

Re Basilinsky

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization of
Canada**

and

Michael Basilinsky

2018 IIROC 13

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

Heard: March 2, 2018 at the City of Toronto

Oral Decision: March 2, 2018

Written Decision: April 13th, 2018

Hearing Panel:

Fred Chenoweth, Chair, Ron Smith and David Lang

Appearances:

Robert DelFrate, Enforcement Counsel of the Investment Industry Regulatory Organization of Canada

Melissa MacKewn, counsel for the respondent

Michael Basilinsky, Respondent

REASONS FOR DECISION

Introduction

¶ 1 A Hearing Panel of the Investment Industry Regulatory Organization of Canada (“IIROC”) was convened on March 2, 2018 in accordance with Rule 15 of the IIROC Dealer Member Rules of Practice and Procedure, to review a Settlement Agreement (“Settlement Agreement”) dated March 1st, 2018 negotiated between the Enforcement Department of IIROC (“Staff”) and Kurt Michael Basilinsky (“Respondent”) assisted by his counsel, in accordance with section 8428 of the IIROC Dealer Member Rules (the Rules”).

¶ 2 The Settlement Agreement was submitted to the Hearing Panel for its acceptance or rejection. After considering the material filed and the oral submissions of Staff and counsel for the Respondent, the Panel unanimously accepted the Settlement Agreement and issued an order accordingly. These are the Panel’s reasons for doing so.

The Allegations

¶ 3 In the Settlement Agreement, the Respondent admits the following contravention of IIROC Dealer Member Rules:

- (a) The Respondent engaged in trading in which he did not seek or obtain his clients’ approval for trades carried out in their accounts. The accounts were not designated as discretionary. The clients were aware that trades were occurring in their accounts, but did not know the Respondent was required to obtain approval prior to executing the orders. None of the trades were unsuitable for the clients.

Statement of Facts

¶ 4 Staff and the Respondent agreed with the facts set out in Part III of the Settlement Agreement and acknowledged that the terms of the settlement contained in the Settlement Agreement were based upon those specific facts. The Settlement Agreement containing the facts to which the parties have agreed is attached as Schedule “1” to these Reasons.

Discussion

¶ 5 In coming to its conclusion in this matter, the Panel considered the facts as set out above, the submissions of Staff and counsel for the Respondent, IIROC Sanction Guidelines, and the decisions to which the Panel was referred.

¶ 6 In particular, the Panel considered that the role of the Hearing Panel in considering a Settlement Agreement was to determine whether the proposed sanctions “strike a reasonable balance between fairness to the Respondent in the circumstances and the need to protect the investing public, the industry membership, the integrity of the discipline process, the integrity of the securities markets and prevention of a repetition of the offence”.

Bereskin (Re), [2010] IIROC 37 at para 5.

¶ 7 The Hearing Panel was also aware that they should not reject the Settlement Agreement unless the penalties proposed therein “clearly fall outside a reasonable range of appropriateness” given the conduct of the Respondent. The penalties agreed to in the Settlement Agreement, fall within the reasonable range and are in the public interest.

Milewski (Re), [1999] I.D.A.C.D. No. 17 at page 13-14.

¶ 8 The Panel further considered a recent Supreme Court of Canada decision which noted that trial judges “should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest”.

R v Anthony-Cook, 2016, S.C.C. 43 at para. 32.

¶ 9 For all the above reasons, the Panel concluded that the facts admitted by the Respondent constitute misconduct in contravention of the By-Law, IIROC Rules or Policies, or provincial securities legislation.

Penalty Discussion

¶ 10 The Panel accepted the submissions of Staff counsel that the following key factors outlined in the guidelines should be taken into account in determining whether the proposed sanctions are appropriate in this case.

- (a) The number, size and character of the transactions at issue.
- (b) Whether the respondent engaged in numerous acts and/or a pattern of misconduct.
- (c) Whether the Respondent engaged in the misconduct over an extended period of time;
- (d) Whether the misconduct was intentional, wilfully blind, or reckless with respect to regulatory requirements;
- (e) Extent of harm to clients or other market participants;
- (f) Extent of harm to market integrity or the reputation of the marketplace;
- (g) Level of vulnerability of the injured or affected client(s).

