

Re Beck

IN THE MATTER OF:

**The Dealer Member Rules of the Investment Industry Regulatory
Organization of Canada**

and

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

Gary Beck

2012 IIROC 41

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

Heard: June 27, 2012
Decision: July 17, 2012

Hearing Panel:

The Honourable Fred Kaufman, C.M., Q.C., Chair, Ted Norris, Robert Guilday

Appearances:

Kathryn Andrews, Senior Enforcement Counsel

No one appeared for the Respondent

REASONS FOR THE DECISION RENDERED AT THE CONCLUSION OF THE HEARING

Introduction

¶ 1 By Notice of Hearing dated April 13, 2012, and served personally on the Respondent, Gary Beck, on April 16, 2012, Mr. Beck was notified that a hearing would be held on June 27, 2012, for the purpose of determining whether or not he contravened IDA Regulation 1300.4 by effecting, from October 2007 to April 2008, “discretionary trades in client SS’s account, without the account having been approved and accepted as a discretionary account.”

¶ 2 The Respondent failed to serve a Response as Required by Rule 7. Furthermore, as noted above, he failed to appear either in person or by counsel at the hearing. It is important to note, however, that he was well informed of the contravention alleged, not only by the details contained in the Notice of Hearing (which are set out below), but also by the ‘will say’ statement of Kenneth Lo, a senior investigator assigned to the file, which had been sent to him by e-mail well before the hearing. In addition, he was also provided with a transcript of the evidence given by SS to IIROC investigators. His knowledge of the facts was therefore complete and, as he indicated in an e-mail to enforcement counsel on June 25, 2012, he had decided not to attend the hearing.

¶ 3 According to Rule 7.2, where a Respondent served with a Notice of Hearing fails to serve a Response within 20 days, the Hearing Panel may not only proceed with the hearing without further notice, but it may also “accept as proven the facts and violations alleged ... in the Notice of Hearing, and may impose penalties

and costs pursuant to Dealer Member Rules 20.33, 20.34 and 20.49,” and that is the path the Hearing Panel chose to follow.

The Facts

¶ 4 The facts are set out with clarity in the Notice of Hearing:

Overview:

1. SS had been a client of Beck at Raymond James Ltd (RJL) since August 2002. SS was out of the country from October 2007 until April 2008. While she was away, Beck engaged in discretionary trading in SS’s account, effecting **35** transactions during this time period.

Registration:

2. Beck is no longer registered in the industry. At the relevant time he was a Registered Representative with RJL in Orangeville, Ontario. He had been at Raymond James as a Registered Representative (“RR”) from March 2003 to September 2009. He was also registered as the Branch Manager at the Orangeville office of RJL between June 2003 to September 2009. He had been an approved person in the industry since April 1998.

Background:

3. Beck was the brother of a friend of SS. SS had also been Beck’s client at a previous firm since 2000. SS and her mother ES both opened accounts with Beck at RJL.
4. SS had Power of Attorney over her mother’s accounts and provided instructions on these accounts. SS’s brother also had Power of Attorney over the mother’s account.
5. SS and her mother had several accounts with Beck, including joint accounts and accounts in their own names. ES was an elderly lady who was in ill health and was living in a nursing home during the material time.

IIROC Dealer Member Rule 1300.4:

6. SS was out of the country from October 2007 until April 2008. While she was away, Beck engaged in discretionary trading in SS’s account, effecting **35** transactions during this time period.
7. SS did not provide any prior written authorization to Beck or RJL to effect trades in her account. Nor was Beck registered to maintain discretionary and/or managed accounts. SS’s account had not been accepted or approved in writing as a discretionary account by RJL. Beck did not have discretionary authority over the client’s account pursuant to IIROC Dealer Member Rule 1300.4.

Out of the country:

8. SS left Ontario to travel to California in October 2007. She also stopped in various locations en route to California, including Iowa, Nebraska and Nevada. She also visited Hawaii in March 2008, as part of the same trip, returning to California. She returned to Ontario in April 2008.

