

Re Reyes

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rules

and

John Manuel Reyes

2023 CIRO 09

Canadian Investment Regulatory Organization
Hearing Panel (Alberta District)

Heard: June 02 and July 19, 2023 in Calgary, Alberta via videoconference

Decision: July 19, 2023

Reasons for Decision: August 7, 2023

Hearing Panel:

Eric Spink, KC, Chair, Martin Davies (not present on July 19, 2023) and James Ross

Appearances:

Marie Abraham, Senior Enforcement Counsel

Robert Brush, for John Manuel Reyes

Liz McLellan, for John Manuel Reyes

John Manuel Reyes (present)

REASONS FOR DECISION

INTRODUCTION

¶ 1 This was a settlement hearing, at the conclusion of which the Hearing Panel accepted a settlement agreement between Enforcement Staff and John Manuel Reyes (“the Respondent”), dated July 19, 2023 (the “Settlement Agreement”), pursuant to sections 8215 and 8428 of the Investment Dealer and Partially Consolidated Rules (“IDPC Rules”) of the Canadian Investment Regulatory Organization (“CIRO”). These are our Reason for accepting the settlement.

¶ 2 One member of the original Hearing Panel was unavailable on July 19, 2023. Pursuant to Rule 8408(10) of the IDPC Rules, with the consent of all parties, the hearing continued with the remaining Panel members.

PRELIMINARY ISSUE – ADDITIONAL FACTS

¶ 3 This case was unusual in that the Settlement Agreement accepted by the Panel was the third version presented to us, with the only difference between the versions being the inclusion of some additional facts. Those facts were initially disclosed to the Panel in Written Submissions of Enforcement Staff (“Staff Submissions”), which the Panel received together with the original settlement agreement, before the commencement of this hearing. As discussed below, the Panel had concerns about whether it could properly rely on the additional facts, and those concerns were completely resolved when the parties revised the Settlement Agreement to include them.

¶ 4 Additional facts at settlement hearings are specifically addressed by Rule 8428(6), which says:

At a settlement hearing, facts that are not contained in the settlement agreement must not be disclosed to the hearing panel without the consent of all parties, unless the respondent does not appear, in which

case Enforcement Staff may disclose additional relevant facts, if requested by the hearing panel.

¶ 5 One example of the additional facts in this case is paragraph 24 of the Settlement Agreement, which says:

“The misconduct in this case was not intentional, willfully blind, or reckless. It was primarily negligent but was nonetheless serious.”

¶ 6 That statement initially appeared in Staff Submissions as part of the discussion of the list of “Key Factors In Determining Sanctions” in the 2015 IIROC Sanction Guidelines (“Sanction Guidelines”). Factor #4 on that list is “Whether the misconduct was intentional, willfully blind, or reckless with respect to regulatory requirements.”

¶ 7 In the Panel’s view, that paragraph contains four important facts (i.e., the misconduct was not intentional; not willfully blind; not reckless; and primarily negligent), which support one submission (that the misconduct “was nonetheless serious”). The submission is proper because it merely suggests a conclusion on an issue that the Panel remains free to decide. However, the submission relies on those four facts, which the Panel is not free to decide but must accept at face value, if properly disclosed. Because those facts were clearly relevant, but not contained in the initial settlement agreement, the Panel asked the parties to ensure that it could properly rely on them, which the parties did by including them in the Settlement Agreement.

¶ 8 Some of the additional facts in Staff Submissions were less significant than the example described above, and a question arose about whether all those facts should be included in the Settlement Agreement. It was suggested that some minor details need not be included because those details could be inferred or implied from facts that were included. While the Panel agreed that some details were so insignificant that they need not be included, the Panel asked that other, relatively minor, facts be included in the Settlement Agreement, for the following reasons.

¶ 9 The practical reason was that the Panel was in the awkward position of having already seen the additional facts, all of which were intertwined with Staff Submissions and the existing facts. It was suggested that the Panel might be able to consciously disregard some facts but, in this case, the Panel did not feel that it could realistically instruct itself to disregard any of the relevant facts. The only practical solution was to include minor-but-relevant details in the Settlement Agreement, which was done.

