Re Smith

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Preston Henry Smith

2019 IIROC 13

Investment Industry Regulatory Organization of Canada
Hearing Panel (Alberta District)

Heard: April 5, 2019 in Calgary, Alberta
Decision: April 5, 2019
Written Decision: April 30, 2019

Hearing Panel:
Daniel Ish, Q.C., Chair; Brad Whyte
Appearance:
Tayen Godfrey, Enforcement Counsel
Don McGarvey, Respondent Counsel

REASONS FOR DECISION

INTRODUCTION

¶ 1 A Settlement Agreement was entered into between IIROC and the Respondent on March 19, 2019. In accordance with Sections 8215 and 8428 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, the Settlement Agreement was presented to this Hearing Panel at a hearing conducted in Calgary, Alberta on April 5, 2019. The Hearing Panel received a Settlement Hearing Book jointly submitted by IIROC and the Respondent, which contained the proposed Settlement Agreement, relevant IIROC Rules, Disciplinary Sanction Guidelines and several decisions of previous hearing panels.

¶ 2 The Hearing Panel heard oral submissions from Enforcement Counsel and Counsel for the Respondent. The Respondent was not in attendance at the hearing because he was unable to get time off from his current employment to attend the hearing. Also, the Hearing Panel was originally structured as a three person panel but, because of an illness experienced by one of the three members, the Panel proceeded with only two members. Both IIROC Counsel and Respondent Counsel consented to the Hearing Panel proceeding with two members.

¶ 3 The proposed Settlement Agreement provided that the Respondent pay a fine of $100,000 (inclusive of disgorgement), be suspended from registration with IIROC in any capacity for a period of 2.5 years, submit to a 12 month period of close supervision upon a return to the industry, successfully rewrite the Conduct and Practices Handbook examination and pay costs to IIROC of $5,000.

¶ 4 Following a review of written and oral submissions of both Counsel and after conducting deliberations,

the Hearing Panel decided it would approve and sign the Settlement Agreement with written reasons to follow. The reasons of the Hearing Panel are set out below, with a copy of the Settlement Agreement appended as Appendix "A" and incorporated into this decision.

THE CONTRAVENTIONS

¶ 5 The contraventions alleged by IIROC and admitted to by the Respondent Preston Henry Smith are set out in the Settlement Agreement as follows:

(i) The Respondent made recommendations that were not suitable for his clients and failed to use due diligence to learn and remain informed of the essential facts regarding his clients, contrary to Dealer Member Rules 1300.1(a) and 1300.1(q), as follows:

a. Between July 2011 and August 2014, for clients BB and JB

b. Between July 2011 and December 2014, for clients DS and KS

c. Between October 2012 and May 2015, for clients JF and JOF

d. Between August 2012 and March 2015, for clients GR and RR

e. Between July 2011 and October 2015, for client AJ.

(ii) Between March 2012 and March 2015, the Respondent failed to use due diligence to learn and remain informed of the essential facts pertaining to his client KS, contrary to Dealer Member Rule 1300.1(a).

A SUMMARY OF THE FACTS

¶ 6 The allegations involve the Respondent failing in his duty to know his clients and recommending investments that were inconsistent with his clients' personal and financial circumstances. The recommendations included the clients' purchasing speculative investments at an unsuitable level of high risk and the purchase of certain high risk corporate debentures. As well, the Respondent altered one of the client's account documents without the client's approval.

¶ 7 The Respondent became a Registered Representative in 1988. The conduct in question took place while he was employed at Blackmont Capital Inc., Macquarie Private Wealth Inc. (which acquired Blackmont Capital Inc.) and Richardson GMP Ltd. (which acquired Macquarie Private Wealth Inc.). The Respondent is not currently working as a Registered Representative.

¶ 8 The allegations pertain to six different groups of clients occurring between July 2011 and March 2015. Four of the six groups of clients were married couples; thus, in total ten individuals were involved. The clients ranged in age from their mid-50s to their mid-70s.

¶ 9 All of the clients were investing to fund their impending or existing retirement. In most cases, the Respondent was overseeing the majority, if not all, of the clients' liquid assets. Despite this, over the life of the accounts the high risk allocations on the New Client Account Forms ("NCAF") grew to inappropriate levels for most of the clients. In many cases, the clients' NCAFs identified allocations of 100% high risk. In several cases, the risk tolerances and objectives were changed to match the clients' holdings. In most cases, the clients' holdings were inconsistent with their personal and financial circumstances.

¶ 10 The clients' holdings contained an unsuitable level of high risk and speculative investments. In addition, the risk in the accounts was exacerbated by holdings being concentrated in TSX Venture issuers, the oil and gas sector, the industrial sector and high risk corporate debentures.

¶ 11 While these clients' accounts contained a number of different types of high-risk securities, a significant factor contributing to the clients' unsuitable holdings was the Respondent's recommendations to invest in a number of corporate debentures.

