Re Wong

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Albert Ying Yuen Wong

2022 IIROC 14

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

Heard: June 7, 2022 in Calgary, Alberta (via videoconference)
Decision: June 8, 2022
Reasons for Decision: June 22, 2022

Hearing Panel:
Omolara Oladipo, Chair, Brad Whyte and Jonathan Lund
Appearances:
April Engelberg, Enforcement Counsel
Albert Ying Yuen Wong (present)

DECISION ON ACCEPTANCE OF SETTLEMENT

INTRODUCTION

The Settlement Agreement

¶ 1 On May 11, 2022, Albert Ying Yuen Wong (the "Respondent) entered into a settlement agreement with Enforcement Staff of the Investment Industry Regulatory Organization of Canada ("IIROC") (the "Settlement Agreement"). The Settlement Agreement is attached as an Appendix to this decision.

¶ 2 An electronic hearing was conducted before the Hearing Panel on June 8, 2022 to consider whether, pursuant to Rule 8215 of the IIROC Rules, the Hearing Panel should accept the Settlement Agreement in respect of the Respondent's alleged misconduct.

¶ 3 At the onset of the Hearing, the Chair confirmed with the Respondent that it was his decision to be self-represented in this matter and that he was aware that he had the right to counsel. The Chair further advised that if the Respondent required an adjournment for the purpose of seeking legal advice, one would be granted to allow him do so. The Respondent advised that he would continue to represent himself.

¶ 4 The Hearing Panel then proceeded to review the terms of the Settlement Agreement and received the submissions and representations of Enforcement Counsel for IIROC and from the Respondent himself.

¶ 5 The Hearing Panel adjourned to deliberate and the main question it considered was the appropriateness of the penalties provided under the Settlement Agreement.

¶ 6 At the conclusion of the hearing and after a brief deliberation, the Hearing 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. These are our reasons.

BACKGROUND

¶ 7 The Respondent was a Registered Representative since 1983 and at the time of the contravention, was employed by Leede Financial Markets Inc. and subsequently Leede Jones Gable Inc. ("Leede") for five years from June 2013 to June 2018. In 2018, Leede terminated the Respondent's employment as a result of the unapproved discretionary trading.

Discretionary Trading

¶ 8 The Respondent was JM's advisor from the late 1980s. During the period of January 2016 to August 2017, the total assets of JM's cash, LIRA and RRSP accounts with Leede were approximately $1.8 million. In September 2017, JM moved to Leede to managed accounts.

¶ 9 The Respondent and JM agreed that JM should make the trades necessary to meet the investment objectives of the accounts as "30% income", "25% long term growth", "25% short term speculative", and "20% venture speculative" with the risk allocation being "45% high". JM's New Client Application Form ("NCAF") identified his investment knowledge as "good". Although the Respondent had JM's verbal consent and general discussed with the client from time to time trading in the accounts, the Respondent had not obtained prior written authorization from the client and approval of the Dealer Member for the discretionary trading.

¶ 10 Between January 2016 and August 2017, the Respondent executed more than 500 trades in JM's accounts. JM was aware of the trades and commissions. JM gained 7.82% overall during the material period, but the gains were reduced by certain short-term trading which incurred realized losses, mostly due to the commission charged in the approximate amount of $142,000.

¶ 11 In May 2019, Leede reached a settlement with JM, compensating him for commissions incurred because of the Respondent's frequent trading.

Settlement Agreement

¶ 12 In the Settlement Agreement, the Respondent admitted to the contravention of IIROC Dealer Member Rule 1300.4, *viz* by exercising discretionary authority over a client account between January 2016 and August 2017.

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

i. a fine of $10,000;

ii. a suspension from IIROC registration in any capacity for two months;

iii. a successful re-write of the Conduct and Practices Handbook ("CPH") Examination before any approval; and

iv. a payment of costs of $1,000.

ANALYSIS

Test for Acceptance of a Settlement Agreement

¶ 14 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". This Hearing 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.

¶ 15 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.

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

IIROC Sanction Guidelines

¶ 17 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 which 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.

¶ 18 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 and to deter others from engaging in like misconduct themselves.

¶ 19 In determining whether the agreed sanctions are appropriate in this case, the Hearing Panel considered the following key factors outlined in the Guidelines:

i. the number, size and character of the transactions at issue;

ii. whether the Respondent engaged in numerous acts and/or a pattern of misconduct;

iii. whether the Respondent engaged in the misconduct over an extended period of time;

iv. Whether the Respondent accepted responsibility for and acknowledged the misconduct ;

v. whether the Respondent was intentional, willfully blind or reckless with respect to regulatory requirements;

vi. whether the Respondent financially benefitted from the misconduct; and was proactive and provided assistance to IIROC in the investigation; and

vii. the Respondent's prior discipline records.

Previous Regulatory Decisions

¶ 20 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.

¶ 21 The submissions and precedents were of assistance in considering 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.