¶ 10 The principled reason was that the Panel has a positive duty not to infer or imply any fact, minor or otherwise, when considering a settlement agreement. The Panel was referred to the principles articulated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43, describing the “public interest test” that has frequently been applied to settlement hearings (see, for example, *Re Cavalaris* 2017 IIROC 04; *Re Laurentian Bank Securities* 2017 IIROC 38; *Re Scotia Capital* 2017 IIROC 48; *Re Smith* 2019 IIROC 13; *Re Malic* 2021 IIROC 10; *Re Ber* 2022 IIROC 08). Panels are obligated to approach settlement agreements “from a position of restraint” (*Anthony-Cook*, para. 46) in order to preserve the public interest benefits of the settlement process. That restraint includes a duty to consider settlement agreements “within the four corners of the Agreed Facts”, recognizing that those facts have been negotiated between counsel, and resisting curiosity about facts that are not included (*Re Ber*, para. 15).

¶ 11 The Panel notes that the only reason we know that any of the additional facts in this case could be implied or inferred, accurately, from existing facts is because we know both sets of facts. If the Panel knew only the existing facts, to imply or infer any additional fact would be mere conjecture and improper. The Panel agreed with the following statement in *Re Donnelly* 2016 IIROC 23 (at para. 8, after discussing the “importance of the settlement process”):

For these reasons, a panel considering the acceptance of a settlement agreement will try to reach a determination of acceptance. It will recognize that settlements are often hotly debated with much compromise and give-and-take between the parties in order to reach an acceptable position agreeable to both parties. Furthermore, the panel will recognize that it is not privy to all the facts and the motivations and considerations that each of the parties have in coming to a solution of the dispute that is agreeable to them.

¶ 12 In *Re Donnelly* (para. 12), the role of the panel was described as follows:

A panel considering whether to accept a settlement agreement cannot substitute for the agreed penalties those penalties that it might prefer to have in the circumstances. However, the parties can always be invited by the panel to provide additional information that the panel believes it needs in order to come to a favourable decision; and the parties may choose to provide it. Or indeed, the parties may agree to changes in the agreed panel. But the panel cannot impose a change unilaterally.

¶ 13 This case is quite unlike the situation described in *Re Donnelly*, where a panel invites the parties to provide additional information because the panel is reluctant to accept the settlement agreement based on the facts presented. In that situation, the panel does not know any additional facts unless and until the parties agree to disclose them. In this case, the Panel never had an opportunity to consider the acceptability of the initial settlement agreement, standing alone, because we already knew the additional facts. The Panel therefore raised the preliminary issue of whether the additional facts could be properly disclosed so that the Panel could rely upon them. If the parties had not agreed to include those additional facts in the Settlement Agreement, the Panel would have had to recuse itself because it could not, realistically, disregard those facts. This case thus illustrates the need to avoid inadvertently disclosing additional facts to the Panel.

¶ 14 The preliminary issue was resolved when the parties revised the Settlement Agreement to include the additional facts. The Panel complimented both counsel for their cooperation and professionalism in resolving the preliminary issue.

CONTRAVENTION AND SANCTIONS

¶ 15 In the Settlement Agreement, which is attached as an Appendix, the Respondent admitted the following contravention of CRO requirements:

Between January 2017 and January 2020, Reyes failed to use due diligence to ensure that investment recommendations were suitable for two clients contrary to Dealer Member Rule 1300.1(q).

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

- (i) a fine of \$22,641;
- (ii) disgorgement of commissions in the amount of \$9,000;
- (iii) six months of close supervision; and
- (iv) costs of \$5,000.

SUMMARY OF FACTS

¶ 17 The Respondent has been a Registered Representative since 2005. He has been with Richardson Wealth Limited (“Richardson”), or its predecessors, in Calgary, Alberta, since July 2012.

¶ 18 The Respondent admitted to making unsuitable, excessively risky, investment recommendations for two vulnerable clients over a 3-year period, which resulted in combined losses of \$22,641. The clients were fully compensated for those losses by Richardson. That amount is also equal to the agreed-upon fine.

¶ 19 By mid-June 2017, the clients’ accounts were changed from commission-based to fee-based on the Respondent’s recommendation. Although the clients’ accounts holdings were excessively risky and unsuitable during portions of the 3-year period, by the end of that period the accounts had been almost entirely moved out of high-risk securities and into mutual funds and exchange-traded funds. Those changes were made on the Respondent’s recommendation before any client complaints and before CRO Staff commenced its investigation.

