Re Hanson

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Scott Andrew Hanson

2021 IIROC 21

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

Heard: September 16, 2021 in Toronto, Ontario (by video conference)
Decision: September 16, 2021
Reasons for Decision: October 1, 2021

Hearing Panel:
Christopher Bredt, Chair, Christopher Hill and Peter Gribbin
Appearance:
Natalija Popovic, Senior Enforcement Counsel
Scott Andrew Hanson, self represented (present)

DECISION ON ACCEPTANCE OF SETTLEMENT

INTRODUCTION

¶ 1 This is a settlement hearing to determine whether to accept or reject the terms of a Settlement Agreement which has been entered into between the staff of the Investment Industry Regulatory Organization of Canada ("IIROC") and Scott Andrew Hanson (the "Respondent"). At the conclusion of the hearing the Panel found that the Settlement Agreement was within a reasonable range of appropriateness, having given consideration to the IIROC Sanction Guidelines and previous IIROC decisions. Accordingly, the Panel accepted and executed the Settlement Agreement with written reasons to follow. These are our reasons.

BACKGROUND

¶ 2 The Respondent was a Registered Representative ("RR") with CIBC World Markets Inc. ("CIBC") from 2003 until August 2020 when his employment was terminated as a result of the matters detailed herein. He is currently not employed with a Dealer Member.

Settlement Agreement

¶ 3 On August 24, 2021, the Respondent entered into a settlement agreement with IIROC (the "Settlement Agreement"). The Settlement Agreement is attached as an Appendix to this decision. In the Settlement Agreement the Respondent has admitted to the following contraventions of IIROC Dealer Member Rules:

(i) Between January and February 2020, the Respondent engaged in discretionary trading in certain client accounts, contrary to Dealer Member Rule 1300.4;

(ii) Between 2015 and 2018, the Respondent engaged in an outside business activity without disclosure to, or approval from, his Dealer Member, contrary to Dealer Member Rule 18.14; and

(iii) In 2016, the Respondent failed to disclose, consider, and address potential material conflicts of interest when he opened accounts for two clients, contrary to Dealer Member Rule 42.

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

(i) Global fine of $42,000;

(ii) Disgorgement of $1,111.72;

(iii) A prohibition of approval for 3 months; and

(iv) Costs of 10,000.

¶ 5 We summarize below the key elements of the misconduct admitted to by the Respondent.

Discretionary Trading

¶ 6 The Respondent opened accounts for his clients MM & AM in December 2019 and had several discussions with them regarding a trading strategy for their accounts. The discussions included a review of securities that the Respondent recommended for them.

¶ 7 After several such discussions, the Respondent began entering trades in their accounts on or about January 30, 2020. The clients left on a month long overseas vacation on February 3, 2020 during which time they were available via email.

¶ 8 The Respondent did not contact MM & AM while they were on vacation and entered several trades on a discretionary basis in their accounts from January 31 to February 14, 2020.

¶ 9 MM & AM made a complaint to CIBC about trading losses and alleged, among other things, that the Respondent had entered discretionary trades while they were on vacation in February 2020. Following an internal review, CIBC settled the complaint of MM & AM and compensated them $190,000.

¶ 10 The Respondent earned commissions of approximately $1,111.00 as a result of engaging in discretionary trading in the accounts of MM & AM.

Outside Business Activity

¶ 11 Between 2015 and 2018, the Respondent engaged in an outside business activity, namely as a member of an investment club, where he would at times make investment presentations to the other club members. The Respondent did not disclose the outside business activity to his Dealer Member.

¶ 12 The purpose of the club was to educate its members about basic principles of investing and invest in securities. The particulars of the club and the Respondent's involvement are:

(i) The club consisted of 9 to 12 members at any one time, and no member of the club was to hold more than 20%;

(ii) Each member would contribute $500 on admission to the club, this contribution would be used to purchase securities as collectively voted on by the club;

(iii) Subsequently, each member would contribute $60 at the club's monthly meetings, and at times members could make additional contributions;

(iv) The Respondent did not attend every monthly meeting;

(v) The Respondent was a member of the club from 1995-2012 and then again from 2015 to 2018;

(vi) The Respondent was the club president from 1995 to 2008; and

(vii) The Respondent did not have trading authority for the club's investment account during his tenure at CIBC, the authority was held by other club members.