¶ 22 In addition to the oft cited *Milewski* (Re), [1999] IDACD 17, IIROC Enforcement Staff referred us to the following panel decisions in support of the submission that the sanctions fell within a reasonable range of appropriateness:

i. *Laurentian Bank Securities Inc. (Re)*, 2017 IIROC 38

ii. *Trudel (Re)*, 2021 IIROC 27

iii. *Black (Re)*, 2020 IIROC 33

iv. *Dykeman (Re)*, 2017 IIROC 49

v. *Li (Re)*, 2020 IIROC 28

vi. *Ast (Re)*, 2012 IIROC 38

¶ 23 In *Laurentian Bank Securities Inc. (Re)*, the respondent Member Firm admitted that contrary to IIROC Member Rules 18.3(b) and 38(1) between March 2011 and September 2012, it failed to take reasonable steps to ensure that three of its Registered Representatives were proficient; and that between February 12, 2012 and April 28, 2013, it failed to establish and maintain a system which allowed adequate supervision of the business activities of one of its registered representatives. The respondent had previous discipline history and had failed to meet previous commitment to IIROC Staff with respect to past violations. However, there had been no customer complaint or loss arising from the violations, and the violations had not affected the integrity of the capital markets. Further, the respondent fully cooperated in the investigation by IIROC and took proactive and corrective measures. Since the corrective action was taken by the respondent, there had been no new deficiency identified by IIROC. In the Settlement Agreement, Laurentian Bank Securities Inc. agreed to an aggregate fine of $200,000 and costs of $20,000.

¶ 24 In *Trudel (Re)*, the respondent admitted to having placed discretionary trades in 2019 contrary to IIROC Rules 1300.4. The respondent had no previous discipline history and, while the number of orders was high, the event was isolated in time and did not reflect a pattern of misconduct. Further, the respondent derived no financial benefit as a result of the violations. In a settlement, he agreed to a fine of $10,000 and costs of $1,000.

¶ 25 In *Black (Re),* the respondent admitted to having placed discretionary trades in the accounts of three clients between June 2017 and May 2019, and he had done so without prior written authorization and without the account being properly designated or approved as a discretionary account contrary to IIROC Rules 1300.4. The respondent had no previous discipline history and had expressed remorse for the alleged conduct. He had also successfully rewritten the CPH examination in January 2019.

¶ 26 In a settlement, the respondent agreed to a fine of $10,000, disgorgement in the amount of $3,401 and costs of $1,500 within 30 days, unless otherwise agreed and $1,000 in costs. The respondent also agreed to be placed under the enhanced strict supervision for one year from the date of his registration and approval with his new Dealer Member as a Registered Representative.

¶ 27 In *Dykeman (Re)*, the respondent admitted that from September 2015 to June 2015, he executed discretionary transactions in a client account contrary to IIROC Dealer Member Rule 1300.4. The aggravating factors included that the fact that the client involved was elderly, living in assisted care facility, had health

issues and was experiencing cognitive difficulties, the respondent sent account statements to an address he was aware the client did not reside in, and the respondent then took instructions from the client's wife without proper authorization. The respondent also entered trades in the client's account on a discretionary basis after being advised that the client was exhibiting some cognitive difficulties. The mitigating factors included that the respondent had no discipline history. In a settlement, he agreed to sanctions consisting of a fine of $10,000 and costs of $1,500.

¶ 28 Similar to *Dykeman*, which was in fact relied upon by the panel in *Li (Re)*, the respondent in *Li* admitted that between January and October 2018, he executed discretionary transactions contrary to IIROC Dealer Member Rule 1300.4. The Panel considered the facts that the earned commissions were small, and the respondent's activity did appear to have been motivated by personal gain, there was client compensation by the employer, the respondent assumed responsibility for his breach of the Rules and cooperated fully with staff. He had also been out of the industry since October 29, 2018, and there were no facts to suggest he would re-offend. In a settlement, Li agreed to sanctions consisting of a fine of $15,000, six months of close supervision upon approval in any capacity with IIROC and costs in the amount of $1,500.

¶ 29 Finally, in *Ast (Re),* 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. The respondent had previously been disciplined by his employer's CIBC World Markets Disciplinary Committee, which in July 2010 imposed a formal reprimand, fine of $25,000, requirement to rewrite the CPH within 90 days and stricter monitoring requirements. In the settlement tabled for acceptance by the panel, he agreed to a fine of $20,000, a period of suspension from registration in any category with IIROC for two months, and costs of $5,000.

¶ 30 While reviewing the foregoing precedents, the Hearing Panel was mindful of the fact that each case must be considered on its own facts and circumstances. Therefore, in considering the submissions and the above-referenced Guidelines, we view the following as mitigating factors for the Respondent:

- The Respondent had no discipline history;
- The Respondent is 64 years old and has not worked in a registered capacity since his employment with Leede was terminated in June 2018; and
- The Respondent has accepted responsibility for his misconduct.