¶ 20 The Respondent has a disciplinary history reported in the decision *Re Reyes* 2018 IROC 47. In a settlement agreement in that case, the Respondent admitted to providing personal funds for a client to trade securities through the client’s account, contrary to Dealer Member Rule 29.1; failing to use due diligence to learn and remain informed of the essential facts relative to two clients, contrary to Dealer Member Rule 1300.1(a); and failing to use due diligence to ensure that investment recommendations were suitable for two clients, contrary to

Dealer Member Rule 1300.1(q). At that time, the Respondent was suspended for two months, fined \$107,500 (which included disgorgement of \$40,000), placed on close supervision for 12 months, required to rewrite the Conduct and Practices Handbook (“CPH”) examination, and paid costs of \$2,500.

¶ 21 Although he was disciplined in 2018 for similar conduct, the Respondent made sincere efforts to improve his practice. However, he did not make the necessary changes to these two clients’ accounts in a timely enough way. The misconduct in this case was not intentional, willfully blind, or reckless. It was primarily negligent, and there is no evidence that the Respondent made the unsuitable recommendations to earn commission. Richardson continues to support the Respondent because of his genuine efforts to improve his practices.

GUIDELINES, PREVIOUS DECISIONS, AND KEY FACTORS IN DETERMINING SANCTIONS

¶ 22 The Panel was referred to the Sanction Guidelines and the following decisions: *Re Sabet* 2021 IIROC 3; *Re Laurentian Bank Securities* 2017 IIROC 38; and *Re Ford* 2016 IIROC 31.

¶ 23 The most relevant principles in the Sanction Guidelines say:

1. Disciplinary sanctions are preventative in nature and should be designed to protect the investing public, strengthen market integrity, and improve overall business standards and practices.

The purpose of sanctions in a regulatory proceeding is to protect the public interest by restraining future conduct that may harm the capital markets. In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence), and to deter others from engaging in similar misconduct (general deterrence). [...]

General deterrence can be achieved if a sanction strikes an appropriate balance by addressing a Regulated Person’s specific misconduct but is also in line with industry expectations. Any sanction imposed must be proportionate to the conduct at issue and should be similar to sanctions imposed on respondents for similar contraventions in similar circumstances. The sanction should be reduced or increased depending on the relevant mitigating and aggravating factors.

2. Disciplinary sanctions should be more severe for respondents with prior disciplinary records.

A respondent’s prior disciplinary record is an aggravating factor and may warrant a harsher sanction than would be required had this been the respondent’s first disciplinary contravention.

A prior disciplinary record for a similar or identical contravention strongly suggests that the prior sanction was not a sufficient deterrent, thereby necessitating an increased sanction in order to address specific deterrence. However, a prior record where the misconduct is different may nonetheless be a factor to consider and it may demonstrate a respondent’s general disregard for compliance with regulatory requirements, the investing public or market integrity in general. A prior disciplinary record generally becomes less relevant as it becomes more dated.

¶ 24 In *Re Sabet*, the panel accepted a settlement agreement that addressed two contraventions, one of which involved unsuitable recommendations. A fine of \$10,000 was separately imposed for that contravention.

¶ 25 In *Re Ford*, the panel accepted a settlement agreement that addressed three contraventions, one of which involved unsuitable recommendations. The global sanctions for all contraventions were a fine of \$30,000; re-writing of the CPH examination, and strict supervision for 6 months.

¶ 26 In *Re Laurentian Bank Securities*, the panel considered Principle #2 of the Sanction Guidelines in circumstances roughly similar to this case. In that case, the panel accepted a settlement agreement in which the respondent was being sanctioned for failing to properly train and supervise registered representatives. The respondent had previously been sanctioned for similar contraventions, and had failed to meet its commitment to make certain corrections required by IIROC Staff with respect to past violations, but had taken proactive steps to become compliant by the time of the hearing. The panel said at para. 34:

[T]he existence of a disciplinary history involving a similar matter, as well as failure to follow through on the statements made to IIROC Staff, appear to be especially aggravating factors that tend to demonstrate a general laxness on the Respondent’s part when it comes to regulatory compliance.

And at para. 37:

However, the Hearing Panel notes that, this time, the Respondent really seems to have implemented appropriate measures to ensure the non-recurrence of the irregularities raised by IIROC Staff. Furthermore, the Respondent has shown proactivity by participating in a pilot project proposed by the IIROC Registration Department, in regard to the Respondent's registration processes and procedures, which must play in its favour.

