Re Morrison

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Krystal Dawn Morrison

2022 IIROC 33

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

Heard: December 6 in Saskatoon, Saskatchewan
Decision: December 6, 2022
Reasons for Decision: December 20, 2022

Hearing Panel:
Daniel Ish, Chair, Claude Tétrault and Eric Wray
Appearances:
Tayen Godfrey, Senior Enforcement Counsel
Emily Y. Fan, for Krystal Dawn Morrison
Krystal Dawn Morrison (absent)

DECISION ON ACCEPTANCE OF SETTLEMENT

INTRODUCTION

¶ 1 This Hearing Panel has been asked to accept a settlement agreement dated November 9, 2022 between IIROC and Krystal Dawn Morrison, the Respondent. Under the terms of the Settlement Agreement, the Respondent has admitted that between July 2020 and February 2021 she was part of a team responsible for thousands of client account forms that were improperly executed. The forms in question were signed by clients but were either blank or missing key information. These forms are referred to as "Pre-Signed forms". The Respondent personally signed 287 of these forms. The Respondent agreed in the Settlement Agreement that her actions breached IIROC Rule 1400, commonly referred to as the "conduct unbecoming" rule.

¶ 2 In the Settlement Agreement, IIROC Enforcement Staff and the Respondent agreed that the acknowledged breach of Rule 1400 should attract a penalty of a fine in the amount of $40,000 and costs to IIROC in the amount of $5,000. The sole issue for this Hearing Panel, pursuant to Rule 8215, is whether the Settlement Agreement should be accepted or rejected. Following a review of written and oral submissions of both counsel and after conducting deliberations, the Hearing Panel decided it would accept and sign the Settlement Agreement with written reasons to follow.

BACKGROUND

¶ 3 While at Scotia Capital Inc. ("Scotia Capital"), the Respondent was part of the Hunter Financial Group (the "Hunter Group"), a financial team within Scotia Capital, operating out of the Saskatoon branch. By

February 2021, the group consisted of three Investment Advisors and four associates. Bart Hunter was the lead advisor for the group; however, they took a team approach to servicing their approximately 869 clients.

¶ 4 The Respondent moved from TD Waterhouse to join the Hunter Group in July of 2020. Approximately 157 of her clients moved with her. While the Respondent joined the Hunter Group team immediately upon her arrival at Scotia Capital, she was primarily responsible for her own clients for the seven-month period she was at Scotia Capital.

¶ 5 In February 2021, Scotia Capital received information that the Hunter Group had been using Pre-Signed forms. As a result, the firm had people attend the branch to obtain any relevant documents. Approximately 3,000 Pre-Signed forms pertaining to Hunter Group clients were collected.

¶ 6 Most of the Pre-Signed forms were not dated. The documents were comprised of several different types of forms, including:

a) Client Account Information Change forms, missing risk tolerances and investment objectives;

b) Accredited Investor Certification forms, missing information specifying how clients met the accredited investor qualification criteria;

c) Transfer Authorization forms, missing the relinquishing institution name and/or client instructions; and

d) Pre-authorized Contribution and/or Withdrawal forms, missing the authorization instructions (bank information, account number, frequency, and dollar amount).

¶ 7 The Respondent personally signed approximately 287 of these Pre-Signed forms. These included:

a) Approximately 267 Account Information Change forms missing risk tolerances and investment objectives; and

b) Approximately 20 Accredited investor forms missing information specifying how clients met the accredited investor qualification criteria.

¶ 8 The forms that were seized from the Hunter Group were being stored for later use, at which time the pertinent information could be entered. The forms were stored in banker boxes which were kept in an empty cubicle. The Hunter Group had been using Pre-Signed forms throughout previous years. As such, a number of other Pre-Signed forms had already been inputted into Scotia Capital's system. The Hunter Group's practice of using Pre-Signed forms was in place before the Respondent joined the team in July 2020.

ANALYSIS

¶ 9 The issue for the Hearing Panel was whether to accept or reject the proposed settlement. This is the sole authority of the Hearing Panel pursuant to Rule 8215. It has long been established that it is not within the authority of a hearing panel to alter a settlement agreement in any manner (see Re Milewski, [1999] I.D.A.C.D. No. 17). Also, previous hearing panels have underscored the importance of giving deference to the settlement process as a cornerstone of an effective and efficient regulatory process.