Discretionary trading:

9. During this time, Beck effected the transactions listed below, in SS’s RSP account. SS did not discuss the trading with Beck while she was away.
10. SS was not aware at the time that Beck was required to obtain her consent prior to carrying out trades in her accounts.
11. Beck told IIROC Staff that he had a discussion with SS in October 2007 before she went away. He said that they talked about the “managing of her account” in her absence. He said that they had an understanding on what would transpire when she left, should certain thresholds be

reached or trouble encountered and that those changes would take effect in her account.

12. Beck did not confirm the specifics of each trade as to price, security, quantity and timing, when he effected the trades in SS's account, as detailed below.

Trades made in SS's RSP account:

TRADING ACTIVITIES BETWEEN OCTOBER 2007 TO APRIL 2008

SS's RSP account (5W3-950R0)

TRADE DATE	SECURITY	BUY/SELL	QUANTITY	PRICE	COST	SALE PROCEED	GROSS COMMISSION	SUB-TOTAL
10/23/2007	AGRIUM INC.	BUY	130	52.67	(6,847)		(125)	(6,972)
10/23/2007	CHURCHILL CORP CL A	BUY	200	25.10	(5,020)		(125)	(5,145)
10/23/2007	OILEXCO INC.	BUY	250	16.87	(4,218)		(125)	(4,343)
10/23/2007	PROGRESS ENERGY TRUST	SELL	(953)	11.92		11,360	(258)	11,101
12/6/2007	GGOF CDN MONEY MARKET FD DSC	SELL	(787)	10.00		7,872	(50)	7,822
12/6/2007	GGOF MONTHLY HI INCOME II DSC	BUY	549	14.33	(7,872)		(50)	(7,922)
12/17/2007	AGRIUM INC.	SELL	(130)	58.93		7,653	(109)	7,544
12/17/2007	ING CANADA INC.	SELL	(200)	40.40		8,080	(128)	7,952
12/21/2007	OILEXCO INC.	BUY	250	12.36	(3,090)		(82)	(3,172)
12/21/2007	TERRAVEST INCOME FUND	BUY	1,500	3.51	(5,265)		(173)	(5,438)
12/24/2007	AGF CDN MONEY MARKET DSC	SELL	(756)	10.00		7,562	(50)	7,512
12/24/2007	AGF CDN RESOURCES DSC	BUY	125	60.67	(7,562)		(50)	(7,612)
12/31/2007	EXALTA ENERGY INC.	BUY	1,000	1.80	(1,806)		(100)	(1,906)
12/31/2007	QUADRA MINING	BUY	275	17.57	(4,839)		(114)	(4,953)
1/2/2008	TALISMAN ENERGY	SELL	(403)	18.98		7,641	(167)	7,475
1/11/2008	CIBC	BUY	100	71.34	(7,142)		(125)	(7,267)
1/22/2008	GGOF CDN MONEY MARKET FD DSC	BUY	699	10.00	(6,988)		(50)	(7,038)
1/22/2008	GGOF MONTHLY HI INCOME II DSC	SELL	(549)	12.72		6,988	(50)	6,938
1/29/2008	QUADRA MINING	SELL	(275)	18.35		5,039	(116)	4,923
2/1/2008	HORIZON BETA S&P/TSX 60 BEAR	BUY	150	22.19	(3,336)		(75)	(3,411)
2/11/2008	HORIZON BETA S&P/TSX 60 BEAR	BUY	150	22.04	(3,314)		(100)	(3,414)
2/20/2008	HORIZON BETA S&P/TSX 60 BEAR	BUY	300	20.73	(6,227)		(132)	(6,358)
2/27/2008	URANIUM ONE	SELL	(400)	5.29		2,109	(75)	2,034
3/7/2008	HORIZON BETA S&P CAPPED FIN BEAR	BUY	250	28.71	(7,185)		(130)	(7,315)
3/13/2008	LAURENTIAN BANK OF CANADA	SELL	(201)	40.18		8,069	(128)	7,941
3/18/2008	HORIZON BETA S&P CAPPED FIN BEAR	SELL	(250)	30.99		7,740	(135)	7,605
3/19/2008	HORIZON BETA PRO CRUDE OIL BEAR	BUY	300	14.75	(4,428)		(114)	(4,541)
3/27/2008	AGRIUM INC.	BUY	125	65.47	(8,192)		(113)	(8,304)
4/7/2008	HORIZON BETA S&P/TSX 60 BEAR	SELL	(600)	19.41		11,641	(100)	11,541
4/7/2008	HORIZON BETA PRO CRUDE OIL BEAR	BUY	300	12.90	(3,878)		(102)	(3,979)