ANALYSIS AND DECISION

¶ 27 The overarching question for the Panel was whether the agreed penalties fell within a "reasonable range of appropriateness" as described in *Re Milewski*, [1999] IDACD No. 17. The most salient issue was whether the penalties were sufficient in light of the Respondent's prior disciplinary record.

¶ 28 As discussed above, the Panel found it significant that the Respondent's misconduct in this case was not intentional, not willfully blind, not reckless, and primarily negligent. The Panel also found it significant that the Respondent had corrected his practices prior to any client complaint or investigation. The Panel concluded that this was not a case of recidivism because the present contravention was not a repetition of the previous contravention, it was the Respondent's excessively slow correction of the previous problem, similar to the situation described in *Re Laurentian Bank Securities*.

¶ 29 The contraventions addressed in *Re Sabet* and *Re Ford* are somewhat similar to the present case, and suggest that the sanctions proposed in the Settlement Agreement are within a reasonable range of appropriateness.

¶ 30 For the above reasons, the Panel was satisfied that the sanctions proposed in the Settlement Agreement were fair, reasonable and sufficient to meet both specific and general deterrence. The Panel therefore accepted and endorsed the Settlement Agreement on July 19, 2023.

Dated at Edmonton, Alberta this 7 day of August 2023.

"Eric Spink"

Eric Spink, KC, Chair

"James Ross"

James Ross

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Canadian Investment Regulatory Organization ("CIRO")¹ 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 John Manuel Reyes (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, John Manuel Reyes ("Reyes") is a Registered Representative ("RR") with Richardson Wealth Limited ("Richardson") in Calgary, Alberta.
5. Between January 2017 and January 2020 (the "Relevant Period"), Reyes initially failed to use due diligence to ensure his investment recommendations were suitable for his clients, RM and CM (the "Clients"), who had limited investment experience, when he recommended certain high-risk securities to RM and CM.
6. RM and CM suffered losses in their accounts of 21%(\$16,138) and 9%(\$6,323) during the Relevant Period. RM and CM were fully compensated for these losses by Richardson.

Registration History

7. Reyes first became an RR in 2005. He has been with Richardson since November 1, 2013, and was with its predecessors, Richardson GMP and Macquarie Private Wealth Inc. since July 2012.
8. Reyes is currently a registrant with Richardson in Calgary and has operated under the name Reyes Wealth since May 2016.

Clients RM and CM

9. RM and CM are a married couple living in Calgary. RM was born in 1969 and previously worked as a production supervisor in a manufacturing facility. In 2008, RM suffered a stroke and has been unable to work since. In 2018, RM had a second stroke.
10. RM was receiving disability benefits since his first stroke in 2008, because it left him with some cognitive and memory problems preventing him from working.
11. CM was born in 1971 and previously worked as a quality assurance manager in a manufacturing facility. In 2011, CM was diagnosed with depression and anxiety. Since 2011, she has been unable to work and was receiving disability benefits.
12. During the Relevant Period, the Clients each held accounts including their respective Registered Disability Savings Plan (RDSP) accounts, Tax-Free Savings (TFSA), Registered Retirement Savings Plan (RRSP), Registered Education Savings Plan (RESP - CM only) and Locked-In Retirement (LIRA) accounts with Reyes.
13. The Clients' stated investment knowledge and experience was "limited/average" during the Relevant Period.
14. During the Relevant Period, the only source of income for both RM and CM was their respective disability benefits payments. Neither had any other or additional source of income. The Clients each received \$36,000 annually in income during the Relevant Period.
15. The stated risk tolerances on each of these accounts were 40-60% medium risk and 40- 60% high risk. This was inconsistent with the Clients' actual financial situation, investment knowledge and experience.

Suitability

16. The investment objectives for the Clients' accounts were stated as 50% Income and 50% Capital Gains. The listed time horizon for each account was long-term, with a target year of 2030.
17. The stated risk parameters and objectives were not aligned with the Clients' actual circumstances.
18. RM and CM were vulnerable clients and relied on Reyes for his investment advice and recommendations.

