Re Molson

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Glenn Molson

2021 IIROC 06

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

Heard: December 17, 2020 in Vancouver, British Columbia by videoconference
Decision: December 17, 2020
Reasons for Decision: April 9, 2021

Hearing Panel:
Stephen Gill, Chair Johannes van Koll Brian Field
Appearance:
Stacey Robertson, Senior Enforcement Counsel
Rod Anderson, Counsel for Glenn Molson
Glenn Molson (absent)

DECISION ON THE ACCEPTANCE OF SETTLEMENT AGREEMENT

INTRODUCTION

¶ 1 This settlement hearing was convened to consider the joint recommendation of the parties to accept a settlement agreement ("Settlement Agreement") entered into between Enforcement Staff of the Investment Industry Regulatory Organization of Canada ("IIROC") and the Respondent,Glenn Molson pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC ("Consolidated Rules"). A copy of the Settlement Agreement is attached tothese reasons. After a settlement hearing, a Hearing Panel may either accept or reject a settlement agreement. It cannot modify it. Moreover, a Hearing Panel cannot go outside the facts set out in the Settlement Agreement.

¶ 2 After considering the material filed and oral submissions of counsel, and after reviewing the proposed Settlement Agreement, the Panel advised counsel at the hearing that the SettlementAgreement was accepted. The Panel further advised counsel that written reasons would be provided at a later date.

¶ 3 The Respondent admitted to the following contravention:

a) Between December 2017 and March 2018, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to a client and to the handling of aclient's account, contrary to Dealer Member Rule 1300.1(a).

¶ 4 The Respondent agreed to the following sanctions and costs:

a) Fine of $10,000 and

b) Costs of $1,000.

BACKGROUND AGREED FACTS

¶ 5 The agreed upon facts are set out in detail in the Settlement Agreement and in the written submissions provided by Enforcement Counsel. They are summarized below with much of thefollowing taken directly from these two documents.

a) The Respondent has been employed at the Vancouver branch of PI Financial Corp. since September 2016. Prior to that, he was a Registered Representative at Global Securities Corp. from August 2014. He has held various positions in the securities industry since 1982. He is presently 62 years of age.

b) Client JB was a friend of JO, who was also a client of the Respondent. JO asked the Respondent if he would open an account for JB. JO acted as the intermediary in the account opening process between JB and the Respondent. The Respondent gave JO the client information forms for JB to fill out. JO returned the completed forms to the Respondent and told him that JB had completed and signed the forms. JO also obtained a trading authorization form for JB's account that JO told the Respondent was signed by JB.

c) The Respondent did not meet with JB in person during the account opening process and relied on the representations of JO that JB signed the client information forms and that the forms contained accurate information regarding JB's financial circumstances, investment knowledge, investment goals and risk tolerance. The Respondent viewed JB's original driver's license and social insurance card but never met her in person until JB requested that her account be closed.

d) PI Financial's policies and procedures provide four methods to verify a client's identity. PI Financial's policy and procedure for verifying the identity of clients provided that "you can check the client's identity against an original copy of the client's [government issued] photo ID when you meet face-to-face with a client". The Respondent did not follow the policies and procedures for verifying the identity of a client.

e) On December 22, 2017, $5,500 was deposited into JB's account. On January 3, 2018, the Respondent purchased 15,000 shares of the TSVX-listed Issuer on the instructions of JO and for which he was an insider, in JB's account. The account documentation for JB's account noted that JO was an insider of the Issuer.

f) The Respondent first met JB on February 19, 2018 in the presence of JO. This was the first time that the Respondent verified the information on the client information forms with JB and verified the source of the initial deposit for funds into the account. JB confirmed that she had filled out the information on the client information forms and it was accurate. At that meeting, JB gave instructions to close the account as she was concerned about losing her money and her friends questioned the manner in which her account was being handled by JO.

g) JB suffered no loss in respect of the account.

h) Subsequently, JB contacted PI Financial about what had occurred regarding her account. PI Financial's CCO initiated an internal investigation into the Respondent's handling of JB's account. PI Financial internally disciplined the Respondent, imposing a fine of $5,000 and a requirement to rewrite the Conduct and Practices Handbook Examination.

i) On March 22, 2018, the shares of the Issuer in JB's account were transferred to JO's account, and on March 26, 2018, JB's account was closed.