¶ 12 Between June of 2011 and October of 2013, Macquarie Private Wealth Inc. was the agent for prospectus offerings for a number of corporate debentures. The Respondent recommended these investments to many of his clients, including the above-noted clients.

¶ 13 These corporate debentures included the following:

a. Family Memorials 10% 15Jun16 ("Family Memorials 10%")

b. Family Memorials 12% 31Jan16 ("Family Memorials 12%")

c. Southern Pacific 8.75% 25Jan15/18 ("Southern Pac")

d. Magnum Energy CV 11% 19June15 ("Magnum Energy")

e. Shoreline Energy CV 9.25% 30Sep15. ("Shoreline Energy").

¶ 14 The Respondent would eventually earn approximately $1,136,928.00 in compensation through the sale of these particular securities. This represented just over half of the fees earned by the firm. Of that, approximately $65,355.00 was earned from approximately $1,864,705.00 in sales of debentures to these particular clients.

¶ 15 The Respondent incorrectly thought the debentures were low risk investments, and many of the clients thought they were purchasing low risk bonds. However, the debentures were actually high risk investments with the following attributes:

a. They were speculative and involved a high degree of risk.

b. They were illiquid: there was no market through which they may be sold and purchasers may not be able to resell the debentures.

c. There was a risk that the issuers may be unable to pay interest or principal on the debentures when due.

d. There were no assurances that an active or liquid trading market for the debentures would develop or be sustained.

¶ 16 Between August and September 2012, the Respondent was informed by his firm that these debentures were actually high risk investments. Notwithstanding this advice/warning, the Respondent continued recommending the debentures to a number of the clients after being informed they were high risk investments.

¶ 17 The value of the clients' debenture investments fell significantly, contributing to the overall decline in value of the clients' accounts.

¶ 18 In some instances, the recommendations of the Respondent resulted in the clients' accounts falling outside the risk tolerances and objectives identified in their NCAFs. When this was noted by the firm's compliance department, the Respondent had these clients increase the risk tolerances to match their high risk holdings. In some instances high risk allocations moved from between 20% and 30% to 90% and 100%.

¶ 19 The financial losses experienced by the clients were significant. Also, as mentioned, the commissions earned by the Respondent on trades that were inappropriate for the clients were also significant. Of the ten clients, five of them have entered into compensation agreements with Richardson GMP Ltd. The Respondent has not reimbursed the firm for these client payments.

ANALYSIS and DECISION

¶ 20 The issue for the Hearing Panel was whether to accept or reject the proposed settlement. It is not within our authority to alter the Settlement Agreement in any manner. In *Re Milewski*, [1999] I.D.A.C.D. No. 17 the following paragraph was written concerning the role of a Hearing Panel dealing with a Settlement

Agreement. In the 1999 decision the equivalent body to the Hearing Panel was the District Counsel but the comments set out in that case, which have been cited numerous times in the 20 years since they were written, have been universally accepted. At page 10 of the decision the following was stated:

> Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

Thus, the role of this Hearing Panel is not to determine the appropriate penalty on the same basis as we might if we were making an initial determination with respect to penalty; rather, we must determine whether the penalty agreed to by IIROC and the Respondent, as reflected in the Settlement Agreement, is within a reasonable range of appropriateness.

¶ 21 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.

¶ 22 The Hearing Panel in *Re Scotia Capital* also referred to a relatively recent decision of the Supreme Court of Canada that dealt with agreed to 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 the 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).

¶ 23 The Hearing Panel in *Re Scotia Capital* then concluded:

> ¶ 11 The views of the Hearing Panel in *Bugden (Re)* above quoted are closely parallel to the views expressed by the Supreme Court of Canada in *R. v. Anthony-Cook*. It is in the public interest that joint settlement agreements be encouraged. The standard to be applied by the approving body should be lowered from that which would be applicable in a contested hearing, as it is in the public interest to do so. That fundamental principle applies to all levels of courts and boards and regulatory hearing panels and is not restricted to criminal proceedings alone.

¶ 24 In their submissions to the Hearing Panel, Counsel made reference to IIROC's Sanction Guidelines and to several other IIROC previous decisions including:

- *Re Yasinowski*, 2018 IIROC 29
- *Re Yaskiw*, 2017 IIROC 19
- *Re Thai*, 2016 IIROC 6
- *Re Ricci*, 2014 IIROC 24
- *Re Eley*, 2014 IIROC 52
- *Re Dickson*, 2013 IIROC 53.

