

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

THE BY-LAWS OF THE
INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

THE DEALER MEMBER RULES OF THE
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AND

SUNDAY BAMIDELE OPALEKE

NOTICE OF HEARING

TAKE NOTICE that pursuant to Part 10 of Dealer Member Rule 20 and Section 1.9 of Schedule C.1 to Transition Rule No.1 of the Investment Industry Regulatory Organization Canada (IIROC), a hearing will be held before a hearing panel of the IIROC (Hearing Panel) on April 14 – 16, 2014, at the Fairmont Winnipeg, in the HEC Room, 2 Lombard Pl, Winnipeg, Manitoba, at 10:00 a.m., or as soon thereafter as the hearing can be heard.

TAKE FURTHER NOTICE that pursuant to Rule 6.2 of the Dealer Member Rules of Practice and Procedure, that the hearing shall be designated on the:

The Standard Track

The Complex Track

TAKE FURTHER NOTICE that on June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada (IDA) and Market Regulation Services Inc. Pursuant to the *Administrative and Regulatory Services Agreement* between the IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for the IDA to carry out its regulatory functions.

THE PURPOSE OF THE HEARING is to determine whether the Respondent, Sunday Bamidele Opaleke, has committed the following contraventions that are alleged by IIROC:

1. Between approximately 2006 and 2012, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to three (3) clients, contrary to IIROC Rule 1300.1(a) [IDA Regulation 1300.1(a) prior to June 1, 2008];
2. Between approximately 2007 and 2012, the Respondent made investment recommendations that were not suitable for three (3) clients, contrary to IIROC Rule 1300.1(q) [IDA Regulation 1300.1(a) prior to June 1, 2008];
3. Between approximately 2006 and 2011, the Respondent made discretionary trades in the accounts of three (3) clients without first having the accounts approved and accepted as discretionary accounts, contrary to IIROC Dealer Member Rules 1300.4 and 1300.5 [IDA Regulation 1300.4 and 1300.5 prior to June 1, 2008];
4. Between approximately 2007 and 2012, the Respondent engaged in unauthorized trading with respect to one (1) client and thereby engaged in conduct unbecoming or detrimental to the public interest contrary to IIROC Dealer Member Rule 29.1 [IDA By-Law 29.1 prior to June 1, 2008]; and
5. In or about July, 2011, the Respondent offered to personally guarantee results through undisclosed compensation to one client, contrary to IIROC Dealer Member Rule 29.1.

PARTICULARS

TAKE FURTHER NOTICE that the following is a summary of the facts alleged and to be relied upon by Staff at the hearing:

Overview

1. The Respondent Sunday Bamidele Opaleke (“Opaleke”) was a Registered Representative (“RR”) responsible for the accounts of four clients – SH; JB; RM and JR.
2. Opaleke failed to know three of his clients, who were retired and/or vulnerable with limited incomes and little investment knowledge. He also failed to ensure that his recommendations were suitable for these clients as he recommended almost no low risk securities.
3. In the case of two of these vulnerable clients, Opaleke recommended significant use of margin. The use of margin, which was over 40% of market value of the accounts for extended periods of time, was not suitable for these clients in the circumstances.

4. In addition, he engaged in discretionary trading in the accounts of three clients, and engaged in unauthorized trading in one client account.
5. Opaleke also offered to personally guarantee results through undisclosed compensation to one client.

Registration History

6. Opaleke joined Edward Jones in 1998 and at all material times he was employed with Edward Jones in a sub-branch in Winnipeg, Manitoba.
7. Opaleke was the only RR on site at his sub-branch, and he was supported by an assistant who handled administrative duties.
8. Opaleke did not have the authority to conduct discretionary trades in any client accounts.
9. On April 17, 2012, Edward Jones terminated his employment. He has not worked in a registered capacity since that date.

Client - SH

Failure to Know Your Client

10. SH first opened accounts with Opaleke in 1998. She suffers from permanent physical disability and poor short term memory as a result of a 1996 motor vehicle accident. She is not able to work due to her disability, and her income consists of disability benefit payments, and spousal support payments from her ex-husband.
11. In 2008, SH sold her home in Winnipeg and moved into a cottage outside the city in order to improve her financial position. She received net proceeds from the sale of approximately \$144,000.
12. In January, 2009, the net sale proceeds were deposited with Opaleke, as SH was looking to Opaleke for advice and direction concerning the investment of these funds. Her objective was to earn 6% per annum while protecting the principal as she needed to rely on these funds in the future for income.
13. A February 2009 client account update form for her primary account, the Canadian Margin account, states that SH was 44 years old with "limited" investment knowledge. Her stated annual income was \$21,000, and she had net liquid assets of \$175,000. In effect, nearly her entire net worth was comprised of the proceeds from the sale of her home.

