Re Arnold

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rules

and

Blaine Patrick Arnold

2023 CIRO 01

Canadian Investment Regulatory Organization
Hearing Panel (Saskatchewan District)

Heard: June 6, 2023, in Saskatoon, Saskatchewan
Decision: June 6, 2023
Reasons for Decision: June 12, 2023

Hearing Panel:
Daniel Ish, Chair, Bernie Plett and Eric Wray
Appearances:
Tayen Godfrey, Senior Enforcement Counsel
Ellen Bessner, for Blaine Patrick Arnold
Blaine Patrick Arnold (present)

REASONS FOR DECISION

INTRODUCTION

¶ 1 This Hearing Panel has been asked to accept a settlement agreement dated May 11, 2023 between CIRO Enforcement Staff and Blaine Patrick Arnold, the Respondent. Under the terms of the Settlement Agreement, the Respondent has admitted that between January 2012 and March 2021, he failed in his supervisor responsibilities, while Branch Manager at Scotia Capital, resulting it the collection, possession and use of 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 agreed in the Settlement Agreement that his actions breached Dealer Member Rule 38.4.

¶ 2 In the Settlement Agreement, CIRO Enforcement Staff and the Respondent agreed that the acknowledged breach of Rule 38.4 should attract a penalty of a six-month suspension from registration in a supervisory capacity, a fine of $35,000, a requirement to successfully rewrite the Investment Dealer Supervisors Course exam before acting in a supervisory capacity, and costs payable to CIRO in the amount of $5,000. The sole issue for this Hearing Panel, pursuant to Rule 8215 of the Investment Dealer and Partially Consolidated Rules (the "IDPC Rules"), 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 endorse the Settlement Agreement with written reasons to follow. These are those written reasons.

BACKGROUND

¶ 3 The conduct in question took place while the Respondent was a Branch Manager with Scotia Capital Inc. ("Scotia Capital"), at the Saskatoon, Saskatchewan branch. The Respondent had been registered as a Supervisor and Registered Representative with Scotia Capital from September 2008, until February 2021. Since then, he has not worked in a registered capacity with a Dealer Member of a CIRO regulated firm.

¶ 4 The Respondent was the Branch Manager overseeing Scotia Capital's Saskatoon branch, where the Hunter Financial Group financial team (the "Hunter Group"), was located. By February 2021, the Hunter 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.

¶ 5 In February 2021, the Respondent received information that the Hunter Group had been using Pre-Signed forms, and reported this to members of Scotia Capital's compliance team. As a result, the firm had people attend the branch to obtain any Pre-Signed forms. Approximately 3,000 forms pertaining to Hunter Group clients were collected.

¶ 6 The Pre-Signed forms that were seized from the Hunter Group were stored for later use, at which time the pertinent information could be entered. They were stored in banker boxes which were kept in an empty cubicle.

¶ 7 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.

¶ 8 The approximately 3,000 Pre-Signed forms seized by Scotia Capital consisted of a mix of forms that were signed by members of the Hunter Group and those which were only signed by clients. Most of the Pre-Signed forms were not dated.

¶ 9 The seized documents are comprised of several different types of forms, including:

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

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

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

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

¶ 10 The Respondent should have been alerted to the Hunter Group's use of Pre-Signed forms when they were provided to him for his approvals. Instead, as Branch Manager, the Respondent failed in his supervisory duties.

¶ 11 In addition to those Pre-Signed forms that were already inputted into Scotia Capital's system, the Respondent personally signed and approved approximately 599 of the Pre-Signed forms that were seized. This includes:

a) Approximately 552 Account Information Change forms, missing risk tolerances and investment objectives; and

b) Approximately 47 Accredited Investor Certification forms, missing information specifying how clients met the accredited investor qualification criteria.

ANALYSIS

¶ 12 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 of the IDPC Rules. 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.

¶ 13 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 *Re 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.

¶ 14 The hearing panel in *Re Scotia Capital* at page 6 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:

> [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.
>
> [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).

¶ 15 The task of this Panel is to determine whether the penalty agreed to for the acknowledged infraction of the breach 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 Sanction Guidelines ("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. The decisions referred to included the following:

Re Smith 2019 IIROC 13

Re Bergh 2011 IIROC 41

Re Silicz 2017 IIROC 2

Re Harvey 2022 IIROC 32

Re Morrison 2020 IIROC 33

Re Innes 2020 CMFDA 155.

¶ 16 In addition to considering sanctions imposed or accepted by past hearing panels, the Hearing Panel considered the 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 reflected in the Sanction Guidelines that we took into consideration were the following:

(a) Aggravating Factors:

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

(ii) The Respondent personally signed 599 Pre-Signed forms and, as Branch Manager, was responsible for thousands of client account forms that were improperly executed.

(iii) The Respondent's involvement continued from January 2012 to February 2021; it was not an isolated incident.

(b) Mitigating Factors:

(i) There were no client complaints or losses as a result of the Pre-Signed forms.

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

(iii) The Respondent has no prior disciplinary record.

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

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

(vi) The Respondent reported the use of Pre-Signed forms to Scotia Capital's compliance team.

(vii) The Respondent has not worked in a registered capacity with a Dealer Member of a CIRO regulated firm since February 2021.

CONCLUSION

¶ 17 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 the Sanction Guidelines and the principles of specific and general deterrence.

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

(a) a six-month suspension from registration in a supervisory capacity;

(b) payment of a fine in the amount of $35,000;

(c) a requirement to successfully rewrite the Supervisors Course exam before acting in a supervisory capacity; and

(d) costs in the amount of $5,000.

Dated this 12 day of June, 2023.

Daniel Ish, K.C.

