Re Movassaghi

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Mohammad Movassaghi

2022 IIROC 02

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

Heard: October 27, 2021 in Vancouver, British Columbia via videoconference
Decision: March 4, 2022
Reasons for Decision: March 4, 2022

Hearing Panel:
Linda J. Murray (Chair), William Wright and Johannes van Koll
Appearances:
Stacy Robertson, Senior Enforcement Counsel
Mohammad Movassaghi (absent)

DECISION ON PENALTY

INTRODUCTION

¶ 1 In its Reasons for Decision issued on August 18, 2021 (2021 IIROC 16), this Hearing Panel found that the following contraventions alleged in the Notice of Hearing and Statement of Allegations dated April 28, 2020, were proven:

a. **Contravention 1**: Between July and September 2016, the Respondent falsified client signatures on account documentation, or knew or ought to have known that certain of his clients' documents were falsified, or failed to exercise due diligence to ensure that certain clients' documents were not falsified contrary to Dealer Member Rule 29.1 and Consolidated Rule 1400 (for conduct after September 1, 2016).

b. **Contravention 2**: On December 14, 2016 and February 13, 2019, the Respondent misled Enforcement Staff ["IIROC Staff"] in sworn interviews and thereby acted contrary to Consolidated Rule 1400.

¶ 2 As directed, a penalty hearing was held on October 27, 2021. The Respondent had notice but did not appear at the hearing on the merits, or the penalty hearing.

SUMMARY OF EVIDENCE AND FINDINGS

Contravention #1 – falsified client documents

¶ 3 We made the following findings regarding Contravention #1.

¶ 4 The Respondent was the broker of record and the main contact for the clients. The Respondent was responsible for his team members who provided administrative and support services. Only the Respondent and his team members had access to the client documents. Neither of his administrative support team members signed any documents for these clients. The Respondent met with the clients and returned the signed documents to his administrative staff to process.

¶ 5 The Respondent admitted to at least one client that he forged her signature and that of other clients. The Respondent over time appeared to shift blame to others including assistants and the clients and began to offer excuses in an attempt to justify situations where client signatures may be forged for convenience.

¶ 6 The Respondent was aware of his professional obligations to: (1) obtain informed consent from each client prior to transferring their accounts; and (2) not to forge client signatures on transfer and new client account documents. The Respondent was aware of his professional responsibility to provide the actual or a reasonable estimate of deferred service charge fees prior to the sale of mutual funds but he failed to do so.

¶ 7 By forging the client signatures on transfer forms and/or ensuring that the signatures were not forged when he became aware of the client complaints, he deprived the clients of the opportunity to fully consider their needs and make informed decisions regarding the account transfer, which was each client's right. The new client account forms contain information regarding the clients' risk tolerance, investment objectives and time horizons. This information forms the basis for determining appropriate investment advice and is of critical importance in properly administering the account. The Respondent's actions in processing documents which were forged or which the clients had not seen and approved, resulted in a betrayal of his obligation to respect the clients' wishes and properly consider their investment needs.

¶ 8 The Respondent's motive for forging the documents was inferred from the facts. If the clients were aware of the fees they may not have transferred their accounts, or all of their account assets, to his new firm. He was already the subject of an IIROC disciplinary action for forging one client signature and he did not want additional instances to come to IIROC's attention as this would expand the investigation and result in more serious consequences. IIROC staff and the previous hearing panel were unaware of the additional client complaints and forgeries at the time that the 2017 Settlement Agreement was approved. It would undoubtedly not have been approved had IIROC known of these other forgeries. As a result of his actions, the Respondent delayed the discovery of the client complaints regarding the other forgeries for his own benefit and to the detriment of his clients, his employer, IIROC, and the public.

¶ 9 We found that the forgeries were not clerical or administrative errors. Signing another person's name is always a conscious act and is not forgettable. It is never acceptable. The Respondent's actions circumvented the right of his clients to make informed decisions regarding their accounts and in some cases defied the specific instructions of two clients that they wished to consider the issue of fees before consenting to the account transfers. The Respondent betrayed his clients' trust, caused his clients financial losses, and put his clients at risk due to the errors (including incorrect beneficiaries) in the forged client documents and transfer forms.

¶ 10 We found that the Respondent failed to observe, and his conduct displayed an unreasonable departure from, the high standards of ethics and conduct expected of him as an IIROC registrant. He engaged in conduct that breached regulatory requirements and was unbecoming and detrimental to the public interest. His actions were likely to diminish investor confidence in the integrity of the securities markets. As a result, we found that the Respondent breached Dealer Member Rule ("DMR") 29.1, now Consolidated Rule 1400, regarding the standards of conduct expected of a registrant regarding these clients.

Findings regarding Client RM

¶ 11 RM advised the Respondent that she was concerned about the amount of potential transfer fees and wanted the opportunity to speak to her accountant prior to agreeing to the transfer of her account. RM had

not seen the new client account and transfer forms before they were sent for processing. The signatures on the documents were forged. RM did not provide consent to transfer her accounts, nor did she authorize the disposition of the proprietary mutual funds. As a result of the unauthorized transfer of the proprietary mutual funds, RM incurred DSC fees totaling $4,746.87. The Respondent admitted to RM that he forged her signature (and the signatures of other clients). The Respondent repaid RM the amount of the deferred sales charge ("DSC") fees.

¶ 12 We found that the Respondent forged RM's signature on new client account and transfer forms without RM's consent. We found that RM may not have transferred her account, or at least the proprietary mutual funds, had she known the amount of the DSC fees or the correct details regarding the proposed rebate plan which involved reinvesting and locking in her funds for longer periods in order to obtain part of the rebate. The Respondent's actions in forging the client signatures and permitting the documents to be processed without RM's consent resulted in DSC fees totaling $4,746.87 from the unauthorized sale of the proprietary mutual funds. As a result, the Respondent breached DMR 29.1, now Consolidated Rule 1400, regarding the standards of conduct expected of a registrant.

