

Re Stock

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Thomas Robert Stock

2021 IIROC 24

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

Heard: October 18, 2021 in British Columbia by videoconference

Decision: October 18, 2021

Written Reasons for Decision: October 28, 2021

Hearing Panel:

Catharine Esson, Chair, Lloyd Costley and John van Koll

Appearances:

Andrew P. Werbowski, Enforcement Counsel

H. Roderick Anderson, for Thomas Robert Stock

Thomas Robert Stock (absent)

DECISION ON ACCEPTANCE OF SETTLEMENT

INTRODUCTION

¶ 1 The purpose of this hearing was to consider the Settlement Agreement entered into by the parties to this matter.

¶ 2 At the hearing, the Hearing Panel accepted the Settlement Agreement. These are the reasons for that decision.

¶ 3 The Respondent admitted in the Settlement Agreement that he breached IIROC's Rules by:

- a) engaging in unsuitable and excessive trading in a client account, which he ought to have known preferred his interests over those of his client, contrary to Dealer Member Rules 1300.1(o) and 1300.1(q); and
- b) failing to cooperate with the Staff's investigation into his conduct, contrary to section 8104 of the Consolidated Rules.

and agreed to the following sanctions:

- a) a permanent bar to approval in any capacity;
- b) a monetary fine in the sum of \$10,000; and

c) payment of costs of \$5000.

¶ 4 Having considered:

- the circumstances of the infractions and Mr. Stock's current circumstances;
- the fact that the proposed settlement was negotiated by experienced counsel on behalf of the parties; and
- the submissions of counsel and the guidance provided by the IIROC Sanction Guidelines and previous cases;

the Hearing Panel accepted that the agreed upon sanctions fall within a reasonable range of sanctions for the admitted misconduct.

ANALYSIS

THE TEST FOR ACCEPTANCE OF THE SETTLEMENT AGREEMENT

¶ 5 The test to be applied in considering a settlement agreement is well established. A hearing panel should be satisfied that the agreed upon sanctions are within a reasonable range for the admitted misconduct, including that the sanctions will serve as a deterrent to the respondent and to the industry. A hearing panel should not interfere with a negotiated penalty, unless the penalty clearly falls outside the reasonable range.

Milewski (Re), [1999] I.D.A.C.D. No. 17

¶ 6 Deference to a negotiated settlement is particularly appropriate where, as here, the parties are represented by experienced counsel.

Re Brum 2020 IIROC 39, para 15

THE ADMITTED MISCONDUCT AND THE CIRCUMSTANCES

¶ 7 The Settlement Agreement, which is attached to this decision, sets out the details of the misconduct and the Respondent's circumstances.

¶ 8 With respect to the breach of Dealer Member Rules 1300.1(o) and 1300.1(q), the Respondent admitted that:

- he engaged in excessive trading in a client account over a period of about 11 months, generating unduly high commissions for himself;
- he ought to have known that the level of commissions and fees charged was excessive and unsuitable; and
- he failed to consider the best interests of his client and ought to have known he was preferring his own interests.

Settlement Agreement, paras 21 – 28, 36, 43

¶ 9 With respect to Section 8104 of the Consolidated Rules, the Respondent admitted that, over a five month period, he failed to respond to correspondence from IIROC and to attend a compelled interview with IIROC Staff. The Respondent had participated in an internal firm investigation. He left his firm during IIROC's investigation and was not aware that IIROC continued to have jurisdiction over his conduct.

Settlement Agreement, paras 30 – 35, 37, 43

¶ 10 In both cases, the breaches were serious and substantial. They extended over months. The misconduct goes to the heart of the relationship between registrant and client and the relationship between registrant

and regulator.

¶ 11 The Hearing Panel was referred to the IIROC Sanction Guidelines and to numerous previous decisions involving excessive trading and the failure to cooperate. In the excessive trading cases we were referred to, the respondents faced significant monetary sanctions and prohibitions on registration approval, consistent with the fact that the conduct violates the trust inherent in the advisor / client relationship.

Re Drose 2021 IIROC 17

Re Dunn 2020 IIROC 11

Re Haller 2017 IIROC 8

Re Crandall 2016 IIROC 37

Re Matthews 2015 IIROC 2

Re Lann 2013 IIROC 9

¶ 12 The failure to cooperate cases evidence that hearing panels frequently impose or accept a permanent bar from registration and large monetary penalty for registrants and former registrants who fail to cooperate with IIROC. This is warranted. IIROC cannot carry out its mandate if those it regulates, including those who leave the industry following allegations of misconduct, do not cooperate with its investigations.

