



IN THE MATTER OF:

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA**

AND

RBC DOMINION SECURITIES INC.

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 RBC DS (“RBC DS”).

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. This Settlement Agreement concerns RBC DS' failure to adequately supervise the activities of Roberta Benson ("Benson") in connection with the accounts of its corporate client, SKL.

Background

5. RBC DS is a Dealer Member with its head office in Toronto, Ontario.
6. Benson was an experienced Registered Representative who began her career in 1978. She joined RBC DS from BMO Nesbitt Burns ("BMO") in 2007. Benson retired from RBC DS in March 2016 and is no longer a Registered Representative.
7. SK was an elderly, high-net worth client of RBC DS. She died on October 14, 2014.
8. SKL was a corporate client of RBC DS. Prior to her death, SK was the President, a Director, and the sole shareholder of SKL.
9. SC was a Chartered Professional Accountant and a Principal of a large Toronto accounting firm. SC was also a trusted friend to SK and her family, who had managed SK's finances and the finances of certain of SK's family members as early as the 1970s. SC was a director and officer of SKL.
10. BC was SC's spouse.
11. In 2019, SC's license as a Chartered Professional Accountant was revoked in connection with the events described below, including misappropriation of funds from SKL.

12. SK and SKL were clients of Benson's, dating back to the late 1990s. When Benson transferred to RBC DS in March 2007, several accounts previously held at BMO were transferred to RBC DS, including SK's and SKL's accounts.
13. Benson was the Registered Representative at RBC DS with primary responsibility for the accounts held by SK, SKL, SC and BC. Benson had frequent contact with SC in connection with orders and other client service matters.

The SK Accounts

14. On March 13, 2007, SK opened three accounts with RBC DS (the "SK Accounts"), and SC was assigned trading authority over the SK Accounts.
15. Between 2007 and 2015, Benson failed to ensure the SK Account parameters were appropriate. Benson placed undue reliance on communications with SC as trading authority, rather than the account holder, SK. At account opening, SK signed New Client Account Forms ("NCAF"). The NCAF incorrectly stated that SK was a sophisticated investor.

The SC Accounts

16. In 2007, SC transferred accounts previously held at BMO to RBC DS. Between May 2007 and November 2010, SC opened three margin accounts at RBC DS (the "SC Margin Accounts").
17. At account opening, SC signed NCAFs indicating that he was a sophisticated investor and, in most cases, that he was comfortable with high risk. In regard to his investment experience, the KYC for the SC Margin Accounts indicated that \$100,000 was "the most money [SC] has in the market at any one time."

The BC Margin Account

18. A margin account with RBC DS was opened in BC's name in 2010 (the "BC Margin Account"). SC had trading authority over the BC Margin Account, and as detailed below, proceeded to use it as his own.
19. At account opening, BC signed an NCAF, which, in regard to her investment experience, indicated that \$100,000 was the most money she had in the market at any one time. No funds were invested into the BC Margin Account and instead SC relied entirely on his trading authority, a guarantee arrangement, and transfers from SKL, as outlined below.
20. KYC updates for the BC Margin Account were completed between 2010 and 2015. During this time, BC's investment knowledge indicated on KYC forms changed from limited to good, and investments in the BC Margin Account consistently exceeded \$100,000, often by millions of dollars.
21. Throughout this time, Benson failed to communicate directly with BC regarding changes in her investment knowledge or to ensure the account parameters were appropriate. Benson accepted and relied on communications with SC as trading authority, rather than the account holder, BC.

The SKL Accounts

22. Between 2007 and 2009, four margin accounts were opened for SKL at RBC DS (the "SKL Accounts"). SC was sole trading authority on the SKL Accounts. SK was listed as the sole beneficiary for SKL.