¶ 10 In Re Scotia Capital 2017 IIROC 48, an Ontario hearing panel discussed at some length the test to be applied when a Hearing Panel is determining whether to accept a settlement agreement. The Hearing Panel in Scotia Capital made reference to the Milewski case as well as to Re Bugden 2017 IIROC 30, where at paragraph 8 the panel said the following with respect to the settlement process:

> […] The efficacy of the settlement process is a cornerstone of effective and efficient regulatory process. Parties who have engaged in good faith negotiations to reach an agreement that is appropriate in the circumstances and is reasonable in its application of the principles of general and specific deterrence, remedial intent and public interest are entitled to expect the agreement to receive appropriate

consideration by a panel. If in its due consideration the panel determines the agreement falls within the governing parameters it should be accepted; if not the agreement should be rejected. The parties would then be free to enter into a subsequent agreement or proceed to a hearing on the merits.

[41] But as I have said, for joint submissions to be possible, the parties must have a high degree of confidence that they will be accepted. Too much doubt and the parties may choose instead to accept the risks of a trial or a contested sentencing hearing. The accused in particular will be reluctant to forgo a trial with its attendant safeguards, including the crucial ability to test the strength of the Crown's case, if joint submissions come to be seen as an insufficiently certain alternative.

[42] Hence, the importance of trial judges exhibiting restraint, rejecting joint submissions only where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system. A lower threshold than this would cast the efficacy of resolution agreements into too great a degree of uncertainty. The public interest test ensures that these resolution agreements are afforded a high degree of certainty. Re Scotia Capital 2017 IIROC 48 Page 6 of 14 [43] At the same time, this test also recognizes that certainty of outcome is not "the ultimate goal of the sentencing process. Certainty must yield where the harm caused by accepting the joint submission is beyond the value gained by promoting certainty of result" (R. V. DeSousa, 2012 ONCA 254, 109 O.R. (3d) 792, per Doherty J.A., at para. 22).

¶ 11 The hearing panel in Re Scotia Capital also referred to a decision of the Supreme Court of Canada that dealt with joint submissions in the criminal law context. In R v. Anthony-Cook, [2016] 2 S.C.R. 204 Moldaver, J., writing for a unanimous court, said the following with respect to the test to be applied in deciding whether to accept or reject a Settlement Agreement between parties:

¶ 12 The task of this Panel is to determine whether the penalty agreed to for the acknowledged infraction of the breach of Rule 1400 falls within an appropriate and reasonable range. In their submissions to the Hearing Panel in support of the Settlement Agreement, counsel made reference to IIROC's Sanction Guidelines and to several other previous decisions both with respect to the role of the Panel and with respect to appropriate penalties for improperly executing client account forms by the use of Pre-Signed forms. Interestingly, there have been no previous IIROC decisions respecting Pre-Signed forms; thus, reference was made to numerous Mutual Fund Dealers Association of Canada ("MFDA") decisions. The decisions referred to included the following:

Re Smith 2019 IIROC 13

Re Milne 2022 LNCMFDA 44

Re Parlee 2019 LNCMFDA 175

Re Mills 2019 LNCMFDA 21

Re Chow 2018 LNCMFDA 69

Re Sharma 2018 LNCMFDA 69

¶ 13 In addition to considering sanctions imposed or accepted by past MFDA hearing panels, the Hearing Panel considered IIROC's Sanction Guidelines as indicative of industry expectations and as relevant to determining the appropriate penalty, although it is recognized that they are neither exhaustive nor determinative. The particular factors we took into consideration were the following:

(a) Aggravating Factors:

(i) The Respondent was part of a financial team within Scotia Capital that executed thousands of Pre-Signed forms.

(ii) The Respondent personally signed 287 Pre-Signed forms.

(iii) The Respondent's involvement continued from July 2020 to February 2021; it was not an isolated incident.

(b) Mitigating Factors:

(i) The Respondent was one of a group of seven representatives with a lead advisor for the group; thus, she was not individually responsible for all the actions of the group.

(ii) There were no client complaints or losses as a result of the pre-signed documents.

(iii) The Respondent received no financial gain from her involvement in executing Pre-Signed forms.

(iv) The Respondent has no prior disciplinary record.

(v) The Respondent fully cooperated with the investigation and the execution of the Settlement Agreement, which avoided the necessity of a protracted hearing process and IIROC is relieved of the burden of proving the allegations.

(vi) There was no fraudulent use of the Pre-Signed forms in any respect.

(vii) The Respondent is currently working at Wellington-Altus Private Wealth Inc. as a Registered Representative under strict supervision. Supervision is often a component of an imposed penalty but need not be imposed in this case.

(viii) In January 2022, after the conduct in question took place, the Respondent successfully rewrote the Conduct and Practices Handbook exam. This requirement is commonly imposed as a sanction by hearing panels but in this case it is not necessary to do so because the exam has already been successfully written by the Respondent.

CONCLUSION

¶ 14 The Hearing Panel, after careful consideration, determined that the terms of the Settlement Agreement:

(a) are reasonable and within the appropriate range of the sanctions, given the facts and circumstances set out in the Settlement Agreement, the submissions of counsel and the authorities cited; and

(b) meet IIROC's Sanction Guidelines and the principles of specific and general deterrence.

