RE TOMKINS

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rules

and

Michael Rowland Tomkins

2025 CIRO 22

Canadian Investment Regulatory Organization
Hearing Panel (Pacific District)

Heard: March 25, 2025 in Vancouver, British Columbia, via videoconference

Decision: March 25, 2025
Reasons for Decision: April 29, 2025

Hearing Panel:
C. Lynn Smith, K.C., Chair, Richard Thomas and Brian Worth

Appearances:
Jagdeep Khun-Khun, Senior Enforcement Counsel
Michael Tomkins (present)

REASONS FOR DECISION ON ACCEPTANCE OF SETTLEMENT

INTRODUCTION

[1] CIRO Enforcement Counsel and the Respondent, Michael Tomkins (**Mr. Tomkins**), jointly recommended that this Hearing Panel accept a settlement agreement between them dated February 14, 2025 (the **Settlement Agreement**). At the hearing, after reviewing the evidence and hearing from both Enforcement Counsel and the Respondent, we announced that we accepted the Settlement Agreement and would provide reasons for that decision in due course. These are those reasons.

THE AGREED FACTS

[2] Mr. Tomkins was employed in the investment industry since the 1980s, working as a mutual fund salesperson at a number of financial institutions. In 2001, he became employed with Assante Financial Management Ltd. As of June 19, 2018, he was a Registered Representative with Assante Capital Management Ltd. In Nanaimo, B.C. (Assante).

[3] Between 2007 and July 2023, Mr. Tomkins misappropriated approximately $5,996,992.21 from five of his clients. Of that amount, he returned about $1,692,421.98 to the clients; about $4,304,570.23 remains outstanding.

[4] Between February 2019 and July 2023 (the Relevant Period), Mr. Tomkins misappropriated about $1,688,500.00 from two of those five clients. The clients were elderly and vulnerable, with noted health concerns.

[5] During the Relevant Period, he returned approximately $418,103.50 to one of those clients.

[6] In order to misappropriate the funds, Mr. Tomkins used a variety of methods involving the deposit of cheques, bank drafts, and electronic fund transfers. He was able to misappropriate the funds by deceiving both the clients and his employer. He did this by providing fabricated or inaccurate information to both the clients and his employer, including fabricating investment vehicles, fabricating investment portfolio summary reports, and fabricating client transactions.

[7] Investigations by the Respondent's former employer, Assante, are underway; funds have been paid back to four of the five clients, and legal action has been commenced by one of the clients against the Respondent and Assante.

[8] The misappropriations came to light in October 2023. The Respondent voluntarily resigned from Assante. He has not been employed at a CIRO-regulated firm since that date.

[9] In about November 2023, CIRO received an endorsed letter from the Respondent admitting to his misconduct of misappropriating funds from the clients.

[10] Mr. Tomkins attempted to recoup the misappropriated funds through speculative investments, but was unsuccessful. In the Relevant Period, he misappropriated $438,500.00 from Client MP and returned $418,103.50; he misappropriated $1,250,000.00 from Client JG and returned nothing.

[11] The net funds misappropriated in the Relevant Period were $1,270,396.50. Mr. Tomkins used all of those funds for his own personal benefit.

[12] The Respondent deliberately deceived both the clients and Assante by providing inaccurate or false information to give himself greater levels of control and to reduce the likelihood of detection.

[13] In an interview with CIRO staff on September 18 and 19, 2024, the Respondent admitted, under oath, to misappropriating a total of $1,688,500.00 from the clients in the Relevant Period. He also admitted that he used all of the funds for his own personal benefit.

[14] Mr. Tomkins has no prior disciplinary history with CIRO or its predecessors. He accepted responsibility for his misconduct. At the hearing, he expressed deep remorse for what he had done.

THE CONTRAVENTIONS

[15] By engaging in the conduct described, that is, misappropriating client funds, the Respondent, while a Registered Representative, contravened Investment Dealer and Partially Consolidated (**IDPC**) Rule 1400 in that he engaged in business conduct or practice which is unbecoming or detrimental to the public interest.

TERMS OF SETTLEMENT

[16] Mr. Tomkins agreed to the following sanctions and costs:

a) permanent prohibition on approval in any capacity with CIRO;

b) permanent prohibition from employment in any capacity by a Regulated Person;

c) payment of a fine in the amount of $1,000,000.00;

d) disgorgement of funds misappropriated in the amount of $1,270,396.50;

e) payment of costs in the amount of $10,000.00;

f) to pay the amounts referred to above within 30 days of acceptance of the Settlement Agreement by the Hearing Panel, unless otherwise agreed between Enforcement Staff and the Respondent.

[17] Enforcement Counsel agreed that if the Settlement Agreement was accepted by the Hearing Panel, they would not initiate any further action against the Respondent in relation to the Agreed Facts as set out in Part III of the Settlement Agreement, and the contraventions set out in Part IV of the Settlement Agreement, subject to a proviso. The proviso is that if the Settlement Agreement is accepted but the Respondent fails to comply with any of its terms, Enforcement Staff may bring proceedings under IDPC Rule 8200 against the Respondent. Such proceedings may be based on, but are not limited to, the facts set out in Part III of the Settlement Agreement.