¶ 11 The Panel noted in particular, that the contravention to which the Respondent has admitted involved in excess of 180 transactions over a period of one year and three months.

¶ 12 The Panel also became aware, during the course of the Hearing, and as a result of the terms of the

Settlement Agreement, that:

- (a) The offending trading were not unsuitable for the clients;
- (b) The trades did not lead to trade losses;
- (c) A trading strategy had been agreed to between the Respondent and the clients prior to the offending trades;
- (d) There is no allegation of excessive trading or excessive commissions.
- (e) The Respondent had not been subject to previous disciplinary findings.
- (f) The loss of the Respondent's employment arising from the offending trades, had had a significant financial impact on the Respondent and on the size of the Respondent's Book of Business.

¶ 13 More specifically, when coming to its view with respect to the joint penalty submission set out in the Settlement Agreement, the Panel considered the case of *Smith (Re)*. Mr. Smith admitted that he executed unauthorized trades in the account of two clients, contrary to Dealer Member Rule 29.1. His agreed penalty included a two-year suspension of his registration with IIROC, which was in fact, largely a retroactive suspension covering the period of his loss of employment arising from the impugned trades.

Smith (Re), 2014 IIROC 16 at paras 3-4.

¶ 14 Similarly, the Panel considered the case of *Eley (Re)*, which stands for the principal that when determining the appropriate period of suspension, an IIROC Hearing Panel may permit an allowance for "the time during which the Respondent is effectively suspended from acting as a registrant".

Eley (Re), 2015 IIROC 52 at paras 69-71.

Result

¶ 15 Accordingly, for all the above reasons, the Hearing Panel, agreed to accept the Settlement Agreement herein.

¶ 16 Accordingly, the Hearing Panel imposes the following penalties on the Respondent:

- (a) A suspension of his approval with IIROC, effective from December 2015, when his employment was terminated by 3Macs and he ceased to be a registrant until May 2016, when he became registered with Global Maxfin;
- (b) Close supervision for a period of six (6) months;
- (c) A requirement that the Respondent successfully complete the Code and Practice Handbook (CPH) course, no later than June 30, 2018;
- (d) A fine in the amount of \$35,000; and
- (e) Costs in the amount of \$2,000.

Dated at Toronto, Ontario, this 13th day of April, 2018.

Fred Chenoweth

Chair

Ron Smith

David Lang

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 Michael Bazilinsky (“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. The Respondent engaged in trading in which he did not seek or obtain his clients’ approval for trades carried out in their accounts. The accounts were not designated as discretionary. The clients were aware that trades were occurring in their accounts, but did not know the Respondent was required to obtain approval prior to executing the orders. None of the trades were unsuitable for the clients.

Registration History

5. The Respondent has been registered as a Registered Representative since 1983.
6. Between January 2008 and August 2014, the Respondent was registered as a Registered Representative with a Toronto, Ontario branch of Desjardins Securities Inc. (“Desjardins”), a Dealer Member of IIROC.
7. In September 2014, MacDougall, MacDougall and Mactier (“3 Macs”), a Dealer Member of IIROC, acquired several branches of Desjardins, including the Respondent’s branch. From September 2014 until his termination in December 2015, the Respondent was registered as a Registered Representative with 3 Macs.
8. In May 2016, the Respondent became registered as a Registered Representative with a Toronto, Ontario branch of Global Maxfin Capital Inc., a Dealer Member of IIROC.
9. The Respondent has no prior disciplinary history with IIROC.

Client LS and FS

10. LS is FS’s daughter. LS assisted her mother with her financial affairs.
11. In or around October 2013, LS and FS became clients of the Respondent at Desjardins. They opened two accounts with the Respondent – 1) a joint account (the “LS and FS Joint Account”); and 2) a RRIF account in FS’s name (the “FS RRIF Account”).
12. The New Account Application Forms (“NAAF”) for each account indicated that both LS and FS had limited investment knowledge and “Moderate” risk tolerance. At the time, FS was 83 years old and LS was 60 years old.
13. When the Respondent joined 3 Macs, LS and FS transferred their accounts to 3 Macs as well. The accounts were not designated as discretionary accounts.
14. Between September 2014 and December 2015, the Respondent made 78 trades in the LS and FS Joint Account and 29 trades in the FS RRIF Account. Although the Respondent had general discussions with LS and/or FS about the accounts, he did not discuss each transaction with them prior to the trades being

entered.