¶ 15 For these reasons the Hearing Panel unanimously accepts the terms of the Settlement Agreement, including the agreed to sanctions and costs which are:

(a) a fine in the amount of $40,000; and

(b) costs to IIROC in the amount of $5,000.

Dated this 20 day of December 2022.

Daniel Ish

Claude Tétrault

Eric Wray

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 Krystal Morrison ("Respondent").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

PART III – AGREED FACTS

3. For the purposes of this Settlement Agreement, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

Overview

4. The Respondent was part of a team responsible for thousands of client account forms that were improperly executed. The forms in question were signed by clients but were either blank or missing key information ("Pre-Signed Forms"). The Respondent personally signed 287 of these forms.

Registration History

5. The conduct occurred while the Respondent was a Registered Representative with Scotia Capital Inc. ("Scotia Capital"), from July 2020 to February 2021, at the Saskatoon, Saskatchewan branch.

6. Before working at Scotia Capital, the Respondent had worked as a Registered Representative at TD Waterhouse Canada Inc. ("TD Waterhouse") from October 2008, until July 2020. Previously, she worked in the securities industry as Mutual Fund Dealer Association registered salesperson.

7. She is currently working at Wellington-Altus Private Wealth Inc. as a Registered Representative, under strict supervision.

8. In January 2022, after the conduct in question took place, the Respondent successfully rewrote the Conduct and Practices Handbook exam.

Background

9. While at Scotia Capital the Respondent was part of the Hunter Financial Group (the "Hunter Group"), a financial team within Scotia Capital, operating out of the Saskatoon branch. By February 2021, the group consisted of three Investment Advisors and four associates. Bart Hunter was the lead advisor for the Hunter Group, however, they took a team approach to servicing their approximately 869 clients.

10. The Respondent moved from TD Waterhouse to join the Hunter Group in July of 2020. Approximately, 157 of her clients moved with her. While the Respondent joined the Hunter Group team immediately upon her arrival at Scotia Capital, she was primarily responsible for her own clients for the seven-month period she was at Scotia Capital.

11. In February 2021, Scotia Capital received information that the Hunter Group had been using Pre-Signed forms. As a result, the firm had people attend the branch to obtain any such documents. Approximately 3000 Pre-Signed forms pertaining to Hunter Group clients were collected.

12. Most of the Pre-Signed forms were not dated. The documents were comprised of several different types of forms, including:

a) Client Account Information Change Forms, missing risk tolerances and investment objectives;

b) Accredited Investor Certification forms, missing information specifying how clients met the accredited investor qualification criteria;

c) Transfer Authorization Forms, missing the relinquishing institution name and/or client instructions; and

d) Pre-authorized Contribution and/or Withdrawal Forms, missing the authorization instructions (bank information, account number, frequency, and dollar amount).

13. The Respondent personally signed approximately 287 of these Pre-Signed forms. This includes:

a) Approximately 267 Account Information Change Forms (MKYCs) missing risk tolerances and investment objectives; and

b) Approximately 20 accredited investor forms missing information specifying how clients met the accredited investor qualification criteria.

Storage & Use of Pre-Signed Forms

14. The Hunter Group had been using Pre-Signed forms throughout previous years. As such, a number of other Pre-Signed forms had already been inputted into Scotia Capital's system.

15. The forms that were seized from the group were being stored for later use, at which time the pertinent information could be entered. The forms were stored in banker boxes which were kept in an empty cubicle.

16. The Hunter Groups' practice of using Pre-Signed forms was in place before the Respondent joined the team in July 2020.

PART IV – CONTRAVENTIONS

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

a) Between July 2020 to February 2021, the Respondent failed in her obligations regarding the proper execution of client documents, resulting in the collection, possession, and use of Pre-Signed client forms, contrary to IIROC Rule 1400.

PART V – TERMS OF SETTLEMENT

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

a) A fine in the amount of $40,000; and

b) Costs to IIROC in the amount of $5,000.

19. 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

20. 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.

21. 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

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

23. 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.

24. 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.

25. 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.

26. 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.

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

28. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full 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.

29. If this Settlement Agreement is accepted, the Respondent agrees that neither **s**he nor anyone on her behalf, will make a public statement inconsistent with this Settlement Agreement.

30. 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

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

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

DATED this 9 day of November, 2022.

"Witness"

Witness

"Krystal Dawn Morrison"

Krystal Dawn Morrison

"Witness"

Witness

"Tayen Godfrey"

Tayen Godfrey

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

The Settlement Agreement is hereby accepted this 6 day of December, 2022 by the following Hearing Panel:

Per: "Dan Ish"

Panel Chair

Per: "Claude Tetrault"

Panel Member

Per: "Eric Wray"

Panel Member