

Re Plentai

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Milan Plentai

2022 IIROC 04

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

Heard: February 28, 2022

Decision: February 28, 2022

Reasons for Decision: March 30, 2022

Hearing Panel:

Deborah Anschell, Chair, Nick Pallotta and Ron Smith

Appearances:

Sylvia Samuel, Senior Enforcement Counsel

Anna Markiewicz, for Milan Plentai

Milan Plentai (present)

DECISION ON ACCEPTANCE OF SETTLEMENT

¶ 1 On February 18, 2022, Enforcement Staff of Investment Industry Regulatory Organization of Canada (“IIROC”) and the Respondent signed a Settlement Agreement regarding facts in respect of which the Hearing Panel could impose disciplinary sanctions on the Respondent.

¶ 2 The issue is whether the Panel should accept or reject the proposed settlement.

¶ 3 The contraventions alleged by IIROC Enforcement Staff, and admitted to by the Respondent in the Settlement Agreement, attached to this Decision, form an integral part hereof, are as follows:

Between 2017 and 2019, Plentai, a Registered Representative with National Bank Financial Inc. (“NBF”), engaged in personal financial dealings with a vulnerable client, RC, in which Plentai accepted payments from RC that were not related to an approved outside business activity, conducted activities for RC that went beyond the power of attorney Plentai held for the client (not a Related Person as defined by the *Income Tax Act*), and failed to take adequate or reasonable steps to ensure that he was not made a beneficiary under RC’s will, either directly or indirectly through his wife. In accepting payments from the client, Plentai expressly directed those certain payments be made to his spouse

instead of himself. Further, Plentai's wife was named as a beneficiary in the client's will after the client told Plentai that he wished to name Plentai in his will. This conduct was a marked departure from the general standards of conduct that apply to Regulated Persons.

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

Contravention 1: In 2017 and 2018, Plentai engaged in personal financial dealings with a client, RC, including accepting payments for activities conducted on behalf of the client, contrary to Dealer Member Rule 43.2 (1).

Contravention 2: Between July 2017 and April 2019, Plentai relied on a Power of Attorney for personal care granted by RC as the basis for conducting activities for RC that went beyond matters of personal care, contrary to Consolidated Rule 1400.

Contravention 3: In or around June 2018, Plentai failed to take adequate or reasonable steps to ensure that RC, a vulnerable client, had not named him as a beneficiary under RC's will, either directly or indirectly, contrary to Consolidated Rule 1400.

¶ 5 The agreed penalties were:

- a) a fine of \$45,000;
- b) disgorgement of \$6,170;
- c) a two-year prohibition of approval commencing on the date of approval of the Settlement Agreement;
- d) successful completion of the Conduct and Practices Course before any re-approval; and
- e) costs of \$10,000.

¶ 6 If the Settlement Agreement was accepted by the Hearing Panel, the Respondent agreed to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Enforcement Staff and the Respondent.

¶ 7 The Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement. First, the agreed penalties had to be within an acceptable range taking into account similar cases. Second, the agreed penalties had to be fair and reasonable. Third, the agreed penalties should serve as a deterrent to the respondent and to the industry. Re Donnelly 2016 IIROC 23

¶ 8 We reviewed five precedent cases submitted by the parties and compared the agreed penalties in the Settlement Agreement with the types of settlements presented in those cases. We also reviewed the facts and circumstances of this particular Settlement Agreement before us. Further, we reviewed Part II of the IIROC Sanction Guidelines that sets forth the key factors to consider when determining appropriate sanctions.

¶ 9 We took note of the following mitigating factor:

By settling with IIROC, the Respondent has taken responsibility for and expressed remorse for his actions and has saved the parties the time and resources associated with conducting a full hearing on the merits.

¶ 10 We concluded that the agreed penalties were within an acceptable range based on precedents.

¶ 11 Further, the settlement would serve as a specific and general deterrent. Finally, the settlement is fair and reasonable. Therefore, we accepted it.

Dated at Toronto, Ontario this 6 day of April 2022.

