

Re Callaway

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Jeffrey Callaway

2022 IIROC 13

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

Heard: June 7, 2022 in Calgary, Alberta (via videoconference)

Decision: June 7, 2022

Reasons for Decision: June 22, 2022

Hearing Panel:

Omolara Oladipo, Chair and Kathleen Jost

Appearances:

Kathryn Andrews, Senior Enforcement Counsel

Andrew Wilson, for Jeffrey Callaway

Jeffrey Callaway (absent)

DECISION ON ACCEPTANCE OF SETTLEMENT

INTRODUCTION

The Settlement Agreement

¶ 1 A settlement agreement was entered into between Enforcement Staff of the Investment Industry Regulatory Organization of Canada (“IIROC”) and Jeffrey Callaway on May 2, 2022 (the “Settlement Agreement”).

¶ 2 An electronic hearing was conducted before the Hearing Panel to consider whether, pursuant to Rule 8215 of the IIROC Rules, the Hearing Panel should accept the Settlement Agreement in respect of the Respondent’s alleged misconduct.

¶ 3 The Hearing Panel discussed the appropriateness of the penalties provided under the Settlement Agreement.

¶ 4 After a brief deliberation, the Hearing Panel informed the parties that it would accept the Settlement Agreement, and that the reasons for its acceptance would follow later.

The Contravention

¶ 5 In the Settlement Agreement, the Respondent admits to having contravened IIROC Dealer Member Rule 43.1 when, between July 2017 and October 2017, the Respondent who was a Registered Representative at Canaccord Genuity Corp. (“Canaccord”), between January 2006 and August 2019, solicited and received

donations to his leadership campaign in the amount of \$24,900 from 15 of his clients. Although the Respondent said he advised his branch manager of his intention to run for the leadership of his party, he did not tell Canaccord of his solicitation and receipt of campaign contributions from his clients. The Respondent's supervisor was also not aware that he had solicited and/or accepted contributions from his clients. The Respondent contravened Canaccord's Policies and Procedures.

¶ 6 The Respondent's employer Canaccord ultimately terminated the Respondent's employment effective August 15, 2019. Detailed background facts are set out at paragraphs 3 to 19 of the Settlement Agreement, which is appended to our reasons for decision.

Analysis

The Penalties Stipulated in the Settlement Agreement

¶ 7 During the hearing, Enforcement Counsel for IIROC submitted that although the Respondent's misconduct was intentional and he indirectly benefited from his misconduct, the following additional factors struck a reasonable balance between fairness to the Respondent and IIROC's mandate to protect public interest:

1. The Respondent has not been an IIROC registrant since his departure from Canaccord in August 2019;
2. The Respondent accepted responsibility for his misconduct;
3. The misconduct was over a relatively short period of time in the summer of 2017;
4. There is no evidence of harm as a result of the Respondent's solicitation and receipt of clients' donations to his campaign;
5. 15 donor clients were also from the Respondent's circle of friends and family and their donations made up approximately 25% of the Respondent's leadership campaign;
6. The Respondent's campaign was public knowledge;
7. There was no evidence relating to clients' vulnerability or lack thereof; and
8. There was a lack of previous disciplinary history.

¶ 8 Enforcement Counsel summarized for the benefit of the Hearing Panel all of the decisions and precedents submitted in support of the penalties sought in this matter. The summary of cases appended to Enforcement Counsel's submissions contains numerous precedents which provided a useful guide to the Hearing Panel in its deliberations and decision. Although cases are unlikely to be on all fours, the cases cited contained contraventions similar to the subject Respondent's contravention. Amongst other cited precedents, the Panel considered the following decisions involving settlement agreements:

- *Toh (Re)*, 2011 IIROC 51
- *Trueman (Re)*, 2016 IIROC 29
- *Michetti (Re)*, 2017 IIROC 22
- *Bridgeman (Re)*, 2018 IIROC 14
- *Small (Re)*, 2021 IIROC 28
- *Stefiuk (Re)*, 2011 IIROC 24
- *Prusky (Re)*, 2017 IIROC 43
- *Nyquvest (Re)*, 2021 IIROC 36

- *Sabet (Re)*, 2021 IIROC 3

¶ 9 *Re Prusky (Re)*, 2017 IIROC 43 involved the comingling of a client’s funds to purchase shares in contravention of Dealer Member Rule 43. The settlement agreement proposed (and accepted by the panel) was a \$20,000 fine, the Respondent’s rewrite and passing of the Conduct and Practices Handbook Examination (“CPH”) within 12 months and \$1,000 in costs.