19. Throughout the Relevant Period, the holdings were generally concentrated in fewer than five securities at any time and included investments in various sectors including energy and two cannabis securities.
20. By mid-June 2017, the Clients' accounts were changed from commission-based to fee-based on Reyes' recommendation.
21. During portions of the Relevant Period, the account holdings exceeded stated risk objectives and were not suitable for the Clients. However, by the end of the Relevant Period, the accounts had been almost entirely moved out of high-risk securities and into mutual funds and exchange traded funds. These changes were made on Reyes' recommendation before any client complaints and before CIRO Staff commenced its investigation into Reyes' conduct.
22. During the Relevant Period, RM sustained a loss of \$16,138 (21%) and CM sustained a loss of \$6,323 (9%). The Clients' combined losses total \$22,461, which is an amount equal to the fines imposed on Reyes in this proceeding.
23. Although Reyes was disciplined in 2018 for similar conduct, he has made sincere efforts to improve his practice and did not open new client accounts and conduct himself as he did previously. However, Reyes did not make the necessary changes to the accounts of RM and CM in a timely enough way.
24. The misconduct in this case was not intentional, willfully blind, or reckless. It was primarily negligent but was nonetheless serious.
25. There is no evidence that Reyes has or will retain any financial benefit from the misconduct, nor is there evidence that Reyes made the recommendations to earn commission. Rather, Reyes has agreed to pay a fine and to disgorge his commissions received in this case.

Aggravating Factors

26. Reyes has a disciplinary history reported in the decision *Re Reyes* 2018 IIROC 47, pursuant to the settlement agreement accepted by the Panel. In that settlement agreement, Reyes admitted having failed to use due diligence to learn and remain informed of the essential facts, and failed to ensure that investment recommendations were suitable for two clients. Reyes also admitted having provided personal funds to a client to trade securities through the client's account, contrary to Dealer Member Rule 29.1. Reyes was suspended for two months, disgorged of his commissions, received a substantial fine, and was placed on twelve months close supervision.

Other Factors

27. Richardson received \$16,346.07 in commissions during the Relevant Period, from which Reyes received approximately \$9,000.
28. The Clients were fully compensated by Richardson for the losses incurred.
29. Since 2017, Reyes has made efforts to improve his practices as an investment advisor. Richardson continues to support Reyes because of his genuine efforts to improve his practices.

PART IV – CONTRAVENTION

30. By engaging in the conduct described above, Reyes committed the following contravention of Corporation requirements:
 - i. Between January 2017 and January 2020, Reyes failed to use due diligence to ensure that investment recommendations were suitable for two clients contrary to Dealer Member Rule 1300.1(q).

PART V – TERMS OF SETTLEMENT

31. Reyes agrees to the following sanctions and costs:
- a) A fine of \$22,461;
 - b) Disgorgement of commissions in the amount of \$9,000;
 - c) Six months of close supervision; and
 - d) Costs of \$5,000.

PART VI – STAFF COMMITMENT

32. 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.
33. 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

34. This Settlement Agreement is conditional on acceptance by the hearing panel.
35. 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 maybe agreed upon between the parties.
36. 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.
37. If the hearing panel accepts this Settlement Agreement, the Respondent agrees to waive all rights under the Rules of CIRO and any applicable legislation to any further hearing, appeal and review.
38. 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.
39. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the hearing panel.
40. This Settlement Agreement will become available to the public upon its acceptance by the hearing panel and CIRO will post a copy of this Settlement Agreement on the CIRO website. CIRO 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.
41. 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.
42. 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

43. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.
44. An electronic copy of any signature will be treated as an original signature.

DATED this 19 day of July, 2023.

“Witness”

Witness

“John Manuel Reyes”

John Manuel Reyes

“Marie Abraham”

Marie Abraham

Senior Enforcement Counsel on behalf of
Enforcement Staff of the Canadian Investment
Regulatory Organization

The Settlement Agreement is hereby accepted this “19” day of July, 2023 by the following Hearing panel:

Per: “Eric Spink”

Chair

Per: “James Ross”

Industry Member

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¹On January 1, 2023, IIROC and the MFDA were consolidated into a single self-regulatory organization recognized under applicable securities legislation.

The Canadian Investment Regulatory Organization (“CIRO”) 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.

Section 1105 (Transitional provision) of the Investment Dealer and Partially Consolidated Rules sets out CIRO’s continuing jurisdiction, including that CIRO shall continue the regulation of any person subject to the jurisdiction of the Investment Industry Regulatory Organization of Canada that was formerly conducted by the Investment Industry Regulatory Organization of Canada.