The Guarantees

23. Between 2009 and 2010, guarantees were signed by SC, BC, and SKL. These were continuing guarantees in which the parties guaranteed each others' obligations to RBC DS:
 - a) On June 11, 2009, SC guaranteed SKL's accounts;
 - b) On June 11, 2009 and September 15, 2009, SKL guaranteed SC's accounts;
 - c) On November 2, 2010, SC and SKL guaranteed BC's accounts; and
 - d) On November 2, 2010, BC guaranteed SC's and SKL's accounts.
24. SC signed the guarantees on behalf of SKL to guarantee his own and BC's accounts.
25. As a result of the various guarantees, a cross-guarantee relationship was established, but only SKL was ever called upon to satisfy the obligations of the other parties to this relationship.
26. There was a conflict of interest raised due to SC acting on behalf of SKL to approve the guarantees of his and BC's personal accounts.
27. Benson did not take adequate steps to ensure that SK understood the nature, significance, and financial implications of the guarantees, and RBC DS failed to sufficiently supervise Benson in regard to confirming the extent of her direct communication with SK.
28. Benson did not explain the nature or significance of the guarantees to BC, and RBC DS failed to sufficiently supervise Benson in regard to confirming the extent of her direct communication with BC.
29. Furthermore, SC's, BC's or SKL's profiles were not updated to reflect the existence of the guarantees that they had each provided and the increased liabilities created as a result.

SC Incurs Margin Debt

30. Beginning in or around November 2009, SC embarked upon a self-directed, unsolicited strategy of high-risk and aggressive trading, including excessive margin trading, in both his and BC's margin accounts. As result of the guarantees, the excess loan value in the SKL Accounts was extended to the SC Margin Accounts and the BC Margin Account, and SC relied on the guarantees, and in particular the excess loan value of the SKL accounts to meet the margin requirements of his and BC's accounts.
31. The SC Margin Accounts were undermargined, one from November 2009 and the other from December 2010, and continued to be undermargined until October 2015.
32. By June 2011, SC's most heavily traded margin account was in a negative equity position and except for a brief reprieve in July 2011, continued in a negative equity position until March 2016.
33. As a result of his margin trading, by April 2010, and continuing through to October 2015, SC caused the debit balance in his accounts to exceed his documented total net worth. At its highest, the total debit balance for all SC's margin accounts was more than 6.8 times his documented net worth (\$1,050,000).
34. SC similarly incurred significant margin debt in the BC Margin Account, including based on high-risk investments that were inconsistent with BC's investment profile and KYC documentation.
35. In response to queries from RBC DS, Benson adjusted BC's investment knowledge upwards on KYC forms in the absence of due diligence to support such changes. The last such change (October 29, 2014) continued in effect until, at least, October 2015.

36. The BC Margin Account was undermargined from December 2010 to October 2015.
37. With the exception of June 2015, between March 2011 to March 2016 the BC Margin Account was continuously in a negative equity position.
38. As a result of SC's margin trading, by January 2011 and continuing through to March 2016, the debit balance in the BC Margin account exceeded her documented total net worth. At its highest, the debit balance of the BC Margin Account was more than 8.3 times her documented net worth (\$1,050,000).
39. SC consistently presented himself to Benson as comfortable with high-risk investments. Nonetheless, in the circumstances, the use of margin in SC's and BC's accounts in excess of their stated net worth and in reliance of the guarantees with SKL, should have been a red flag for Benson and RBC DS.
40. In particular, the high margin debt and the deteriorating equity position of SC's Margin Accounts and the BC Margin Account warranted further suitability assessments, which Benson failed to conduct, and RBC DS failed to sufficiently supervise Benson to ensure that she conducted appropriate suitability assessments.

SK's Death

41. SK died on or about October 14, 2014.
42. Benson knew of SK's death by no later than October 17, 2014 but did not notify RBC DS at that time.