Re Sole 2018 IIROC 19

Re Trites 2010 IIROC 48

Re Nelson 2019 IIROC 22

¶ 13 The Settlement Agreement also describes other factors which bear on the acceptable range of sanctions. Most significantly, Staff advised that it would have sought more significant financial sanctions but for the following:

- the Respondent participated in his firm's internal investigation of this matter and personally paid \$50,000 to the client for the settlement of her complaint and reimbursed his firm \$5,544 in connection with legal fees; and
- more significant penalties would result in financial hardship to the Respondent.

¶ 14 The Hearing Panel agrees that it is appropriate to consider the Respondent's restitution and proven financial hardship in determining the appropriate range of sanctions. But for those factors, the Hearing Panel would have expected a larger fine.

CONCLUSION

¶ 15 The Hearing Panel is satisfied that the agreed upon sanctions are within the reasonable range for the admitted misconduct and the circumstances of this case and accepts the Settlement Agreement.

Dated at British Columbia, this 28 day of October 2021.

Catharine Esson

Lloyd Costley

John van Koll

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada (“IIROC”) will issue a Notice of Motion to announce that it will hold a settlement hearing to consider whether, pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, a hearing panel (“Hearing Panel”) should accept the settlement agreement (“Settlement Agreement”) entered into between the staff of IIROC (“Staff”) and Thomas Robert Stock (“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 unsuitable and excessive trading in a client account, which he ought to have known preferred his own interests over those of the client. In addition, the Respondent failed to cooperate with Staff’s investigation into his conduct.

Background

5. The Respondent has worked in the securities industry since June 2000. He has been approved as a Registered Representative with various Dealer Members since May 2001 (other than a brief period between August 2008 and February 2009).
6. Between February 2009 and May 2016, the Respondent worked as an RR in the Vancouver office of Global Securities Corp. (“GSC”). While registered at GSC, the Respondent opened accounts for SH and LN (SH’s spouse at the time). All investment decisions for the GSC accounts were made by SH.
7. In May 2016, the Respondent moved to the Vancouver office of Haywood Securities Inc. (“HSI”), where he worked as an RR.
8. In June 2016, the Respondent opened an RRSP account with both CDN\$ and US\$ components for LN. The CDN\$ component had an initial balance of approximately CDN\$13,800 and the US\$ component had an initial balance of approximately US\$13,500. Neither account was actively traded until April 2017.
9. In April 2017, SH and LN divorced and divided their financial assets. Approximately CDN\$175,000 was transferred into LN’s RRSP account as part of the divorce settlement.
10. In April 2017, the Respondent also opened a US\$ cash account for LN and securities valued at approximately US\$354,000 were transferred “in kind” into LN’s US\$ cash account.
11. Beginning in April 2017, the Respondent engaged in a pattern of excessive trading that was not within the bounds of good business practice and unsuitable for LN. The pattern of trading continued until LN complained to the Respondent about the management of her accounts in the fall of 2017.
12. In February 2018, LN escalated her concerns to HSI’s compliance department and requested compensation for the mismanagement of her account. In April 2018, HSI agreed to compensate LN, having concluded after an internal review that the trading was unsuitable for her.

13. The Respondent was internally disciplined by HSI. He received a formal reprimand, was required to reimburse HSI the amount of the compensation paid to LN together with a portion of HSI's legal costs and was placed under heightened supervision for a period of twelve months.
14. In February 2019, the Respondent was terminated from HSI in good standing.
15. The Respondent has failed to cooperate with Staff's investigation. Opening letters sent by registered mail have been returned unclaimed and several voice mail messages requesting an interview have gone unanswered. The Respondent has failed to attend a compelled investigation interview despite having been personally served with the request.

The L.N. Accounts

16. The Respondent opened registered accounts for LN in June 2016. The NCAF for the RRSP account included the following information:
 - a) Date of birth – August 19, 1965
 - b) Employment status – homemaker
 - c) Estimated liquid assets - \$2,000,000
 - d) Estimated fixed assets - \$2,000,000
 - e) Current annual income from all sources - \$100,000
 - f) Source of annual income – investments
 - g) Investment knowledge – good
 - h) Investment objectives / risk tolerance – partially fund retirement, retirement savings
 - i) Time horizon – five to ten years
17. The category of investment objective / risk tolerance identified on the NCAF was "Growth" and included the following description:

