Re Menzel

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Owen Blagrave Menzel

2015 IIROC 06

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

Heard: January 16, 2015
Decision: January 16, 2015
Reasons: January 31, 2015

Hearing Panel:
Jeffrey Flinn, Chair, Debbie Archer and Zahra Bhutani
Appearances:
Kathryn Andrews, Enforcement Counsel and Sharon Lloyd-Gyurkovics, Senior Investigator for IIROC
David Hausman, Counsel for the Counsel for the Respondent
Owen Blagrave Menzel, Respondent

REASONS FOR ACCEPTANCE OF SETTLEMENT

Introduction

¶ 1 The Hearing Panel has been constituted to consider a Settlement Agreement entered into by IIROC Enforcement Staff and the Respondent and they have jointly recommended that the Hearing Panel accept the Settlement Agreement. The Agreement is set forth in Appendix "A".

¶ 2 In the Settlement Agreement the Respondent admits to contravening the IIROC Dealer Member Rules, Guidelines, Regulations or Policies by failing to adequately supervise Registered Representative Rajiv Puri as required by IIROC Dealer Member Rules 38, 1300.2 and 2500.

Facts

¶ 3 The Respondent has been an approved person with IIROC from January 2010 until January 2013. He was employed by PWM Capital (PWM) from January 2010 to January 2013 and was the Ultimate Designated Person, Chief Compliance Officer and a Supervisor at PWM in Toronto. He was responsible for the supervision of all PWM personnel including Puri during the period January 2010 to January 2012. The employment of Puri was terminated in February 2012. PMW has since changed its name and no longer has retail clients.

¶ 4 In December 2013 following a disciplinary hearing with respect to contraventions by Puri, the Hearing Panel found that Puri had failed to exercise the due diligence required by a Registered Representative when opening certain client accounts at PWM and imposed sanctions on Puri with fines totaling $36,000.00 and a six month suspension from registration.

¶ 5 The Respondent was aware that Puri worked at locations other than at PWM office, including a home

office and at a company known as “Skyline” as well as out of country. Little is disclosed about “Skyline” except that at the relevant times that company was promoting the sale of shares in the capital of MobileBits Holdings Corp. (MBIT). These shares were Over the Counter Bulletin Board shares, and not qualified for distribution in either Ontario or Quebec.

¶ 6 In February 2011 the Respondent inquired about MBIT when Puri presented the Respondent with a new account opening form proposing to transfer in MBIT shares to a number of clients. The Respondent reported that Puri advised that he was to open accounts for clients who had already purchased MBIT shares. However, a February 2011 email indicated that at least one client had not yet purchased MBIT shares. Puri opened approximately 30 new accounts at PWM and all purchased or proposed to purchase MBIT shares. The new account application forms were sent to the carrying broker of PWM without being signed by the Respondent. Six of the accounts had MBIT shares deposited into them.

¶ 7 The Respondent knew that MBIT shares had a restricted legend, and in fact were not qualified for distribution in Ontario or Quebec.

¶ 8 The Agreement sets forth the various ways in which the Respondent failed to exercise due diligence at the time Puri opened the new accounts and did not adequately supervise Puri in that the Respondent:

(a) Failed to question Puri’s involvement in assisting clients to purchase shares in MBIT;

(b) failed to ask Puri whether MBIT shares were approved for sale or distribution in either Ontario or Quebec where Puri’s clients were;

(c) permitted Puri to work in Skyline’s offices;

(d) did not review the MBIT documentation distributed by Skyline and provided to him by Puri, which included a pooling agreement, a shareholder agreement and other documents relating to purchase MBIT shares;

(e) did not make sufficient inquiries into the circumstances of the opening of these accounts; and

(f) did not make any notes of any discussions with Puri regarding MBIT.

¶ 9 Other details of the inadequate supervision include that from January 2010 to February 2012 the Respondent;

(a) often did not know where Puri was physically located;

(b) allowed Puri to work outside of the country where he could not adequately supervise him;

(c) did not visit Puri’s home office;

(d) did not conduct any supervision related reviews of Puri’s emails;

(e) allowed Puri to use an email account held outside PWM for business communications, even though the Respondent could not access or review this account; and

(f) failed to follow up with Puri to determine whether he had completed a 2011 PWM questionnaire relating to the disclosure of his outside business activities.

Mitigating Factors.

¶ 10 The Respondent does not have any previous disciplinary history with IIROC.

¶ 11 The Respondent co-operated with Staff’s investigation and this prosecution.