Findings regarding Client CY

¶ 13 The Panel found that although CY agreed to transfer her accounts, the Respondent did not provide sufficient opportunity for her to provide informed consent or proper authorization to do so. We found that the signatures on the new client account and transfer documents were forged. As a result, CY did not provide informed consent to the transfer her accounts, nor did she authorize the disposition of the proprietary mutual funds. CY incurred DSC fees totaling $3,758.01. We found that CY may not have transferred her account, or at least the proprietary mutual funds, had she known the amount of the DSC fees.

¶ 14 We found that there was sufficient evidence to conclude that the Respondent knew or ought reasonably to have known that the documents were forged, or failed to exercise due diligence to ensure that the documents were not forged, regarding CY's signatures on the new client account, transfer, and beneficiary change forms. The Respondent's actions permitted the documents to be processed without CY's consent resulting in DSC fees totaling $3,758.01 from the unauthorized sale of the proprietary mutual funds. As a result, the Respondent breached DMR 29.1, now Consolidated Rule 1400, regarding the standards of conduct expected of a registrant.

Findings regarding Clients EC & DC

¶ 15 We found that the new client account and transfer form documents used to transfer the accounts of DC and EC were not signed by them, nor had they seen the forms before they were sent for processing. The signatures on the documents for DC and EC were forged. As a result, DC and EC did not provide informed consent to transfer their accounts, nor did they authorize the disposition of the proprietary mutual funds. As a result of the unauthorized activity, DC incurred DSC fees totaling $4,816.97 and EC $613.51.

¶ 16 By this time, the Respondent had been terminated by the firm as a result of the first forgery which was the subject of the 2017 Settlement Agreement. The Respondent's assistant, also a registrant, became the broker for the client accounts. The assistant contacted the Respondent upon receiving DC's complaint and arranged a meeting with the clients, which the Respondent attended even though he was no longer registered. We found that the Respondent was therefore aware of the forgery of the account documents for DC and EC and of DC's potential complaint shortly after it was received in mid-September 2016.

¶ 17 We found that there was sufficient evidence to conclude that the Respondent knew or ought reasonably to have known that the documents were forged, or failed to exercise due diligence to ensure that the documents were not forged, regarding the signatures of DC and EC on the new client account and transfer forms used to transfer the accounts of DC and EC. The Respondent's actions permitted the documents to be processed without the consent of DC and EC resulting in DSC fees totaling $4,816.97 for DC and $613.51 for EC from the unauthorized sale of the proprietary mutual funds. As a result, the Respondent breached DMR 29.1,

now Consolidated Rule 1400, regarding the standards of conduct expected of a registrant.

Findings regarding Client RS

¶ 18 RS did not sign the new client account and transfer form documents, nor had he seen them before they were sent for processing. The forms contained errors. RS's signatures on the documents were forged. As a result, RS did not provide informed consent to the transfer of his accounts, nor did he authorize the disposition of the proprietary mutual funds. As a result of the unauthorized activity, RS incurred DSC fees totaling $1,781.74.

¶ 19 RS advised that he wanted to discuss potential fees before the accounts were moved since, if losses would be incurred, he questioned why he would move the accounts. RS was not aware at that time that the forged documents had been submitted to initiate the transfer of his accounts. The assistant referred RS's inquiries to the Respondent. We found that the Respondent was therefore aware of RS's expectation that he would be informed about the transfer fees and have the opportunity to decide whether to transfer his accounts.

¶ 20 We found that there was sufficient evidence to conclude that the Respondent knew or ought reasonably to have known that the documents were forged, or failed to exercise due diligence to ensure that the documents were not forged, regarding the new client account and transfer forms used to transfer RS's accounts. The Respondent's actions permitted the documents to be processed without RS's consent resulting in DSC fees totaling $1,781.74 from the unauthorized sale of the proprietary mutual funds. As a result, the Respondent breached DMR 29.1, now Consolidated Rule 1400, regarding the standards of conduct expected of a registrant.

Contravention #2 – misleading IIROC

Sworn Interview of December 14, 2016

¶ 21 During his sworn IIROC interview on December 14, 2016, the Respondent admitted forging one client's (KO) signature and was terminated by his firm. During the interview, the Respondent stated a number of times that he did not forge any other client signatures. We found that at the time of the interview, the Respondent was aware of a number of complaints and inquiries by these clients regarding potential forgery of signatures on their client account and transfer documents.

¶ 22 The Respondent did not report the potential issues to his firm or to IIROC, despite the ongoing investigation. IIROC was not aware of the other client complaints at the time of the interview. Even when specifically asked, the Respondent failed to advise IIROC during the interview of his knowledge of these additional complaints and possible additional forgeries of client documents, or his discussion with his assistant regarding potential additional forgeries. The Respondent's actions delayed discovery of the forged signatures, the unauthorized account transactions, and the clients' complaints for his own benefit and to the detriment of his clients, his firm, IIROC, and the public.

¶ 23 We found that the Respondent made misrepresentations and/or misled IIROC while testifying under oath on December 14, 2016.

Sworn Interview of February 13, 2019

¶ 24 During his sworn IIROC interview on February 13, 2019, the Respondent admitted forging one client's (KO) signature. The Respondent continued to deny that he forged any other client signatures and said he did not know about any other client complaints at the time of the interview except RM's. Even when specifically asked, the Respondent failed to advise IIROC of his knowledge of the additional complaints and possible additional forgeries of client documents, or his discussions with his assistant regarding potential additional forgeries.

¶ 25 The Respondent said that RM's complaint was brought to his attention by his firm's Compliance

Department in about February 2018, and at that time he denied the allegation that he forged RM's signature. However, between mid-December 2016 and July 2017, the Respondent had discussions and texts with RM in which he admitted forging RM's signatures and those of other clients. We found that the Respondent was aware of RM's complaint from at least September 3, 2016, and that by July 2017, the Respondent had repaid RM the resulting DSC fees for the unauthorized account transfer for admittedly forging her signatures. The Respondent did not advise IIROC of these discussions with, or payments to, RM.