4/8/2008	AGRIUM INC.	SELL	(125)	71.33		8,909	(120)	8,788
4/14/2008	HORIZON BETA S&P CAPPED FIN BEAR	BUY	300	26.44	(7,940)		(148)	(8,087)
4/17/2008	AGRIUM INC.	BUY	100	87.24	(8,724)		(113)	(8,837)
						TOTAL	(3,630)	

(Note: Two further trades were subsequently found, and as a result the gross commission was increased to \$3,900, as noted in the following paragraph.)

Commission:

13. SS incurred gross commissions in the amount of **\$3,900.** in relation to the above trades. Beck received 85% of that amount (ie **\$3,315.**) as a net amount.

Net losses:

14. The above **35** transactions resulted in a net loss of **\$6,852.** to SS's account.

Discussion

¶ 5 It is well established that unauthorized discretionary trading is a serious matter: see, for instance, *Templeton v. RBC Securities Inc.*, 2005 NLTD 130, where Osborn J. characterized discretionary trading “as a fundamental breach of the investment advisor’s duty to his or her client.” It is not, therefore, surprising that violations of this nature have been dealt with severely in the past: see, for instance, *In re Janiewicz*, [2006] IDACD No.3 (a fine of \$50,000 and other sanctions for multiple violations); *In re Symonds*, [2007] IDACID No. 17 (a fine of \$20,000 and other sanctions); *In re Shamseer*, 2011 IIROC 5 (a fine of \$40,000 and other sanctions for a second offence), and *In re Jones*, 2011 IIROC 70 (a fine of \$22,500 and other sanctions).

¶ 6 Of course, each case must be dealt with on the specific facts, and in the present instance we note that this is the Respondent’s first offence. On the other hand, we also take into consideration that fact that he was a branch manager at the time. We also note that while the number of trades is large (35), his share of the commissions was relatively low (\$3,315), and that the securities traded were not necessarily unfit for his client, whose total loss amounted to \$3,630. Indeed, we were told that, subsequently, the loss turned into a gain.

¶ 7 As we said above, this is a first offence, and it is, therefore, relevant to consider section 3.5 of the Dealer Member Disciplinary Sanction Guidelines, which states as follows:

The fact that a respondent has no prior disciplinary record should, in the absence of evidence to the contrary, lead a panel to the presumption that the respondent was of good moral character prior to the misconduct. A first conviction may be seen as a measure of punishment in and of itself, given the attendant stigma attached to the process of charging, finding of guilt, and imposition of sanction.

¶ 8 We agree with the proposition and have taken it into account in assessing the appropriate penalty.

Disposition

¶ 9 Considering the facts of this case, the aggravating as well as the mitigation factors, and bearing in mind the guidelines as well as the case law, we concluded (as announced at the end of the hearing) that the following disposition would be appropriate:

1. A fine in the amount of \$20,000;
2. Disgorgement of profits of \$3,315;
3. Should the Respondent return to the industry he must work under close supervision for 12 months;
4. He must rewrite the CPH examination within six months from his return to the industry, and
5. He must pay the costs of the investigation and proceedings, fixed at the amount of \$15,000.

Given in Toronto this 17th day of July, 2012.

Hon. Fred Kaufman, Chair

Ted Norris, Industry Representative

Robert Guilday, Industry Representative

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