Bernie Plett

Eric Wray

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Corporation[i] will issue a Notice of Application to announce a settlement hearing pursuant to sections 8215 and 8428 of the Investment Dealer and Partially Consolidated Rules (the "Investment Dealer Rules") to consider whether a hearing panel should accept this Settlement Agreement between Enforcement Staff and Blaine Patrick Arnold (the "Respondent").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Enforcement 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 Branch Manager for a team that was 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 signed 599 of these forms in his capacity as Branch Manager.

Registration History

5. The conduct in question took place while the Respondent was a Branch Manager with Scotia Capital Inc. ("Scotia Capital"), at the Saskatoon, Saskatchewan branch. The Respondent had been registered as a Supervisor and Registered Representative with Scotia Capital from September 2008, until February 2021. Since then, he has not worked in a registered capacity with a Dealer Member of a New SRO regulated firm.

Background

6. The Respondent was the Branch Manager overseeing Scotia Capital's Saskatoon branch, where the Hunter Financial Group financial team (the "Hunter Group"), was located. By February 2021, the Hunter 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.

7. In February 2021, the Respondent received information that the Hunter Group had been using Pre-Signed forms, and reported this to members of Scotia Capital's compliance team. 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.

Storage & Use of Pre-Signed Forms

8. The Pre-Signed forms that were seized from the Hunter Group were being stored for later use, at which time the pertinent information could be entered. They were being stored in banker boxes which were kept in an empty cubicle.

9. 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.

Pre-Signed Forms Details

10. The approximately 3000 Pre-Signed forms seized by Scotia Capital consisted of a mix of forms that were signed by members of the Hunter Group and those which were only signed by clients. Most of the Pre-Signed forms were not dated.

11. The seized documents are 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).

12. The Respondent should have been alerted to the Hunter Group's use of Pre-Signed forms when they were provided to him for his approvals. Instead, as Branch Manager, the Respondent failed in his supervisory duties. In addition to those Pre-Signed forms that were already inputted into Scotia Capital's system, the Respondent personally signed and approved approximately 599 of the Pre-Signed forms that were seized. This includes:

    a) Approximately 552 Account Information Change Forms (MKYCs) missing risk tolerances and investment objectives; and

    b) Approximately 47 accredited investor forms missing information specifying how clients met the accredited investor qualification criteria.

PART IV – CONTRAVENTIONS

13. By engaging in the conduct described above, the Respondent committed the following contraventions of Corporation requirements:

    a) Between January 2012 and March 2021, the Respondent failed in his Supervisor responsibilities, while Branch Manager, resulting in the collection, possession, and use of Pre-Signed forms, contrary to Dealer Member rule 38.4.

PART V – TERMS OF SETTLEMENT

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

    a) A six-month suspension from registration in a supervisory capacity;

    b) Payment of a fine in the amount of $35,000;

    c) A requirement that to successfully rewrite the Supervisors course exam before acting in a supervisory capacity;

    d) Costs in the amount of $5,000.

15. 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 Enforcement Staff and the Respondent.

PART VI – STAFF COMMITMENT

16. If the hearing panel accepts this Settlement Agreement, Enforcement 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.

17. If the hearing panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of this Settlement Agreement, Enforcement Staff may bring proceedings under Investment Dealer Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

18. This Settlement Agreement is conditional on acceptance by the hearing panel.

19. This Settlement Agreement shall be presented to a hearing panel at a settlement hearing in accordance with sections 8215 and 8428 of the Investment Dealer Rules, in addition to any other procedures that may be agreed upon between the parties.

20. Enforcement Staff and the Respondent agree that this Settlement Agreement will form all 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.

21. If the hearing panel accepts this Settlement Agreement, the Respondent agrees to waive all rights under the Rules of the Corporation and any applicable legislation to any further hearing, appeal and review.

22. If the hearing panel rejects this Settlement Agreement, Enforcement Staff and the Respondent may enter into another settlement agreement or Enforcement Staff may proceed to a disciplinary hearing based on the same or related allegations.

23. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the hearing panel.

24. This Settlement Agreement will become available to the public upon its acceptance by the hearing panel and the Corporation will post a copy of this Settlement Agreement on the Corporation website. The Corporation will publish a notice and news release of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement and the hearing panel's written reasons for its decision to accept this Settlement Agreement.

25. If this Settlement Agreement is accepted, the Respondent agrees that neither they nor anyone on their behalf, will make a public statement inconsistent with this Settlement Agreement.

26. This Settlement Agreement is effective and binding upon the Respondent and Enforcement Staff as of the date of its acceptance by the hearing panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

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

28. An electronic copy of any signature will be treated as an original signature.

DATED this 11th day of May, 2023.

"Witness"

Witness

"Blaine Patrick Arnold"

Blaine Patrick Arnold

"Tayen Godfrey"

Tayen Godfrey

Enforcement Counsel on behalf of Enforcement Staff of the Corporation

The Settlement Agreement is hereby accepted this 6 day of June, 2023 by the following Hearing panel:

Per: Eric Spink

Chair

Per: Eric Wray

Industry Member

Per: Bernie Plett

Industry Member

[i]On January 1, 2023, IIROC and the MFDA were consolidated into a single self-regulatory organization recognized under applicable securities legislation. The New Self-Regulatory Organization of Canada (the "Corporation") has adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies of the MFDA (the "Interim Rules"). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and the rules and certain by-laws and policies of the MFDA that were in force immediately prior to amalgamation. Where the rules of IIROC and the rules and by-laws and policies of the MFDA that were in force immediately prior to amalgamation have been incorporated into the Interim Rules, Enforcement Staff have referenced the relevant section of the Interim Rules.