¶ 10 Enforcement Counsel also cited the Supreme Court of Canada’s decision in *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 in stressing the importance of general deterrence when imposing “a penalty that is designed to keep an occurrence from happening” by discouraging wrongdoing in other people.

¶ 11 Counsel for the Respondent, for his part, mentioned that his client had no disciplinary history, that the alleged misconduct constituted an “isolated incident”.

¶ 12 In the Settlement Agreement under consideration, the parties agreed to the following penalties:

1. a fine in the amount of \$20,000;
2. a three-month prohibition on any re-approval with IIROC;
3. six-months close supervision upon any re-registration with IIROC; and
4. \$3,000 in costs to IIROC.

The Acceptance of the Settlement Agreement

¶ 13 The Hearing Panel may accept or reject the Settlement Agreement. It is generally agreed that a hearing panel should accept a settlement agreement as long as the penalties that it provides fall within “a reasonable range of appropriateness”. See for example, *Re Milewski*, [1999] I.D.A.C.D. No. 17 and *Re Zhang* 2013 IIROC 35.

¶ 14 In the oft-cited *Re Milewski*, which was one of the numerous precedents submitted to the Hearing Panel, a District Council panel succinctly sets out the role of the Hearing Panel at a settlement hearing, which role should be differentiated from its role at a contested hearing. The panel said:

We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel “will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.”

¶ 15 *Milewski* considered whether to accept a settlement agreement between a registered representative and the Investment Dealers Association, IIROC’s predecessor. The allegations were that a registered representative had sold clients investments that were unsuitable given the clients’ stated investment objectives. The penalty proposed was a substantial fine plus disgorgement of commissions. The District Council accepted the settlement. It stated that the test to be applied to determine whether it should accept a settlement agreement was the following:

Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of

specific settlements.

This understanding is reflected in paragraph 20.26 of the By-laws, which authorizes the District Council to “accept”, rather than “approve”, a settlement agreement. In each case, a District Council must determine appropriateness, but the standards applicable to its doing so on a settlement hearing differ from those in a contested hearing. [Our emphasis]

¶ 16 This Hearing Panel wishes to underscore the importance that it has attributed to the principle stated in *Re Milewski*, to the effect that a hearing panel may not reject a settlement unless it considers that a penalty clearly falls outside the reasonable range of appropriateness. The penalties agreed to in the Settlement Agreement under consideration falls within the “range of appropriateness”.

¶ 17 We concluded that we must accept the Settlement Agreement given the recognized benefits of the settlement process. Our decision was also motivated by the additional arguments put forward by counsel for both parties as discussed above.

The Conclusion

¶ 18 In considering the Settlement Agreement, we recognized that the proposed sanctions are the product of a process of negotiation and agreement between ably represented parties. We should not reject the Settlement Agreement unless the proposed penalty falls outside the reasonable range on the facts agreed upon.

¶ 19 Considering the submissions by counsel for both parties, the precedents cited and the factors invoked regarding the conduct of the Respondent, the Hearing Panel concluded that the penalties proposed in the Settlement Agreement fall within a reasonable range of appropriateness and accepted the Settlement Agreement.

Dated at Calgary, Alberta this 22 day of June 2022.

Omolara Oladipo

Kathleen Jost

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 IIROC Rule 8215, a hearing panel (“Hearing Panel”) should accept the settlement agreement (“Settlement Agreement”) entered into between the staff of IIROC (“Staff”) and Mr. Jeffrey Callaway (the “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. Previously the Respondent was a Registered Representative at a Canaccord Genuity Corp. (“Canaccord”)

branch office in Calgary, Alberta. Between July 2017 and October 2017 (the “Relevant Time”), the Respondent engaged in personal financial dealings with clients when he solicited and received funds from those clients, for his political leadership campaign.

5. Furthermore, the Respondent did not disclose to Canaccord that he was soliciting or receiving donations from clients for his leadership campaign, nor did he receive approval to do so.