ANALYSIS

The contravention

¶ 6 The parties to the Settlement Agreement submit that the Respondent has contravened IIROC Dealer Member Rule 1300.1(a)

¶ 7 The relevant provision of that Rule is as follows:

Rule 1300.1(a)

1. Each Dealer Member shall use due diligence to learn and remain informed of theessential facts relative to every customer and to every order or account accepted.

Criteria for accepting or rejecting a joint settlement agreement

¶ 8 The Hearing Panel is called upon to accept or reject the Settlement Agreement.

¶ 9 Section 8215 of IIROC's Consolidated Rules provides:

8215. Settlements and settlement hearings

(1) Enforcement Staff may agree in a settlement agreement to settle a proceeding or proposedproceeding against a Regulated Person at any time prior to the conclusion of a disciplinary hearing.

(2) A settlement agreement must contain:

…..

(vi) a provision that the settlement agreement is conditional on acceptance by a hearingpanel,

…..

(5) After a settlement hearing, a hearing panel may accept or reject a settlement agreement.

¶ 10 What is the test to be applied to determine if a settlement agreement should be accepted or rejected?

¶ 11 According to various precedents that were submitted to the Panel, the Hearing Panel should acceptthe Settlement Agreement as long as the proposed penalties fall within a reasonable range of appropriateness.

¶ 12 Enforcement Counsel for IIROC provided a number of cases explaining the role of a Hearing Panel in accepting or rejecting a settlement agreement, including:

- *Re Deutsche Bank Securities Ltd.* 2013 IIROC 07
- *Re Clark* (1999) I.D.A.C.D. No. 40
- *Re Milewski* (1999) I.D.A.C.D. No. 17
- *Re Edward Jones* 2016 IIROC 42 and
- *Re Heaks* 2019 IIROC 09.

¶ 13 We have included details of the relevant portions of the cases IIROC Enforcement Counsel referred to, highlighting the responsibilities of the Hearing Panel in determining if it should accept the settlement agreement.

¶ 14 *Re Edward Jones 2016 IIROC 42* - IIROC Enforcement Counsel pointed out that the hearing panel in that settlement agreement quoted from *Re Donnelly,* where the hearing panel noted the general benefits of settlement. IIROC hearing panels should try to reach a determination of acceptance. It noted that there is often give and take between the parties in order to reach a negotiated settlement and that theIIROC hearing

panel may not be privy to all the facts, motivations and considerations of each party leading to their mutual agreement.

¶ 15 *Re Heaks* 2019 IIROC 09 - IIROC Enforcement Counsel referred to the case as being a more recent IIROC decision involving a hearing panel considering a settlement agreement. The hearing panel statedat para. 18 as follows:

> Hearing panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what one party or the other has given up in the course ofnegotiations, and what interest each party has in agreeing to resolve the matter. The panel cannot go beyond the settlement agreement. There are often facts that play a role in the settlement which are not set out in the settlement agreement or brought to the attention of the Panel. Respecting settlements is particularly desirable in cases, such as this one, where experienced counsel were involved and where, we were told, there were"extensive negotiations".

¶ 16 The other cases supplied to the Hearing Panel provided similar support for the Hearing Panel in accepting or rejecting a settlement agreement.

IIROC Sanction Guidelines

¶ 17 The Hearing Panel must now determine if, given the circumstances of the case before us, the penalties agreed upon in the Settlement Agreement fall within a reasonable range of appropriateness. For this purpose, the Panel has examined IIROC's Sanction Guidelines which are "*intended to promote consistency, fairness and transparency by providing a framework to guide the exercise of discretion in determining sanctions which meet the general sanctioning objectives*" and penalties imposed for similar contraventions.

¶ 18 The Guidelines are divided into two parts. Part I provides a framework that should be considered in connection with the imposition of sanctions in all cases. Part II lists factors commonly taken into consideration when making a determination as to an appropriate sanction.

¶ 19 The Panel has mainly considered that given the preventative nature of disciplinary sanctions, sanctions are imposed to protect the investing public, strengthen market integrity, and improve overall business standards and practices. As stated in the Guidelines:

> The purpose of sanctions in a regulatory proceeding is to protect public interest by restraining future conduct that may harm capital markets. In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specificdeterrence), and to deter others from engaging in similar misconduct (general deterrence).

