

Re Barreca

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization of
Canada**

and

Paul Barreca

2020 IIROC 01

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

Heard: January 15, 2020 in Toronto, Ontario

Decision: January 15, 2020

Written Reasons for Decision: January 31, 2020

Hearing Panel:

Hon. Peter B. Hambly, Chair, Lou D'Souza and Guenther Kleberg

Appearance:

Kathryn Andrews, Enforcement Counsel

Michael Wou, IIROC Investigator

Janice Wright, for Paul Barreca

Paul Barreca, present

REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT

Introduction

¶ 1 The Staff of Investment Industry Regulatory Organization of Canada ("IIROC") and the Respondent entered into a Settlement Agreement which they had negotiated pursuant to Rule 8428 of the Consolidated Enforcement, Examination and Approval Rules of IIROC (Consolidated Rules). They submitted the Settlement Agreement to this Hearing Panel for acceptance or rejection pursuant to Section 8215 of the Consolidated Rules. The Settlement Agreement is attached hereto as Appendix A.

¶ 2 After hearing oral submissions on January 15, 2020, the Hearing Panel retired to consider the matter. After returning to the hearing room, the Chair announced that the Hearing Panel had decided to accept the Agreement. Written reasons would follow. These are our reasons.

Background

¶ 3 The Respondent has been registered in the securities industry since 1993. He has been employed as a

Registered Representative at a Toronto branch of IPC Securities Corporation (IPC SC) since 2004. During the material time, AV was a Mutual Fund Dealers Association of Canada (MFDA) advisor employed by IPC Investment Corporation (IPC IC). AV was not registered with IIROC. Both IPC SC and IPC IC are owned by Investment Planning Counsel Inc. (IPC Inc.). In about February, 2015, the Respondent entered into a Referral Arrangement with AV which provided the following:

- the Respondent would send AV financial planning prospects,
- AV would provide investment and financial planning services as well as insurance advice, under AV's MFDA code, and
- AV would transfer 50% of net commission to the Respondent.

¶ 4 The Respondent did not disclose this Referral Arrangement to the compliance department or his branch manager at IPC SC. He also did not disclose it to clients or potential clients. He denied to IPC SC having a Referral Arrangement in his executed annual attestation forms in 2015 and 2016. IPC SC discovered the referral arrangement as a result of a routine audit by IPC IC of AV's branch in July 2017. It sent a compliance notice to the Respondent in which it asked him to terminate the Referral Arrangement, which he did. He received approximately \$18,000 in net commissions from the Referral Arrangement. He has repaid this amount as of January 2019.

¶ 5 IIROC Dealer Member Rule 29.1 and Consolidated Rule 1402 require that a registered representative observe high standards of ethics and conduct in the transaction of business and that he comply with regulatory obligations. National Instrument 31-103, Registration Requirements, Exemptions and Ongoing Registrant Obligations, Part 13, Division 3 (NI 31-103) requires that a referral arrangement must be disclosed by a Registered Representative to his firm and to potential clients and meet stringent tests. The Respondent is in violation of these rules and this regulation.

Role of a Hearing Panel in Considering a Settlement Agreement

¶ 6 IIROC Consolidated Rule 8215(5) states the following:

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

¶ 7 The hearing panel in *Re Milewski*, [1999] I.D.A.C.D. No. 17 explained how this test was to be applied:

Although a settlement agreement must be accepted by a District Council (predecessor of a hearing panel of IIROC) 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.

¶ 8 The hearing panels in *Re Jacob* 2017 IIROC 17 and *Re M Partners and Isenberg* 2018 IIROC 25 held that a hearing panel should not apply an elaboration of this test by the reasoning of the Supreme Court of Canada in *R. v. Anthony-Cook*, [2016] 2 SCR 204 as to whether a court should accept a joint submission on sentence in

a criminal case. (See also *Ast (Re)* 2012 IIROC 38 and *Portfolio Strategies (Re)* 2012 IIROC 36 on the application of the *Mielewski* test).

The Sanctions

¶ 9 The sanctions proposed in the Settlement Agreement are as follows:

- a. Payment of a fine in the amount of \$15,000,
- b. Successfully re-write the Conduct and Practices Handbook examination within six months of the date of acceptance of the Settlement Agreement, and
- c. Costs in the amount of \$1,500.

¶ 10 The Respondent agreed to pay the amounts in paragraph 9 (a) and (c) within 30 days of the approval of the Settlement Agreement.

