

# **Re Bodnarchuk**

**IN THE MATTER OF:**

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

**and**

**Edward Peter Bodnarchuk**

2018 IIROC 34

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

Heard: September 13, 2018 in Winnipeg, Manitoba  
Decision: October 1, 2018

**Hearing Panel:**

Michael F.C. Radcliffe Q.C., Debbie Archer, Guenther Kleberg

**Appearance:**

Tayen Godfrey, Enforcement Counsel

Edward Peter Bodnarchuk, Appearing in person

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## **PENALTY DECISION**

¶ 1 In its Decision and Reasons issued June 22, 2018, this Hearing Panel found that seven contraventions alleged in the Notice of Hearing issued IIROC dated July 26, 2017, were proven to the required standard.

¶ 2 The contraventions proven were as follows:

Client G.S.

Count 1:

Between July of 2008 and November 2012, the Respondent failed to use due diligence to learn and to remain informed of the essential facts relative to G.S., contrary to Dealer Member Rule 1300.1(a).

Count 2:

Between July of 2008 and November 2012, the Respondent made unsuitable recommendations for the account of G.S., contrary to Dealer Member Rule 1300.1(q).

Count 3:

Between July of 2008 and November 2012, the Respondent made discretionary trades in the account of G.S., contrary to Dealer Member Rule 1300.4.

Client T.B.

Count 4:

Between August of 2010 and April 2016, the Respondent failed to use due diligence to learn and to remain informed of the essential facts relative to T.B., contrary to Dealer Member Rule 1300.1(a).

Count 5:

Between August of 2010 and April 2016, the Respondent made unsuitable recommendations for the account of T.B., contrary to Dealer Member Rule 1300.1(q).

Count 6:

Between August of 2010 and April 2016, the Respondent made discretionary trades in the accounts of T.B., contrary to Dealer Member Rule 1300.4.

Count 7:

Between October of 2010 and December of 2012, the Respondent failed to disclose to his firm activities that fell outside the scope of his duties as a Registrant that created a real or potential conflict of interest between the Respondent and his clients contrary to Dealer Member Rule 29.1.

¶ 3 In this Hearing Panel's earlier decision of June 22, 2018, it reviewed the allegations in IIROC's Notice of Hearing statement of particulars which were to the following effect:

#### FAILURE TO KNOW YOUR CLIENT:

¶ 4 An IIROC investigator (Michael Smith) confirmed that client G.S. was completely invested in junior exploration stock, that same were of the highest risk, that G.S. did not have an accurate grasp of the degree of risk involved, and that the Respondent had completed the NCAF for the client and had the client sign same, indicating a more sophisticated knowledge of the investment. This document was prepared despite the fact the client was of modest earning means and wished to use the funds invested for retirement. The Respondent stated he had known the client for a number of years.

¶ 5 The IIROC investigator likewise confirmed that the Respondent placed T.B. in junior exploration stock, that T.B. did not appreciate the real risk that he could be wiped out in such investments and that a large part of the client's investment portfolio was involved.

¶ 6 Both clients were of relatively modest means and had no experience in the junior resource market and were reasonably unsophisticated. The Respondent completed the NCAF for T.B. as well, indicating a risk tolerance far above the level established in evidence.

#### SUITABILITY:

¶ 7 The evidence showed that the Respondent moved the portfolios of both G.S. and T.B. from Mutual Funds to junior resource stock.

¶ 8 The entire portfolio in each case was moved to a high-risk investment and not just a speculative fraction of the client's portfolio.

¶ 9 Neither client had extensive alternative holdings and were relying on these funds to form the capital to finance their retirement.

¶ 10 Both clients suffered significant loss with the volatility of the market.

#### DISCRETIONARY TRADING:

¶ 11 Uncontroverted evidence was presented that the Respondent told the clients of the respective trades after the fact, not before. The Respondent had no documentary permission to involve the clients in such discretionary trading.