¶ 20 The Respondent has been a Registered Representative in the industry of just over 6 years and held various positions in the securities industry since 1982. The client JB did not suffer any losses as a resultof the misconduct. The Respondent has been sanctioned by PI Financial in the amount of $5,000 and was required to rewrite the Conduct and Practices Handbook Examination, which he successfully completed on August 24, 2018.

Precedents

¶ 21 The Panel has considered the following precedents submitted by Enforcement Counsel on penalties imposed for contraventions to IIROC Dealer Member Rule 1300.1(a) (know your client):

- *Re Hayes* 2014 IIROC 31
- *Re Bereskin* 2010 IIROC 37
- *Re Dunn & Wimble* 2015 IIROC 16 and
- *Re Driver* 2020 IIROC 17.

¶ 22 IIROC Enforcement Counsel reviewed the circumstances and the penalties for each of the cases withthe Hearing Panel. Counsel submitted that *Re Hayes* and *Re Bereskin* provided the best examples forthe Hearing Panel.

a) *Re Hayes* involved a Registered Representative never meeting or speaking with a client and taking all instructions from one spouse without any proper trading authorization. The panel accepted a $35,000 fine when the $10,000 internal fine was taken into account. However, the panel noted that $5,000 of the fine was for failure to have proper trading authorization documents, which is not the case in this matter. The panel also accepted the requirement to rewrite the Conduct and Practices Handbook Examination. The facts in *Re Hayes* occurred over a seven-year period and there was an absence of trading authorization documents in the file, which makes it slightly more egregious than the present case.

b) *Re Bereskin* involved similar circumstances where a Registered Representative took instructions from only one trustee where two out of the three trustees were required to provide proper trading instructions on the account. The Registered Representative did not know the client and did not understand the terms of the trust agreement. The panel accepted a fine of $10,000. In *Re Bereskin*, the Registered Representative met with one of the three trustees, whereas in the present case, the Respondent did not meet with the client at all during the account opening process. In both cases, the Respondents relied on a third party's representations regarding authorizations from the actual client.

¶ 23 The other cases had additional other contraventions which resulted in higher penalties.

¶ 24 While no case is identical, penalties for similar offences usually provide for a fine and additional measures, such as the obligation to pass the Conduct and Practices Handbook Examination and payment of costs incurred by or on behalf of IIROC in connection with the hearing and any investigation related to the hearing. In more serious contraventions, restrictions to membership orsuspension have been imposed.

¶ 25 The Panel found that the nature and the extent of the penalties agreed upon by the parties in the Settlement Agreement fall within the scope of penalties imposed for similar contraventions.

Aggravating and Mitigating Factors

¶ 26 The aggravating factor is that the Respondent has a prior disciplinary record in the securities industryfor failing to file insider reports with the Securities Commission in 2000, 18 years prior to this case. In that earlier case, Mr. Molson agreed to a number of sanctions and penalties, all of which have beensatisfied.

¶ 27 The mitigating factors are that:

a) the Respondent admitted that his conduct resulted in the contravention and saved the time and expense of a contested hearing,

b) The Respondent did not conceal that JO was an insider and did disclose this on the account documentation,

c) The account was only open for a short period of time and only involved approximately $5,500,

d) The Client suffered no losses in the account prior to the closing of the account,

e) The Respondent did not financially benefit from the misconduct and, as noted, the Respondent was fined $5,000 by his firm and was required to rewrite the Conduct and Practices Handbook Examination, which he has already completed.

CONCLUSION

¶ 28 Considering:

- the agreed facts in the Settlement Agreement,
- the Respondent was represented by experienced legal counsel in reaching the Settlement Agreement,
- the need to:
    - protect the investing public, strengthen market integrity, and improve overall business standards and practices,
    - prevent and discourage future misconduct by the Respondent, and
    - deter others from engaging in similar misconduct,
- the precedents examined,

the Hearing Panel has unanimously concluded that the recommended penalties fall within a reasonable range of appropriateness.

the Hearing Panel therefore unanimously accepted the proposed Settlement Agreement.

Dated at Vancouver, British Columbia this 9 day of April, 2021.