¶ 13 The investment account for the club was not held at CIBC during the Respondent's tenure at the firm. In July 2018, the investment club transferred its account from the original investment dealer to another and during the new account opening process at the new dealer, the Respondent's status as an Approved Person was flagged.

¶ 14 Subsequently, the Respondent withdrew as a member, due to his concern that he should not have personal assets co-mingled with client assets.

Potential Material Conflicts of Interest

¶ 15 In 2016, the Respondent opened client accounts for two individuals who were also members of the investment club and did not disclose, consider or address the potential material conflicts of interest that arose as a result.

Internal Discipline

¶ 16 In a disciplinary letter dated April 30, 2020, CIBC advised the Respondent that his failure to disclose the OBA was a violation of the firm's policies and procedures and regulatory requirements and that he was in a conflict of interest in relation to the two clients who were also members of the investment club.

¶ 17 The April 30, 2020 letter imposed disciplinary action including a requirement that the Respondent cease all activities related to the outside business activity, pay a fine of $40,000, and be subject to close supervision. In July 2020, he admitted to CIBC that he had engaged in discretionary trading in the accounts of MM & AM in February 2020.

¶ 18 In August 2020, CIBC terminated the Respondent's employment for cause; the $40,000 internal discipline fine was not paid.

Early Resolution Offer

¶ 19 The Respondent has admitted the misconduct described above which reducing the length of time required to investigate this matter and agreed to resolve this matter in a timely manner. The Respondent accepted Enforcement Staff's settlement offer which granted a 30% reduction on the fine Enforcement Staff otherwise would have sought. The Respondent has also agreed to disgorge the amounts obtained as a result of executing the discretionary trades.

ANALYSIS

¶ 20 This proceeding raises the following issues:

(i) the test for acceptance of a Settlement Agreement;

(ii) review of the IIROC Sanction Guidelines; and

(iii) previous regulatory decisions.

(i) Test for Acceptance of a Settlement Agreement

¶ 21 It is well accepted that, in considering a settlement agreement, a hearing panel's task is to decide

whether the agreed sanctions fall within a "reasonable range of appropriateness". The Panel is not to decide whether it would have imposed the same sanctions as those negotiated by the parties, nor is it to modify or alter the sanctions.[1]

¶ 22 Accordingly, in considering the acceptance of a settlement agreement, a hearing panel must be satisfied that the agreed sanctions are within an acceptable range, are fair and reasonable, and serve as a deterrent to the respondent and to the industry. A hearing panel should accept the settlement agreement where it is in the public interest to do so.[2]

¶ 23 In applying the "reasonable range of appropriateness" test, hearing panels consider IIROC Sanction Guidelines, previous regulatory decisions, and any other relevant matters.

(ii) IIROC Sanction Guidelines

¶ 24 A hearing panel is to consider the IIROC Sanction Guidelines ("Guidelines") in determining whether the agreed sanctions in a settlement agreement fall within a reasonable range of appropriateness. The Guidelines set out general principles that provide a framework that should be considered in connection with the imposition of sanctions as well as key factors commonly taken into consideration when making a determination of the appropriateness of sanctions.

¶ 25 The Guidelines make it clear that the purpose of sanctions in a regulatory proceeding is to protect the public interest by restraining future conduct that may harm the market. Sanctions should be significant enough to prevent and discourage the respondent from engaging in future misconduct (specific deterrence) and to deter others from engaging in like misconduct themselves (general deterrence).

¶ 26 Counsel for IIROC Enforcement Staff submitted that the following key factors outlined in the Guidelines should be considered in determining whether the agreed sanctions are appropriate in this case:

- the number, size and character of the transactions at issue;
- whether the Respondent engaged in numerous acts and/or a pattern of misconduct;
- whether the Respondent engaged in the misconduct over an extended period of time;
- whether an individual was subject to internal discipline by the Dealer Member;
- the extent to which the Respondent obtained or attempted to obtain a financial benefit from the misconduct; and
- the Respondent's relevant discipline history.

¶ 27 In considering these factors we note that the Respondent's conduct spans over a period from 2015 to early 2020. Further, the conduct consisted of three distinct contraventions, including discretionary trading, undisclosed involvement in an outside business activity, and conflicts of interest in relation to two clients related to the outside business activity. The Respondent was subject to internal disciplinary action including a requirement that he cease all activities related to the outside business activity, pay a fine of $40,000, and be subject to close supervision. Further, as a result of the complaint the dealer member firm compensated the clients in the amount of $190,000. The Respondent earned commissions of approximately $1,111; and, the Respondent had no previous discipline history.