¶ 25 In making the decision to accept the Settlement Agreement in this case we were guided by the comments and principles outlined by the numerous Hearing Panels in the decisions cited above, as well as by the Supreme Court of Canada. Thus, our task was to determine, in light of the agreed to infractions, whether the penalty agreed to in the Settlement Agreement was within the range of appropriateness. In doing so we continued to be reminded that in addition to the individual circumstances of the Respondent, there is an overall public policy goal and objective that must be taken into account by Hearing Panels when they are determining appropriate disciplinary sanctions for infractions of IIROC's rules and regulations. It is these two interests that must be balanced. (See *Re Gareau*, 2011 LNIIROC 72)

¶ 26 A perusal of the facts in the above-noted IIROC cases and the penalties imposed in those cases lead to the conclusion that the penalties in the Settlement Agreement are within an appropriate range. The facts in some of the cases were similar to the ones before us in that some dishonest conduct was often involved, such as signing an NCAF without a client's authorization. Also, in the present case, the Respondent on one occasion altered a client's NCAF to increase the risk of his investment profile without the knowledge or consent of the client. In most of the cases, the penalties were less severe than the ones agreed to in the present case, which includes a 2.5 years suspension and a $100,000 fine. Nevertheless, we accept the penalty as justified because of the blatant falsifying of a document by the Respondent without the clients' authorization or knowledge.

¶ 27 In addition to comparing the sanctions imposed by the Settlement Agreement to that imposed by hearing panels in past cases, we considered the particular facts of this case including the situation and circumstances of the clients as well as that of the Respondent. The Hearing Panel considered IIROC's Sanction Guidelines as indicative of industry expectations and as relevant to determining an appropriate penalty, although it is recognized that they are neither exhaustive nor determinative. The factors we took into consideration in determining that the Settlement Agreement is acceptable were the following:

(a) The Respondent made recommendations that were clearly not suitable for his clients and he failed to use due diligence to learn and remain informed of the essential facts regarding his clients or, alternatively, he knowingly ignored the essential facts regarding his clients' circumstances and risk tolerances.

(b) The Respondent altered an NCAF for Client K.S., who was related to him, without the knowledge and consent of K.S.

(c) The Respondent has not worked as a Registered Representative since 2017. He is currently employed earning an hourly rate just above minimum wage. Also, he has declared bankruptcy.

(d) Aggravating factors:

(i) The Respondent continued to recommend debentures to his clients after being specifically told the debentures were high risk investments;

(ii) the Respondent changed risk tolerances knowing that they were inappropriate for his clients;

(iii) with respect to Client KS, the Respondent falsely altered the clients' NCAF without consent or knowledge of the client;

(iv) the amount of losses resulting to the clients were significant;

(v) the Respondent earned commissions from his inappropriate actions;

(vi) the Respondent's inappropriate actions occurred over a significant interval of time.

(e) Mitigating factors:

(i) The Respondent has no prior disciplinary record;

(ii) the Respondent has been in the industry since 1988;

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

¶ 28 This Hearing Panel concluded that the proposed sanctions in the Settlement Agreement are appropriate to the conduct of the Respondent, taking into account the goal of promoting general adherence to industry rules and standards, the goals of the disciplinary process whose prime function is to protect the public, the maintenance of the reputation of the securities industry and the personal circumstances of the Respondent as represented by the parties in the hearing. Therefore, the Hearing Panel decided that the sanctions as provided for in the Settlement Agreement and costs fall within the range of appropriateness and are reasonable. As a result, we accepted and executed the Settlement Agreement on April 5, 2019.

Dated this 30 day of April 2019.

Daniel Ish

Brad Whyte

APPENDIX "A"

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada ("IIROC") will issue a Notice of Application to announce that it will hold a settlement hearing to consider whether, pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, a hearing panel ("Hearing Panel") should accept the settlement agreement ("Settlement Agreement") entered into between the staff of IIROC ("Staff") and Preston Henry Smith ("Respondent").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. 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. These allegations pertain to six different groups of clients. These matters involve the Respondent failing in his duty to know his clients, and recommending investments that were inconsistent with his client's personal and financial circumstances. This includes recommending the purchase of certain high-risk corporate debentures, the risks of which the Respondent and his clients did not fully appreciate, as well as the unapproved alteration of one client's account document.

Registration History

5. The Respondent is currently not working as a Registered Representative. The Respondent became a Registered Representative in 1988. The conduct in question took place while he was employed at the following Dealer Members:

    a. Blackmont Capital Inc.

    b. Macquarie Private Wealth Inc. (which acquired Blackmont Capital Inc.)

    c. Richardson GMP Limited (which acquired Macquarie Private Wealth Inc.).

The Clients

6. These allegations pertain to the following six different groups of clients (collectively and individually, the "Clients") during the specified time periods:

    a. BB and his spouse JB ("Mr. and Mrs. B") between July 2011 and August 2014

    b. DS and his spouse KS ("Mr. and Mrs. S") between July 2011 and December 2014

    c. JF and his spouse JOF ("Mr. and Mrs. F") between October 2012 and May 2015

    d. RR and his spouse GR ("Mr. and Mrs. R") between August 2012 and March 2015

    e. AJ between July 2011 and October 2015

    f. KS between March 2012 and March 2015.