¶ 26 We found that at the time of the interview the Respondent was aware of a number of clients' complaints and inquiries regarding potential forgery of signatures on their client account and transfer documents. The Respondent texted with RM on November 28, 2016 regarding the apparent forgery of her signatures as well as those of other clients. The Respondent's assistant advised him of the other client complaints prior to the interview (CY's on December 22, 2016, DC and EC's on February 5, 2017, and RS's on January 7, 2017).

¶ 27 In addition, the Respondent made additional misrepresentations and/or misled IIROC while testifying at the interview. The Respondent said he met RM at his office on July 28, 2016, the date when the documents were purportedly signed by RM. However, at the time, the Respondent was aware of the text messages from RM on August 19, 2016 in which she asked for the address to his new office for their initial meeting on August 23, 2016. We found that the meeting with RM did not occur until August 23, 2016 and that RM did not sign any documents at that time nor would it have been logical for RM to sign documents at that time as the forged documents for the account transfer were sent for processing before the meeting took place.

¶ 28 We found that the Respondent was not truthful in his responses and made misrepresentations to IIROC during the February 13, 2019 interview regarding: his knowledge of the clients' complaints; the forged signatures on the documents to transfer the clients' accounts; and his meeting date and repayment to RM.

¶ 29 With respect to the Respondent's conduct at both IIROC interviews we further found that:

a. These were not administrative or minor matters that the Respondent could have easily overlooked or forgotten. The Respondent's conduct in forging the clients' signature, and then concealing that fact and the clients' resulting complaints from IIROC despite direct inquiries under oath, were deliberate and intentional acts, not the result of administrative errors or inadvertent mistakes or misunderstandings by the Respondent. The Respondent's knowledge of other clients' complaints and forged signatures was material.

b. During the interviews, IIROC asked the Respondent specific, clear and understandable questions regarding his knowledge of other potential forged signatures. The Respondent's answers were not truthful. Even if IIROC had not asked specific questions, the Respondent had a professional duty of candor and honesty, and he ought to have advised IIROC of the additional complaints and potential forgery of other clients' documents. The Respondent's omissions and half-truths during the interviews misled IIROC. The Respondent's conduct was deliberate, ongoing, was meant to deceive, and did deceive IIROC for his personal benefit, at the expense of his clients, the firm, the regulatory authorities, and the public.

¶ 30 Trust is a necessary element in all relationships within the securities industry, including the relationship between IIROC and registrants. IIROC regulates the securities industry to protect the public interest and ensure market integrity and confidence of the public in the capital markets. The public must have confidence that registrants will comply with their regulatory responsibilities. Honesty and candor by registrants with IIROC are essential to ensure that IIROC can properly carry out its oversight function, including timely and efficient investigations of client complaints and potential registrant misconduct.

¶ 31 We concluded that the Respondent failed to observe, and his conduct displayed an unreasonable departure from, the high standards of ethics and conduct expected of him as an IIROC registrant. He engaged

in conduct that breached regulatory requirements and was unbecoming and detrimental to the public interest. His actions would likely diminish investor confidence in the integrity of the securities markets. As a result, we found that the Respondent breached Consolidated Rule 1400 regarding the standards of conduct expected of a registrant.

Credibility Issues

¶ 32 We were required to make an assessment of credibility as information provided by the Respondent contradicted other documentary evidence. Unless otherwise specifically noted, we rejected the Respondent's version of events and did not find the Respondent to be credible where his version of events differed from the recollections of other witnesses or the documentary evidence.

SUBMISSIONS ON PENALTY

¶ 33 The main point of submissions by Enforcement Counsel was that there were several egregious violations involving forgeries and misleading IIROC, that the Respondent's conduct was likely to diminish investor confidence in the integrity of the securities markets, that a significant general deterrence message was required to ensure that IIROC was able to properly perform its regulatory functions, and that therefore significant sanctions were required.

¶ 34 Enforcement Counsel suggested the following penalties were warranted in this case:

- A fine of $30,000 for the forgeries;
- A fine of $50,000 for misleading IIROC;
- A permanent ban; and
- $40,000 in costs.

Sanction Guidelines and Cases - Submissions

¶ 35 In his submissions, Enforcement Counsel referred to several of the principles set out in the IIROC Sanction Guidelines, including Principles 5 and 6, which deal with situations where a suspension should be considered including: several serious contraventions involving fraud or willful misconduct; a pattern of misconduct; prior disciplinary history; harm to clients and the integrity of the marketplace in general. This case involved five clients, multiple instances of forgeries of new client account documents and transfer forms (despite client instructions and without the knowledge of the clients), losses suffered by the clients, for the personal benefit of the Respondent. The Respondent lied to cover up the misconduct over a several months and made misrepresentations in sworn IIROC interviews meant to prevent IIROC from uncovering the misconduct.

¶ 36 Enforcement Counsel submitted that there was no question that a suspension was warranted in his case, but that the real issue was whether a permanent ban was appropriate and should be considered given the following factors:

a. the contraventions involved significant harm to the investing public and integrity of the markets;

b. the misconduct had an element of criminal or quasi-criminal behaviour;

c. there was reason to believe that the Respondent cannot be trusted to act in an honest and fair manner in dealings with clients, the public, and the industry; and

d. additional factors warranting a permanent ban included: betrayal of client trust; financial losses to the clients; risks to the clients due to errors in the forged documents; the conduct was deliberate and not an inadvertent or an administrative error; the conduct was ongoing and meant to deceive, and did deceive, the clients, his firm, IIROC, and the public for his personal benefit; his actions in misleading IIROC in sworn interviews was detrimental to the public

interest; his conduct shows that the Respondent does not take regulation seriously, does not appreciate the type of conduct required in the public interest, and cannot be trusted to act in a fair and honest manner with clients or the securities industry generally.