¶ 28 We view the following as mitigating factors:

[1] *Melville (Re)* 2014 IIROC 51, at pg. 3-4; *Re Milewski*, [1999] IDACD No. 17.
[2] *Donnelly, (Re)* 2016 IIROC 23, at paras 5-13; *Portfolio Strategies Inc. (Re)* 2012 IIROC 36, at paras 9-10.

- the Respondent had no discipline history; and
- the Respondent's admissions and cooperation shortened the length of time required by Enforcement Staff to investigate the matter and led to an early resolution.

¶ 29 We view the following as aggravating circumstances:

- the Respondent continued with an undisclosed outside business activity over a period from 2015 to 2018; and
- the Respondent's firm paid compensation of $190,000 to his client as a result of his discretionary trading.

¶ 30 In our view, the Settlement Agreement is consistent with the principles and the framework established by the Guidelines.

(iii) Previous Regulatory Decisions

¶ 31 In addition to considering the Guidelines, previous hearing panel decisions have, in determining whether the sanctions fall within a reasonable range of appropriateness, considered sanctions approved by hearing panels for similar types of misconduct. While it is rare to find cases with identical facts, it is of assistance to consider settlement decisions involving similar misconduct to assess, to the extent that they are comparable, whether the agreed sanctions fall within a reasonable range of appropriateness. However, it is important to keep in mind that each case must be considered on its own facts and circumstances.

¶ 32 IIROC Enforcement Staff referred us to a number of cases in support of the submission that the sanctions fell within a reasonable range of appropriateness.

¶ 33 In Skelton (Re)[3], the respondent admitted that from 2003 to 2008 he effected discretionary trades on behalf of a client; and, that he failed to ensure that the trade recommendations were suitable for the client, contrary to IIROC Rules 1300.1(p) and (q), and 1300.4 and 1300.5. In a settlement, Skelton agreed to a fine of $30,000 and costs of $1,000. Skelton had no previous discipline history.

¶ 34 In Scoten (Re)[4], the respondent admitted: to having placed discretionary trades in 2010 for client accounts; that between 2007 and 2009 he solicited and facilitated the purchase of previously issued shares of an issuer by some of his clients without knowledge or consent of his employer; to receiving compensation between 2008 and 2010 for the facilitation of previously purchased shares; and to making false statements to IIROC staff in respect of the compensation. He admitted to having acted contrary to IIROC Rules 1300.4 and 1300.5, and 29.1. In a settlement, he agreed to a fine of $50,000, a three year prohibition on approval, to rewrite the Conduct and Practices Handbook ("CPH") course, one year of strict supervision, and $5,000 for costs. Scoten had no previous discipline history.

¶ 35 *Hodge (Re)*[5] was uncontested hearing. Hodge was found liable for three contraventions, two of which related to engaging in an undisclosed outside business activity from 2003 to 2009 and from 2009 to 2011; the third contravention related to offering compensation to a client in 2008, all contrary to IIROC Rule 29.1. The hearing panel imposed sanctions consisting of fines of $45,000 for the first contravention, $30,000 for the second, and $10,000 for the third; a one year suspension; twelve months of strict supervision; a requirement to rewrite the CPH exam; and cost of $5,000. Hodge had no previous discipline history.

[3] *Skelton (Re)*, 2012 IIROC 46, at paras 2 and 7.
[4] *Scoten (Re)*, 2012 IIROC 67, at paras 3-4 and 18.
[5] *Hodge (Re)* 2013 IIROC 31, at paras 2 and 7-9.

¶ 36 In *Trueman (Re)*[6], the respondent admitted that over a one-year period he engaged in outside business activities without disclosure to or approval from his Dealer Member firm; and accepted remuneration from persons other than his firm regarding securities related activities; contrary to Dealer Member Rules 18.14 and 18.15. In the settlement, Trueman agreed to sanctions consisting of a global fine of $25,000, a requirement to complete the Chief Compliance Officer exam, and cost of $2,500. Trueman had no discipline history.