Deborah Anshell

Nick Pallotta

Ron Smith

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada (“IIROC”) will issue a Notice of Motion to announce that it will hold a settlement hearing to consider whether, pursuant to section 8215 of the IIROC Rules, a hearing panel (“Hearing Panel”) should accept the settlement agreement (“Settlement Agreement”) entered into between the staff of IIROC (“Staff”) and Milan Plentai (“Respondent”).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

PART III – AGREED FACTS

3. For the purposes of this Settlement Agreement, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement

Overview

4. Between 2017 and 2019, Plentai, a Registered Representative with National Bank Financial Inc. (“NBF”), engaged in personal financial dealings with a vulnerable client, RC, in which he accepted payments from RC that were not related to an approved outside business activity, conducted activities for RC that went beyond the power of attorney Plentai held for the client (not a Related Person as defined by the *Income Tax Act*), and failed to take adequate or reasonable steps to ensure that he was not made a beneficiary under RC’s will, either directly or indirectly through his wife. In accepting payments from the client, Plentai expressly directed that certain payments be made to his spouse instead of himself. Further Plentai’s wife was named as a beneficiary in the client’s will after the client told Plentai that he wished to name Plentai in his will. This conduct was a marked departure from the general standards of conduct that apply to Regulated Persons.
5. In or about October 2019, JC, the client’s accountant and estate trustee under the client’s June 1, 2016 will, raised concerns about Plentai’s conduct with IIROC, who notified NBF. NBF conducted an internal investigation following which it terminated Plentai’s employment on December 16, 2019.

Background

6. Plentai was an experienced investment advisor. Between November 2011 and December 16, 2019, Plentai was a Registered Representative with NBF. Between October 2007 and October 2011, he was employed by Wellington West Capital Inc. prior to its acquisition by NBF. Plentai does not have any

disciplinary history with IIROC.

7. RC was born October 15, 1930 and was, at all material times, a client of NBF.
8. At all material times, Plentai was the Registered Representative for RC's account at NBF.
9. RC was diagnosed with Alzheimer's disease in or about May 2014.
10. Plentai was, at all material times, aware of RC's Alzheimer's diagnosis.
11. RC and Plentai are not Related Persons.
12. JP is Plentai's spouse. JP had no relationship with RC prior to RC's client relationship with Plentai.
13. JP accompanied Plentai on several meetings between Plentai and RC.

(i) Plentai Accepted Consideration from RC

14. On or about August 8, 2017, RC made payment to Plentai by way of a certified cheque drawn on RC's account and made payable to Plentai in the amount of \$1,000.
15. The \$1,000 payment was purportedly for activities conducted by Plentai on behalf of RC, outside of the services provided as a registered representative.
16. Plentai directed RC to reissue the August 8, 2017 cheque, making it payable to Plentai's spouse, JP, instead.
17. The certified cheque dated August 8, 2017 was cancelled and the funds returned to RC's account.
18. Then, on or about August 22, 2017, RC made payment to Plentai by a certified cheque dated August 22, 2017 in the amount of \$1,170.00, drawn on RC's account and payable to JP.
19. The \$1,170 payment was purportedly for activities conducted by Plentai on behalf of RC, discussed above, plus the full cost of a meal shared by Plentai, JP, and RC for which Plentai had paid because RC's payment method had been declined.
20. The August 22, 2017 cheque was cashed and funds deposited into an account held jointly by Plentai and his wife.
21. On or about May 7, 2018, RC made a further payment to Plentai by certified cheque dated May 7, 2018, in the amount of \$5,000.
22. The funds from the May 7, 2018 cheque were deposited by Plentai into his account.