Failure to Know the Clients

7. All of the Clients were investing to fund their impending, or existing, retirement. In most cases, the Respondent was overseeing the majority, if not all, of the Clients liquid assets. Despite this, over the life of the accounts the high risk allocations on the New Client Account Forms ("NCAF") grew to inappropriate levels for most of the Clients. In many cases, the Clients' NCAFs identified allocations of 100% high risk. In several cases, the risk tolerances and objectives were changed to match the Clients' holdings. In most cases, the Clients' holdings were inconsistent with their personal and financial circumstances.

Unsuitable Investments

8. In most cases, the Clients' holdings contained an unsuitable level of high risk and speculative investments. In addition, the risk in the accounts was exacerbated by the holdings being concentrated in the following areas:

    a. TSX Venture issuers

b. The Oil and Gas sector

c. Industrial sector

d. High risk corporate debentures.

The Role of Corporate Debenture Investments

9. While these Clients' accounts contained a number of different types of high risk securities, a significant factor contributing to the Clients' unsuitable holdings was the Respondent's recommendations to invest in a number of corporate debentures.

10. Between June of 2011 and October of 2013, Macquarie Private Wealth Inc. was the agent for prospectus offerings for a number of corporate debentures. The Respondent recommended these investments to many of his clients, including the above-noted Clients.

11. These corporate debentures (collectively and individually the "Debentures") included the following:

a. Family Memorials 10% 15Jun16 ("Family Memorials 10%")

b. Family Memorials 12% 31Jan16 ("Family Memorials 12%")

c. Southern Pacific 8.75% 25Jan15/18 ("Southern Pac")

d. Magnum Energy CV 11% 19Jun15 ("Magnum Energy")

e. Shoreline Energy CV 9.25% 30Sep15. ("Shoreline Energy").

12. The Respondent would eventually earn approximately $1,136,928.00 in compensation through the sale of these particular securities. This represented just over half of the fees earned by the firm. Of that, approximately $65,355.00 was earned from approximately $1,864,705.00 in sales of Debentures to these Clients.

Risks of Debentures Misunderstood

13. The Respondent incorrectly thought these Debentures were low risk investments, and many of the Clients thought they were purchasing low risk bonds. However, the Debentures were actually high risk investments with the following attributes:

a. They were speculative and involved a high degree of risk

b. They were illiquid: there was no market through which they may be sold and purchasers may not be able to resell the Debentures

c. There was a risk that the issuers may be unable to pay interest or principal on the Debentures when due

d. There were no assurances that an active or liquid trading market for the Debentures would develop or be sustained.

14. Between August and September 2012, the Respondent was informed by his firm that these Debentures were actually high risk investments. The Respondent continued recommending the Debentures to a number of the Clients after being informed they were high risk investments.

15. The value of the Clients' Debenture investments fell significantly, contributing to the overall decline in value in the Clients' accounts.

Risk Tolerances Increased to Match the Holdings

16. In some instances, the purchase of Debentures resulted in the Clients' accounts falling outside the risk tolerances and objectives identified in their NCAFs. When this was noted by the firm's compliance

department the Respondent had these Clients increase the risk tolerances to match their high risk holdings.

Client Compensation

17. The following clients have entered into compensation agreements with Richardson GMP Limited: Mr. & Mrs. S, Mr. & Mrs. R, and KS. The Respondent has not reimbursed the firm for these client payments.

Specific Client Details

18. Specific details pertaining to each group of Clients are set out below.

Mr. & Mrs. B

Background

19. Mr. & Mrs. B were saving for their retirement. Between July of 2011 and August of 2014, the Respondent oversaw the following six accounts for these clients:

    a. Mr. B held a Registered Retirement Savings Plan account ("RRSP"), Locked in Retirement Account ("LIRA"), Tax Free Savings Account ("TFSA") and a Cash account with nominal value

    b. Mrs. B held a Spousal RRSP and TFSA.

20. Collectively, these accounts contained all of Mr. & Mrs. B's liquid assets. In July of 2011 Mr. & Mrs. B were aged 52 and 48, respectively.

Failure to Know Mr. & Mrs. B

21. Over the life of Mr. & Mrs. B's accounts both the risk allocations stated in their NCAFs, and the risk in their holdings, increased to levels inconsistent with their personal and financial circumstances. These circumstances included:

    a. The accounts comprised the entirety of their liquid assets

    b. They were saving for retirement and nearing retirement age

    c. They did not want excessive risk in their accounts

    d. They had limited investment knowledge

    e. They did not know the difference between a corporate debenture and a bond

    f. They were reliant on the Respondent for investment advice.

22. Prior to the relevant period, the NCAFs for all six of Mr. & Mrs. B's accounts identified high risk allocations between 20% and 30%. This allocation eventually grew to 90% and 100%, when they were aged 52 and 49, respectively.

