Unofficial English Translation

Re Melkonian

IN THE MATTER OF:

The Dealer Member Rules of the Investment Industry Regulatory Organization of Canada (IIROC)

The Rules of the Investment Dealers Association of Canada (IDA)

and

Melkon Melkonian

2011 IIROC 62

Investment Industry Regulatory Organization of Canada
Hearing Panel (Québec District Council)

Hearing held in Montréal, November 16, 2011
Decision rendered November 28, 2011
(16 paragraphs)

Hearing Panel:
Me Claude Bisson, Jean André Élie, François Gervais
Appearances:
Me Marie-Claude Sarrazin, Enforcement Counsel
Me David I. Johnston, Lawyer for the Respondent, Melkon Melkonian

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DECISION ON SETTLEMENT AGREEMENT

¶ 1 This concerns a Settlement Agreement signed and submitted in accordance with Rules 14 and 15 of the Rules of Practice and Procedure;

¶ 2 The Settlement Agreement signed February 24 and March 1, 2011 reads as follows:

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent Melkon Melkonian ("**the Respondent**") consent and agree to the settlement of this matter by way of this settlement agreement ("**the Settlement Agreement")**.

2. The Enforcement Department of IIROC has conducted an investigation ("**the Investigation**") into the conduct of the Respondent.

3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions;

4. On June 1, 2008, the Respondent became a Regulated Person of IIROC and the Respondent consents to be subject to the jurisdiction of IIROC;

5. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to Transition Rule No. 1, Schedule C.1, Part C ("**the Hearing Panel**").

II. JOINT SETTLEMENT RECOMMENDATION

6. Staff and the Respondents jointly recommend that the Hearing Panel accept this Settlement Agreement.

7. The Respondent admits to the following contravention of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies ("**IDA Regulation**"):

   a) From August 2004 to June 2009 inclusive, the Respondent effected discretionary transactions in the joint accounts of two clients, without either of those accounts having been previously authorized by the firm as discretionary accounts, contrary to IDA Regulation 1300.4 and 1300.5;

   b) From 2005 to 2008 inclusive, the Respondent engaged in unsuitable and improper sales practices by excessively trading in the joint accounts of both clients without proper consideration of the clients best interest, contrary to IDA By-law 29.1(ii);

8. Staff and Respondent agree to the following terms of settlement:

   a) The Respondent will pay a fine in the amount of $30,000;

   b) The registration in any capacity of the Respondent will be suspended for a period of three years;

9. The Respondent agrees to pay costs to IIROC in the sum of $5,000.

III. STATEMENT OF FACTS

(i) Acknowledgement

10. Staff and the Respondent agree with the facts set out in this section III and acknowledge that the terms of the settlement contained in the Settlement Agreement are based upon those specific facts;

(ii) Factual Background

11. The Respondent has been a duly registered representative with IIROC and its predecessor, IDA, since 1983, and was employed by Canaccord Capital Corporation (**"Canaccord"**) from November 1998 to September 2009, when he voluntary resigned to retire;

12. The clients, Egyptian nationals, sought immigration to Canada through the Immigrant Investor Program. To satisfy the requirements of this Program, Clients were required to deposit $400,000 in a financial institution or with a brokerage firm;

13. The Respondent explained to the clients that they had two options: the first being to pay the entire amount of $400,000 to the provincial government. That sum would then be held for five (5) years and returned at the end of that period, but without interest;

14. The second option was to pay only $120,000 to the provincial government (that sum would not be returned at the end of the term) and to invest the balance, namely $280,000, with a brokerage firm like Canaccord for the five-year period. The money should grow to satisfy another program's requirement, that an immigrant's investment should be able to yield income;

15. The clients chose the second option and an amount of $280,000 was entrusted to the Respondent to be invested for five years in income trust securities with an expected rate of return of 7% per annum;

16. However, during the period of August 2004 to June 2009 (the **Period of reference**"), while in the employment of Canaccord the Respondent, without the knowledge of Canaccord or the consent of the clients:

    c) changed the content of the clients' portfolio without prior authorization;

    d) purchased common shares and speculative securities non-approved by the clients;

    e) engaged in excessive trading;

    f) neglected the clients' best interest

17. In particular, the Respondent modified the composition of the portfolio by progressively reducing the proportion of the income trust and replacing them with common shares and other speculative securities, without first obtaining the consent of the clients;

18. Moreover, in doing so, the Respondent did not adhere to the investment objectives of the clients, which were as follows: 85% capital preservation, 10% moderate growth and 5% speculative;

19. The change in the portfolio was the result of excessive trading by the Respondent;

20. Hence, during the Period of reference the Respondent turned over the portfolio 6.56 times, which was not in the best interest of the clients;

21. By contrast, such trading practices allowed the Respondent to personally benefit by earning commission without any corresponding benefit to the clients, thereby putting his interests ahead of his clients;

III. AGGRAVATING AND MITIGATING FACTORS

(i) Aggravating factors

22. The parties considered for the determination of their joint recommendations the following aggravating factors:

    a) The Respondent engaged in approximately 1,100 discretionary trading transactions;

    b) The commissions received by the Respondent were approximately $146,000;

    c) The turnover ratio of the portfolio during the period of reference was 6.56 times;

    d) The ratio total fees / average assets during the period of reference was 29%;

    e) The clients suffered an unrealized loss of $192,000.