14. Her stated risk tolerance and investment objective parameters were 5%-95%-0% (low-medium-high); with investment objectives of cash 5%; income 59%; growth/income 20%; growth 1%; aggressive 0%; aggressive income 15%.
15. In August, 2011, her account was updated to risk tolerance of 0%-51%-49% (low-medium-high); and investment objectives of cash 0%; income 28%; growth/income 23%; growth 0%; aggressive 34%; aggressive income 15%.
16. From at least February, 2009 onward, the stated parameters permitted too much risk and were inconsistent with the client's true financial situation, investment knowledge, investment objectives and risk tolerance.
17. As such, they were not appropriate for a vulnerable client with limited income and investment knowledge, who intended to rely on her investments for income.

Suitability

18. Between June, 2007 and June, 2011, the total average balance in her accounts was \$129,293.
19. The securities recommended to SH by Opaleke were nearly all medium risk preferred shares and equity mutual funds. On average, approximately 5% of her holdings were in low risk, fixed income securities.
20. During the relevant period of approximately January, 2007 to October, 2011, SH's account earned a profit of \$8,242, a gain of 5%. During the same period, the S&P/TSX Composite Total Return Index increased 7.3% and a DEX Universe Bond Index fund returned 27.3%.
21. The lack of low risk, income-producing securities was too aggressive for a client who could not work, had limited investment knowledge, and was focused on capital preservation.
22. As such, the recommended securities were not suitable for the client in light of her employment status, investment knowledge, and financial circumstances.

Discretionary Trading

23. In an email dated February 10, 2012 in response to a query from the Edward Jones compliance department, Opaleke stated that SH gave him "verbal trading authorization" to execute trades when he was unable to contact her.
24. In subsequent emails to his compliance department on February 13 and 14, 2012, Opaleke identified seven (7) specific trades in her account between June, 2006 and October, 2011 that he had executed without obtaining her prior authorization.

25. In an interview with Staff conducted on January 22 and 31, 2013, Opaleke advised Staff that although he did not have specific prior authorization for the seven trades, he had executed these trades pursuant to a “verbal agreement” with SH which permitted him to sell securities at his discretion.
26. Although Opaleke did not have discretionary authority over any of SH’s accounts, and the accounts were not approved as discretionary, Opaleke conducted the seven trades in SH’s account at his discretion.

Client – JB

Failure to Know Your Client

27. JB was a 57 year old registered nurse when she first opened an account with Opaleke in or about June, 2004.
28. JB intended to rely on her investments when she retired, and her primary concern was having sufficient money for retirement. She was a single parent with very limited investment knowledge and she also needed money to help her son and daughter financially.
29. Between 2004 and 2012, JB held a total of four accounts – a Canadian margin account; a US margin account; an RRSP; and a TFSA. Most of the trading activity was carried out in the Canadian and US margin accounts. However, the majority of JB’s holdings were in her Canadian margin and RRSP accounts.
30. The June, 2004 NCAF for the Canadian margin account and the RRSP account states that she had an annual income of \$56,000, and net liquid assets of \$175,000. Her risk tolerance parameters were 25%-70%-5% (low – medium – high) and her investment objectives were 5% cash; 20% income; 45% growth and income; 25% growth; 5% aggressive; and 0% aggressive income. At the time, she was 57 years old.
31. An April, 2006 update for the Canadian margin account changed the risk tolerance parameters to 4%-83%-13% (low-medium-high) and the investment objectives to 0% cash; 4% income; 46% growth and income; 37% growth; 13% aggressive; and 0% aggressive income.
32. A May, 2006 NCAF update for the RRSP account changed the risk tolerance parameters to 4%-83%-13% (low-medium-high) and the investment objectives to 0% cash; 4% income; 38% growth and income; 45% growth; 13% aggressive; and 0% aggressive income.

33. The September, 2007 NCAF update for the Canadian margin account states that she had an annual income of \$56,000, and net liquid assets of \$ 175,000. Her risk tolerance parameters were 3%-73%-24% (low – medium – high) and her investment objectives were 0% cash; 3% income; 48% growth and income; 25% growth; 24% aggressive; and 0% aggressive income. At the time, she was 60 years old.
34. Despite her pending retirement, the level of risk in JB's accounts actually increased over time.
35. JB retired in 2008, but returned to work on a casual basis in 2010.
36. From at least April, 2006 onward, the stated parameters permitted too much risk and were inconsistent with the client's true financial situation, investment knowledge, investment objectives and risk tolerance.
37. As such, they were not appropriate for a vulnerable client with limited investment knowledge, who intended to rely on her investments for income.