¶ 37 With respect to the importance of general deterrence, Enforcement Counsel referred to Re Pariak-Lukic 2015 ONSEC 18, in which the Ontario Securities Commission found that IIROC hearing panels must adequately take into account general deterrence to protect the public interest. Enforcement Counsel also referred to R. v. Kusnezoff 1991 CanLII 1968 (BCCA) and submitted that the Respondent's conduct in intentionally misleading IIROC in sworn interviews was akin to the offence of perjury which the B.C. Court of Appeal noted in Kusnezoff (p.2) was a very serious offence as it "strikes at the very root of the justice system".

¶ 38 Enforcement Counsel submitted that a permanent ban was appropriate in this case and that a suspension would not adequately meet the standard required for general deterrence. Enforcement Counsel also submitted that, in addition to a permanent ban or lengthy suspension, a significant fine is appropriate. He referred to Re Rudensky 2018 IIROC 38 and 2019 ONSEC 24 in which a fine of $50,000 was imposed in addition to a permanent ban in order to provide a sufficient specific deterrent to the respondent and to Re Li 2016 IIROC 34 in which a fine was imposed for failure to cooperate.

¶ 39 Enforcement Counsel referred the Hearing Panel to a number of other cases involving forgeries and misleading or failing to cooperate with IIROC.

Re Movassaghi 2017 IIROC 46 (2017 Settlement Agreement)

¶ 40 The Respondent admitted forging one client's (KO) signature on several documents using the client's driver's licence as a template for the signature in order to transfer the client's account in 2016. KO asked if the transfer would involve costs and require her to sign documents. In response to her inquiries, the Respondent advised KO that she needed to sign documents and there would be fees payable which he would discuss with her at their next meeting. The Respondent used the forged documents to open the new client account and transfer the holdings from his former firm without KO's knowledge or consent. The DSC fees relating to the sale of the proprietary mutual funds were about $3,600. KO learned of the account transfer from the firm and confronted the Respondent on August 30, 2016 about forging her signature and transferring her account without consent. The Respondent then admitted the forgeries and was terminated by his firm.

¶ 41 The panel in the Movassaghi 2017 Settlement Agreement reviewed cases involving forgeries, including a number of the cases referred to us for this hearing. The decisions reflect that forgery is extremely serious misconduct for which determining an appropriate penalty requires a careful weighing of the facts of each case. The 2017 hearing panel found that the Respondent's conduct amounted to forgery and breached IIROC DMR 29.1 (now Consolidated Rule 1400). One of the factors relied upon by the 2017 hearing panel in accepting the Settlement Agreement was that the "misconduct consisted of an isolated episode in which a limited sequence of actions imposed limited short-term harm to one client" [para. 24(b)]. The Respondent cooperated with IIROC's investigation regarding KO. The sanctions included a fine of $27,500, an eight-month suspension, and costs of $2,500, which the 2017 hearing panel noted was at the high end of the range but appropriate in the circumstances. The Respondent initially made some arranged instalment payments to IIROC from April 5 to November 5, 2018, but there remains $17,600 due and owing to IIROC. The Respondent was serving the eight-month suspension when the second IIROC investigation arose and was not re-registered by IIROC.

¶ 42 We considered other cases, including Re Dickson 2013 IIROC 53; Re Lamontagne 2009 IIROC 6 and 2009 ABASC 490; Re Gill 2015 IIROC 39; Re Obasi 2011 LNONOSC 179; Re Tassone 2017 IIROC 53; Re Cuthbertson 2012 IIROC 24; Re Papp 2016 IIROC 51; Re Pan 2012 IIROC 22; Re Lohrisch 2010 IIROC 31; and Re Rail 2012 IIROC 17. Enforcement Counsel noted that in previous cases the fines for forgery contraventions ranged from $7,500 to $35,000, with suspensions of two to nine months depending upon the gravity of the conduct. The fines in previous cases for misleading IIROC ranged from $40,000 to $50,000.

¶ 43 In his submissions (paras 52 to 54), Enforcement Counsel submitted that Re Tassone was an "outlier case" which relied too heavily on Re Wood 2015 BCSECCOM 169 and Re Steinhoff 2013 BCSECCOM 308. He submitted that the suspensions in Re Tassone (six months) and Re Wood (twelve months) were difficult to reconcile with the other cases in which suspensions of two years to a permanent ban were imposed for misleading regulators. He noted that in the Re Tassone, Re Wood and Re Steinhoff cases, the panels did not find that the respondents breached some of the contraventions and the circumstances were not as egregious as this case. In Re Pariak-Lukic, the Ontario Securities Commission (upheld on appeal) distinguished Re Steinhoff (which involved suitability recommendations but not intentionally misleading IIROC during an investigation) on the basis that the respondent had not acted dishonestly, with improper motive, or with deliberate deception or reckless, harmful behaviour.

¶ 44 Enforcement Counsel submitted that a significant general deterrence message is required regarding misleading IIROC in order for IIROC to effectively carry out its regulatory functions. He submitted that the fine for the additional forgery contraventions in this case should be at least equal to or greater than, those imposed for the 2017 Settlement Agreement, and a fine of $50,000 was appropriate in this case for misleading IIROC as the circumstances were particularly egregious.

COSTS SUBMISSIONS

¶ 45 Enforcement Counsel provided evidence showing that IIROC's actual costs in this matter were $120,619.50. This did not include all of the costs incurred by IIROC regarding this matter.

¶ 46 The panel in Re Golden Capital Securities Ltd. 2008 IIROC 1 and 2009 BCSECCOM 192 noted that IIROC could make recommendations regarding the amount of reasonable costs and that it was the hearing panel's duty to determine the appropriate cost award amount.

