶ 13 Several of the sanction guidelines apply in this case. Some are aggravating factors while others are mitigating factors. In the former category, the Client LP was a vulnerable client with limited investment knowledge. She suffered a significant loss in her investments both from a percentage point of view and as an actual dollar amount. The Respondent clearly was aware of LP's situation and made investments not suitable for her.

¶ 14 The mitigating factors that operate in the Respondent's favor include the fact that he has no prior disciplinary record, he disgorged his fees and commissions, he was cooperative with the IIROC investigation and he accepted full responsibility for his actions.

¶ 15 IIROC Enforcement Counsel reviewed each of the previous IIROC decisions pertaining to penalty – all were settlement agreements except for *Re Gareau*, which was a decision of a panel on liability and penalty following a lengthy hearing. The Panel has read each of the decisions, which involve contraventions similar to those of the Respondent and has considered the penalties imposed in each decision. We conclude that the terms of settlement agreed to in the Settlement Agreement are, in the words of the *Milewski* case, "within a reasonable range, taking into account the settlement process and the fact that the parties have agreed".

DECISION

¶ 16 The Panel is cognizant of its role in the settlement process. The securities industry is a business of trust and confidence and one responsibility of a hearing panel is to ensure the continued trust and confidence. Registrants must meet significant responsibilities in protecting investors and maintaining the integrity of capital markets. It is important for registrants to appreciate that there will be significant penalties, including suspensions and significant fines, because of a disciplinary action for failure to comply with the regulatory requirements.

¶ 17 The Panel considered a number of factors in determining whether to accept the Settlement Agreement including:

(a) The Respondent, Mr. James Robert Harris, through the Settlement Agreement has admitted that his conduct breached the IIROC Dealer Member Rules.

(b) The terms of the Settlement Agreement are reasonable in response to the Rules violations by the Respondent.

(c) The Settlement Agreement addresses both specific and general deterrence and will assist in preventing the type of conduct described from occurring in the future.

(d) The proposed penalty will protect investors.

(e) The Settlement Agreement will foster confidence in the integrity of the capital markets, IIROC

and the regulatory process.

¶ 18 The Panel, after careful consideration, determined that the terms of the Settlement Agreement:

(a) Are reasonable and within the appropriate range for sanctions, given the facts and circumstances set out in the Settlement Agreement, the submissions of Counsel, and the authorities cited; and

(b) Meet IIROC's Sanction Guidelines and the principles of specific and general deterrence.

CONCLUSION

¶ 19 For the reasons set out above, the Panel unanimously accepted the terms of settlement set out in the Settlement Agreement, which include the following sanctions and costs:

(a) a fine in the amount of $25,000;

(b) disgorgement of fees and commissions in the amount of $15,000;

(c) a 30 day suspension from registration in any capacity with IIROC; and

(d) costs in the amount of $2,500.

Dated this 12 day of May, 2021.

Daniel Ish

Claude Tétrault

Eric Wray

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada ("IIROC") will issue a Notice of Application 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 James Robert Harris ("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. The Respondent, James Robert Harris ("Harris") was a Registered Representative ("RR") in Regina, Saskatchewan, responsible for the accounts of his client, LP.

5. LP was a retired widow with limited investment knowledge, and a vulnerable, long term client of Harris. After her retirement in 2011 she relied on withdrawals from her investment accounts for part of her monthly living expenses.

6. At all times, none of LP's investment accounts were discretionary or managed accounts, and her prior

approval was required before executing trades.

7. Between December, 2012 and July, 2017 (the "Relevant Period"), LP suffered losses of approximately $116,000 which represented a 23% net loss of her initial investment.

8. Staff focused their review on the Relevant Period, and have not reviewed account activity prior to 2012.

Registration History

9. During the Relevant Period, Harris was an RR with PI Financial Corp ("PI Financial") in Regina. Between December, 2000 and October, 2012, Harris was an RR with Union Securities Ltd. Harris left PI in August, 2017. Harris is not currently a registrant with a Dealer Member, and does not presently intend to seek to re-register with IIROC in future.

Client – LP

(i) Failure to Know the Client

10. LP was born in 1946 and lives in Saskatchewan. When Harris became her investment advisor, LP was employed as a registered nurse. She retired in 2011. Following a divorce in 1996, she received some farmland that she rented out for additional income. LP continued to own that farmland and receive rental income from that farmland throughout the Relevant Period.

11. LP was a long term client with limited investment knowledge, and relied on Harris for his investment advice and recommendations. She had previously owned some energy securities including flow through investments.

12. LP was seeking lower risk investments that paid some income but still offered potential for growth.

13. After her retirement, LP relied on her investment accounts for part of her living expenses, and she typically withdrew approximately $1,100 per month from her investment accounts.

