Re Murphy

IN THE MATTER OF:

THE INVESTMENT DEALER AND PARTIALLY CONSOLIDATED RULES AND THE DEALER MEMBER RULES

and

Allen Murphy

2024 CIRO 57

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: May 1, 2024 in Toronto, Ontario by videoconference
Decision: May 1, 2024
Reasons for Decision: June 25, 2024

Hearing Panel:
Thomas J. Lockwood, K.C., Chair
Sarah Shody, Industry Representative
Vanessa Gardiner, Industry Representative

Appearances:
Kathryn Andrews, Senior Enforcement Counsel
Natalia Vanervoort, for Allen Murphy
Allen Murphy (present)

REASONS FOR DECISION

I. INTRODUCTION

¶ 1 By Notice of Application for Settlement Hearing, dated March 19, 2024, Enforcement Staff of the Canadian Investment Regulatory Organization ("CIRO") gave notice that a hearing would be held before a hearing panel on May 1, 2024, to consider a request to accept a settlement agreement between Enforcement Staff and Allen Murphy (the "Settlement Agreement"), pursuant to sections 8215 and 8428 of the Investment Dealer and Partially Consolidated Rules ("IDPC Rules").

¶ 2 The Notice of Application advised that the hearing was not open to the public but that the public would be notified if the Settlement Agreement was accepted by the Hearing Panel.

¶ 3 At the settlement hearing, the Hearing Panel considered the provisions of the Settlement Agreement. After hearing submissions, both as to the applicable law and as to why this particular Settlement Agreement met the appropriate criteria, the Hearing Panel retired to consider whether we were in a position to accept the Settlement Agreement on the basis of the material before us.

¶ 4 After carefully considering the Settlement Agreement and the submissions of the parties, the Hearing Panel unanimously accepted the Settlement Agreement. We made an order to this effect on May 1, 2024. At that time, we advised that written reasons would follow our decision. These are our Reasons.

II. SETTLEMENT AGREEMENT

¶ 5 The Settlement Agreement is attached hereto and marked as Appendix A. In the Settlement Agreement the Respondent admitted that his Dealer Member's policy, at the relevant time, prohibited participation in non-brokered private placements. Nevertheless, the Respondent admitted that he assisted clients in purchasing shares in a non-brokered private placement, even after receiving specific instructions from the Dealer Member not to do so, along with a warning letter.

¶ 6 At the time of the Private Placement the issuer filed audited financial statements showing no revenue and approximately $3.8 million in losses (exploration expenses).

¶ 7 The Respondent, either directly or indirectly, emailed numerous clients about the Private Placement. At least eight of the contacted clints participated in the Private Placement, collectively purchasing over 4 million shares. The Respondent personally purchased 1.6 million shares in the Private Placement.

¶ 8 As a result of his actions, the Dealer Member imposed a suspension on the Respondent, gave him a reprimand letter, fined him $30,000, required him to successfully re-write the Conduct and Practices Handbook course, restricted him from personally investing in private placements and subjected his emails to enhanced supervision.

¶ 9 In assessing the adequacy of the Settlement Agreement, the Hearing Panel was also influenced by the fact that the Respondent has no prior disciplinary history and did not receive any financial benefit as a result of his contravention. Additionally, there was no financial loss to clients.

III. THE LAW

¶ 10 Rule 1400 of the IDPC Rules provides, in part, as follows:

> Rule 1400 STANDARDS OF CARE
>
> 1401. Introduction
>
> Rule 1400 sets out the general standards of conduct that apply to Regulated Persons.
>
> 1402. Standards of conduct
>
> (1) A Regulated Person:
>
> (i) in the transaction of business must observe high standards of ethics and conduct and must act openly and fairly and in accordance with just and equitable principles of trade; and
>
> (ii) must not engage in any business conduct that is unbecoming or detrimental to the public interest.
>
> (2) Without limiting the generality of the foregoing, any business conduct that:
>
> (i) is negligent,
>
> (ii) fails to comply with a legal, regulatory, contractual or other obligation, including the rules, requirements, and policies of a *Regulated Person*,
>
> (iii) displays an unreasonable departure from standards that are expected to be observed by a Regulated Person, or
>
> (iv) is likely to diminish investor confidence in the integrity of securities, futures or derivatives markets,
>
> may be conduct that contravenes one or more of the standards set forth in subsection 1402(1).
>
> 1404. Policies and procedures

(1) A Dealer Member must establish, maintain and apply written policies and procedures regarding the conduct of its business activities and operations.

