Re Gordon

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Daniel George Gordon

2022 IIROC 11

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

Heard: May 25, 2022 in Toronto, Ontario
Decision: May 25, 2022
Reasons for Decision: June 2, 2022

Hearing Panel:
The Honorable Peter B. Hambly, Chair, Dave Persaud and Tim Pryor
Appearances:
Danielle Bastarache, Senior Enforcement Counsel
Ron Weston, for Daniel George Gordon
Daniel George Gordon (present)

REASONS FOR 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 Daniel George Gordon ("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 the Settlement Agreement with written reasons to follow. It is attached hereto. These are our reasons.

Background

¶ 2 The Respondent was a Registered Representative ("RR") with Harbourfront Wealth Management Inc. ("Harbourfront") from June 2015 until his retirement in April 2020.

¶ 3 He engaged in an undisclosed outside business activity ("OBA") between March 2016 and March 2020 when he provided financial management advisory services directly and through a consulting business

which he owned and controlled for a corporate client in the pharmaceutical industry ("Corporate Client"). Services that he provided for the corporate client included negotiating corporate loans as well as mortgages for various properties, discussing contract details for entering into a business partnership with another party and generally advising on financial matters for the corporate client. In July 2017, the Respondent incorporated a company called Dan Gordon Consulting Inc. ("DG Consulting"). Between August 2017 and December 2019, he received payments from the Corporate Client into his DG Consulting bank account in total amount of $670,000.

¶ 4 Pursuant to the policies of Harbourfront, he signed declarations that he had not engaged in OBA which he had. By engaging in these activities without the approval of Harbourfront the Respondent violated Dealer Member Rules 18.14, 43 and Consolidated Rule 1400.

The Agreement

¶ 5 The parties have jointly agreed to the following:

1. A fine in the amount of $80,000 to be paid quarterly in equal installments of $10,000 for a total of 8 payments.
2. Costs in the amount of $20,000 to be paid within 10 days of the acceptance of the Settlement Agreement by the Hearing Panel.

Discussion

¶ 6 In *Re Donnelly* 2016 IIROC 23, a branch manager failed to adequately supervise a registered representative and accounts of a client. A hearing panel confirmed a settlement imposing a fine of $30,000, a suspension from acting in a supervisory capacity for one year and costs of $1,500.

¶ 7 The panel determined that it had to be satisfied regarding three considerations before it could accept the settlement agreement. First, the agreed penalties had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalties had to be fair and reasonable (i.e., proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalties should serve as a deterrent to the respondent and to industry. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the respondent, and the impact on him of the agreed penalties.[1]

¶ 8 The case law is clear that the panel can only accept or reject the settlement. It cannot impose a different penalty of its own choosing. The parties can provide additional information by agreement to support their proposal to meet concerns of the panel.

¶ 9 In *Re Hansen* 2021 IIROC 21, the Respondent was a RR with CIBC for 17 years ending in 2020 when he was dismissed. Between 2015 and 2018, he engaged in OBA without disclosure to CIBC. He also engaged in discretionary trading in client accounts without their approval and failed to disclose conflicts of interest with two clients. A hearing panel approved a fine of $42,000, disgorgement of $1,111.72 and costs of $10,000. CIBC compensated the clients who suffered losses as a result of the respondent's discretionary trading in the amount of $190,000. For three years, the respondent engaged in OBA as president of an investment club. On April 30, 2020, CIBC imposed a fine of $40,000 on the respondent, which he did not

[1] *Re Donnelly* 2016 IIROC 23 at para. 5.

pay and terminated his employment in August 2020.

¶ 10 In determining the appropriate penalty, the panel considered the following factors:

1. the number, size and character of the transactions at issue;
2. whether the respondent engaged in numerous acts and/or a pattern of misconduct;
3. whether the respondent engaged in the misconduct over an extended period of time;
4. whether an individual was subject to internal discipline by the Dealer Member;
5. the extent to which the respondent obtained or attempted to obtain a financial benefit from the misconduct; and
6. the respondent's relevant discipline history.[2]

¶ 11 The panel regarded as aggravating factors the length of time in which the respondent engaged in OBA and the compensation which CIBC paid. It regarded as mitigating factors no previous disciplinary history and the respondent's admissions and cooperation with the investigation.

¶ 12 In *Re Nyquvest* 2021 IIROC 36, the respondent was a RR who engaged in personal financial dealings and OBA contrary to the Dealer Member Rules. The hearing panel approved a settlement which required that the respondent pay a fine of $34,000, costs of $5,000 and be suspended for six months. In its decision, at para. 13, the panel cited the well-known case of *Re Milewski*, [1999] I.D.A.C.D. No. 17 at page 10 as follows:

> […] that a hearing panel is not to "reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness" to ensure that in making its decision it properly reflects "the public interest benefits of the settlement process in its consideration of specific settlements".