23. On October 29, 2012, Mrs. B increased the high risk allocation for her Spousal RRSP account to 100% high risk. This increase came shortly after a $23,000 Debenture purchase the Respondent had recommended. After the purchase, the firm's compliance department raised concerns about the level of risk in Mrs. B's accounts. The Respondent then had Mrs. B raise increase this allocation from the already excessive 80%, to 100%.

Unsuitable Recommendations for Mr. & Mrs. B

24. The risk in Mr. & Mrs. B's holdings grew to inappropriate levels throughout the life of the accounts. As of June 30, 2011 the combined high risk holdings for all six of their accounts was $59,883.00 (23%). By December 31, 2013, this grew to approximately $305,328.00 (78%). A significant number of their investments were TSX Venture issuers and were concentrated in the Oil and Gas sector and the

Industrial sector.

Impact of Debenture Purchases

25. While Mr. & Mrs. B's accounts contained a number of different high risk securities, the Respondent's recommendation to purchase Debentures significantly contributed to the unsuitable level of risk in these Clients' accounts.

26. Between July of 2011 and October of 2013, Mr. & Mrs. B made Debenture purchases totaling $158,030.00. During that same time the average combined balance in Mr. & Mrs. B's accounts was $343,708.00.

Significant High Risk Holdings

27. As a result of the Respondent's recommendations, the Debentures and other high risk securities eventually made up an inappropriate portion of Mr. & Mrs. B's holdings:

Date	High Risk Holdings	Debentures
31/12/2011	$191,316 (52%)	$60,263 (16%)
31/12/2012	$196,939 (65%)	$143,356 (47%)
31/12/2013	$305,328 (78%)	$132,196 (34%)
31/08/2014	$220,675 (67%)	$125,440 (38%)

28. When Mr. & Mrs. B's accounts were transferred out they still held all of the Debentures.

Impact on Mr. & Mrs. B

29. Between approximately July of 2011 and August of 2014 Mr. and Mrs. B accounts had declined in value by of $58.809.00 representing a 15% decline in their initial investment.

30. The value of their $158,030 investment in Debentures declined by $32,590. When accounting for the $30,940 in interest this security generated, the unrealized loss for this investment is $1,650 (1%).

31. The S&P/TSX Composite Index returned 20.7% during the same period.

Mr. & Mrs. S

Background

32. Mr. and Mrs. S were saving for their retirement. Between July of 2011 and December of 2014 the Respondent oversaw the following seven accounts for these clients:

    a. Mr. S held a RRSP, TFSA and Canadian Investment Account

    b. Mrs. S held a RRSP, Spousal RRSP, and TFSA

    c. Together they held a Joint RRSP.

33. Collectively, these accounts contained all of Mr. & Mrs. S's liquid assets. In July 2011 Mr. & Mrs. S were aged 57 and 56, respectively.

Failure to Know Mr. & Mrs. S

34. Over the life of Mr. & Mrs. S's accounts both the risk allocations stated in their NCAFs, and the risk in their holdings, increased to levels inconsistent with their personal and financial circumstances. Which included:

    a. The accounts comprised the entirety of their liquid assets

b. They were saving for retirement and nearing retirement age

c. They had limited investment knowledge

d. They were not aware the Debentures were high risk investments

e. They didn't want high risk investments

f. They were reliant on the Respondent for investment advice.

35. Prior to September of 2011 the NCAFs for all seven of Mr. & Mrs. S's accounts identified high risk allocations between 10% and 30%. With the exception of the Canadian Investment Account this allocation eventually grew to range between 85% and 100%, when they were aged 57 and 59, respectively.

36. On October 24, 2012, Mrs. S increased the high risk allocation for her accounts to 80% high risk. This increase came shortly after the Respondent had recommended a series of Debenture purchases totaling $90,000.00. After the purchases, the firm's compliance department raised concerns about the level of risk in Mrs. S's accounts. The Respondent then had Mrs. S increase this allocation from 10% to 80%.

Unsuitable Recommendations

37. The risk in Mr. & Mrs. S's holdings grew to inappropriate levels throughout the life of the accounts. Just prior to the relevant period the combined high risk holdings for all seven of their accounts was $31,408.00 (7.3%). By December 31, 2013, this grew to approximately $352,075.00 (57%). A significant number of their investments were TSX Venture issuers and were concentrated in the Oil and Gas sector and the Industrial sector.

The Impact of Debenture Purchases

38. While Mr. & Mrs. S's accounts contained a number of different high risk securities, the Respondent's recommendation to purchase Debentures significantly contributed to the unsuitable level of risk in these clients' accounts.

39. Between July of 2011 and November of 2014, Mr. & Mrs. S made Debenture purchases totaling $270,150.00. During that same time the average combined balance in Mr. & Mrs. S's accounts was $569,117.00.