¶ 47 In Re Van Hee 2009 IIROC 34 (para 106), the panel outlined a number of non-exhaustive factors to take into account in determining the amount of a cost award against a respondent. Enforcement Counsel noted that the cost award provisions have changed since that decision was issued (the current rule refers only to costs incurred by IIROC and time spent by IIROC staff and does not refer to an assessment of appropriate and reasonable costs), but that the factors are still relevant to the hearing panel's exercise of discretion in awarding costs. Costs should not be used as a further penalty and must bear some relationship to the actual costs incurred, the contraventions, and other financial penalties.

¶ 48 In this case, the investigation and disciplinary process took almost four years, scheduling the hearing was difficult due to the timing of disciplinary proceedings by other regulators and the availability of the Respondent's counsel, there was a time delay in discovering the forgeries (for which the Respondent was responsible), which resulted in significant efforts to locate and interview witnesses, and the Respondent continued to vigorously deny any involvement in the forgeries up to the hearing for which he failed to appear and present any evidence to support his position.

¶ 49 Enforcement Counsel referenced *Re Lohrisch* (para 54) regarding costs:

> In our view, the Respondent's conduct, commencing in 2003, and continuing once matters were under investigation, was a direct cause of IIROC incurring significant costs in this case. Had Lohrisch admitted his initial misrepresentation, we believe matters could have been resolved in a very timely manner, and without incurring substantial costs. Instead, the Respondent's conduct compounded matters and increased the costs incurred by IIROC.

¶ 50 Enforcement Counsel submitted that these comments applied to the Respondent in this case, i.e., had the Respondent been truthful in the first IIROC interview on December 14, 2016, the investigation (including a second interview) and this hearing would not have been necessary and the additional instances of forgeries for these clients could have been addressed in the 2017 hearing with the KO matter.

¶ 51 Enforcement Counsel submitted that a cost award of $40,000 would be reasonable in the

circumstances and that any less might result in a loss of public confidence in IIROC's ability to effectively regulate the markets generally. Enforcement Counsel submitted that it was necessary to ensure an effective message to others in the industry that serious breaches would result in significant consequences.

Other Regulatory Proceedings and Penalties

¶ 52 Enforcement Counsel referred the Hearing Panel to other disciplinary proceedings involving the Respondent regarding conduct related to the subject of this hearing[1].

¶ 53 The Respondent was the subject of a disciplinary proceeding by the Mutual Fund Dealers Association of Canada regarding his conduct at his former firm for forging KO's client documents and discretionary trading in KO's account. On March 22, 2021, an MFDA hearing panel found the Respondent liable on all counts but has yet to issue written reasons or hold a penalty hearing.

¶ 54 The Respondent was certified as a Certified Financial Planner by the Financial Planning Standards Council (now FP Canada). He did not renew his certification after March 2017. FP Canada pursued disciplinary proceedings against the Respondent for fraud, forgery and other contraventions that arose out of the same facts as the 2017 IIROC Settlement Agreement. On March 23, 2021, FP Canada ordered, effective immediately, a permanent ban from seeking renewal or reinstatement of his certification or any other certification; a permanent ban on using any CFP certification marks or holding himself out as certified; and payment of costs of $15,000 on or before May 24, 2021.

ANALYSIS

¶ 55 From May 22, 2013 to July 8, 2016, the Respondent was registered as a mutual fund dealing representative with an MFDA member firm. On July 11, 2016, the Respondent began work at an IIROC Dealer Member. On July 25, 2016, the Respondent was approved as a Registered Representative (mutual funds). On September 2, 2016, the IIROC Dealer Member terminated the Respondent's employment for cause due to the initial forgery involving KO. The Respondent has not since been registered in the securities industry.

Sanction Guidelines and Principles - Findings

¶ 56 The Hearing Panel considered the general principles in IIROC's Disciplinary Sanction Guidelines ("Sanction Guidelines"). Although the Sanction Guidelines are not binding on the Panel, they describe the principles to be applied and illustrate how case-specific factors must be considered in determine the appropriate sanctions in each particular case.

> Sanction Guidelines, Principle 1:
>
> > The purpose of sanctions in a regulatory proceeding is to protect the public interest by restraining future conduct that may harm the capital markets. In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence), and to deter others from engaging in similar misconduct (general deterrence).
> >
> > General deterrence can be achieved if a sanction strikes an appropriate balance by addressing Regulated Person's specific misconduct but is also in line with industry expectations [referencing *Re Mills*]. Any sanction imposed must be proportionate to the conduct at issue and should be similar to sanctions imposed on respondents for similar contraventions in similar circumstances. The sanction should be reduced or increased depending on the relevant mitigating and aggravating factors.

¶ 57 The panel in *Re Mills* 2001 IDACD 7 (April 2001) (p. 3) noted:

[1] Enforcement Counsel referred us to the Respondent's criminal conviction for breaching provincial health orders regarding the COVID-19 pandemic. We did not consider those proceedings in our decision as the conduct did not relate to the Respondent's actions as a registrant and occurred after the events regarding the matter before us.

> Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its Members to expect for the conduct under consideration, it may undermine the goals of the Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the District Council in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention rather than punishment.

¶ 58 We considered all the cases referred to us by Enforcement Counsel. The decisions were of assistance in considering how circumstances differ among cases involving similar contraventions. We found that although some had similar facts, none had exactly the same facts as the case before us. The cases provided general guidance on how to apply principles to the facts of this particular case.

¶ 59 We agreed that a global approach to penalty was appropriate, rather than individual multiple violations. We considered what global penalties were appropriate for the cumulative violations.