My primary investment objective is to have a portfolio that has the potential for above-average returns. I am willing to accept a medium to high level of risk and a corresponding degree of price volatility. I am also prepared to accept the temporary loss of capital and the potential for some permanent loss of capital. I do not require the portfolio to be diversified, to produce or supplement my income and I am prepared to accept periods of illiquidity.
18. As of June 30, 2016, the balances in the two components of the RRSP account were CDN\$13,811.42 and US\$13,506.42. The CDN\$ component had no trading activity between June 2016 and March 2017. The US\$ component had six trades over the same time period. As of March 31, 2017, the account balances were CDN\$ 13,811.42 and US\$17,966.01.
19. In April 2017, the Respondent opened a new US\$ cash account for LN to facilitate the transfer of funds arising from the divorce settlement. This NCAF contained similar information to the RRSP NCAF described in paragraphs 13 and 14, with the following changes:
 - a) Employment – homemaker / aspiring filmmaker
 - b) Estimated liquid assets - \$1,000,000
 - c) Estimated fixed assets - \$2,000,000
 - d) Current annual income from all sources - \$300,000

e) Time horizon – three to five years

20. LN advised IIROC Staff that these NCAFs do not accurately represent her financial information or her investment objectives and risk tolerance. In particular, LN advised IIROC Staff that she did not have liquid assets of \$1,000,000 (her only liquid assets being the HSI accounts) and she had instructed the Respondent to lower risk from medium-high in the cash account and to lower risk for her registered accounts as well. The NCAFs were filled in for her and LN only signed or initialed where requested to do so.

Excessive and Unsuitable Trading Activity

21. In April 2017, CDN\$175,023.25 in cash was transferred to LN's RRSP account and securities valued at approximately US\$354,000 were transferred in-kind to LN's new US\$ cash account.
22. Between April 2017 and February 2018, the turnover rate (i.e. – the cost of purchases divided by the average net equity) for the three accounts was as follows:

Account	Cost of purchases	Average net equity	Turnover rate	Turnover rate (annualized)	# of buys
US\$ Cash	\$3,303,032.72	\$359,932.05	9.18	10.01	53
US\$ RRSP	\$152,537.57	\$20,024.82	7.62	8.31	8
TOTAL US\$ COMBINED	\$3,455,570.29	\$379,956.86	9.09	9.92	61
CDN\$ RRSP	\$1,192,778.37	\$184,840.25	6.45	7.04	19

23. Between April 2017 and February 2018, the commission to equity ratio (i.e. – the commissions charged divided by the net equity of the account) for the three accounts was as follows:

Account	Total commissions charged	Average net equity	Commission to equity ratio	Annualized commission to equity ratio
US\$ Cash	\$47,842.36	\$359,932.05	13.3%	14.5%
US\$ RRSP	\$2,653.43	\$20,024.82	13.3%	14.5%
TOTAL US\$ COMBINED	\$50,495.78	\$379,956.86	13.3%	14.5%
CDN\$ RRSP	\$14,415.01	\$184,840.25	7.8%	8.5%

24. Between April 2017 and February 2018, the total cost to equity ratio (i.e. – the commissions plus fees charged divided by the net equity of the account) for the three accounts was as follows:

Account	Total fees charged	Total Costs (Commissions plus fees)	Average net equity	Cost to equity ratio	Annualized cost to equity ratio
US\$ Cash	\$103.46	\$47,945.82	\$359,932.05	13.3%	14.5%
US\$ RRSP	\$103.46	\$2,756.89	\$20,024.82	13.8%	15.0%

Account	Total fees charged	Total Costs (Commissions plus fees)	Average net equity	Cost to equity ratio	Annualized cost to equity ratio
TOTAL US\$ COMBINED	\$206.92	\$50,702.70	\$379,956.86	13.3%	14.6%
CDN\$ RRSP	\$236.25	\$14,651.26	\$184,840.25	7.9%	8.6%

25. Between April 2017 and February 2018, the number of trades, profit / loss and rate of return for the three accounts were as follows:

Account	# of trades	Profit / Loss	Rate of return	Annualized Rate of return	Total costs (commissions plus fees) charged
US\$ Cash	103	\$22,046.91	8.3%	-9.0%	\$47,945.82
US\$ RRSP	16	\$9,158.51	13.7%	14.9%	\$2,756.89
TOTAL US\$ COMBINED	119	\$31,205.42	-7.2%	-7.9%	\$50,702.70
CDN\$ RRSP	33	-\$4,560.93	-6.0%	-6.6%	\$14,651.26

26. During the period April 2017 to February 2018, the rate of return for the Dow Jones Industrial Average was 19.5%. The rate of return for the S&P/TSX was -0.9%.
27. The Respondent ought to have known that the commissions and fees charged to the LN accounts were excessive and unsuitable. In particular,
- The commissions and fees earned on the combined accounts by the Respondent were almost 2.5 times greater than the profits earned by LN; and
 - The Respondent could have recommended and selected a fee-based commission account structure. Had he done so, LN would have paid substantially less in commissions, assuming a 2% fee structure.
28. In selecting a transaction-based commission structure, the Respondent ought to have known he was preferring his own interests over those of the client and did not act in the best interests of LN, given the trading strategy he employed.