¶ 31 We view the following as aggravating circumstances:

- The Respondent carried out more than 500 discretionary trades from January 2016 to August 2017; and
- The Respondent's firm compensated his client for commissions incurred by the client as a result of the Respondent's discretionary trading.

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

CONCLUSION

¶ 33 In considering the Settlement Agreement, we recognize that the proposed sanctions are the product of a process of negotiation and agreement between parties. We should not reject the Settlement Agreement unless the proposed penalty falls outside the reasonable range for the facts agreed upon (*Re Milewski*).

¶ 34 Considering the submissions at the hearing, the precedents cited and the factors invoked regarding the conduct of the Respondent, the Hearing Panel concluded that the penalties proposed in the Settlement Agreement fall within a reasonable range of appropriateness and accepted the Settlement Agreement.

Dated at Calgary, Alberta this 22 day of June 2022.

Omolara Oladipo

Brad Whyte

Jonathan Lund

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 Albert Ying Yuen Wong (the "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. Between January 2016 and August 2017, the Respondent engaged in discretionary trading in a client's account with the client's verbal consent, but without obtaining prior written authorization from the client and approval of the Dealer Member. The Respondent had general discussions with the client from time to time about trading in the client's accounts but exercised discretion with respect to time, price, quantity, and type of securities.

Background

5. The Respondent has been a Registered Representative ("RR") since 1983 and was employed at Leede Financial Markets Inc. and subsequently Leede Jones Gable Inc. from June 2013 to June 2018, when he was terminated because of the unapproved discretionary trading.

The Client

6. The client, JM, was born in 1955 and is a professional engineer. The Respondent was JM's advisor from the late 1980s.

7. JM had a cash, LIRA and RRSP account with the Respondent at Leede. JM's NCAF identified his investment

knowledge as "good" and his investment objectives as "30% income," "25% long term growth," "25% short term speculative," and "20% venture speculative." The risk allocation was "45% high."

8. During the period of January 2016 to August 2017, the total assets of the three accounts were approximately $1.8 million.

9. In September 2017, JM moved to managed accounts at Leede.

Discretionary Trading

10. The Respondent and JM had agreed that the Respondent should make the trades necessary to meet the investment objectives of the accounts but that he did not want to be bothered with every single trade that the Respondent made.

11. The Respondent did not obtain written authorization for discretionary trading and JM's accounts were not approved as discretionary accounts by the firm.

12. Between January 2016 and August 2017, the Respondent executed over 500 trades in JM's accounts. JM was aware of the trades and commissions charged as he received and reviewed trade confirmations and his monthly account statements.

13. Although the JM accounts gained 7.82% overall during the period January 2016 to August 2017, the gains were reduced by certain short-term trading which incurred realized losses, often due to the commission charged.

14. In August 2017, the client became concerned about the volume of trading in his accounts and the commissions he was paying.

15. Between January 2016 and August 2017, JM paid approximately $142,000 in commissions. Prior to this period on several occasions, and for example when updating his NCAF in October 2015, JM was made aware of the availability of a fee-based model but declined, requesting to stay in a transactional account.

16. To permit proper supervision of trading in client accounts by Dealer Members, formal written authorization is required from the client and approval by the firm prior to exercising discretionary authority. The discretionary trading ultimately gave rise to a complaint by JM to Leede about the frequency of trading and the commissions charged.

17. In May 2019, Leede reached a settlement with the client, compensating him for commissions incurred because of the Respondent's frequent trading.

Additional Factors

18. The Respondent has no prior disciplinary history with IIROC.

19. The Respondent has accepted responsibility for his misconduct.

20. The Respondent is 64 years old and has not been working in a registered capacity with a Dealer Member since June 2018.

PART IV – CONTRAVENTIONS

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

    (i) Between January 2016 and August 2017, the Respondent exercised discretionary authority over

a client account, contrary to Dealer Member Rule 1300.4.

PART V – TERMS OF SETTLEMENT

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

    (i) A fine of $10,000;

    (ii) A suspension from IIROC registration in any capacity for 2 months;

    (iii) Successfully re-write Conduct and Practices Handbook Examination before any approval; and

    (iv) Costs of $1,000.

23. 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

24. 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.

25. 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

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

27. 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.

28. 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.

29. 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.

30. 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.

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

32. 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.

33. 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.

34. 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

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

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

DATED this "11" day of "May", 2022.

"Maria Wong"
Witness

"Albert Ying Yuen Wong"
Albert Ying Yuen Wong

"Ricki Ann Newmarch"
Witness

"April Engelberg"
April Engelberg

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

The Settlement Agreement is hereby accepted this "8" day of "June", 2022 by the following Hearing Panel:

Per: "Omolara Oladipo"
Panel Chair

Per: "Jonathan Lund"
Panel Member

Per: "Brad Whyte"
Panel Member