Suitability

38. Between June, 2007 and December, 2011, the total average balance in her accounts was \$182,645.
39. The securities recommended to JB by Opaleke were nearly all medium risk issuers and equity mutual funds. Less than 5% of her combined holdings in the Canadian margin and RRSP accounts were in low risk, fixed income securities.
40. In addition, although JB did not know what margin was, or how it worked, there was a significant use of margin in the Canadian and US margin accounts.
41. During the time period of January, 2007 to April, 2012, the level of margin in the Canadian margin account ranged from 41% to 48% of the market value in 29 of the 64 months.
42. Between January, 2007 and April, 2012, the four accounts sustained total losses of \$91,853, which is 40.3% of the net amount invested. During the same period, the S&P/TSX Composite Total Return Index increased 9.5% and a DEX Universe Bond Index fund returned 29.8%.
43. The lack of low risk, income producing securities was too aggressive for a client who was a vulnerable senior with limited investment knowledge, and who intended to rely on her investments in retirement.
44. In addition, the recommended use of a high degree of leverage through margin was not at all suitable for JB as it significantly increased the level of risk and resulting losses in her accounts.

45. As such, the recommended securities, in combination with the high use of margin, were not suitable for the client in light of her age, employment status, investment knowledge, and financial circumstances.

Unauthorized Trading

46. JB travelled outside of the country on vacation numerous times per year and was not available to be contacted during those periods.
47. Between 2007 and 2012, 32 trades were conducted in her RRSP account during time periods when she was out of the country. Only 5 of these 32 trades are documented by file notes suggesting contact with JB.
48. Opaleke executed 27 trades in JB's RRSP account without first obtaining her prior authorization.

Client - RM

Failure to Know Your Client

49. RM, a sales and marketing representative, was 57 years old when she first opened accounts with Opaleke in 2002.
50. She held a Canadian margin account, an RRSP account and a TFSA with Opaleke.
51. A March, 2006 NCAF for her RRSP account states that she had moderate investment knowledge, an annual income of \$40,000, and net liquid assets of \$75,000; with risk tolerance parameters of 12%-68%-20% (low – medium – high) and investment objectives of 0% cash – 12% income – 43% growth/income; 25% growth; 20% aggressive; and 0% aggressive income.
52. A July, 2008 NCAF for her Canadian margin account provides the same income and liquid asset particulars as the RRSP account. It states that she had risk tolerance parameters of 0% -72% - 28% (low – medium – high), and investment objectives of 0% cash; 0% income; 59% growth/income; 13% growth; 28% aggressive; and 0% aggressive income.
53. RM had limited investment knowledge and assets. She was seeking low risk investments as she needed to rely on her investments in retirement.
54. Now 67 years old, RM continues to work as a sales representative earning \$40,000 per year.

55. From at least March, 2006 onward, the stated risk parameters permitted too much risk and were inconsistent with the client's true financial situation, investment knowledge, investment objectives and risk tolerance.
56. As such, they were not appropriate for a senior client with limited investment knowledge, who intended to rely on her investments for income.

Suitability

57. Between June, 2008 and December, 2011, the total average balance in her three accounts was \$57,844.
58. The securities recommended to RM by Opaleke were nearly all medium risk issuers and equity mutual funds. Between 5% and 11% of her holdings in RRSP account were in low risk, fixed income securities. There were no low risk securities in her Canadian margin account.
59. In addition, there was a significant use of margin in the Canadian margin accounts.
60. During the period of July, 2008 to April, 2012, the level of margin in the Canadian margin account ranged from 35% to 48% of the market value for 19 of the 47 months.
61. Between January, 2008 and April, 2012, RM had total losses of \$6,310, or 7.74% of the net amount invested. During the same period, the S&P/TSX Composite Total Return Index increased 5.8% and a DEX Universe Bond Index fund returned 26%.
62. Losses were approximately \$2,573 (9.1%) in the Canadian margin account and \$2,648 (6.1%) in the RRSP account.
63. The absence of low risk, income-producing securities was too aggressive for a client who was a vulnerable senior with limited investment knowledge, and who intended to rely on her investments in retirement.
64. In addition, the recommended use of a high degree of leverage through margin was not at all suitable for RM as it significantly increased the level of risk, and resulting losses, in her accounts.
65. As such, the recommended securities, in combination with the high use of margin, were not suitable for the client in light of her age, employment status, investment knowledge, and financial circumstances.