PROCESS FOR ACCEPTANCE OF A SETTLEMENT AGREEMENT

[18] A hearing panel may either accept or reject a proposed settlement agreement (IDPC Rule 8215(5)). This Panel recognizes that settlements are usually desirable where possible in the public interest. It also recognizes that settlements are usually the product of negotiations to which the hearing panel is not privy. As stated in Milewski (Re)[1] , a settlement agreement should be accepted unless the proposed penalties "clearly fall outside a reasonable range of appropriateness" as a response to the Respondent's conduct.

[19] The question before the Panel is whether the agreed penalties for the conduct during the Relevant Period are: (1) within an acceptable range considering similar cases; (2) fair and reasonable in the circumstances; and (3) sufficient to serve as a deterrent to the Respondent and in the industry.[2]

RELEVANT FACTORS IN THIS CASE

[20] The CIRO Sanction Guidelines set out general principles, as well as a number of key factors, that hearing panels must take into account.

[21] We begin by considering the nature and gravity of the misconduct admitted by the Respondent. We limit this consideration to what occurred during the Relevant Period. At the hearing, Enforcement Counsel advised us that events preceding the Relevant Period (that is, the earlier misappropriations) were described only to provide the background for what occurred in the four-year Relevant Period.

[22] During that time, Mr. Tomkins misappropriated funds totalling $1,688,500.00 from two clients, using devious means including fabricated information. He committed serious transgressions, involving large sums of money. He engaged in an ongoing pattern of intentional deception. This was far from an isolated lapse in judgment.

[23] The affected clients were elderly, with noted health concerns.

[24] We find that the misconduct falls at the most serious end of the spectrum.

[25] At the same time, we note that Mr. Tomkins self-reported the misconduct. He has acknowledged and admitted it. He voluntarily resigned from his employment and left the CIRO-regulated industry. He also returned some of the misappropriated funds ($418,103.50) to one client.

[26] Enforcement Counsel for CIRO, Mr. Khun-Khun, referred us to previous cases involving contraventions of this nature, where members of the industry had misappropriated funds from clients. The penalties in those cases reflected the seriousness with which such contraventions are viewed. They showed that persons who committed such contraventions were both ordered to pay amounts that would ensure they did not benefit from the misappropriations (disgorgement) and to pay substantial fines, as well as costs. Permanent bans from registration or employment in the securities industry were the norm. These cases are: *Re Rutledge*[3], *Re St. Pierre*[4], *Re McCarthy*[5], and *Re Howell*[6].

CONCLUSION

[27] The Hearing Panel concludes that the agreed penalties for the contraventions during the Relevant Period are within a reasonable range consistent with previous cases, fair and reasonable in all of the circumstances, and sufficient to create a strong deterrent. We conclude that the public interest is served by accepting the proposed settlement.

Dated at Vancouver, British Columbia this 29th day of April 2025.

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[1] (1999) I.D.A.C.D. No. 17 at 9
[2] *Re Donnelly*, 2016 IIROC 23 at para. 5
[3] 2022 IIROC 36
[4] 2022 IIROC 29
[5] 2021 IIROC 33
[6] 2016 IIROC 48

"C. Lynn Smith"

C. Lynn Smith, K.C., Chair

"Richard Thomas"

Richard Thomas

"Brian Worth"

Brian Worth

CIRO · OCRI
Canadian Investment Regulatory Organization
Organisme canadien de réglementation des investissements

IN THE MATTER OF
THE INVESTMENT DEALER AND PARTIALLY CONSOLIDATED RULES

AND

MICHAEL ROWLAND TOMKINS

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Canadian Investment Regulatory Organization ("CIRO")[1] will issue a Notice of Application to announce a settlement hearing pursuant to sections 8215 and 8428 of the Investment Dealer and Partially Consolidated Rules (the "Investment Dealer Rules") to consider whether a hearing panel should accept this Settlement Agreement between Enforcement Staff and Michael Rowland Tomkins (the "Respondent").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Enforcement 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. The Respondent was employed as a Registered Representative with Assante Capital Management Ltd., at a branch in Nanaimo, British Columbia.

5. From in or about 2007 to July 2023, the Respondent misappropriated approximately $5,996,992.21 from five of his clients (the "Five Clients"). Of this amount, the Respondent returned approximately $1,692,421.98 to the Five Clients. An approximate amount of $4,304,570.23 remains outstanding.

6. Between in or about February 2019 to July 2023 (the "Relevant Period"), the Respondent misappropriated approximately $1,688,500.00 from two of the Five Clients (the "Clients").

7. In the Relevant Period, the Respondent returned approximately $418,103.50 to one of the Clients.

8. The Respondent misappropriated the funds in the Relevant Period through a variety of methods involving the deposits of cheques, bank drafts, and electronic fund transfers. The Respondent was able to misappropriate the funds by deceiving both the Clients and his employer. He did this by providing fabricated or inaccurate information to both the Clients and his employer.