HSI Resolution and Internal Discipline

29. HSI conducted an internal investigation and agreed to compensate LN for mismanagement of her account. The Respondent was internally disciplined, as set out in paragraph 13 above.

Failure to Cooperate

30. By registered letters dated May 28 and July 16, 2018, Staff advised the Respondent of the opening of the investigation into his conduct. Both these letters were unclaimed and eventually returned to Staff.
31. On August 16, 2018, Staff delivered the opening letter regarding the investigation by email to the Respondent's HSI email address. The Respondent acknowledged receipt of this email.
32. Staff attempted on numerous occasions to arrange for an interview with the Respondent in order to

complete its investigation. Telephone calls were placed to the Respondent's phone number on January 30, February 4, February 11 and May 7, 2020. Voice messages requesting a return call were left for the calls of January 30, February 4 and May 7. The Respondent has not returned any phone calls or communicated in any way.

33. On September 30, 2020, having had no response to its efforts to communicate with the Respondent, Staff prepared a letter compelling him to attend for an interview in order to answer questions regarding the investigation.
34. On October 5, 2020 Enforcement Staff received confirmation that Mr. Stock had been served personally at his residence with the letter compelling his attendance at the investigative interview scheduled for November 2, 2020.
35. The Respondent failed to attend at the interview and has not communicated with Staff in any way.

Conclusion

36. The Respondent adopted a trading strategy in LN's accounts that generated high commissions for himself and in doing so, he failed to consider the best interests of his client and ought to have known he was preferring his own interests.
37. The Respondent failed to attend a compelled investigation interview and, in doing so, failed to cooperate with Staff.

PART IV – OTHER FACTORS

38. The Respondent did participate in the internal investigation of the LN complaint conducted by his firm. The written response provided by the Respondent in the context of that internal investigation was made available to Staff.
39. The Respondent personally paid the sum of \$50,000 to LN for the settlement of her complaint and to that extent, he has made restitution to the client. The Respondent also reimbursed HIS's legal expenses in the sum of \$5,544.00.
40. The Respondent has provided satisfactory evidence to Staff that significant financial penalties would result in financial hardship.
41. Except for matters referred to herein, the Respondent has had no prior history of regulatory issues.
42. The Respondent was not aware that IIROC continued to have jurisdiction over his conduct as an investment advisor after he ceased to be employed by HSI in February 2019 until he engaged counsel after service of the Notice of Hearing.

PART V – CONTRAVENTIONS

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

Contravention 1

Between April 2017 and March 2018, the Respondent engaged in excessive trading in the accounts of LN which was not within the bounds of good business practices and not suitable for LN contrary to Dealer Member Rules 1300.1(o) and 1300.1(q).

Contravention 2

Between August and November 2020, the Respondent failed to cooperate with IIROC Enforcement Staff

("Staff") who were conducting an investigation, contrary to section 8104 of the Consolidated Rules.

PART VI – TERMS OF SETTLEMENT

44. The Respondent agrees to the following sanctions and costs:
- a) A permanent bar to approval in any capacity;
 - b) A monetary fine in the sum of \$10,000; and
 - c) costs of \$5,000.
45. 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 VII – STAFF COMMITMENT

46. 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.
47. 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 VIII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

48. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
49. 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.
50. 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.
51. 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.
52. 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.
53. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
54. 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.
55. 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.

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

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this “17” day of “September”, 2021.

“Witness”

Witness

“Thomas Robert Stock”

Thomas Robert Stock

“Witness”

Witness

“Andrew P. Werbowski”

Andrew P. Werbowski

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

The Settlement Agreement is hereby accepted this “18” day of “October”, 2021 by the following Hearing Panel:

Per: “Catharine Esson”

Catharine Esson

Panel Chair

Per: “Lloyd Costley”

Lloyd Costley

Panel Member

Per: “John van Koll”

John van Koll

Panel Member

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