¶ 13 Mitigating circumstances were that the respondent had no prior disciplinary history, that he cooperated with the IIROC investigation and that there were no losses by clients. Aggravating circumstances were the number of violations and that the respondent was a senior member of the investment industry.

¶ 14 In *Re Malic 2021* IIROC 10, the Respondent failed to report a conflict of interest with clients and engaged in OBA without informing his Dealer Member. The panel approved a settlement of a fine of $75,000, a suspension for six months and costs in the amount of $5,000. He had worked in the securities industry since 1987. He and two partners attempted unsuccessfully to develop a plot of land by subdividing and selling residential lots. He lost his personal investment in the project and paid $570,000 to settle a deficiency on a mortgage. He was 69 at the time of the hearing and had no prior disciplinary history. Aggravating circumstances were the length of time that the respondent engaged in the OBA and the amount of money that was lost by others. Mitigating circumstances were that the OBA failed and the respondent's cooperation with IIROC.

¶ 15 In *Re Jones* 2020 IIROC 29, the respondent had been a RR with Manulife from 2004 to 2018. After a contested hearing, the panel found that between June 2015 and April 2017, the respondent engaged in, and facilitated investments for two clients in an OBA without informing, and without the approval of, his

[2] *Re Hansen* 2021 IIROC 21 at para. 26.

Dealer Member contrary to Dealer Member Rule 18.14 and Consolidated Rule 1400.

¶ 16 Mr. Jones, in the relevant period, was involved in an OBA involving the manufacture and sale of a garden hose with a company called Aqua Flo. The respondent incorporated a numbered company through which he operated Aqua Flo. CM was a client of the respondent through Manulife. The respondent sold on behalf of CM investments that she had at Manulife. On the respondent's advice she invested this money in the amount of $205,000 in Aqua Flo. CM was aged 50. She made investments at Manulife under the respondent's supervision to generate income for her retirement. The respondent left Manulife in November 2016. CM lost her investment in Aqua Flo. She settled with Manulife in the amount of $100,000. The respondent did not advise Manulife of his involvement in Aqua Flo. CM filed a complaint against the respondent with Manulife.

¶ 17 The panel, in its decision, adopted passages from decisions referred to it by counsel for IIROC which emphasized the importance of a RR disclosing OBA to its Dealer Member as follows:

> 21 […] In Trueman (Re), 2016 LNIIROC 29, the following statement is found at paras 37 - 39:
>
> > Disclosure of outside business activities is one of the fundamental principles of the securities regulatory framework. It allows a firm on a Tier 1 basis [Tier 1 is at the business supervisor level at the firm] to look at all the activities that a salesperson is undertaking and to make sure that they are in the client's best interests and that issues such as conflicts of interest and potential for client confusion are identified and addressed. It also allows that activity to be monitored at the Tier 2 level [an independent compliance review].
> >
> > When a person undertakes activity outside the auspices of the firm, that fundamental protection provided for in securities regulation is unable to occur.
> >
> > [...]
> >
> > One should never forget the fundamental principle of outside business activity and disclosure. For the respondent and anybody else who might read these reasons in the future, it should be very clear that these are fundamental protections in the securities regulatory framework and we cannot tolerate people who do not adhere to them.
> >
> > […]
>
> 23 In Hoshizaki (Re), 2017 LNIIROC 40, the hearing panel emphasized that outside business activities by a Registered Representative create issues of conflict of interest. In that case, the panel, citing from Re Bortolin 2012IIROC13, made the following statement at para 11:
>
> > [...] Outside business activities without the knowledge and approval of the Member are not permitted by IIROC or by the Member. There is no evidence that [the Member] knew about these extensive outside business activities engaged in by the Respondent over many years.
> >
> > Disclosure and approval are necessary in such circumstances in order to allow the Member to supervise and control a Registered Representative's activities. Not to do so can create conflicts of interest for the Registered Representative and lead to the type of improper activity found in this case. The policy also helps protect the integrity of the securities market as well as the reputation of the Member.

Conclusion

¶ 18 We had some concern that the fine was much less than the amount earned by the Respondent in OBA and there was no requirement for disgorgement. However, after a review of the case law that was filed with us, we concluded that the agreed penalties and the arrangements for payment were within an acceptable range based on precedents, would serve as a specific and general deterrent, and were fair and reasonable. We concluded that the settlement agreement was in the public interest and, therefore, we accepted it.

Dated at Toronto this 2 day of June 2022.