¶ 37 It is important to note that in *Trueman (Re)*, the hearing panel commented on the importance of disclosure of outside business activities to ensure proper supervision:

> The contraventions are serious because they deprived the Member of the opportunity of supervising the respondent and the outside business activities. Although the clients in this case appeared not to suffer any harm, they were not protected by the securities regulatory system of regulation and supervision that they would have benefited from had the outside business activities been under the supervision and control of a Member firm.[7]

¶ 38 In Frederick (Re)[8], the respondent admitted in a settlement that in April 2010, he recommended and accepted orders for 14 clients in a public offering of securities without disclosing a conflict of interest, contrary to Dealer Member Rule 29.1. In a settlement, Frederick agreed to a fine of $30,000, and cost of $2,500. Frederick did not have a discipline history.

¶ 39 In Couture (Re)[9], the respondent admitted in a settlement that he failed to inform his clients of the existence of a conflict of interest and failed to record securities held by a client in the books of his Dealer Member firm, contrary to (then) By-Law 29.1. In the settlement, he agreed to a fine of $35,000, to rewrite the CPH, and strict supervision for 12 months; no costs were requested or ordered. Couture had no discipline history.

¶ 40 Not surprisingly, none of the cases referred to us by IIROC Enforcement Counsel have facts that mirror all three of the contraventions at issue here. However, each of the cases have some overlap with the Respondent's contraventions. It is apparent from a consideration of these previous decisions that the sanctions are within a reasonable range of appropriateness.

CONCLUSION

¶ 41 Accordingly, the Panel found that the agreed sanctions fall within a range of reasonable appropriateness and has accepted the Settlement Agreement.

Dated at Toronto, Ontario this 1 day of October 2021.

Christopher Bredt

Christopher Hill

Peter Gribbin

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

[6] *Trueman (Re)*, 2016 IIROC 29, at paras 16 and 35.
[7] *Ibid.*
[8] *Frederick (Re)*, 2015 IIROC 45, at para 11.
[9] *Couture (Re)*, 2009 IIROC 45, at paras 2-3 and 20-21.

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 Scott Andrew Hanson ("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 engaged in discretionary trading in the accounts of a husband and wife. The majority of the trades took place while the couple were away for a month long overseas vacation in February 2020.

5. Between 2015 and 2018, the Respondent engaged in an outside business activity ("OBA"), namely as a member of an investment club, where he would at times make investment presentations to the other club members. The Respondent did not disclose the OBA to his Dealer Member.

6. In 2016, the Respondent opened client accounts for two individuals who were also members of the investment club and did not disclose, consider or address the potential material conflicts of interest that arose as a result.

Background

7. The Respondent was a Registered Representative ("RR") with CIBC World Markets Inc. ("CIBC") from 2003 until August 2020 when his employment was terminated as a result of the matters detailed herein. He is currently not employed with a Dealer Member.

Discretionary Trading

8. The Respondent opened accounts for his clients MM & AM in December 2019 and had several discussions with them regarding a trading strategy for their accounts. The discussions included a review of securities that the Respondent recommended for them.

9. After several such discussions, the Respondent began entering trades in their accounts on or about January 30, 2020. The clients left on a month long overseas vacation on February 3, 2020 during which time they were available via email.

10. The Respondent did not contact MM & AM while they were on vacation and entered several trades on a discretionary basis in their accounts from January 31 to February 14, 2020.

11. By letter dated August 31, 2020 MM & AM submitted a complaint to CIBC about trading losses and alleging, among other things, that the Respondent had entered discretionary trades while they were on vacation in February 2020. Following an internal review, CIBC settled the complaint of MM & AM and compensated them $190,000.

12. The Respondent earned commissions of approximately $1,111.00 as a result of engaging in discretionary trading in the accounts of MM & AM.

13. In addition to his clients MM & AM, the Respondent has admitted to engaging in discretionary trading in the accounts of four other client households. None of these clients complained to CIBC or IIROC.

Outside Business Activity

14. The Respondent was involved in an investment club between 2015 and 2018.

15. The purpose of the club was to educate its members about basic principles of investing and invest in securities. The particulars of the club and the Respondent's involvement are:

    (i) The club consisted of 9 to 12 members at any one time, and no member of the club was to hold more than 20%;

    (ii) Each member would contribute $500 on admission to the club, this contribution would be used to purchase securities as collectively voted on by the club;

    (iii) Subsequently, each member would contribute $60 at the club's monthly meetings, and at times members could make additional contributions;

    (iv) The Respondent did not attend every monthly meeting;

    (v) The Respondent was a member of the club from 1995-2012 and then again from 2015 to 2018;

    (vi) The Respondent was the club president from 1995 to 2008; and

    (vii) The Respondent did not have trading authority for the club's investment account during his tenure at CIBC, the authority was held by other club members.

