

Re Crocker

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rules

and

Robert Weston Crocker

2024 CIRO 05

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: December 18, 2023, in Toronto, Ontario (via videoconference)

Decision: December 18, 2023

Reasons for Decision: January 8, 2024

Hearing Panel:

Christopher Portner, Chair, David Lang and Steven Garmaise

Appearances:

April Engelberg, Senior Enforcement Counsel

Bruce O'Toole, for Robert Weston Crocker

Robert Weston Crocker (present)

REASONS FOR DECISION ON ACCEPTANCE OF SETTLEMENT

INTRODUCTION

¶ 1 On December 8, 2023, a Notice of Motion was issued relating to a motion that Enforcement Staff of the Canadian Investment Regulatory Organization ("CIRO") would bring to a hearing panel requesting that it consider a settlement agreement between Enforcement Staff and Robert Weston Crocker (the "Respondent"), dated December 6, 2023 ("Settlement Agreement") pursuant to Rules 8215 and 8428 of the Investment Dealer and Partially Consolidated Rules (the "IDPC Rules").

¶ 2 The Settlement Agreement, a copy of which is attached to these Reasons, addresses allegations that the Respondent contravened Dealer Member Rule 1300.1(a) by completing Know Your Client ("KYC") information that he knew was inaccurate, and IDPC Rule 1400 by completing purchases of private placements for a client's account which should have been, but was not, marked "PRO", i.e. not eligible for these investments, contrary to the standards of conduct that apply to a regulated person.

¶ 3 On December 18, 2023, the Hearing Panel heard submissions by Senior Enforcement Counsel of CIRO and the Respondent's counsel with respect to the acceptance of the Settlement Agreement by the Hearing Panel. Following the submissions, the Hearing Panel adjourned to consider the appropriateness of the sanctions and costs provided in the Settlement Agreement.

¶ 4 After considering the submissions, the IIROC Sanction Guidelines¹ and prior decisions of hearing panels, the Hearing Panel accepted the Settlement Agreement with written reasons to follow. These are our reasons.

BACKGROUND

¶ 5 Commencing in November 2016, the Respondent worked as a Registered Representative at the same branch of BMO Nesbitt Burns as another Registered Representative (the “RR”). In May 2016, the RR began working at RBC Dominion Securities (“RBC DS”) and, in August 2019, the Respondent began working at Canaccord Genuity Corp.(“Canaccord”).

¶ 6 While working at Canaccord, the Respondent became the advisor for the RR’s spouse or common law spouse (the “Client”). In or about April 2020, the Respondent opened an account at Canaccord for the Client. The KYC information indicated that the RR was the Client’s spouse or common law spouse. There was no indication that the RR was a joint account holder or authorized party on the Client’s account. The RR’s occupation was shown as “Real Estate Deve” and the KYC information further indicated that he was not related to and did not reside at the same residence as the Client. At all relevant times, the address on the Client’s account was the same as that of the RR.

¶ 7 The KYC information did not disclose that the RR was a Registered Representative with RBC DS. The RR did not, at any time, have any personal investment accounts at Canaccord.

¶ 8 In April 2020, the Respondent sent the unsigned KYC documents to the RR, but not the Client, by email at the RR’s RBC DS email address which the Respondent had been using since 2019. The RR returned the KYC document with the Client’s signature by email later the same day from the same RBC DS email address.

¶ 9 The Respondent completed the purchase of five private placements in the Client’s account. The placements, which had a value of \$177,000, were not “PRO” eligible. Between April and December 2020, the Respondent received commissions for the private placements of approximately \$8,190.

¶ 10 The Respondent worked in the industry for approximately nine years and had no prior disciplinary history. There is no evidence that any clients suffered loss as a result of his misconduct.

CONTRAVENTIONS

¶ 11 The Settlement Agreement states that, by engaging in the conduct described above, the Respondent:

- (a) failed to learn and remain informed of the essential facts relating to a client by completing KYC information that he knew was inaccurate, contrary to Dealer Member Rule 1300.1(a); and
- (b) completed purchases of private placements for the Client, which were non-PRO eligible when he knew that the Client’s account should have been marked PRO, contrary to IDPC Rule 1400.

SANCTIONS AND COSTS

¶ 12 With respect to the foregoing contraventions, Enforcement Staff and the Respondent agree in the Settlement Agreement, a copy of which is attached, to the following sanctions and costs:

- (a) a fine of \$30,000;
- (b) the disgorgement of \$8,078;
- (c) a six-month suspension from registration with CIRO;
- (d) re-writing the Conduct Practices Handbook course prior to any re-registration with CIRO;
- (e) strict supervision of six months upon any re-registration with CIRO; and

¹ The Investment Industry Regulatory Organization (“IIROC”) is one of the two predecessor regulatory organizations of CIRO.

(f) costs of \$10,000.

¶ 13 If the Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees to pay the amounts detailed in paragraph 12 above within 30 days of such acceptance unless otherwise agreed between Enforcement Staff and the Respondent.

RESPONSIBILITY OF THE HEARING COMMITTEE

¶ 14 Pursuant to IDPC Rule 8215(5), the Hearing Panel may only accept or reject the Settlement Agreement. Senior Enforcement Counsel referred the Hearing Panel to *Re Milewski*² in which the District Council stated that:

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 settlement.³

ANALYSIS

¶ 15 The Hearing Panel received a Settlement Book from the parties which, in addition to the Settlement Agreement, included (i) copies of IDPC Rules 1300.1, 1401, 8215 and 8428; (ii) the IIROC Sanction Guidelines; and (iii) five prior IIROC cases including *Re Milewski* referred to in paragraph 14 above and the four cases which are addressed in paragraphs 16 and 17 below.