Background

6. The Respondent was born in 1977 and became an IIROC registrant in 1999. He was a Registered Representative at Canaccord between January 2006 and August 2019. Canaccord terminated the Respondent’s employment effective August 15, 2019. The Respondent is not currently an IIROC registrant. He has not been an IIROC registrant since leaving Canaccord.

Respondent’s candidacy

7. In the summer of 2017, the Respondent was a candidate for the leadership of the Alberta United Conservative Party (“UCP”). He withdrew from the campaign in October 2017.
8. The Respondent advises that prior to being a candidate, he informed his branch manager of his intention to run for the leadership. The Respondent’s branch manager was aware in 2017 through a discussion with the Respondent that he was a candidate but does not remember the exact date he became aware of the Respondent’s candidacy.

Respondent Solicited Donations from Clients Without Informing his Dealer Member

9. During the Relevant Time, while a candidate for the leadership of the UCP, the Respondent solicited and received funds for his leadership campaign, from fifteen of his Canaccord clients as campaign donations.
10. The Respondent did not tell Canaccord that he was seeking campaign contributions from his clients or that he received funds from clients which were used as contributions to his leadership campaign.
11. The Respondent’s Supervisor was not aware that the Respondent had solicited or accepted contributions from clients.

Donation amounts from clients

12. The Respondent’s Leadership Contestant Financial Statement dated February 27, 2018, for the period 07/28/2017 to 12/28/2017, (the “Financial Statement”) indicated that the total amount of received contributions to the Respondent’s campaign was \$94,384. Of this amount, the Financial Statement indicates that the fifteen clients contributed cash amounts varying from \$300 to \$4,000 per person for a total of \$24,900. The Financial Statement further indicates that most of the clients contributed \$1,000 or more each.

Respondent’s Actions Were Also Contrary to Canaccord Policies and Procedures

13. Canaccord’s Policies and Procedures Manual dated September 20, 2016 (the “Manual”) was maintained electronically, including updates, and was available at all times on Canaccord’s intranet homepage. As a Canaccord employee, the Respondent agreed to adhere to and to comply with the Manual.
14. The Manual addressed, amongst other things, conflicts of interest, outside business activity and personal financial dealings with clients. The Respondent did not seek or receive approval from the Canaccord CCO. The Respondent’s actions described above were contrary to the Manual, which states that:

Registrants must not directly or indirectly engage in personal financial dealings with clients. Any departure from this policy must be approved by the CCO... Other than remuneration from activities conducted through Canaccord, accepting consideration from a client, both monetary and non-monetary, poses a conflict of interest...

Respondent is No Longer an IIROC Registrant

15. The Respondent has not been an IIROC registrant since his departure from Canaccord in August 2019.

Other Facts

16. There is no evidence of client harm as a result of the Respondent's solicitation and receipt of the client funds used as donations to his campaign.
17. The Respondent advises that the fifteen clients were also his friends and family.
18. The Respondent's leadership campaign was public knowledge.
19. The Respondent does not have a previous disciplinary history.

PART IV – CONTRAVENTIONS

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

On or about July 2017 to October 2017, the Respondent engaged in personal financial dealings with clients when he received contributions to his political campaign from fifteen clients, contrary to Dealer Member Rule 43.1.

PART V – TERMS OF SETTLEMENT

21. The Respondent agrees to the following sanctions and costs:
 - (a) A fine in the amount of \$20,000;
 - (b) A three-month prohibition on any re-approval with IIROC;
 - (c) Six months close supervision upon any re-registration with IIROC; and,
 - (d) Costs in the amount of \$3,000.
22. 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

23. 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.
24. 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

25. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
26. This Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing in accordance with the procedures described in Rules 8215 and 8428, in addition to any other procedures that may be agreed upon between the parties.
27. 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.

28. 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.
29. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement or Staff may proceed to a disciplinary hearing based on the same or related allegations.
30. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
31. 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.
32. 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.
33. 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

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

DATED this “2” day of May 2022.

“Jeffrey Callaway”

Respondent Jeffrey Callaway

“Kathryn Andrews”

Kathryn Andrews

Senior 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 “June”, 2022 by the following Hearing Panel:

Per: “Omolara Oladipo”

Panel Chair

Per: “Kathleen Jost”

Panel Member

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