¶ 60 We determined that the following Sanction Guideline principles were most applicable to this case, taking into account Principles 1, 5 and 6:

a. The forgeries involved five clients and numerous documents including new client account and transfer documents, some which contained material errors (including designated beneficiaries) that were potentially prejudicial to the clients. The new client account documents are of critical importance in appropriately serving the needs of clients. By forging these documents, the Respondent deprived the clients of the opportunity to ensure that accurate information was used to provide advice regarding their financial investments. The Respondent breached a fundamental professional obligation to ensure that he had accurate information regarding the circumstances of each client. The forgeries eroded the trust relationship that must exist between the Respondent and his clients, his firm, and the regulator for the protection of the marketplace and the public.

b. The conduct was ongoing for over three years and involved a pattern of misconduct. The clients were advised in writing that their consent was required to complete the account transfers. The Respondent failed to advise the clients of the account transfers and the resulting DSC fees. The clients had the right, and two clients specifically advised the Respondent that they wished to, consider the impact of the proposed account transfers. The Respondent ignored those clients' rights and specific instructions.

c. The clients suffered financial losses as a result of the Respondent's actions. Only one client was reimbursed the DSC fees by the Respondent months later.

d. The Respondent's actions were not inadvertent or careless but were deliberate and calculated to deceive his clients, his firm, and IIROC.

e. The Respondent's actions were not for the benefit of his client but rather for his own personal benefit, i.e., to ensure that the client accounts were transferred to his new firm as part of his client base regardless of the clients' concerns or instructions. The Respondent's conduct in hiding the additional complaints from his firm and from IIROC was meant to ensure he faced minimal regulatory penalties and to ensure that the 2017 Settlement Agreement was approved so he could return to the industry and obtain his signing bonus with another firm.

f. The Respondent deliberately lied or omitted to provide material information to IIROC when asked about additional complaints or forgeries and, as a result, he misled IIROC. He also made fabrications that did not stand up to scrutiny with the intent of obstructing or impeding IIROC's investigation.

g. It might be argued that the Respondent had no disciplinary record at the time that these additional forgeries took place and/or were discovered by IIROC as the 2017 Settlement Agreement had not been approved. Typically, a lack of disciplinary record can be considered as a mitigating factor. However, in this case we considered the Respondent's conduct to be so egregious as to nullify the effect of mitigation for lack of a disciplinary record.

h. The Respondent failed to pay a significant portion of the previous IIROC penalties from the 2017 Settlement Agreement.

i. The Respondent receives no credit for cooperation as a mitigating factor. He did not cooperate with IIROC's investigation, did not self-report the conduct, failed to take any remedial steps (with the exception of repaying the DSC fees to client RM) to compensate for losses or ensure his conduct did not recur, and blamed others (including the clients and his staff) for his conduct.

j. The Respondent did not participate in the hearing. He provided information in his written Response, which was either not supported by the other evidence (leading us to make an assessment that the information he provided was not generally credible) or for which he provided no supporting evidence.

k. As the Respondent had already been terminated by his firm for admitting to the initial forgery, he faced no additional internal disciplinary sanctions from the firm.

¶ 61 We concluded that the Respondent's actions: (1) caused significant harm to the reputation of the marketplace and to market integrity; (2) were criminal or quasi-criminal in nature; (3) demonstrated that he cannot be trusted to act in and honest and fair manner in dealings with clients, the public, and the securities industry as a whole; and (4) prejudiced the ability of IIROC to effectively perform its regulatory functions in the public interest.

Previous Cases and Penalties - Findings

¶ 62 With respect to the forgery contraventions, as we and other previous hearing panels (including the panel in the 2017 Settlement Agreement) found, forgeries are not clerical or administrative errors and they involve deliberate conduct. Regardless of the rationale, forgery is never acceptable.

¶ 63 The previous cases cited involved a range of situations from those where the signatures were forged as a matter of convenience with the client's implied or express consent with no personal benefit to the registrant and where the documents were not misleading and reflected the client's wishes, to cases involving more serious conduct where clients were asked to lie or cover up the conduct, to creation of false account holding documents, and lying to regulators when questioned. Fines in the cases ranged from $7,500 to $35,000 with periods of suspension from two to nine months and cost awards from $1,000 to $15,000. Cases with sanctions at the low end included Re Dickson, Re Lamontagne, with Re Gill and Re Obasi at the higher end. Some cases involved settlement agreements, rather than contested hearings. Sanctions in the 2017 Settlement Agreement regarding forgeries for one client included a fine of $27,500, a suspension of eight months, and costs of $2,500.

¶ 64 With respect to the contraventions of misleading IIROC, the previous cases cited involved conduct ranging from misleading the firm (about unauthorized trading, off book transactions, improper loans to clients, undisclosed outside brokerage accounts), to misleading IIROC during an investigation. Sanctions for the cases not involving misleading IIROC during an investigation ranged from suspensions of six months to permanent bans, plus fines up to $35,000. In the cases of *Re Cuthbertson*, *Re Rudensky* and *Re Papp*, suspensions ranged from 18 and 24 months, some resulting in longer suspensions where the respondent had been out of the industry for some period. It was the deliberate, ongoing deceitful conduct resulting in harm to market integrity that led to the imposition of lengthier suspensions in those cases.

¶ 65 As noted in *Re Papp* (para 18), quoting *Re Morrison* 2009 IIROC 4 (para 51):

> The securities industry is a business of trust and confidence. Approved Persons must above all conduct themselves with trustworthiness and integrity, and act in an honest and fair manner in all their dealings with the public, their clients, and the securities industry as a whole. Approved Persons have agreed to abide by and comply with the Association's By-laws, and that includes the duty to cooperate in any investigation. As was said in *Re Stewart* (supra), there is a general principle that the requirement to cooperate in any investigation is fundamental to maintaining an efficient, competitive market environment, and also to maintain the integrity of the securities system and protect the public interest.

¶ 66 The hearing panel in *Re Papp* added (para 19):

> It cannot be overemphasized the adequate regulation is the lifeblood of the industry. It is the means by which the investing public's confidence in the integrity of the industry is maintained. There is not room for those, like Mr. Papp, who choose not to follow the rules and especially, to hide that fact. He had a choice; it was between joining the industry or staying out. Once he elected to become a part of it, he was bound by all the prevailing rules. It is necessary to make it clear to him, and all others who might be similarly inclined to be selective, that the rules are not optional.