(ii) Mitigating factors

23. The parties also considered the following mitigating factors:

    a) The Respondent personally compensated the clients to an amount of $225,000, which exceeded the unrealized loss of the clients;

    b) The Respondent has never been disciplined in over 25 years of practice;

    c) The Respondent fully collaborated during the investigation and disciplinary process and admitted his wrongdoing;

IV. TERMS OF SETTLEMENT

24. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.

25. The Settlement Agreement is subject to acceptance by the Hearing Panel.

26. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

27. The Settlement Agreement will be presented to the Hearing Panel at a hearing ("**the Settlement Hearing**") for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.

28. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his rights under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.

29. 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 in relation to the matters disclosed in the investigation.

30. The Settlement Agreement will become available to public upon its acceptance by the Hearing Panel.

31. Staff and the Respondent agree that, if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.

32. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

33. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at the City of Montreal in the Province of Quebec, this 24th day of February, 2011.

(s) Melkon Melkonian	*(s) David Ian Johnston*
RESPONDENT MELKONIAN	**DAVID IAN JOHNSTON**, Counsel for the Respondent

AGREED TO by Staff at the City of Montreal in the Province of Quebec, this 1st day of March, 2011.

(s) Linda Vachet	*(s) Sébastien Tisserand*
WITNESS: LINDA VACHET	**SÉBASTIEN TISSERAND** Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada

¶ 3 At the start of the hearing of November 16, 2011, the legal counsel for both parties stated that they had agreed that their representations should be made in the French language, to which the Respondent immediately acquiesced. The French language was also indicated as being appropriate for the current decision, and the Hearing Panel agrees.

¶ 4 Also at the start of the hearing, the members of the Hearing Panel indicated that analysis of the record could well suggest certain questions regarding relevant facts that do not appear in the Agreement. It was agreed that, if applicable, these facts would be part of the record, subject, of course, to either party being allowed to object to certain disclosures, which did not occur.

¶ 5 Thus it is that we learned, relative to paragraph 12 of the Agreement, that the Egyptian investors were a couple who, in the course of soliciting Canadian citizenship, had not left their country during the five years (2004 to 2009) that are the scope of the Settlement Agreement.

¶ 6 The distances involved imposed on the Respondent compliance obligations that were even more intense given that his clients did not have the benefit of proximity to track the growth of their investments.

¶ 7 These investors had nevertheless clearly stated their investment objectives, which were defined in clause 18 of the Agreement.

¶ 8 Not only was there a breach of trust, but the situation went on for five (5) years and, as indicated in paragraphs 22 and 23 of the Agreement, the investors suffered considerable losses which led to payment by the Respondent of $225,000 in compensation for these losses and the deemed interest on the investments that should have been made.

¶ 9 What is at stake in this case, is the breach of the necessary trust between the clients and the securities market intermediaries.

¶ 10 The public has a right to rely on the irreproachable conduct of these participants, and the role of a Hearing Panel is to contribute to the protection of the public by deterring members of the securities industry from engaging in conduct unbecoming or detrimental to the public interest, to quote Rule 29.1, to which clause 7 b) of the Agreement refers.

¶ 11 In light of the circumstances, the two principal components of the penalty agreed between the parties, namely the aggregate fine of $30,000 and suspension from approval for a period of three years from the date hereof do not seem severe to us, quite the contrary.

¶ 12 Nevertheless, the role of a Hearing Panel is limited to accepting or rejecting the Settlement Agreement (Rule 20.36). What the Hearing Panel must ask itself, is not whether it would have imposed the same penalty, but whether the one before it is reasonable or not, given the circumstances and the applicable criteria.

¶ 13 The full reimbursement of the losses by the Respondent, the absence of any disciplinary record after 25 years of professional practice, and the Respondent's full cooperation in the investigation have convinced us that the penalty is neither inadequate nor unreasonable, but rather that it is within acceptable bounds.

¶ 14 One final remark regarding clauses 7 and 8 of the Settlement Agreement. Paragraphs 7a) and 7 b) state violations that differ one from the other, while paragraph 8 a) imposes an aggregate fine of $30,000. We think it preferable that when there is more than one count, that a percentage of the fine should be attributed to each count.

¶ 15 Such a distinction allows a Hearing Panel to better appreciate the different components of a penalty agreed between the parties.

¶ 16 **FOR THESE REASONS,** the Hearing Panel accepts the Settlement Agreement reproduced in paragraph 2 hereof, and gives effect to it from the effective date of this decision.

Montréal, November 28, 2011
Claude Bisson, Chair
Jean A. Élie
François Gervais