Inappropriate High Risk Holdings

40. As a result of the Respondent's recommendations, the Debenture's and other high risk securities eventually made up an inappropriate portion of Mr. & Mrs. S's holdings:

Date	High Risk Holdings	Debentures
31/12/2011	$116,029 (20%)	$25,110 (4%)
31/12/2012	$231,878 (41%)	$195,670 (35%)
31/12/2013	$352,075 (57%)	$220,345 (35%)
31/12/2014	$147,854 (39%)	$106,294 (28%)

41. When Mr. & Mrs. S's accounts were transferred out they still held the majority of the Debentures.

Impact on Mr. & Mrs. S

42. At December of 2014 the value of Mr. and Mrs. S's accounts declined in value by $203,106.00, which represented 32% loss on their investment. The value of their $270,150.00 investment in Debentures

declined by $163,871.00. When accounting for the $49,753.00 in interest this security generated and the $27,652.00 in redemptions received, the loss for this investment is $86,466.00 (32%).

43. During that same period the S&P/TSX Composite Index returned 13%.

Mr. & Mrs. F

Background

44. Mr. and Mrs. F would eventually retire in April of 2013. Between October 31, 2012 and May 31, 2015 the Respondent oversaw the following nine accounts for these clients:

    a. Mrs. F held a RRSP, Spousal RRSP and a TFSA

    b. Mr. F held a RRSP, TFSA, LIRA and Canadian Investment Account

    c. Mr. & Mrs. F were both signatories on a Corporate Account and held a Joint Canadian Investment Account.

45. Collectively, these accounts contained all of Mr. & Mrs. F's liquid assets. In October of 2012 Mr. and Mrs. F were 60 and 58 years old, respectively.

Failure to Know Mr. & Mrs. F

46. Throughout the life of the accounts, both the high risk allocations, and the risk in their holdings, were inconsistent with Mr. & Mrs. F's personal and financial circumstances. These circumstances included:

    a. Their accounts comprised the entirety of their liquid assets

    b. They were saving for retirement and eventually retired in April of 2013

    c. They wanted to diversify their portfolio: when they transferred their assets to the Respondent's care, they were heavily concentrated in the Oil and Gas sector, with 84% of their account consisting of Tourmaline Oil Corp. ("Tourmaline")

    d. They did not appreciate the high risk nature of their Debenture investments

    e. While at times Mr. F had made his own trade suggestions to the Respondent, they were reliant on the Respondent for advice.

47. When all nine accounts were opened the NCAFs identified 100% high risk allocations. With the exception of the corporate account (for which the high risk allocation was reduced to 95%) the risk allocations remained unchained during the life of the accounts, even after Mr. & Mrs. F retired in April of 2013.

Unsuitable Recommendations

48. The risk levels in Mr. & Mrs. F's holdings were inappropriate throughout the life of their accounts. While the Respondent made recommendations that reduced their concentration of Tourmaline holdings, Mr. & Mrs. F's high risk holdings grew and their accounts remained significantly concentrated in the Oil and Gas sector.

49. In October of 2012, Mr. & Mrs. F's accounts contained mostly medium risk investments, which mostly consisted of Tourmaline. The accounts did not contain any high risk investments. By June 30, 2013, the combined high risk holdings for all nine accounts grew to approximately $1,103,808.00 (29%).

50. In addition, the risk in the accounts was exacerbated by the holdings continued concentrated in the Oil and Gas sector. Despite wishing to diversify their portfolio, Mr. & Mrs. F's investments in the Oil and Gas sector would makeup between 53% and 75% of their holdings. The Respondent mistakenly thought this level of concentration was suitable, given Mr. F's experience working in the Oil and Gas

sector.

Impact of Debenture Purchases

51. While Mr. & Mrs. F's accounts contained a number of different high risk securities, the Respondent's recommendation to purchase Debentures significantly contributed to the unsuitable level of risk in these clients' accounts.

52. Between December 2012 and February 2015 Mr. & Mrs. F made Debenture purchases totaling $1,126,465.00. During that same time the average combined balance in Mr. & Mrs. F's accounts was approximately $3,360,066.00.

Inappropriate High Risk Holdings

53. As a result of the Respondent's recommendations, the Debenture's and other high risk securities eventually made up an inappropriate portion of Mr. & Mrs. F's holdings:

Date	High Risk Holdings	Debentures
31/12/2012	$107,000 (3%)	$107,000 (3%)
31/12/2013	$984,797 (29%)	$647,167 (19%)
31/12/2014	$361,695 (14%)	$338,608 (13%)
31/05/2015	$269,338 (10%)	$255,738 (9%)

54. When Mr. & Mrs. F's accounts were transferred out they still held the majority of their Debenture investments.

Impact on Mr. & Mrs. F

55. Between October of 2012 and May of 2015, Mr. and Mrs. F's accounts had declined in value by of $488,415 representing a 16% decline in their initial investment.

56. The value of their $1,126,465.00 investment in Debentures declined by $603,618.00. When accounting for the $131,370.00 in interest this security generated and the $95,400.00 in redemptions, the loss for this investment is $376,848.00 (44%).