#### POTENTIAL CONFLICT OF INTEREST:

¶ 12 The IIROC investigator provided evidence that the Respondent became involved in a proxy battle with several of the subject investment companies. He involved his clients' shares in such contest as well as his own. This activity was beyond the scope of a Registrant and without knowledge or permission of the Respondent's

dealer.

¶ 13 For the above facts, the Panel found the Respondent had breached his duty to know his clients (Dealer Member Rule 1300.1(a)), placed his clients in unsuitable investments (Dealer Member Rule 1300.1(q)), and made unauthorized discretionary trades (Dealer Member Rule 1300.4).

¶ 14 Further, based on the unchallenged evidence presented, the Panel found the Respondent had breached Rule 29.1 re the proxy fight.

¶ 15 At the Penalty Hearing instant, enforcement counsel cited the overall general principles of imposing sanctions to be:

- 1) Penalties are to form a general deterrence to the members of the industry nationally.
- 2) The penalties are to form a specific deterrence to the individual Respondent so as to deter him from becoming re-involved in similar activity.

¶ 16 The Panel is to attempt to achieve a balance of sanctions having regard for the conduct of the Respondent and expectations of other members of the industry. The sanctions are to be proportionate to the acts of the Respondent having in mind the decisions and penalties imposed in similar cases. There must be a consistency of treatment and results.

¶ 17 Enforcement counsel directed the attention of the Panel to IIROC Sanction Guidelines, published February 02, 2015, which outlined the purpose of such sanctions and provided an overview.

¶ 18 Counsel drew the attention of the Panel to the following principles:

- 1) Sanctions are preventive to protect the public.
- 2) If one has multiple violations, the Panel should consider a cumulative sanction to represent the totality of the misconduct.
- 3) The Respondent should not profit from the misconduct.
- 4) Suspension is appropriate if there are one or more serious contraventions and where the integrity of the market place is impacted.
- 5) Inability to pay is a factor to be considered when raised by the Respondent and document by affidavit and financial records.

¶ 19 Key factors in determining sanctions:

- 1) Number, size, and character of the transactions
- 2) Was there a pattern of misconduct
- 3) Was the misconduct intentional, willful or reckless
- 4) Harm to the client or market participants
- 5) Harm to market integrity
- 6) Level of vulnerability of injured clients

¶ 20 Enforcement Counsel is asking for a penalty of \$100,000.00, twelve to eighteen months' suspension, that the Respondent be required to write and pass the CPH examination at the end of the suspension period, a period of further 12-month supervision after requalifying, and payment of costs in the sum of \$20,000.

¶ 21 The Panel was apprised that the Respondent had no prior record and IIROC had no knowledge that the Respondent had received any profit from his misdeeds.

¶ 22 G.S. lost approximately \$30,000.00 and T.B. lost \$212,000.00; the concentration of high-risk for G.S. was 80% and 90% for T.B.

¶ 23 The *Yaskiw* decision was cited (2017 LNIIROC 19) as being very similar in its fact base.

¶ 24 The penalty here was \$120,000.00, two-year suspension, a re-write of the CPH examinations, 18 months supervision and \$25,000 costs.

¶ 25 The Respondent spoke briefly at the Hearing. He has left the industry, is likely unemployable and living in reduced circumstances. He acknowledged he had breached his duty to his clients, acceding to their demands for high-risk stock. The Respondent advised that he had moved many of his clients out of high-risk investments after these proceedings started.

¶ 26 Considering all of the evidence presented, the guidelines to the sanctions and the case law,

THIS PANEL ORDERS:

- 1) The Respondent pay a penalty of \$100,000
- 2) The Respondent be suspended for 18 months from the date of this decision
- 3) The Respondent re-write and pass the CPH exam following suspension
- 4) The Respondent be strictly supervised by a dealer for 12 months upon being re-qualified
- 5) The Respondent pay costs of \$20,000.

Dated at Winnipeg, Manitoba this 1<sup>st</sup> day of October, 2018.

Michael Radcliffe

Debbie Archer

Guenther Kleberg

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