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*For distribution to relevant parties within your firm*

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## Discipline

### **Discipline Penalties Imposed on Michael Joseph Puccini; Violations of By-laws 29.1 and 19.5**

Person Disciplined A Hearing Panel appointed pursuant to IDA By-law 20 has imposed discipline penalties on Michael Joseph Puccini, at all material times a Registered Representative with the Halifax branch of TD Waterhouse Canada Inc., a Member of the IDA.

By-laws, Regulations, Policies Violated Following a disciplinary hearing held on March 28, 2007, in Halifax, Nova Scotia, a Hearing Panel found that Mr. Puccini violated By-laws 29.1 and 19.5 in committing the following contraventions:

1. During the period May 2005 to October 2005, the Respondent engaged in conduct unbecoming or detrimental to the public interest contrary to By-Law 29.1 in that he:
  - a) Carried out unauthorized trading in the account of EA without the client's knowledge or consent; and
  - b) Carried out unauthorized trading in the account of RG without the client's knowledge or consent.
2. In October 2005, the Respondent engaged in conduct unbecoming or detrimental to the public interest contrary to By-Law 29.1 in that he opened a margin account in the name of EA without the client's knowledge or consent and forged the signature of EA on the margin account opening application.
3. In October 2005, the Respondent engaged in conduct unbecoming or detrimental to the public interest contrary to By-Law 29.1 in that he forged the signature of TF on a security subscription agreement.

4. On July 24, 2006, the Respondent refused and/or failed to attend and give information in respect to an investigation being conducted by the Association's Enforcement Department, contrary to Association By-law 19.5.

Penalty Assessed    The discipline penalties assessed against Mr. Puccini are:

- (i) with respect to the violations of By-law 29.1 set out in count 1 of the Notice of Hearing, a fine of \$15,000 for each of the unauthorized trades, for a total of \$30,000;
- (ii) With respect to the violations of By-law 29.1 as set out in counts 2 and 3 of the Notice of Hearing, a fine of \$25,000 for each count of forgery, for a total of \$50,000;
- (iii) With respect to the violation of By-law 19.5 as set out in count 4 of the Notice of Hearing, a fine of \$50,000 for failure to cooperate with the investigation by the IDA;
- (iv) A permanent bar from approval with the Association; and
- (v) Costs to be paid to the Association in the amount of \$17,371.

Summary of Facts    At the hearing, Staff brought a Motion for an Order for substituted service of the Notice of Hearing or in the alternative, an Order dispensing with service of the Notice of Hearing. After considering the affidavit evidence filed by Association Staff, the submissions of Enforcement Counsel and after reviewing and considering the Rules of Practice and Procedure, the Hearing Panel granted the Motion brought by Staff of the Association and decided that the requirements of Rule 5.2(1)(b) had been met and that satisfactory constructive service on the Respondent had been completed and it proceeded with the hearing.

The Hearing Panel then considered and accepted Enforcement Counsel's submission that it should accept as proven the facts and violations as alleged by IDA Staff in the Notice of Hearing pursuant to Rules 7.2(1)(b) and 13.5(1).

**EA Account**

At the material time, EA was a sixty year old retired widow. EA had been a client of the Respondent since August 2004.

EA met with the Respondent when she initially opened her account. He recommended several mutual funds which were subsequently purchased. Other than this initial meeting, EA can recall only one

occasion in September or October 2005 where she and the Respondent discussed a change in her holdings in the account.

Save for the initial meeting and the one occasion in September or October, the Respondent did not speak to EA prior to executing trades in her account.

EA had been diagnosed with breast cancer and underwent surgery as a result on September 1, 2005. She was discharged from the hospital on September 12, 2005. Thereafter, she was convalescing at home. EA did not speak to the Respondent while she was in hospital.

On September 8, 2005, four trades settled in EA's account, while she was in hospital, without her knowledge or consent.

EA recalls speaking to the Respondent on one occasion in September 2005 or October 2005, wherein the Respondent recommended the purchase of a particular security. EA cannot recall which trade was solicited by the Respondent, but recalls it was a purchase of only one security.

Twelve trades were executed and settled in EA's account during the balance of the month of September. Two trades settled in EA's account on October 5, 2005, but were entered in the month of September.

EA did not speak to the Respondent prior to the execution of all but one of the aforementioned trades.

The total amount realized from the sales of the mutual fund units in EA's account in September 2005 was \$59,000. The total cost of the mutual fund units purchased in September 2005 was \$68,200. As a result, EA's account suffered a debit of approximately \$12,100. EA was not advised by the Respondent that her account was in a debit position.

On or about October 1, 2005, the Respondent submitted an Account Application form to the firm for a margin account in the name of EA. The Application was an "update" and had the effect of converting EA's cash account into a margin account. The Application form bore EA's signature.

EA did not sign the margin account form and did not authorize the Respondent to open a margin account or sign the account opening form on her behalf.

### **RG**

In April 2005 RG opened a Retirement Income Fund (RIF) account with the Respondent.

In May 2005, RG transferred two mutual funds to his TD RIF

account. In RG's initial meeting with the Respondent, the Respondent advised him that the two mutual funds he held in his account were fine and would not need to be changed.

Later that month, the Respondent sold all of the holdings in RG's account and with the proceeds, purchased three new mutual funds without RG's knowledge or consent. As a result of the sales of the two mutual funds, RG's account incurred Deferred Sales Charges (DSC) totaling \$3,438.

RG learned of the trades and DSC when he received the trade confirmation slips from TD. He contacted the Respondent several times and asked that he be reimbursed for the DSC incurred as a result of the unauthorized trades. The Respondent advised him that he was going to deal with it and have RG reimbursed.

Prior to the Respondent's termination, RG was not reimbursed for the DSC. After its termination of the Respondent TD learned of RG's complaint and reimbursed RG for the DSC.

#### **TCC Account**

In October 2005, the Respondent submitted to TD an executed Subscription Agreement for the public offering of units in KCP Income Fund by his client, TCC. TCC is a Nova Scotia corporation. TF has trading authority over the account and is an officer and director of the corporation.

The Respondent subsequently admitted that he had completed the Subscription Agreement and that he had signed TF's signature on the Agreement, as TF was out of the country at the time. The Respondent further advised that in the ten years in which TF had been his client, the Respondent had signed TF's signature on documents on three or four occasions.

#### **Failure to Cooperate**

On June 28, 2006, Association Staff wrote to the Respondent compelling him to attend for an interview on July 24, 2006, pursuant to Association By-law 19.5. The letter was sent to the Respondent by registered mail. A copy was also sent to his counsel by fax after the registered letter was returned to the Association by Canada Post.

In response to its letter to the Respondent compelling him to attend an interview pursuant to Association By-law 19.5, Association Staff received correspondence from the Respondent's counsel, advising that the Respondent would not be attending "any interview with any investigator" from the Association. The Respondent failed to attend the interview on July 24, 2006.

#### **Penalty**

Having found the Respondent guilty of all of the violations alleged in

the Notice of Hearing the Hearing Panel then considered the appropriate penalty. In determining penalty, the Hearing Panel took into the account the vulnerability of the investors affected and the fact that the Respondent had been purposely uncooperative in the IDA Staff investigation.

For further details and the complete reasons for decision on liability and penalty, please see Enforcement > Reasons for Decisions in Disciplinary Hearings on the IDA's web site ([www.ida.ca](http://www.ida.ca)).

Kenneth A. Nason  
*Association Secretary*