Peter Hambly

Dave Persaud

Tim Pryor

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 Daniel George Gordon ("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 an undisclosed outside business activity ("OBA") between March 2016 and March 2020 ("the Relevant Period") when he provided financial management advisory services directly and through a consulting business which he owned and controlled for a corporate client in the pharmaceutical industry ("the Corporate Client").

5. During the Relevant Period, the Respondent undertook several activities for the Corporate Client, including: negotiating corporate loans as well as mortgages for various properties; discussing contract details for entering into a business partnership with another party such as issuing shares of the proposed company; and generally advising on financial matters for the Corporate Client.

6. During the Relevant Period, the Respondent's consulting business received approximately $670,000 in payments from the Corporate Client for its services.

7. The Respondent was aware that his Dealer Member had specifically directed him to not engage in the OBA for the Corporate Client.

Background

8. The Respondent was a Registered Representative ("RR") with Harbourfront Wealth Management Inc. ("Harbourfront") from June 2015 until his retirement in April 2020. He was a registrant since 2010 and has been in the securities industry otherwise since 1993. He is not currently registered with a Dealer Member and has not been since his retirement in April 2020.

The Outside Business Activity

9. In June 2015, when the Respondent became a RR with Harbourfront and signed a declaration confirming that he had read and understood Harbourfront's policies and procedures.

10. As required by the Harbourfront policies and procedures, he completed an OBA Disclosure Form; on the form, he indicated that he was to be the CFO of the Corporate Client with an expected start date of September 1, 2015. The Respondent had provided business advisory services to the Corporate Client since approximately 2014.

11. On December 3, 2015, Harbourfront issued a memo to the Respondent to confirm that his involvement in the OBA was strictly prohibited and asked him to acknowledge his understanding; the Respondent did so by signing the memo on January 18, 2016.

12. On March 1, 2016, Harbourfront issued a further memo to the Respondent advising that a compliance email review had identified an email address for the Respondent with the Corporate Client's domain name. Harbourfront required that the Respondent close the email address or transfer the Corporate Client's accounts to another advisor.

13. The Respondent had used this email address strictly for consulting work for the Corporate Client. On March 2, 2016, the principal of the Corporate Client signed a letter of confirmation stating that the email account had been terminated. Harbourfront tested the email address on March 4, 2016 and confirmed that it had been deactivated.

14. Notwithstanding the above events, the Respondent continued in the OBA.

15. Further, notwithstanding his ongoing OBA, the Respondent signed off on Annual Compliance Declarations in 2018 and 2019 indicating that he had reported all OBAs to compliance.

Personal Financial Dealings with the Corporate Client

16. In July 2017, the Respondent incorporated a company called Dan Gordon Consulting Inc. ("DG Consulting").

17. The Respondent admitted to Harbourfront that between August 2017 and December 2019 he received payments from the Corporate Client into his DG Consulting bank account: in 2017, he received $155,000, in 2018, $260,000, and in 2019 $255,000 for a total of $670,000.

18. The Respondent admitted to Enforcement Staff that since Harbourfront had prohibited him from acting as CFO for the Corporate Client, he changed his role to consultant; however, he did not inform Harbourfront of the consulting services he had provided to the Corporate Client until the company's principal filed a complaint with Harbourfront in March 2020.

PART IV – CONTRAVENTIONS

19. By engaging in the conduct described above, the Respondent committed the following contraventions

of IIROC's Rules:

(i) Between March 2016 and March 2020, the Respondent engaged in an outside business activity without informing, and without the approval of, his Dealer Member contrary to Dealer Member Rule 18.14 and Rule 1400 (prior to September 1, 2016, Dealer Member Rule 29.1); and

(ii) Between March 2016 and March 2020, the Respondent engaged in personal financial dealings with a client, contrary to Dealer Member Rule 43.

PART V – TERMS OF SETTLEMENT

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

a) A fine in the amount of $80,000;

b) A prohibition of approval in any capacity for three months;

c) A requirement to rewrite the CPH upon any re-registration; and

d) Costs of $20,000.

21. If this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees to pay the amounts referred to above unless otherwise agreed between Staff and the Respondent.

PART VI – STAFF COMMITMENT

22. 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.

23. 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

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

25. 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.

26. 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.

27. 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.

28. 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.

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

30. 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.

31. 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.

32. 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

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

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

DATED this "24" day of "May", 2022.

"Ronald J. Weston"

Witness

"Daniel George Gordon"

Daniel George Gordon

DATED this "24th" day of "May", 2022.

"Danielle Bastarache"

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 "25" day of "May", 2022 by the following Hearing Panel:

Per: "Peter Hambly"

Panel Chair

Per: "Dave Persaud"

Panel Member

Per: "Tim Pryor"

Panel Member