Discretionary Trading

66. Between January, 2008 and December, 2011, Opaleke executed 70 trades in the RRSP account. Opaleke's electronic notes indicate that he obtained RM's authorization for 14 trades during this period.
67. Between December, 2008 and December, 2011, Opaleke executed 25 trades in the Canadian margin account. Opaleke's electronic notes indicate that he obtained RM's authorization for 3 of the trades during this period.
68. RM states that she was never contacted by Opaleke in advance of any trades in her accounts.
69. Opaleke's electronic notes do not contain any references to contacts with RM during this period.
70. During the material time, Opaleke executed trades in RM's accounts without confirming the details of all trades with RM prior to their execution.

Client - JR

71. JR is RM's 42 year old daughter and also Opaleke's client. She held both a Canadian margin account and a TFSA.

Discretionary Trading

72. According to a 2011 NCAF for her Canadian margin account, she has liquid assets of \$100,000 and an annual income of \$40,000. Her investment experience is described as "moderate".
73. Between June, 2008 and December, 2011, Opaleke executed 143 trades in her account. Opaleke's electronic notes indicate that he obtained JR's authorization for 17 of the trades during this period.
74. JR states that she was only ever contacted by Opaleke once in advance of a trade in her account, and this occurred approximately 1 month before he was terminated by Edward Jones.
75. Opaleke's electronic notes do not contain any references to contacts with JR during this period.
76. During the material time, Opaleke executed trades in JR's accounts without confirming the details of all trades with JR prior to their execution.

Conduct Unbecoming

77. On or about July 11, 2011, Opaleke advised JR that he would ensure that she achieved at least a 7% return in her TFSA. At the time, the TFSA held a balance of approximately \$4,300.
78. In a handwritten statement dated July 11, 2011 above Opaleke's signature on an Edward Jones account statement of the same date, it states:

“I will refund the difference between amount invested and market value if below amount invested when security is sold or redeemed”
79. JR did not receive any compensation from Opaleke.
80. The offer to compensate the client JR by personally offering compensation to guarantee results without the knowledge and approval of his firm constitutes conduct unbecoming.

GENERAL PROCEDURAL MATTERS

TAKE FURTHER NOTICE that the hearing and related proceedings shall be subject to the Association's Rules of Practice and Procedure.

TAKE FURTHER NOTICE that pursuant to Rule 13.1, the Respondent is entitled to attend and be heard, be represented by counsel or an agent, call, examine and cross-examine witnesses, and make submissions to the Hearing Panel at the hearing.

RESPONSE TO NOTICE OF HEARING

TAKE FURTHER NOTICE that the Respondent must serve upon the Association a Response to the Notice of Hearing in accordance with Rule 7 within twenty (20) days (for a Standard Track disciplinary proceeding) or within thirty (30) days (for a Complex Track disciplinary proceeding) from the effective date of service of the Notice of Hearing.

FAILURE TO RESPOND OR ATTEND HEARING

TAKE FURTHER NOTICE that if the Respondent fails to serve a Response or attend the hearing, the Hearing Panel may, pursuant to Rules 7.2 and 13.5:

- (a) proceed with the hearing as set out in the Notice of Hearing, without further notice to the Respondent;

- (b) accept as proven the facts and contraventions alleged by the Association in the Notice of Hearing; and
- (c) order penalties and costs against the Respondent pursuant to By-law 20.33, 20.34 and 20.49.

PENALTIES & COSTS

TAKE FURTHER NOTICE that if the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by the Association in the Notice of Hearing, the Hearing Panel may, pursuant to By-law 20.33 and By-law 20.34, impose any one or more of the following penalties:

Where the Respondent is/was an Approved Person:

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
 - (i) \$1,000,000 per contravention; and
 - (ii) an amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention.
- (c) suspension of approval for any period of time and upon any conditions or terms;
- (d) terms and conditions of continued approval;
- (e) prohibition of approval in any capacity for any period of time;
- (f) termination of the rights and privileges of approval;
- (g) revocation of approval;
- (h) a permanent bar from approval with the Association; or
- (i) any other fit remedy or penalty.

Where the Respondent is/was a Member firm:

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
 - (i) \$5,000,000 per contravention; and

- (ii) an amount equal to three times the profit made or loss avoided by the Member by reason of the contravention;
- (c) suspension of the rights and privileges of the Member (and such suspension may include a direction to the Member to cease dealing with the public) for any period of time and upon any conditions or terms;
- (d) terms and conditions of continued Membership;
- (e) termination of the rights and privileges of Membership;
- (f) expulsion of the Member from membership in the Association; or
- (g) any other fit remedy or penalty.

TAKE FURTHER NOTICE that if the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by the Association in the Notice of Hearing, the Hearing Panel may pursuant to By-law 20.49 assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.

DATED at Calgary, Alberta, this “6” day of “January”, 2014.

“Warren Funt”

WARREN FUNT
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