¶ 11 As set out in paragraph 5 of the Settlement Agreement, at the relevant time, the Respondent's Dealer Member's policy prohibited participation in non-brokered private placements.

IV. Principles and Factors Regarding the Acceptance of Settlement Agreements

¶ 12 Investor protection is the primary goal of securities regulation. Settlements play an important and necessary role in meeting this objective.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557 at paras. 59 and 68.

¶ 13 In our view, the role of a hearing panel in a settlement hearing is not the same as its role in making a penalty determination after a contested hearing. In a contested hearing, the hearing panel attempts to determine the correct penalty. In a settlement hearing, the hearing panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the settlement agreement. In our view, a hearing panel should not interfere lightly in a negotiated settlement and should not reject a settlement agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

¶ 14 When determining whether a penalty agreed upon by the parties is appropriate, the Hearing Panel may also consider the CIRO Sanction Guidelines ("Guidelines"), which came into effect on February 1, 2024.

¶ 15 The Guidelines set out general principles which should be considered in connection with a proposed settlement agreement, as well as some key factors commonly reviewed when considering the appropriateness of the sanctions.

¶ 16 The Guidelines' principles state that sanctions should be significant enough to prevent and discourage future misconduct by a particular respondent (specific deterrence) and to deter others from engaging in similar mistakes (general deterrence). General deterrence can be achieved if a sanction strikes an appropriate balance by addressing a registrant's specific misconduct but is also in line with industry expectations.

V. CONSIDERATIONS IN THE PRESENT CASE

¶ 17 Here, there is one contravention, which occurred during an approximate one month time period.

¶ 18 On the other hand, the misconduct involved numerous clients as well as non-clients. It was not an isolated incident.

¶ 19 The Respondent's actions occurred after he had been told by his firm that client participation was not allowed as the firm's internal policy specifically prohibited client orders for non-brokered private placements.

¶ 20 The Respondent's activity took place after he had been told by his firm not to distribute an RPX Letter of Intent, and after he was told to cease discussions with clients, to cease providing subscription agreements to clients and to cease facilitation of these trades.

¶ 21 The Respondent had a personal connection to RPX. He, or his family member's accounts, held approximately 2.8 million shares by the end of November 2018. Various of his clients also held shares of RPX. Together, they held approximately 8.238 million shares as of November 30, 2018. On November 27, 2018, RPX filed audited financial statements showing it had no revenue and over $3 million in losses (exploration expenses).

¶ 22 In early 2020, the Respondent's Dealer Member imposed a suspension upon him and issued a Reprimand Letter. It also fined the Respondent $30,000 and required him to retake the Conduct and Practices Handbook course.

¶ 23 The Respondent was also subject to restrictions by his Dealer Member involving prospectus exempt securities. His email communications have been subject to enhanced supervision by his Dealer Member.

¶ 24 There was no financial loss to clients as a result of the impugned activities.

¶ 25 The Respondent did not receive any financial benefit as a result of his contraventions.

¶ 26 The Respondent has no prior disciplinary history.

Previous Decisions Made in Similar Circumstances

¶ 27 Enforcement Staff provided the Hearing Panel with a detailed analysis of a number of previous cases to show that the proposed resolution is within the reasonable range of appropriateness with regard to other decisions made by hearing panels in similar circumstances.

¶ 28 The following cases were discussed:

(a) *Re Blackmore* 2014 IIROC 43

(b) *Re Marek* 2017 IIROC 13

(c) *Re Poirier* 2017 IIROC 12

(d) *Re Nyquvest* 2021 IIROC 36

(e) *Re Spooner* 2023 CIRO 07

VI. DECISION

¶ 29 After a thorough review of the principles and factors by which we should be guided and the facts of this case, as reflected in the Settlement Agreement, we were, unanimously, of the view that this Settlement Agreement was reasonable and in the public interest and should be accepted by the Hearing Panel. We so informed the parties at the conclusion of the hearing.

DATED at Toronto, Ontario this 25th day of June 2024.

"Thomas J. Lockwood"
Thomas J. Lockwood, K.C., Chair

"Sarah Shody"
Sarah Shody, Industry Representative

"Vanessa Gardiner"
Vanessa Gardiner, Industry Representative

IN THE MATTER OF
THE INVESTMENT DEALER AND PARTIALLY CONSOLIDATED RULES
AND THE DEALER MEMBER RULES

AND

ALLEN MURPHY

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

¶ 1 The Canadian Investment Regulatory Organization ("CIRO")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 Allen Murphy (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 In November 2018, Red Pine Exploration Inc. ("RPX"), an issuer listed on the TSX Venture Exchange (the "TSXV"), announced a non-brokered private placement closing in December 2018.