57. The S&P/TSX Composite Index returned 20.86% during the same period.

Mr. & Mrs. R

Background

58. Mr. & Mrs. R were relying on their investments for income. Between August 2012 and March 2015 the Respondent oversaw two RRIF accounts for Mr. & Mrs. R. Collectively, these accounts contained approximately 68% of Mr. & Mrs. R's liquid assets, with the remaining 32% (approximately $40,000) held in a nominal interest bearing account. In August of 2012, Mr. & Mrs. R were 76 and 75 years old, respectively.

Failure to Know Mr. & Mrs. R

59. Mr. & Mrs. R completed two NCAFs at the accounts' openings in July of 2008 and Mrs. R's NCAF was updated in November of 2008. There were no subsequent updates throughout the life of the accounts. The high risk allocation for the two accounts was 10% (Mr. R) and 0% (Mrs. R).

60. Mr. & Mrs. R's holdings exceeded their high risk allocations, and were inconsistent with their personal and financial circumstances. These circumstances included:

a. Their accounts contained the majority of their liquid assets;

b. At the beginning of the relevant period they were 76 and 75 years old and retired;

c. They were relying on their RRIF accounts for income;

d. They did not want any high risk investments; and

e. They thought the Debentures were low risk bonds.

Unsuitable Recommendations for Mr. & Mrs. R

61. Just prior to the relevant period, Mr. & Mrs. R's accounts were invested entirely in medium risk (23%) and low risk (77%) investments. By December 31, 2012 the high risk holdings grew to approximately $30,280.00 (33%). In addition, the risk in the accounts was exacerbated by the holdings concentration in the Energy sector. This concentration grew from 17% of their holdings to a high of 56%.

62. Both Mr. & Mrs. R's accounts consistently exceeding their high risk allocations of 10% and 0%. The high risk component in Mr. & Mrs. R's account was only reduced as a result of a large decline in the market value of their Debenture holdings.

Impact of Debentures

63. Almost the entirety of Mr. & Mrs. R's high risk holdings were a result of the August 8, 2012, $30,000.00 purchase of Magnum Energy 11%:

Date	High Risk Holdings (Debentures)
31/12/2012	$30,280 (33%)
31/12/2013	$22,780 (28%)
31/12/2014	$1,780 (3%)
31/03/2015	$2,594 (4%)

64. The December 2014 reduction was due to a decline in the value of the Debentures.

65. When Mr. & Mrs. R's accounts transferred out their accounts in April 2015 they still held their purchases of Magnum Energy 11%.

Impact on Mr. & Mrs. R

66. Mr. and Mrs. R accounts decreased in value by $9,086.00 representing a 13% loss on their initial investment.

67. However, while the overall account values increased, the value of their $30,000.00 investment in Magnum Energy 11% declined by $27,406.00. When accounting for the $5,976.00 in interest this security generated the unrealized loss for this investment is $21,430.00 (71%).

68. The S&P/TSX Composite Index returned 24.7% during the same period.

AJ

Background

69. AJ was saving for her retirement. Between July 2011 and October 2015 the Respondent oversaw a RRSP Account and a Canadian Investment Account (a third Margin Account was closed in November of 2011).

70. Collectively, these accounts contained all of AJ's liquid assets. In July of 2011, AJ was 48 years old.

Failure to Know AJ

71. Over the life of AJ's accounts, both the risk allocations stated in her NCAFs, and the risk in her holdings, increased to levels inconsistent with her personal and financial circumstances. These circumstances included:

    a. She was saving for retirement

    b. The bulk of her investments funds came from inheritances

    c. She had health issues that impacted her ability to work

    d. She did not want excessive risk in her accounts

    e. She did not understand the risks associated with Debentures

    f. She was reliant on the Respondent for investment advice.

72. Just prior to the relevant period the NCAFs for AJ's two accounts identified high risk allocations of 40% (Canadian Investment Account) and 20% (RRSP account). This eventually grew to 70% and 100%, when she was 50 years old.

Unsuitable Recommendations for AJ

73. The risk in AJ's holdings grew to inappropriate levels throughout the life of her accounts. Prior to the relevant period her combined high risk holdings was $179,780.00 (28%). This number eventually grew to a high of approximately $299,050.00 (44%). Her accounts held a significant number of high risk investments in TSX Venture issuers and were concentrated in the Oil and Gas sector.

Impact of Debentures

74. While AJ's accounts contained a number of different high risk securities, the Respondent's recommendation to purchase Debentures significantly contributed to the unsuitable level of risk in these clients' accounts.

75. In July of 2011, the Respondent began recommending the purchase of the Debentures for AJ's accounts. Between July 2011 and October 2015 AJ made Debenture purchases totaling $280,060.00. During that same time, the average combined balance in AJ's accounts was $601,512.00.