15. LS and FS received post trade confirmations of the transactions.
16. The Respondent earned commissions on these transactions totaling over \$15,000.

Client IS and MS

17. IS is MS's niece. IS assisted her aunt with her financial affairs.
18. IS and MS became clients of the Respondent in 2008. They opened two accounts with the Respondent – 1) a joint account (the "IS and MS Joint Account"); and 2) an RRSP account in IS's name (the "IS RRSP Account").
19. When the Respondent joined 3 Macs, IS and MS transferred their accounts to 3 Macs as well.
20. The NAAF for each account indicated that IS had "Limited" and MS had "Average" investment knowledge and "Medium" risk tolerance. At the time, MS was 82 years old and IS was 66 years old.
21. The accounts were not designated as discretionary accounts.
22. Between September 2014 and December 2015, the Respondent made 16 trades in the IS and MS Joint Account and 12 trades in the IS RRSP Account. Although the Respondent had general discussions with IS and/or MS about the accounts, he did not discuss each transaction with them prior to the trades being entered.
23. IS and MS received post trade confirmations of the transactions.
24. The Respondent earned commissions on these transactions totaling over \$3,000.

Client MP

25. MP had been a client of the Respondent for over 20 years.
26. When the Respondent joined 3 Macs, MP transferred her RRSP account to 3 Macs as well.
27. The NAAF for her RRSP account which indicated that she had "Average" investment knowledge and "Medium" risk tolerance. At the time, MP was 63 years old.
28. The account was not designated as a discretionary account.
29. Between September 2014 and December 2015, the Respondent made 49 trades in MP's account. Although the Respondent had general discussions with MP about the account, he did not discuss each transaction with her prior to the trades being entered.
30. MP received post trade confirmations of the transaction.
31. The Respondent earned commissions on these transactions totaling over \$3,500.

Additional Relevant Factors

32. Despite not having obtained prior authorization for the transactions, the trades were suitable for each of the clients and in line with their stated investment objectives. Further, all clients received trade confirmations after the transactions had been processed.
33. Following his termination from 3Macs in December 2015, the Respondent, despite his best efforts, was unable to secure employment as a registrant, in part as a result of IIROC's investigation into his conduct.
34. In May 2016, the Respondent joined Global Maxfin in May 2016. At that time, terms and conditions were imposed on his registration requiring that he be placed under close supervision pending the outcome of the IIROC Enforcement matter. Since May 2016, no regulatory issues have been identified.
35. The Respondent has provided satisfactory evidence to Staff as to the financial impact that the monetary sanctions and costs will have on him.

PART IV – CONTRAVENTIONS

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

Between September 2014 and December 2015, the Respondent engaged in unauthorized trading in the accounts of several clients, contrary to Dealer Member Rule 29.1.

PART V – TERMS OF SETTLEMENT

37. The Respondent agrees to the following sanctions and costs:
- a) A suspension of his approval with IIROC, effective from December 2015, when his employment was terminated by 3Macs and he ceased to be a registrant until May 2016, when he became registered with Global Maxfin;
 - b) Close supervision for period of six (6) months;
 - c) A requirement that the Respondent successfully complete the Conduct and Practices Handbook (CPH) course by no later than June 30, 2018;
 - d) A fine in the amount of \$35,000; and
 - e) Costs in the amount of \$2,000.
38. If this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and the Respondent.

PART VI – STAFF COMMITMENT

39. 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.
40. 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

41. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
42. 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.
43. 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.
44. 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.
45. 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.
46. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.

47. 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.
48. 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.
49. 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

50. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.
51. A fax or electronic copy of any signature will be treated as an original signature.

DATED this “2” day of “March”, 20 .

“Witness”

 Witness

“Michael Bazilinsky”

 Michael Bazilinsky

“Witness”

 Witness

“Rob DelFrate”

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

The Settlement Agreement is hereby accepted this “2nd” day of “March”, 20“18” by the following Hearing Panel:

Per: “Frederick Chenoweth”

 Panel Chair

Per: “Ron Smith”

 Panel Member

Per: “David Lang”

 Panel Member

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