(ii) Attorney for Personal Care

23. Plentai was appointed attorney for personal care for RC pursuant to a Power of Attorney for Personal Care dated July 26, 2017.
24. Plentai was, again, appointed as attorney for personal care pursuant to a Power of Attorney for Personal Care dated June 19, 2018.
25. The Power of Attorney for Personal Care dated June 19, 2018 remained in effect until about April 3, 2019 when it was revoked by RC.
26. Plentai also was named in a Power of Attorney for Property for RC that was drafted at the same time as the 2018 Power of Attorney for Personal Care, but after concerns were raised about Plentai's

appointment, the May 2018 Power of Attorney for Property was amended to substitute Natcan Trust Company (“NatCan”) in place of Plentai. As such, Plentai never held a Power of Attorney for Property for RC and the Power of Attorney for Property was held by someone other than Plentai at all times that Plentai held the Power of Attorney for Personal Care.

27. Plentai was aware that he had been appointed as attorney for personal care for RC, but he failed to disclose the existence of the Power of Attorney to NBF or to obtain NBF's approval of the arrangement. Further, Plentai exceeded his authority under the power of attorney for personal care by engaging in activities that were not covered by the Power of Attorney for Personal Care, including instructing a lawyer and an accountant on RC's behalf.

(iii) Plentai's Spouse Named Beneficiary of RC's Will

28. By a draft will dated May 31, 2018, Plentai was named as a beneficiary of ten parts of the residue of RC's estate.
29. The draft May 31, 2018 will was revised, and pursuant to a will dated June 19, 2018, JP was instead named as a beneficiary to ten parts of the residue of RC's estate.
30. The gift of ten parts of RC's estate was valued at approximately \$260,000 based on the total estimated value of the estate in 2018.
31. Plentai was involved in arranging the meeting between RC and a lawyer to whom Plentai had introduced RC, during which RC's June 2018 will was executed, and Plentai was copied on an email from the lawyer to NatCan attaching the will.
32. On or about June 19, 2018, Plentai forwarded to JP the email from RC's lawyer, attaching RC's Power of Attorney for Property and RC's June 19, 2018 will naming JP as a beneficiary.
33. Plentai did not disclose to NBF the existence of RC's June 19, 2018 will or its contents.
34. Following certain intervention by RC's longtime accountant, RC revoked his June 19, 2018 will in which JP was named a beneficiary. RC subsequently executed a will in April 2019 in which JP was not named a beneficiary.

PART IV – CONTRAVENTIONS

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

Contravention 1: In 2017 and 2018, Milan Plentai (“Plentai”) engaged in personal financial dealings with a client, RC, including accepting payments for activities conducted on behalf of the client, contrary to Dealer Member Rule 43.2(1).

Contravention 2: Between July 2017 and April 2019, Plentai relied on a Power of Attorney for personal care granted by RC as the basis for conducting activities for RC that went beyond matters of personal care, contrary to Consolidated Rule 1400.

Contravention 3: In or around June 2018, Plentai failed to take adequate or reasonable steps to ensure that RC, a vulnerable client, had not named him as a beneficiary under RC's will, either directly or indirectly, contrary to Consolidated Rule 1400.

PART V – TERMS OF SETTLEMENT

36. The Respondent agrees to the following sanctions and costs:
- a. a fine of \$45,000;
 - b. disgorgement of \$6,170;
 - c. a two-year prohibition of approval commencing on the date of approval of this Settlement Agreement;
 - d. successful completion of the Conduct and Practices Course before any re-approval; and
 - e. costs of \$10,000.
37. 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

38. 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.
39. 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 IIROC 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

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

47. If this Settlement Agreement is accepted, the Respondent agrees that neither he nor anyone on his behalf, will make a public statement inconsistent with this Settlement Agreement.
48. 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

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

DATED this "18" day of February, 2022.

"Witness"

Witness

"Milan Plentai"

Milan Plentai

"Ricki Ann Newmarch"

Witness

"Sylvia M. Samuel"

Sylvia M. Samuel "February 22, 2022"

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

The Settlement Agreement is hereby accepted this "28" day of "February" , 2022 by the following Hearing Panel:

Per: "Deborah Anshell"

Panel Chair

Per: "Nick Pallotta"

Panel Member

Per: "Ron Smith"

Panel Member

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