¶ 16 With respect to the first contravention by the Respondent, it is clear from the facts on which the parties agreed that the Respondent either totally failed to adequately assess, or completely ignored, the relationship between the RR and the Client notwithstanding his knowledge of the RR's function and place of employment, thereby contravening Dealer Member Rule 1300.1(a). In this regard, Senior Enforcement Counsel referred the Hearing Panel to:

- (a) *Re Jacobsen*⁴, in which the respondents acted contrary to Dealer Member Rule 1300.1(a) by failing to use due diligence to ensure that his clients qualified as accredited investors as defined in National Instrument 45-106 before facilitating their purchase of securities pursuant to prospectus exemptions. The respondents were required to (i) pay fines in the amount of \$15,000 and \$25,000, respectively; (ii) each pay an additional amount of \$2,096 being the amount of commissions earned; (iii) each successfully complete the Conduct and Practices Handbook course prior to any re-registration; and (iv) each pay costs in the amount of \$2,500.
- (b) *Re Moon et al*⁵, in which the three respondents solicited and facilitated the purchase of securities pursuant to an exemption from the prospectus and registration requirements of the *Securities Act* of Ontario. The case involved 38 clients, who purchased nearly \$1 million of such securities but did not appear to be accredited investors. The respondents were required to pay \$35,000, \$20,000 and \$15,000, respectively, and costs in the amount of \$6,000.

¶ 17 With respect to the second contravention by the Respondent, his purchase of five separate and ineligible private placements for the Client's account over a seven-month period demonstrates a complete disregard for, or indifference to, IDPC Rule 1400. In this regard, Senior Enforcement Counsel referred the Hearing Panel to:

- (a) *Re McKee*⁶, in which the respondent opened an account for a client who was the director, officer

² [1999] I.D.A.C.D No. 17.

³ *Ibid*, at pages 11-12.

⁴ 2013 IIROC 59.

⁵ 2017 IIROC 42.

⁶ 2020 IIROC 12.

and shareholder of a corporation and the spouse of an individual (the “Spouse”), both of whom were subjects of a securities regulatory proceeding. The respondent’s branch manager asked the respondent if the client was associated with the Spouse but used a given name that was similar but not identical to that of the Spouse. The respondent advised the branch manager that the client was not associated with that name which was a misleading representation as the respondent knew or ought to have known that the purpose of the enquiry was to determine whether the client had any connection to the Spouse who was the subject of the securities regulatory proceeding. When the branch manager subsequently asked the respondent if the client was connected to the corporation, the respondent falsely represented that she was not. The respondent was required to pay a fine in the amount of \$30,000, and costs in the amount of \$5,000 and re-write the Conduct and Practices Handbook course prior to any re-registration.

- (b) *Re Bealer*⁷, in which the respondent contravened IDPC Rule 1400 by, among other things, failing to designate several client accounts as PRO-accounts and then investing client accounts in ineligible new issues without receiving appropriate approvals from his firm. The accounts in question participated in 32 new issues having a value of approximately \$1,966,575 of which \$1,286,275 of the purchases were sold for a realized gain of \$111,087. The respondent was required to (i) pay a fine of \$50,000 plus disgorgement in the amount of \$17,269; (ii) be subject to a five-month prohibition of approval from registration and a twelve-month period of close supervision; and (iv) pay costs in the amount of \$5,000.

¶ 18 Although the sanctions and costs set out in the Settlement Agreement are not separately allocated to the first and second contraventions, the Hearing Panel views them as being consistent with those described in *Re Jacobsen* and *Re Moon et al*, with respect to the contravention by the Respondent of Dealer Member Rule 1300.1(a), and *Re McKee* and *Re Bealer*, with respect to the contraventions by the Respondent of IDPC Rule 1400. This is particularly appropriate with respect to the requirements that the Respondent be suspended from registration for six months and thereafter be subject to strict supervision for six months upon any re-registration and, further, be required to successfully re-write the Conduct Practice Handbook course.

¶ 19 Finally, the Hearing Panel has considered the IIROC Sanction Guidelines, which “are intended to promote consistency, fairness and transparency by providing a framework to guide the exercise of discretion in determining sanctions which meet the general sanctioning objectives.”⁸

¶ 20 The Sanction Guidelines further state:

Where there are multiple violations, the overall sanction imposed should not be excessive or disproportionate to the gravity of the total misconduct at hand. For this reason, a global approach to sanctioning may be appropriate where the imposition of a sanction for each contravention would have the effect of imposing on the respondent a cumulative sanction that is excessive.⁹

CONCLUSIONS

¶ 21 For the foregoing reasons, the Hearing Panel is of the opinion that the sanctions set out in the Settlement Agreement are within the range of reasonableness and, accordingly, are accepted.

Dated at Toronto, Ontario this 8 day of January 2024.

“Christopher Portner” _____

Christopher Portner, Chair

⁷ 2022 IIROC 30.

⁸ IIROC Sanction Guidelines at page 2.

⁹ *Ibid*, at Part I, Section 1.

“David Lang”

David Lang

“Steven Garmaise”

Steven Garmaise

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