Joint Settlement Recommendation

¶ 12 The joint settlement recommendation is:

- Respondent shall pay a fine of $20,000.00,
- Respondent will be suspended from registration as a Supervisor for six weeks and

- Respondent agrees to pay costs to IIROC in the sum of $1500.00.

¶ 13 The settlement is also in accordance with the terms of paragraphs 29 to 38 inclusive of the Settlement Agreement.

The Contraventions

¶ 14 Paragraph 5 of the Settlement Agreement describes the contravention by the Respondent as "failed to adequately supervise Registered Representative Raji Puri contrary to Dealer Member Rule 38". That rule is set out in Tab 4 of the Settlement Book. The section is headed "Compliance and Supervision" indicating the importance of supervision.

¶ 15 In *Re Portfolio Strategies* 2012 LNIRROC 36, the Hearing Tribunal made this observation:

> "The responsibility of Dealer Members to comply with their obligations to supervise their activities and their employees is a very important one. Supervision is necessary to ensure ethical conduct, fair trading and the integrity of the investment industry. The contraventions in this case must, therefore, be treated as serious ones."

¶ 16 While the facts in that case differ from this it was a case of failure to supervise contrary to Rule 38 of the Dealer Member Rules.

Duty of Hearing Panel

¶ 17 It is not the duty of the Hearing Panel to decide whether they would have reached the same conclusion as the parties to the Settlement Agreement, but rather whether the penalties imposed are within a reasonable range that meets the objectives of the disciplinary process which are to protect the investing public, maintain the integrity of the investment industry and the markets, and to deter conduct which might violate the rules and policies.

¶ 18 The test is reasonableness and fairness in all the circumstances, determined with due consideration of the guidelines of IIROC and the jurisprudence built up from the reasons for decision of other hearing panels in somewhat like cases. Again, while few cases are identical, *Re Bergh* 2011LNIIROC 41, *Re Portfolio Strategies* (supra), *Re Jessiman* 2014 LNIIROC, and *Re Richardson* 2013 LNIIROC all of which appear in the Settlement Book, have been helpful in assessing the penalty agreed to by the parties.

¶ 19 The Hearing Panel has also considered the provisions of Rule 1300 and Rule 2500 which sets out the standards of supervision required. These provisions are featured in S.4.3 of the Sanction Guidelines. The Hearing Panel observed that the extent of losses suffered by clients, if any, might if disclosed, have been helpful in making the assessment of reasonableness and fairness. However that lack of information is not fatal to the application.

Decision

¶ 20 Having considered all of the material in the Settlement Book and the circumstances of the contravention and after hearing Counsel for IIROC and for the Respondent, the Hearing Panel concluded the settlement was reasonable, and accepted the settlement. The original of the Settlement Agreement was executed by each member of the Hearing Panel indicating acceptance.

Dated this 31st day of January 2015

Jeffrey Flinn, Chair

Debbie Archer

Zahra Bhutani

Appendix A

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff ("Staff") and the Respondent Owen Blagrave Menzel (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 January 2010 to February 2012, the Respondent failed to adequately supervise Registered Representative Rajiv Puri, contrary to IIROC Dealer Member Rules 38, 1300.2, and 2500.

6. Staff and the Respondent agree to the following terms of settlement:

   a) Payment of a fine in the amount of $20,000; and,

   b) A six week suspension from registration as a Supervisor.

7. The Respondent agrees to pay costs to IIROC in the sum of $1,500.

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. At all material times, the Respondent was the Ultimate Designated Person, Chief Compliance Officer and a Supervisor at PWM Capital Inc. ("PWM") in Toronto, Ontario. He was responsible for the supervision of all PWM personnel, including supervision of Registered Representative Rajiv Puri ("Puri") from 2010 to 2012.

10. From January 2010 to early 2012, the Respondent failed to adequately supervise Puri in that he did not sufficiently review or question the activities that Puri conducted in his client accounts. In particular, he failed to supervise the opening of a number of Puri client accounts which purchased or intended to purchase shares in MobileBits Holdings Corp. ("MBIT"), an Over the Counter Bulletin Board stock. In fact, MBIT shares were not legally qualified for distribution in Ontario or Quebec.

11. Puri's employment was terminated by PWM in February 2012. At that time PWM informed IIROC that Puri had failed to disclose certain outside business activities.

Disciplinary action against Puri

12. Following a December 2013 disciplinary hearing, an IIROC Hearing Panel found, among other things, that Puri had failed to exercise due diligence when opening certain client accounts at PWM.