¶ 5 The Respondent's Dealer Member's policy prohibited participation in non-brokered private placements at the time.

¶ 6 In December 2018, the Respondent assisted clients in purchasing shares in the RPX non-brokered private placement, contrary to the Dealer Member's internal policy and after receiving instructions from the Dealer Member not to do so.

Background

¶ 7 The Respondent has been a CIRO registrant since 2001. At the relevant time the Respondent was a Registered Representative ("RR") and Portfolio Manager with CIBCWM.

¶ 8 The Respondent is currently an RR and Portfolio Manager with CIBCWM.

Red Pine Exploration Inc.

¶ 9 RPX was a publicly traded company on the TSXV. It was involved in the purchase, exploration and development of mining properties in Canada. According to the Respondent, he became aware of RPX in 2016 through his colleague.

¶ 10 By April 2017, RPX owned 60% of a mining site known as the Wawa Gold Project.

¶ 11 The Respondent met with RPX's CEO and geological team on various occasions.

¶ 12 By the end of November 2018, the Respondent's personal accounts (or his family member's accounts) had purchased large amounts of shares of RPX, holding approximately 2.8 million shares in total.

¶ 13 Various of the Respondent's clients also held shares of RPX as of November 30, 2018. The Respondent and his clients together held approximately 8.238 million shares of RPX as of November 30, 2018, for a total market value of $335,541.

RPX's Non-Brokered Private Placement

¶ 14 On November 23, 2018, RPX announced a non-brokered private placement of a combination of non-

flow-through units ("Units") and flow-through shares ("FT Shares" and together with the Units, the "Offered Securities"), closing on December 20, 2018. (the "RPX Private Placement").

¶ 15 RPX further announced that gross proceeds from the issuance of the FT Shares will be used for Canadian Exploration Expenses and will qualify as "flow-through mining expenditures" (the "Qualifying Expenditures") as defined in the Income Tax Act (Canada). RPX stated that Qualifying Expenditures will be renounced to the subscribers by no later than December 31, 2018, and if the Qualifying Expenditures are reduced by the Canada Revenue Agency, the Corporation will indemnify each FT Share subscriber for any additional taxes payable by such subscriber as a result of the Corporation's failure to renounce the Qualifying Expenditures as agreed.

¶ 16 On November 27, 2018, RPX filed audited financial statements on SEDAR, showing no revenue and approximately $3.8 million in losses (exploration expenses) for the years ended July 31, 2018, and 2017.

CIBCWM Policies Prohibited Non-Brokered Private Placements

¶ 17 At the time the RPX Private Placement was announced, CIBCWM's internal policy prohibited client orders for non-brokered private placements.

¶ 18 On November 30, 2018, the Respondent received a copy of RPX's subscription agreement for the RPX Private Placement. On the same day, the Respondent's assistant emailed the CIBCWM supervisory department, to seek approval for his clients to participate in the RPX Private Placement.

¶ 19 On that day, CIBCWM's business risk advisory team advised the Respondent and his assistant that the RPX Private Placement was rejected under the firm's guidelines. These guidelines had been outlined in a July 30, 2018 communication from the firm.

¶ 20 On the morning of December 10, 2018, the Respondent received an email from RPX's CEO, attaching a Letter of Intent ("RPX LOI"), regarding RPX's intention to acquire the remaining 40% interest in the Wawa Gold Project from Citibar for $20 million cash.

¶ 21 On the afternoon of December 10, 2018, the Respondent asked his branch manager for his assistance in seeking an exception for his clients to participate in the RPX Private Placement. In his email, the Respondent indicated that his clients were interested in participating in the RPX Private Placement, that he himself was currently participating in this deal and that while the firm would not allow him to facilitate a non-brokered private placement for his clients, he felt "obligated" to recommend to his clients that they participate in the deal through another broker. The Respondent did not attach the RPX LOI to his email.

¶ 22 In the afternoon of December 10, 2018, the Respondent forwarded the RPX LOI to a client and her husband.

¶ 23 Later that same day, the Respondent forwarded the RPX LOI to the Regulatory Supervision department at CIBCWM. He was told on that day that the RPX LOI should not be distributed.

Respondent Facilitated Off-Book Investments in RPX's Private Placement

¶ 24 Between December 10 and 18, 2018, the Respondent or his assistant, on the Respondent's behalf, emailed numerous clients about the RPX Private Placement, sending them an RPX corporate presentation, and/or the RPX subscription agreements (in some cases for both non-flow-through units and for flow-through shares). Most of these clients did not previously hold RPX shares at CIBCWM as of the end of November 2018.