¶ 67 The cases of *Re Lohrisch* and *Re Rail* involved misleading IIROC during an investigation, and the sanctions imposed were at the high end of the range. The hearing panels in those cases agreed that the conduct was egregious and that the guidelines recommended the possibility of permanent ban in appropriate cases.

¶ 68 In *Re Lohrisch*, the respondent falsified records regarding his credentials, submitted false documents to IIROC. He then lied during the investigation and made deliberate attempts to obstruct IIROC's investigation by making further fabrications that did not withstand scrutiny. The panel found that his conduct was egregious and that his intentional and deliberate attempts to obstruct the investigation subverted IIROC's ability to perform its regulatory functions.

¶ 69 We agree with the comments of the *Lohrisch* panel (paras 44 & 46) that forgery is egregious and shows that the respondent lacks the honesty required and failure to understand or practice the principles required of a professional in the securities industry. The trust and confidence between the registrant and the client is destroyed by the deceptive conduct, which also harms the firm and the marketplace. It must be clear to IIROC members that this type of conduct is completely unacceptable and will be dealt with severely. The *Lohrisch* panel noted that this factor alone in the Sanction Guidelines was sufficient to consider a permanent ban, particularly where there was no remorse, and imposed a permanent ban, a fine of $40,000, and costs of $27,000.

¶ 70 The *Lohrisch* panel (para 50) referred to *Re Djordjevic* 2007 IDACD 46, in which the respondent forged a client signature on a guarantee and asked the client to lie to his firm to cover up the forgery, to which the client refused. Djordjevic continued to deny the misconduct and blamed the client. We noted with approval the comments by the *Djordjevic* panel that the respondent's conduct was egregious, showed clear disregard for his client's interests, and violated the bonds of trust with his client and his firm. As noted by the *Djordjevic* panel, forgeries of this nature cause harm to the employer and to the securities markets, and negatively impact the confidence of market participants that the system operates fairly and honestly. The *Djordjevic* panel imposed a permanent ban, a fine of $50,000, and costs of $15,000.

¶ 71 In Re Rail, the primary and most serious violation was lying to IIROC and other contraventions flowing from those lies, i.e., failing to observe the high standards of ethics and conduct regarding business transactions, failing to learn the relevant facts of each client, and unauthorized trading. The hearing panel noted that this was an egregious case as the blameworthy conduct went on for several years, the conduct was intentional, the respondent tried to cover up his non-compliance and showed no remorse. He failed to cooperate with the IIROC investigation and in so doing, prevented IIROC from fulfilling its role as an industry regulator. The hearing panel ordered a permanent ban and a $50,000 fine for misleading IIROC, plus a $25,000

fine for each of the other two contraventions, and $10,000 in costs. The panel noted (para 55):

> The Hearing Panel must conclude that the Respondent behaved disrespectfully towards his profession and his oversight body, by the same token, this flagrant lack of integrity is a formal impediment to any reinstatement within the securities industry.

¶ 72 In *Re Pan*, the respondent made a large loan to a client without his firm's consent to facilitate trading in the client's account which then sustained large losses. He also misled his firm regarding the source of the funds. He had several chances to tell the truth but did not do so, and only did so after he left the industry when the loans were discovered. The panel noted that it was an egregious case due to the ongoing deception of his employer, and the sanctions imposed were at the high end of the range.

¶ 73 In *Re Tassone*, the proven allegations related to providing misleading information to IIROC about the respondent's personal financial interest in, and directorship of, a US company. The panel found that Tassone deliberately lied to IIROC when he was obliged to tell the truth on matters that were not trivial, he compounded the problem by offering an explanation for the lies that was itself untrue, and his conduct delayed, frustrated, impeded or otherwise prejudiced IIROC's investigation. The panel agreed that the conduct was serious and required a period of suspension and a significant fine. In determining the appropriate sanction using a global approach, the panel in *Re Tassone* noted that longer suspensions are usually reserved for cases involving multiple clients or a pattern of misconduct (para 28). The panel noted that the two-to-four-year suspension requested by IIROC would essentially amount to a permanent ban, relying upon comments of the BC Securities Commission panel in *Re Steinhoff* (para 90) that "suspension of any length beyond the rate of a normal vacation is, for a registered representative, an extremely serious matter".

¶ 74 We found that the *Tassone* case (insofar as it relied upon the *Wood*, *Steinhoff* and other BC Securities Commission testimony cases) is distinguishable from this case on the facts. We agree with the findings in those cases that misleading any regulator in any circumstance is a serious contravention, particularly given the professional responsibilities of registrants in the securities industry. However, we found that the conduct in this case is much more serious than in those other cases. The contraventions in this case included multiple instances of forgeries for a number of clients, as well as misleading IIROC in two sworn interviews and offering alternative fact scenarios that were themselves not true. The clients suffered losses. The Respondent did not accept responsibility for his conduct but blamed others (including his staff and the clients themselves). The Respondent offered non-credible information in his Response but failed to appear or fully participate in the hearing. The Respondent was aware of the other client forgeries and complaints at the time of the initial IIROC investigation and interview, but purposefully omitted to advise IIROC. He misled IIROC staff and the 2017 hearing panel for his own benefit as he knew that if he admitted to more client forgeries that the proposed 2017 Settlement Agreement would not be approved, and he would face more serious regulatory consequences.

¶ 75 We agree with the submissions by Enforcement Counsel that there must be significant penalties to ensure effective general deterrence for misleading IIROC or IIROC risks losing the ability to effectively perform its regulatory functions in the public interest. We agree that a strong message is required to ensure general deterrence for the industry in general and to ensure specific deterrence for this Respondent in particular.

¶ 76 As noted by the panel in *Re Papp*, the Respondent made a choice to become a registrant in an industry which is heavily regulated to protect the public interest. As a registrant, he was required to comply with all of the rules all of the time, not just some of the rules or for some of the time at his choosing. It is necessary to make it clear to the Respondent and to others who might make similar choices that following the rules is not optional and that serious penalties will result for breaches of the rules.