13. In a sanction decision dated January 20, 2014, the Hearing Panel imposed various sanctions on Puri, including fines totaling $36,000 and a six month suspension from registration.

Background

14. The Respondent has been an Approved Person with IIROC in various capacities since 2002. From January 2010 until January 2013, he was employed with PWM and registered with IIROC as the UDP and Supervisor, as well as the CCO at various times.

15. In early 2013, PWM changed its name to Arton Investments ("Arton"). The Respondent is currently approved as the UDP, Supervisor, CCO and CFO at Arton.

16. Since November 2012, PWM and now Arton no longer maintain any retail clients. Arton's business activities are limited solely to the Quebec Immigrant Investor Program ("QIIP"). The QIIP is a Quebec government initiative which helps individuals and their families gain entry to that province by providing funds in support of Quebec's economic development.

Puri's work location

17. The Respondent was aware that from time to time Puri worked at various locations other than PWM's offices. Occasionally Puri was out of the country. The Respondent was also aware that sometimes Puri worked out of a home office and sometimes he worked out of the Toronto office of a company known as "Skyline".

MBIT

18. According to the Respondent, Puri told him that he was associating himself with Skyline who was promoting the sale of MBIT shares.

19. In approximately February of 2011, the Respondent asked Puri about MBIT when Puri provided him with a new account opening form proposing to transfer in MBIT shares. The Respondent understood from Puri that he wanted to open accounts for clients who had already purchased MBIT shares but planned to diversify the holdings in their accounts.

20. The Respondent told Staff that he believed that Puri's clients had already invested in MBIT shares prior to opening their new accounts at PWM. One email sent by Puri to the Respondent in February 2011 indicates, however, that at least one client had not yet purchased MBIT shares.

Opening of new accounts at PWM

21. Puri opened approximately 30 new accounts at PWM in 2011, all of which purchased or proposed to purchase MBIT shares. A number of new account application forms for these clients were sent to PWM's carrying broker without having been signed by the Respondent.

22. Six of the new accounts that Puri opened at PWM in 2011 had MBIT shares deposited into them.

23. The Respondent knew that MBIT shares bore a restricted legend. The Respondent did not review a stock purchase agreement or any of the other documents relating to MBIT, other than some stock certificates.

24. In actual fact, MBIT shares were not legally qualified for distribution in Ontario or Quebec.

Lack of adequate supervision

25. The Respondent failed to conduct sufficient due diligence at the time that Puri opened the new accounts in 2011. The Respondent did not adequately supervise Puri in that he:

    (a) failed to question Puri's involvement in assisting clients to purchase shares of MBIT;

    (b) failed to ask Puri whether MBIT shares were approved for sale or distribution in Ontario or Quebec where Puri's clients resided;

    (c) permitted Puri to work from Skyline's offices;

    (d) did not review the MBIT documentation distributed by Skyline and provided to him by Puri, which included a pooling agreement, a shareholder agreement and other documents relating to purchases of MBIT shares;

(e) did not make sufficient inquiries into the circumstances of the opening of these accounts; and,

(f) did not make any notes of any discussions with Puri regarding MBIT.

26. Other details of the inadequate supervision include the fact that from January 2010 to February 2012, the Respondent:

(a) often did not know where Puri was physically located;

(b) allowed Puri to work outside of the country where he could not adequately supervise him;

(c) did not visit Puri's home office;

(d) did not conduct any supervision related reviews of Puri's work emails;

(e) allowed Puri to use an email account held outside of PWM for business communications, even though the Respondent could not access or review this account; and

(f) failed to follow up with Puri to determine whether he had completed a 2011 PWM questionnaire relating to the disclosure of his outside business activities.

Mitigating Factors

27. The Respondent does not have any previous disciplinary history with IIROC.

28. The Respondent co-operated with Staff's Investigation and this prosecution.

IV. TERMS OF SETTLEMENT

29. 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.

30. The Settlement Agreement is subject to acceptance by the Hearing Panel.

31. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

32. 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.

33. 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.

34. 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.

35. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

36. 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.

37. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

38. 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 17th day of December, 2014.

"Witness" **"Owen Blagrave Menzel"**

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 16th day of January, 2015.

"Witness" **"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 16th day of January, 2015, by the following Hearing Panel:

Per: "Jeffrey Flinn"

Panel Chair

Per: "Debbie Archer"

Panel Member

Per: "Zahra Bhutani

Panel Member