Inappropriate High Risk Holdings

76. As a result of the Respondent's recommendations, the Debenture's and other high risk securities eventually made up an inappropriate portion of AJ's holdings:

Date	High Risk Holdings	Debentures
31/12/2011	$215,143 (31%)	$75,329 (11%)
31/12/2012	$275,158 (39%)	$251,029 (36%)
31/12/2013	$299,050 (44%)	$229,904 (34%)
31/12/2014	$124,723 (29%)	$108,271 (25%)
31/10/2015	$85,416 (22%)	$70,382 (18%)

77. When AJ's accounts were moved in October 2015 they still held all of the Debentures.

Impact on AJ

78. AJ's accounts had declined in value by $224,467.00 representing a 37% decline in her initial

investment.

79. The value of her $280,060.00 investment in Debentures declined by $209,684.00. When accounting for the $68,918.00 in interest this security generated, and the $19,152.00 in redemptions received, the loss for this investment is $121,614.00 (43%).

80. The S&P/TSX Composite Index returned 4.5% during the same period.

KS

81. KS is related to the Respondent. In March 2012 he was 61 years old and was saving for his retirement.

82. In July 2011 the Respondent recommended KS purchase various Debentures. By January 2012, the Respondent's compliance department raised concerns about the risk in KS's accounts. Shortly after, in March 2012, KS executed an NCAF which slightly increased the risk profile on his NCAF. He then mailed the NCAF to Macquarie Private Wealth Inc. Eleven days later the NCAF was signed by the Respondent, as the investment advisor of record.

83. However, the Respondent altered KS's NCAF to further increase the risk of his investment profile. The changes to the document were carried out using liquid paper, and was done without the knowledge or consent of KS. They include:

    a. Venture Speculative allocation was increased from 20% to 100%

    b. High risk allocation was increased from 20% to 50%

    c. Low risk allocation was decreased from 40% to 0%.

84. These changes were not consistent with the KS's personal and financial circumstances, nor his intended investment parameters. These inappropriate investment parameters were not updated until March 2015.

Respondent's Personal Circumstances

85. The agreed sanctions set out below take into consideration the Respondent's personal and financial situation. This includes, the Respondent:

    a. is currently 59 years old

    b. has not worked in the investment industry since December 2017

    c. is presently employed in an unrelated job, earning an hourly rate just above minimum wage

    d. has recently declared bankruptcy.

PART IV – CONTRAVENTIONS

86. By engaging in the conduct described above, the Respondent committed the following contraventions of IIROC's Rules:

    (i) The Respondent made recommendations that were not suitable for his clients and failed to use due diligence to learn and remain informed of the essential facts regarding his clients, contrary to Dealer Member Rules 1300.1(a) and 1300.1(q), as follows:

        a. Between July 2011 and August 2014, for clients BB and JB

        b. Between July 2011 and December 2014, for clients DS and KS

        c. Between October 2012 and May 2015, for clients JF and JOF

        d. Between August 2012 and March 2015, for clients GR and RR

e. Between July 2011 and October 2015, for client AJ.

(ii) Between March 2012 and March 2015, the Respondent failed to use due diligence to learn and remain informed of the essential facts pertaining to his client KS, contrary to Dealer Member Rule 1300.1(a).

PART V – TERMS OF SETTLEMENT

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

a) A fine in the amount of $100,000.00, inclusive of disgorgement

b) Suspension from acting in a registered capacity for 2.5 years

c) Period of close supervision for 12 months

d) Successful rewrite of the Conduct and Practices Handbook exam

e) Pay costs to IIROC in the amount of $5,000.00.

88. If this Settlement Agreement is accepted by the Hearing Panel, the amounts referred to above are due and payable within 30 days of such acceptance unless otherwise agreed between Staff and the Respondent.

PART VI – STAFF COMMITMENT

89. If the Hearing Panel accepts this Settlement Agreement, 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.

90. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

91. This Settlement Agreement is conditional on acceptance by the Hearing Panel.

92. This Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing in accordance with the procedures described in Sections 8215 and 8428, in addition to any other procedures that may be agreed upon between the parties.

93. Staff and the Respondent agree that this Settlement Agreement will form all of 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.

94. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights under the IIROC Rules and any applicable legislation to any further hearing, appeal and review.

95. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement or Staff may proceed to a disciplinary hearing based on the same or related allegations.

96. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.

97. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full of copy of this Settlement Agreement on the IIROC website. IIROC will

also publish a summary of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement.

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

99. The Settlement Agreement is effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

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

101. A fax or electronic copy of any signature will be treated as an original signature.

DATED this 19 day of March, 2019.

"Witness"

Witness

"Preston Henry Smith"

Preston Henry Smith

"Witness"

Witness

"Tayen Godfrey"

Tayen Godfrey

Enforcement Counsel on behalf of Enforcement Staff of the Investment Industry Regulatory Organization of Canada

The Settlement Agreement is hereby accepted this 5th day of April, 2019 by the following Hearing Panel:

Per: "Daniel Ish"

Panel Chair

Per: "Brad Whyte"

Panel Member