43. On or about January 7, 2015, Benson advised RBC DS that SK had passed away months earlier.

The Transfers

44. Starting approximately ten weeks after SK's death, SC, on behalf on SKL, directed a series of transfers from an SKL account to his and BC's margin accounts. First, on December 22, 2014, SC directed the transfer of \$1.8 million (US) from SKL to BC, pursuant to a Letter of Authorization. After reviewing the Letter of Authorization signed by SC, and following discussions with Benson, RBC DS permitted the transfer.
45. On April 14, 2015, pursuant to two further Letters of Authorization, SC directed the transfer of \$492,000 from SKL to BC and \$669,000 from SKL to SC. After reviewing the Letters of Authorization signed by SC, and following discussions with Benson, RBC DS permitted the transfers on June 3, 2015.
46. At the time the April 2015 Letters of Authorization were processed, RBC DS had not been provided with a copy of SK's will and had not received instructions from SK's estate trustees. Further, beneficiary information with respect to SKL had not been updated. Moreover, the transfers pursuant to the Letters of Authorization amounted to transfers of a substantial part of the assets of SKL.
47. By permitting the transfers pursuant to the Letters of Authorization, RBC DS failed to adequately supervise Benson with respect to her KYC obligations, and to address the existing conflict of interest between the clients.

Account Restrictions

48. On July 23, 2015, the SKL Accounts were restricted to sells.

49. On December 15, 2015, RBC DS wrote to SK's estate trustees and separately to SC and BC advising that activity in the SKL Accounts, SK Accounts, the SC Margin Accounts and the BC Accounts would be restricted to liquidating trades only.

Failure to Supervise Benson

50. Notwithstanding that RBC DS considered the conflict of interest created by SC's execution of the guarantees and authorization of transfers on behalf of SKL, in reviewing the relationships between the parties, RBC DS placed undue reliance on Benson's representations regarding her knowledge and discussions with the clients at issue, when heightened supervision or direct contact with clients was required.
51. Although RBC DS questioned the activities that occurred within and between the SKL, SC and BC accounts, and raised concerns with respect to the guarantees, RBC DS nonetheless failed to sufficiently address the red flags that were raised and did not sufficiently follow up on questions or make further inquiries to address the conflict of interest between the parties.

Mitigating Factors

52. After SK's passing, RBC DS contacted SK's Estate Trustees to arrange a meeting to discuss the accounts. It was during this meeting that RBC DS alerted SK's family to the transfers SC made from SKL to his and BC's accounts. It was as a result of RBC DS' outreach that the family began its investigation into SC's actions.
53. RBC DS has made a voluntary payment of \$500,000 to SKL in reflection of its share of responsibility for the events described herein.

54. By settling, RBC DS has saved the need for a lengthy, costly hearing and has indicated acceptance of its responsibilities as an IIROC Dealer Member.

PART IV – CONTRAVENTION

55. By engaging in the conduct described above, the Respondent committed the following contraventions of IIROC's Rules:
- (i) Between March 2007 and July 2015, RBC DS failed to adequately supervise the activities of its Registered Representative, Benson, in connection with the accounts of its corporate client, SKL, contrary to Dealer Member Rules 2500 and 38.1.

PART V – TERMS OF SETTLEMENT

56. The Respondent agrees to the following sanctions and costs:
- (i) RBC DS will pay a fine of \$350,000; and
 - (ii) RBC DS will pay costs of \$50,000.
57. 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

58. 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.

59. 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

60. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
61. 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.
62. 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.
63. 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.
64. 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.

65. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
66. 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.
67. If this Settlement Agreement is accepted, the Respondent agrees that neither it nor anyone on its behalf, will make a public statement inconsistent with this Settlement Agreement.
68. 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

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

DATED this “17th” day of June, 2021.

Witness

“David Agnew”
Respondent

“Ricki Ann Newmarch”
Witness

“Sylvia Samuel”
Sylvia Samuel
Enforcement Counsel on behalf of
Enforcement Staff of the Investment
Industry Regulatory Organization of
Canada

The Settlement Agreement is hereby accepted this “7” day of “July”, 2021 by the following Hearing Panel:

Per: “John Lorn McDougall”
Panel Chair

Per: “Daniel Iggers”
Panel Member

Per: “Vanessa Gardiner”
Panel Member