¶ 77 For the reasons noted above, we decided that the Respondent's conduct in this case is more egregious and warrants sanctions for the forgeries and misrepresentations to IIROC at the high end of the range, determined on a global basis. We concluded that this case is more similar to the cases of *Re Rail*, *Re Lohrisch*

and *Re Papp*. We find that *Re Tassone* (and the cases upon which it relied) is distinguishable from this case on the basis of the facts and the seriousness of the proven contraventions.

¶ 78 Based upon our review of the cases, the Sanction Guidelines, the need for effective general and specific deterrence, and the specific circumstances of this case, we concluded that not only was a suspension warranted, but that a permanent ban is appropriate and reasonable given all the circumstances. We also concluded that significant fines were appropriate in addition to a permanent ban.

Costs – Findings

¶ 79 IIROC Consolidated Rule 8214 provides hearing panels with the authority to assess and award costs, including costs for time spent by IIROC staff, against a respondent. Previous cases including Re Golden Capital, Re Tassone, and Re Van Hee confirm the ability of IIROC staff to make submissions regarding costs and the hearing panel's authority to determine an appropriate award of costs to be assessed against a respondent.

¶ 80 The general approach to be taken by hearing panels is set out in Re Van Hee (paras 101 and 102) as referenced in Re Tassone (para 33). The panel in Re Van Hee noted that a cost award should not be an additional penalty for the respondent but should reflect the time and effort by IIROC and the hearing panel's assessment of how much of those costs the respondent should bear. A hearing panel should exercise care and take a conservative approach in awarding costs so as not to discourage respondents from advancing what they feel are defences of merit and to recognize that respondents are not able to obtain cost awards against IIROC.

¶ 81 As referenced in Re Tassone (para 34), the panel in Re Van Hee suggested factors which a hearing panel might consider in awarding costs including: the degree of a respondent's success in resisting any of the charges; his financial circumstances and degree to which his financial position was already affected by other penalties; the seriousness of the charges; and whether the amount of costs would constitute a "penalty".

¶ 82 As noted by Enforcement Counsel in his submissions, the costs rules have changed since the Van Hee decision (the current rule refers only to costs incurred by IIROC and time spent by IIROC staff and does not refer to an assessment of appropriate and reasonable costs), but that the factors are still relevant to the hearing panel's exercise of discretion in awarding costs. Costs should not be used as a further penalty and must bear some relationship to the actual costs incurred, the contraventions, and other financial penalties.

¶ 83 In Re Tassone, IIROC presented a bill for $179,583.50 and asked for $40,000 (about 22% of the total). The panel noted that IIROC proved at least 20% of the allegations and found that a cost award of $40,000 was appropriate and reasonable in that case. The Lohrisch panel awarded costs of $27,000, and the Rail panel $10,000 in contested hearings. The previous hearing panel in the Respondent's 2017 Settlement Agreement awarded costs of $2,500 (but that was an agreed settlement, not a contested hearing).

¶ 84 Enforcement Counsel provided an affidavit setting out details regarding the costs of the IIROC investigation from December 2017 to October 4, 2021, totaling $120,619.50. He noted that this did not represent all of IIROC's costs regarding this matter.

¶ 85 In making a determination of the appropriate cost award in this case, we took into account the following factors, including factors noted by Enforcement Counsel in his submissions and the other cases to which we were referred regarding the issue of costs:

a. The investigation and disciplinary process took almost four years. This included a delay in discovering the forgeries due to the Respondent's ongoing deception during the initial investigation, the first IIROC interview in 2016, the subsequent investigation in which the additional forgeries were discovered, and the second interview in 2019. We find that the Respondent's continuing deception and misconduct was a direct cause of IIROC incurring significant costs in this case. Had the Respondent not misled IIROC and initially admitted to the additional forgeries, the issues would have been resolved in a more timely manner and potentially in one hearing or settlement in 2017, avoiding the need and substantial costs of an

ongoing IIROC investigation and this second contested hearing. The Respondent's deceitful conduct prolonged the investigation and substantially increased the costs of IIROC's investigation in the public interest.

b. The Respondent continued to deny any involvement in the forgeries up to the date of the hearing. There was a time delay and efforts required by IIROC to locate witnesses and obtain evidence for a contested hearing.

c. The Respondent filed a Response in which he put forth a number of alternate facts and submissions without foundation. The Respondent did not appear at the hearing to provide evidence or submissions regarding his Response. We found that there were a number of assertions made by the Respondent in the Response which were at odds with other evidence, and we concluded that in those instances the Respondent was not credible.

d. The Respondent did not appear at the hearing, nor did his Response provide any details of his financial circumstances and degree to which his financial position was already affected by the other penalties assessed against him either for this hearing or taking into account the penalties assessed (and still unpaid and outstanding) from the 2017 Settlement Agreement.

¶ 86 We agree that it is necessary to ensure that the amount of the cost award sends an effective message of general deterrence to others in the industry that serious breaches will result in significant consequences. In determining a cost award, we also must consider that an award that is too low might result in a loss of public confidence in IIROC's ability to effectively regulate the markets generally.

¶ 87 We considered the costs submissions by Enforcement Counsel to be reasonable but at the low end of the range. Given the circumstances of this case, we determined that costs awarded should be at the higher end of the range. We found that a cost award of $60,000 was reasonable and appropriate in this case and did not constitute an additional penalty.

ORDER

¶ 88 The Hearing Panel therefore orders the following sanctions as appropriate in this case:

a. a fine of $50,000 for the forgeries;

b. a fine of $50,000 for misleading IIROC;

c. a permanent ban on any registration with IIROC; and

d. payment of $60,000 in costs.

¶ 89 The Hearing Panel thanks Enforcement Counsel for his helpful submissions and all participants who assisted with the hearing process.

Dated at Vancouver, British Columbia on March 4, 2022.

"Linda J. Murray"

Linda J. Murray, Chair

"William Wright"

William Wright

"Johannes van Koll"

Johannes van Koll