14. Harris handled six accounts for LP: a Margin account, RRSP, Cash, TFSA, and two RESP accounts.

15. In December, 2012, due to Harris' move from Union Securities Ltd. to PI Financial, LP signed new client account forms ("NCAFs") for all six accounts, with particulars summarized as follows:

Date Client Executed NCAF	Age	Account	RISK LEVEL PER NCAF			INVESTMENT PROFILE PER NCAF			
							CAPITAL GAINS		
			Low	Med	High	Income	Short Term	Med Term	Long Term
December 21, 2012	66	Cash	0%	0%	100%	0%	0%	0%	100%
		RESP X-8	20%	50%	30%	20%	0%	50%	30%
May 26, 2016	69	RESP X-8	0%	0%	100%	0%	0%	0%	100%
December 21, 2012	66	Margin	0%	50%	50%	0%	0%	50%	50%
		RRSP and TFSA	20%	50%	30%	20%	0%	50%	30%
		RESP X-0	20%	50%	30%	20%	0%	50%	30%

16. The NCAFs provided the following financial information:

Net Liquid Assets	Net Fixed Assets	Net Worth	Annual Income
$530,000	$500,000	$1,030,000	$75,000

17. The NCAFs listed LP's investment knowledge as "limited".

18. LP remarried in the early 2000s, to KP. KP died in 2012. LP was the beneficiary of KP's RRSP, and following KP's death the assets of KP's RRSP were rolled in to LP's RRSP account.

19. In May, 2016, the risk tolerance and investment objectives of one of the RESP accounts were updated to 100% high risk and 100% long term capital gains. The investment knowledge entry was left blank.

20. There were no NCAF updates after May, 2016.

21. For the period of December, 2012 to July, 2017, the stated investment objectives of her accounts were too aggressive for LP, who had limited investment knowledge, and was relying on withdrawals from her investments for a portion of her income.

22. Harris failed to learn and remain informed of the essential facts relative to LP as the stated investment objectives in her accounts were inconsistent with her true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

23. Through Harris' own research and investment ideas, he pursued an aggressive investment strategy in her accounts, which involved an excessive level of risk for a vulnerable client relying on her investments for income.

24. Between November 30, 2012 and July 31, 2017, Staff conducted a semi-annual review indicating that:

    a. The majority of LP's holdings were in medium and/or high risk investments;

    b. Energy sector security concentration ranged between 29% to 62% of her total portfolio in 8 of the 12 periods reviewed;

    c. Holdings in her TFSA account ranged between 39% to 90% high risk, exceeding her stated high risk account parameters during the entire time period;

    d. There were minimal low risk investments in her accounts. Low risk holdings in her RRSP ranged between 1% to 10%, in her TFSA it ranged between 0.3% to 11%; and

    e. LP had a margin account that was in a debit balance for 22 of the 57 months of the Relevant Period, although it did not exceed 10% of the total securities' accounts value.

25. During the Relevant Period, the average total value of LP's accounts was $522,163. The accounts earned total interest, dividends and distribution income of $137,062. Gross fees and commissions were $15,483.

26. During the Relevant Period, LP experienced a loss of $116,564, representing 23% of her portfolio. During the same time period, the S&P TSX Composite Index increased by 23.7%.

27. PI Financial paid LP compensation for losses in the amount of $26,405.44, which was repaid by Harris to PI Financial.

28. The holdings in her accounts were medium and high risk investments concentrated in the energy sector, and presented a degree of risk, which was contrary to both her true financial and life circumstances. These holdings were not suitable for this client in light of her age, financial situation, investment knowledge and experience.

PART IV – CONTRAVENTIONS

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

    a) Between December, 2012 and July, 2017, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to his client, LP, contrary to Dealer Member Rule 1300.1(a); and

    b) Between December, 2012 and July, 2017, the Respondent failed to use due diligence to ensure that investment recommendations were suitable for his client, LP, contrary to Dealer Member Rule 1300.1(q).

PART V – TERMS OF SETTLEMENT

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

    a) a fine in the amount of $25,000;

    b) disgorgement of fees and commissions in the amount of $15,000;

    c) a 30 day suspension from registration in any capacity with IIROC; and

    d) costs in the amount of $2,500.

31. 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

32. 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.

33. 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

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

35. 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.

36. 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.

37. 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.

38. 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.

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

40. 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.

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

42. 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

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

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

DATED this 12th day of April, 2021.

"Witness"

Witness

"James Robert Harris"

James Robert Harris

"Witness"

Witness

"David McLellan"

David McLellan

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

The Settlement Agreement is hereby accepted this 4th day of May, 2021 by the following Hearing Panel:

Per: "Dan Ish"

Panel Chair

Per: "Claude Tetrault"

Panel Member

Per: "Eric Wray"

Panel Member