

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA (IIROC)**

AND

LINDA KENNEDY

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff (“Staff”) and the Respondent Linda Kennedy (the “Respondent”), consent and agree to the settlement of this matter by way of this agreement (the “Settlement Agreement”).
2. The Enforcement Department of IIROC has conducted an investigation (the “Investigation”) into the Respondent’s conduct.
3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (the “Hearing Panel”).

II. JOINT SETTLEMENT RECOMMENDATION

4. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. The Respondent admits to the following contravention of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

From September 2010 to December 2012, the Respondent failed to adequately supervise the account activity in an external account held by Registered Representative Alistair Melville at another Dealer Member firm, contrary to IIROC Dealer Member Rules 38.4 (a) and 2500.

6. Staff and the Respondent agree to the following terms of settlement:
 - a) Payment of a fine in the amount of \$25,000.
7. The Respondent agrees to pay costs to IIROC in the sum of \$1,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

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

(ii) Factual Background

Overview

9. Kennedy was the Branch Manager at an Assante Capital Management Ltd. (“Assante”) branch located in Hamilton, Ontario. Registered Representative Alistair Melville (“Melville”) joined the branch in 2007.
10. From September 2010 through to December 2012, Kennedy failed to adequately question the account activity conducted by Melville in an external pro account held by him at BMO Investorline Inc. (the “BMO Account”).
11. Kennedy did not thoroughly question the numerous deposits and withdrawals made by Melville in the BMO Account. Kennedy told Staff that she was aware that Melville was a professional poker player. Kennedy relied solely on Melville’s assurances that his BMO Account was used as his “slush fund” for his poker tournaments. Kennedy failed to conduct any other due diligence to satisfy herself regarding the numerous activities in the BMO Account. In fact, Melville used the BMO Account to deposit and to withdraw funds provided by his clients.

Background

12. Kennedy was registered with IIROC as a Branch Manager in 2003. From September 2010 until December 2012 (the “Relevant Time Period”) Kennedy was the Branch Manager responsible for supervising Melville.
13. Kennedy remains a Branch Manager at Assante and does not have her own book of business. Kennedy did not have her own book of business during the Relevant Time Period.

Melville's conduct

14. Between 2009 and 2012, Melville obtained funds from numerous clients totaling over \$2 million and deposited these funds into bank accounts then into discount brokerage accounts held by him at two other Dealer Member firms.
15. By way of Settlement Agreement accepted by a Hearing Panel in October 2014, Melville agreed to a permanent ban on registration in any capacity, a fine of \$400,000 and to pay costs in the amount of \$10,000.

Inadequate Supervision

16. Kennedy failed to conduct adequate supervision of Melville's BMO Account activity during the Relevant Time Period.

Red Flags in the BMO Account

17. A review of the BMO Account monthly statements indicates that, for example, between April 2011 and September 2011, a total of over \$20,000 was withdrawn every month from the BMO Account in a series of smaller transactions. In addition, in every month during 2011, there was at least \$20,000 in either total withdrawals or total deposits each month done in a series of smaller transactions.
18. In addition, there were two months (August 2011 and November 2012) where the series of deposits to the BMO Account totalled more than \$70,000 in each of those months. There were also twelve months in 2011 and 2012 where the series of deposits totalled more than \$40,000 in each of those months.
19. The total amount of withdrawals and deposits in the BMO Account increased quite substantially during 2012 as compared to 2010 and 2011.

Lack of due diligence

20. Kennedy told Staff that she asked Melville in September 2010 about the BMO Account and that he replied that it was his "slush fund" for poker winnings. Kennedy told Staff that she had seen Melville in a televised poker tournament where he won \$150,000. As a result, Kennedy believed Melville's explanation. Kennedy should not have simply relied on Melville's response. She should have made other efforts to ascertain whether or not the numerous withdrawals and deposits to the BMO Account were legitimate.
21. Kennedy told Staff that Melville's salary during the Relevant Time Period was approximately \$130,000 to \$140,000. Kennedy should have paid greater attention to, and made additional inquiries about the numerous deposits, given Melville's own salary and his explanation for the source of the funds.

22. Kennedy acknowledges that she should not have accepted Melville's explanation at face value, and should instead have recognized the "red flags" in the account statements and escalated the matter to head office.
23. While Melville did not transfer funds from Assante client accounts directly into the BMO Account, some of the clients' losses might have been discovered earlier had the Respondent escalated the matter to head office.
24. Kennedy did not make any notes or provide Staff with any written evidence of queries made of Melville regarding activity in the BMO Account during the Relevant Time Period.

Other

25. The Respondent's supervisory practices at the branch received good reviews during a 2008-2009 internal audit by Assante. There have been no issues with the Respondent's supervision of client accounts at Assante during the Relevant Time Period or since.
26. The Respondent does not have a previous disciplinary history with IIROC.

IV. TERMS OF SETTLEMENT

27. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
28. The Settlement Agreement is subject to acceptance by the Hearing Panel.
29. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
30. The Settlement Agreement will be presented to the Hearing Panel at a hearing (the "Settlement Hearing") for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.
31. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his rights under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
32. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
33. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

34. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.
35. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
36. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at the City of “Toronto” in the Province of Ontario, this “8” day of July, 2016.

“Witness”
Witness

“Linda Kennedy”
LINDA KENNEDY

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this “8th” day of July, 2016.

“Witness”
Witness

“Kathryn Andrews”
Kathryn Andrews
Senior Enforcement Counsel on
behalf of Staff of the Investment
Industry Regulatory Organization of
Canada

ACCEPTED at the City of Toronto in the Province of Ontario, this “20th” day of “September”, 2016, by the following Hearing Panel:

Per: “Susan Lang”
Panel Chair

Per: “David Kerr”
Panel Member

Per: “Edward Jackson”
Panel Member