¶ 25 At least eight of the contacted clients participated in the RPX Private Placement and subsequently transferred the shares back to CIBCWM after a hold period expired. The total number of RPX Private Placement shares purchased by these clients was over 4 million shares.

¶ 26 The Respondent also sent RPX documentation to various individuals who were not CIBCWM clients at the time, seeking their investment in the RPX Private Placement.

¶ 27 On December 12, 2018, CIBCWM's Regulatory Supervision department emailed the Respondent (with a copy to the branch manager) and instructed him to cease any discussions with clients regarding the RPX Private Placement, to cease facilitation of these trades and to cease providing subscription agreements to clients. The Respondent's branch manager also emailed the Respondent on this date, indicating that his request for client participation had been declined.

¶ 28 Despite these instructions, the Respondent sent additional emails to clients and other potential investors between December 13 and 16, 2018 regarding participation in the RPX Private Placement. On December 17, 2018, CIBCWM supervisory personnel emailed the Respondent indicating that he had continued to send emails about the RPX Private Placement after he had been specifically instructed not to do so.

¶ 29 On December 18, 2018, the Respondent sent an additional email about participation in the RPX Private Placement. He then received a warning letter from CIBCWM dated December 19, 2018.

¶ 30 On December 21, 2018, the Respondent sent an email to a non-client about participation in the RPX Private Placement.

¶ 31 On December 10, 2018, the Respondent had executed documentation to participate himself in the RPX Private Placement and CIBCWM Business Risk Advisory Team approved the trade on December 20, 2018. The Respondent purchased 1.6 million shares in the RPX Private Placement for a total of $80,000.

Internal Conditions Imposed by CIBCWM

¶ 32 CIBCWM imposed a suspension on the Respondent from Friday January 31, 2020 to Monday February 17, 2020 (Family Day), pending an internal investigation.

¶ 33 The Respondent received a reprimand letter dated March 18, 2020 (the "Reprimand Letter") from CIBCWM indicating that the Respondent's actions were insubordinate and that he had acted in contravention of the firm's policies and procedures.

¶ 34 The Respondent was restricted by CIBCWM from personally investing in private placements, as well as from promoting or soliciting prospectus exempt securities to clients and non-clients/prospects, and/or assisting in the facilitation of any prospectus exempt securities.

¶ 35 The Respondent was fined $30,000 by CIBCWM and ordered to successfully re-write the Conduct and Practices Handbook course. Both of these conditions were completed in 2020.

¶ 36 Since March 23, 2020, the Respondent's email communications have been subject to enhanced supervision by CIBCWM.

Additional Factors

¶ 37 The Respondent has no prior disciplinary history.

¶ 38 The Respondent did not receive a financial benefit as a result of the contravention.

¶ 39 There was no financial loss to clients as a result of the contravention.

PART IV – CONTRAVENTION

¶ 40 By engaging in the conduct described above, the Respondent committed the following contravention of CIRO requirements:

> In December 2018, the Respondent facilitated off-book investments in a TSXV listed issuer, without his Dealer Member's consent, contrary to Investment Dealer Rule 1400.

PART V – TERMS OF SETTLEMENT

¶ 41 The Respondent agrees to the following sanctions and costs:

(i) A fine in the amount of $35,000;

(ii) A one-month suspension;

(iii) Two months strict supervision by CIBCWM; and,

(iv) Costs of $5,000.

¶ 42 The suspension indicated above in sub paragraph 41 (ii) is to be completed within two months of acceptance of this Settlement Agreement.

¶ 43 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

¶ 44 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.

¶ 45 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

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

¶ 47 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.

¶ 48 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.

¶ 49 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.

¶ 50 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.

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

¶ 52 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.

¶ 53 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.

¶ 54 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

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

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

DATED this "12" day of "March", 2024.

"Witness"

Article I. Witness

"Allen Murphy"

Respondent Allen Murphy

Article II. "Kathryn Andrews"

Article III. Kathryn Andrews
Senior Enforcement Counsel
on behalf of Enforcement Staff
of the Canadian Investment Regulatory Organization

The Settlement Agreement is hereby accepted this "1" day of "May", 2024 by the following Hearing panel:

Per: "Thomas Lockwood"
Chair

Per: "Sarah Shody"
Industry Member

Per: "Vanessa Gardiner"
Industry Member

[i] 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.