¶ 11 The Hearing Panel considered the proposed sanctions by analyzing a number of aggravating and mitigating factors. The central aggravating factor is that the Respondent was untruthful in the 2015 and 2016 attestation forms by failing to disclose the existence of the Referral Arrangement. Similarly, the Respondent failed to disclose the Referral Arrangement to AV's clients. As a registrant with more than 25 years of financial services industry experience, we would expect the Respondent to have been aware of the regulatory obligations regarding referral arrangements and, if he was unclear, to have raised the Referral Arrangement with his Branch Manager and/or Compliance at IPC SC before executing it.

¶ 12 Mitigating factors are that no clients suffered loss, over a lengthy career in the securities industry the Respondent has no discipline history, he repaid the commissions that he earned pursuant to the Referral Arrangement, he did disclose the Arrangement to senior management persons at IPC Inc., which owns IPC SC and his motivation in entering into the agreement was to provide service to clients with small portfolios.

¶ 13 The primary purpose of sanctions is to protect the investing public by providing deterrence. The sanctions must be neither too harsh nor too lenient. This concept was well expressed in *Re Mills*, [2001] 1. D.A.C.D. No.7, April 17, 2001 at p 3:

Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its Members to expect for the conduct under consideration, it may undermine the goals of the Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the District Council in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention rather than punishment.

¶ 14 The sanctions are consistent with sanctions imposed in other cases. In *Re Mathews* 2018 IROC 16, two registered representatives accepted remuneration for securities related activities from someone other than their Dealer Member. A panel approved a settlement, which provided that each should pay a 50% proportionate share of \$99,600, which included disgorgement of \$84,600, net fines of \$15,000, and costs of \$5,000. In *Re Dennis* 2011 IIROC 39, after a contested hearing, a hearing panel found that a registered representative failed to disclose to his employer outside business activities. The hearing panel imposed a fine of \$321,855.14, which included disgorgement of \$291,855, a net fine of \$30,000, costs of \$15,000, that he re-write the IIROC Conduct and Practices Handbook examination and be under supervision for one year.

Conclusion

- ¶ 15 In accordance with the Settlement Agreement, the Respondent shall do the following:
- a. Pay a fine in the amount of \$15,000,
 - b. Successfully re-write the Conduct and Practices Handbook examination within six months of the date of acceptance of the Settlement Agreement, and
 - c. Pay costs in the amount of \$1,500.

Dated at Toronto this 31 day of January 2020.

Peter Hambly

Lou D'Souza

Guenther Kleberg

Appendix A

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 Paul Barreca (“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 was a Registered Representative at a Toronto branch of IPC Securities Corporation (“IPC SC”). In early 2015, he entered into a referral arrangement for which he received compensation (the “Referral Arrangement”). The Respondent participated in the Referral Arrangement without disclosing it to clients, his Branch Manager or IPC SC compliance.
5. The Respondent did not disclose to IPC SC the approximately \$18,000 in net commission he received between 2015 and the spring of 2017 as a result of the Referral Arrangement.
6. In both 2015 and 2016, the Respondent failed to disclose the Referral Arrangement on annual attestation forms which asked if any referral arrangements were in place.

Background

7. The Respondent has been registered in the securities industry since 1993. He has been employed by IPC SC since 2004 as a Registered Representative (“RR”). The Respondent was working in that capacity between 2015 and 2017.
8. Currently the Respondent is employed as an RR at IPC SC. IIROC’s Dealer Member IPC SC and a Mutual Fund Dealers Association of Canada (“MFDA”) entity called IPC Investment Corporation (“IPC IC”) are both owned by Investment Planning Counsel Inc. (“IPC Inc.”)