Stephen Gill

Johannes van Koll

Brian Field

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 Glenn Molson ("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 opened an account for a client based on information and documentation provided to him by a friend of the client's, who was also his client. The Respondent never met the client until the client gave instructions to close the account. The client's friend, who was an insider of an issuer listed on the TSXV (the "Issuer"), was given trading authorization over the account. The Respondent executed a trade in the client account on the instructions of the insider in shares of the Issuer.

Background

5. The Respondent has been employed at the Vancouver branch of PI Financial Corp. since September 2016.

Prior to that, he was a Registered Representative at Global Securities Corp. from August 2014. He has held various positions in the securities industry since 1982. He is presently 62 years of age.

Client JB

6. Client JB was a friend of JO, who was also client of the Respondent. JO asked the Respondent if he would open an account for JB. JO acted as the intermediary in the account opening process between JB and the Respondent. The Respondent gave JO the client information forms for JB to fill out. JO returned the completed forms to the Respondent and told him that JB had completed and signed the forms. JO also obtained a trading authorization form for JB's account that JO told the Respondent was signed by JB.

7. The Respondent did not meet with JB in person during the account opening process and relied on the representations of JO that JB signed the client information forms and that the forms contained accurate information regarding JB's financial circumstances, investment knowledge, investment goals and risk tolerance. The Respondent viewed JB's original driver's license and social insurance card but never met her in person until JB requested that her account be closed.

8. PI Financial's policies and procedures provided four methods to verify a client's identity. PI Financial's policy and procedure for verifying the identity of clients provided that "you can check the client's identity against an original copy of the client's [government issued] photo ID when you meet face-to-face with a client." The Respondent did not follow the policies and procedures for verifying the identity of a client.

9. On December 22, 2017, $5,500 was deposited into JB's account. On January 3, 2018, the Respondent purchased 15,000 shares of the TSXV-listed Issuer on the instructions of JO and for which he was an insider, in JB's account. The account documentation for JB's account noted that JO was an insider of the Issuer.

10. The Respondent first met JB on February 19, 2018 in the presence of JO. This was the first time that the Respondent verified the information on the client information forms with JB and verified the source of the initial deposit of funds into the account. JB confirmed that she had filled out the information on the client information forms and it was accurate. At that meeting, JB gave instructions to close the account as she was concerned about losing her money and her friends questioned the manner in which her account was being handled by JO.

11. JB suffered no loss in respect of the account.

12. Subsequently, JB contacted PI Financial about what had occurred regarding her account. PI Financial's CCO initiated an internal investigation into the Respondent's handling of JB's account. PI Financial internally disciplined the Respondent, imposing a fine of $5,000 and a requirement to rewrite the Conduct and Practices Handbook Examination.

13. On March 22, 2018, the shares of the Issuer in JB's account were transferred to JO's account and on March 26, 2018, JB's account was closed.

Other Relevant Factors

14. The Respondent paid an internal fine imposed by PI Financial of $5,000 for the conduct that is the subject matter of the contravention in this Settlement Agreement. The Respondent also successfully completed his rewrite of the CPH course on August 24, 2018.

PART IV – CONTRAVENTIONS

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

Between December 2017 and March 2018, the Respondent failed to use due diligence to learn and

remain informed of the essential facts relative to a client and to the handling of a client's account, contrary to Dealer Member Rule 1300.1(a).

PART V – TERMS OF SETTLEMENT

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

    a) Fine of $10,000; and

    b) Costs of $1,000;

17. 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

18. 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.

19. 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

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

21. 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.

22. 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.

23. 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.

24. 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.

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

26. 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.

27. If this Settlement Agreement is accepted, the Respondent agrees that neither [he/she/it] nor anyone on [his/her/its] behalf, will make a public statement inconsistent with this Settlement Agreement.

28. 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

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

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

DATED this 24 day of November, 2020.

"Witness"	"Glenn Molson"
Witness	Glenn Molson (Respondent)
"Witness"	"Stacy Robertson"
Witness	Stacy Robertson Enforcement Counsel on behalf of Enforcement Staff of the Investment Industry Regulatory Organization of Canada

The Settlement Agreement is hereby accepted this 17 day of December, 2020 by the following Hearing Panel:

Per: "Stephen Gill"
Panel Chair

Per: "Johannes van Koll"
Panel Member

Per: "Brian Field"
Panel Member