16. The monthly meetings of the investment club members reflected the following:

    (i) The members would research and discuss stocks;

    (ii) One member would often make a presentation to the other members;

    (iii) The Respondent regularly, although not always, made recommendations to the group with respect to the investment decisions the group should make;

    (iv) He was among the top three members with respect to presentations;

    (v) When he presented he used CIBC research, among other research, for his presentations;

    (vi) When the investment club had cash available or when a stock was sold the members would collectively make buy decisions;

    (vii) The Respondent understood that other members relied on his opinion because of his influence as an advisor; and

    (viii) Most of the investment club's holdings were large multi-national Canadian companies, and none was a small cap stock.

17. The investment account for the club was not held at CIBC during the Respondent's tenure at the firm. In July 2018, the investment club transferred its account from the original investment dealer to another

and during the new account opening process at the new dealer, the Respondent's status as an Approved Person was flagged.

18. Subsequently, the Respondent withdrew as a member, due to his concern that he should not have personal assets co-mingled with client assets.

19. He awarded his units in the investment club to one of his adult children, while retaining his voting status via a permanent proxy. The Respondent ceased all activity in the investment club in August 2018.

Potential Material Conflicts of Interest

20. In 2016, while involved in the investment club, the Respondent opened accounts at CIBC for two clients, JD and KE, who were members of the investment club.

21. The Respondent admitted to Enforcement Staff that he had a potential material conflict of interest in relation to the two clients by acting as their investment advisor while also being a member of the investment club.

22. The Respondent failed to disclose potential material conflicts of interest to CIBC and failed to consider and address them.

Internal Discipline

23. In a disciplinary letter dated April 30, 2020 CIBC advised the Respondent that his failure to disclose the OBA was a violation of the firm's policies and procedures and regulatory requirements and that he was in a conflict of interest in relation to the two clients who were also members of the investment club.

24. The April 30, 2020 letter imposed disciplinary action including a requirement that the Respondent cease all activities related to the OBA, pay a fine of $40,000, and be subject to close supervision. In July 2020, he admitted to CIBC that he had engaged in discretionary trading in the accounts of MM & AM in February 2020.

25. In August 2020, CIBC terminated the Respondent's employment for cause; the $40,000 internal discipline fine was not paid.

Early Resolution Offer

26. The Respondent has admitted the misconduct described above reducing the length of time required to investigate this matter and agreed to resolve this matter in a timely manner. The Respondent accepted Enforcement Staff's settlement offer which granted a 30% reduction on the fine Enforcement Staff otherwise would have sought. The Respondent has agreed to disgorge the amounts obtained as a result of executing the discretionary trades.

PART IV – CONTRAVENTIONS

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

(i) Between January and February 2020, the Respondent engaged in discretionary trading in certain client accounts, contrary to Dealer Member Rule 1300.4;

(ii) Between 2015 and 2018, the Respondent engaged in an outside business activity without disclosure to, or approval from, his Dealer Member, contrary to Dealer Member Rule 18.14; and

(iii) In 2016, the Respondent failed to disclose, consider, and address potential material conflicts of interest when he opened accounts for two clients, contrary to Dealer Member Rule 42.

PART V – TERMS OF SETTLEMENT

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

    a) Global fine of $42,000;

    b) Disgorgement of $1,111.72;

    c) A prohibition of approval for 3 months; and

    d) Costs of 10,000.

29. 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

30. 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.

31. 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

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

33. 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.

34. 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.

35. 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.

36. 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.

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

38. 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.

39. 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.

40. 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

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

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

DATED this "23" day of "August", 2021.

"Witness"

Witness

"Scott Andrew Hanson"

Scott Andrew Hanson

DATED this "24" day of "Aug.", 2021.

"Witness"

Witness

"Natalija Popovic"

Natalija Popovic

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

The Settlement Agreement is hereby accepted this "16" day of "September", 2021 by the following Hearing Panel:

Per: "Christopher Bredt"

Panel Chair

Per: "Christopher Hill"

Panel Member

Per: "Peter Gribbin"

Panel Member