The Referral Arrangement

9. In late 2014 and early 2015, the Respondent had a radio show which generated potential client leads. He wanted to refer some of the smaller clients elsewhere, and in exchange, to be paid a percentage of commission generated by them.
10. In early 2015, the Respondent agreed to a Referral Arrangement with AV, an MFDA advisor at IPC IC who was not registered with IIROC.
11. The Respondent did not discuss the Referral Arrangement with anyone in compliance at IPC SC, or with his Branch Manager.
12. On January 15, 2015, the Respondent sent an email to four people, namely, KW who was the Regional VP of Business Development at IPC Inc., the then President and CEO of IPC Inc., the then President of IPC SC and to a recruiter at IPC Inc. In this email, the Respondent discussed a potential plan to refer clients to “another advisor” and split commissions. The email was not sent to the Respondent’s Branch Manager or anyone in compliance at IPC SC.
13. Subsequently KW suggested AV to the Respondent as an option for referrals.
14. The Respondent met with AV and discussed entering into a referral arrangement.
15. On January 26, 2015, the Respondent asked KW in an email who he should speak to about a referral arrangement. On the same day, KW emailed IPC Inc.’s Manager of Strategic Initiatives for Business Development (“TM”) to ask if she could help the Respondent. TM emailed the Respondent, copying KW, and said that she could take a look at the draft agreement.
16. On February 9, 2015, the Respondent emailed KW to say that he had reached an agreement with AV and asked who he should send the draft agreement to. KW emailed the Respondent, indicating that he should send it to TM.
17. On February 10, 2015, the Respondent emailed a draft of the agreement to TM. The draft referral agreement included “Investment Planning Counsel” as a signing party.
18. On February 12, 2015, TM emailed the Respondent and indicated that she was “not sure we really need to be involved in this. You can sign away in my opinion.”
19. In or around February 2015, the Respondent (signing as “Paul Barreca, Tribar Financial Inc. O/A West End Wealth Planning part of IPC Securities Corporation”) and AV signed the Referral Arrangement dated February 1, 2015. None of the IPC entities were parties to the Referral Arrangement. The Referral Arrangement indicated that:
 - the Respondent would send AV financial planning prospects;
 - AV would provide investment and financial planning services as well as insurance advice, under AV’s

MFDA code; and

- AV would transfer 50% of net commission to the Respondent.

Lack of disclosure

20. The Respondent did not disclose the Referral Arrangement to his Branch Manager or anyone in compliance at IPC SC. He did not disclose the Referral Arrangement to clients or potential clients.

Net Commission Received

21. Between 2015 and 2017, the Respondent received approximately \$18,000 in net commission from AV as a result of the Referral Arrangement.
22. The Respondent's net commission was paid by AV to a company known as Tribar Financial Inc., which was an insurance company controlled by the Respondent.
23. The amount and receipt of commission was not disclosed by the Respondent to IPC SC.

Non-disclosure of the Referral Arrangement on Annual Forms

24. In 2015 and 2016, the Respondent was asked by IPC SC on annual attestation forms, whether he had any referral arrangements in place for which he received compensation. The Respondent answered no, on both occasions. These answers were not accurate.

Events in 2017 and following

25. IPC SC reviewed the Referral Arrangement during a routine audit by IPC IC of AV's branch during the spring or early summer of 2017.
26. In July 2017 IPC SC sent a Compliance Notice to the Respondent, in which IPC SC asked him to terminate the Referral Arrangement. The Respondent did this immediately.
27. IPC SC has advised Staff that as of January 2019, the Respondent has re-paid the approximately \$18,000 net commission received by the Respondent as a result of the Referral Arrangement.

National Instrument 31-103 Referral Arrangements

28. National Instrument 31-103, Registration Requirements, Exemptions and Ongoing Registrant Obligations, Part 13, Division 3, ("NI 31-103") governs permitted referral arrangements for registered firms and registered individuals and the requirements for participating in referral arrangements, including the disclosure of referral arrangements to clients. The Respondent's participation in the Referral Arrangement did not meet the requirements of NI 31-103.

Other

29. The Respondent does not have a previous disciplinary history.
30. There is no evidence of client harm.
31. The Respondent has re-paid all commissions earned.
32. The Respondent has indicated that he entered into the Referral Arrangement with the intention of ensuring that the financial needs of clients with smaller portfolios would be looked after by an MFDA advisor.

PART IV – CONTRAVENTIONS

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

Between January 2015 and May 2017, the Respondent failed to disclose a referral arrangement to his Dealer Member IPC Securities Corporation, contrary to Dealer Member Rule 29.1 (prior to September 1, 2016) and Consolidated Rule 1400 (after September 1, 2016).

PART V – TERMS OF SETTLEMENT

34. The Respondent agrees to the following sanctions and costs:
- a. Payment of a fine in the amount of \$15,000;
 - b. Successfully re-write the Conduct and Practices Handbook examination within six months of the date of acceptance of the Settlement Agreement; and,
 - c. Costs in the amount of \$1,500.
35. 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

36. 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.
37. 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

38. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
39. 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.
40. 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.
41. 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.
42. 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.

- 43. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
- 44. 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.
- 45. 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.
- 46. 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

- 47. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.
- 48. A fax or electronic copy of any signature will be treated as an original signature.

DATED this “9” day of “December”, 2019.

“Witness”

Witness

“Paul Barreca”

Respondent Paul Barreca

“Ricki Newmarch”

Witness

“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 “15th” day of “January”, 20“20” by the following Hearing Panel:

Per: “Peter Hambly”

Panel Chair

Per: “Lou D’Souza”

Panel Member

Per: “Guenther Kleberg”

Panel Member