9. The Clients were elderly and vulnerable with noted health concerns.

10. The Respondent's former employer is in the process of investigating the misappropriation of client funds by the Respondent. Funds have been paid back to four of the Five Clients. Legal action has also been commenced by one of the Clients against the Respondent and his former employer.

Background

11. The Respondent has been employed in the investment industry since the 1980s working as a mutual fund salesperson at a number of financial institutions.

12. In 2001, the Respondent became employed with Assante Financial Management Ltd. On or about June 19, 2018, the Respondent became a Registered Representative, employed with Assante Capital Management Ltd. (collectively "Assante").

Misappropriation of Client Funds

13. On or about October 10, 2023, one of the Clients contacted the Respondent informing him that they would be moving their investments to another firm.

14. Consequently, on or about October 18, 2023, the Respondent voluntarily resigned from Assante. He has not been employed at a CIRO-regulated firm since.

15. In or about November 2023, CIRO received an endorsed letter from the Respondent dated November 28, 2023, admitting to his misconduct of misappropriating funds from the Clients.

16. In the Relevant Period, the Respondent misappropriated funds from the Clients through different methods. These methods involved the use of cheques, bank drafts and electronic fund transfers. All of the transactions were predicated on inaccurate or fictitious information provided to the Clients or Assante by the Respondent.

17. These methods were facilitated by different processes, that the Respondent used to deliberately deceive both the Clients and Assante, and to reduce the likelihood of detection. These processes included fabricating:

    (i) investment vehicles;

    (ii) investment portfolio summary reports; and

    (iii) client transactions.

18. In the Relevant Period, the Respondent misappropriated approximately $1,688,500.00 from the Clients (the "Misappropriated Funds").

19. Also, in the Relevant Period, the Respondent returned approximately $418,103.50 to one of the Clients.

20. In the Relevant Period, the net funds misappropriated by the Respondent from the Clients was approximately $1,270,396.50. All of these funds were used for the Respondent's own personal benefit.

21. To try and recoup the Misappropriated Funds, the Respondent used some of the Misappropriated Funds to participate in speculative investments. The Respondent was unsuccessful in this regard.

22. The following chart shows the total approximate funds misappropriated, broken down by client, in the Relevant Period:

	Client Name	Funds Misappropriated	Funds Returned to Client by Respondent	Net Funds Misappropriated By Respondent
1.	MP	$438,500.00	$418, 103.50	$20, 396.50
2.	JG	$1,250,000.00	$0	$1,250.000.00
Total		**$1,688,500.00**	**$418,103.50**	**$1,270,396.50**

23. The Respondent deliberately deceived both the Clients and Assante by providing inaccurate or false information to provide himself with greater levels of control and reduce the likelihood of detection.

24. On September 18, and 19, 2024, the Respondent attended an interview with CIRO staff in which he admitted, under oath, to misappropriating a total of approximately $1,688,500.00 from the Clients in the Relevant Period. The Respondent further admitted that he used all of these funds for his own personal benefit.

Additional Factors

25. The Respondent has no prior disciplinary history with CIRO or its predecessors.

26. The Respondent has accepted responsibility for his misconduct.

PART IV – CONTRAVENTIONS

27. By engaging in the conduct described above, the Respondent committed the following contraventions of CIRO requirements:

    (i) Between February 2019 to July 2023, the Respondent, while a Registered Representative, engaged in business conduct or practice which is unbecoming

or detrimental to the public interest in that he misappropriated client funds, contrary to Investment Dealer Rule 1400.

PART V – TERMS OF SETTLEMENT

28. The Respondent agrees to the following sanctions and costs:

    (i) The permanent prohibition of approval in any capacity with CIRO;

    (ii) The permanent prohibition from employment in any capacity by a Regulated Person;

    (iii) The payment of a fine in the amount of $1,000,000.00;

    (iv) Disgorgement of funds misappropriated in the amount of $1,270,396.50; and

    (v) The payment of costs in the amount $10,000.00.

29. 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 Enforcement Staff and the Respondent.

PART VI – STAFF COMMITMENT

30. If the hearing panel accepts this Settlement Agreement, Enforcement 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.

31. If the hearing panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of this Settlement Agreement, Enforcement Staff may bring proceedings under Investment Dealer Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

32. This Settlement Agreement is conditional on acceptance by the hearing panel.

33. This Settlement Agreement shall be presented to a hearing panel at a settlement hearing in accordance with sections 8215 and 8428 of the Investment Dealer Rules, in addition to any other procedures that may be agreed upon between the parties.

34. Enforcement Staff and the Respondent agree that this Settlement Agreement will form all 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.

35. If the hearing panel accepts this Settlement Agreement, the Respondent agrees to waive all rights under the Rules of CIRO and any applicable legislation to any further hearing, appeal and review.

36. If the hearing panel rejects this Settlement Agreement, Enforcement Staff and the Respondent may enter into another settlement agreement or Enforcement Staff may proceed to a disciplinary hearing based on the same or related allegations.

37. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the hearing panel.

38. This Settlement Agreement will become available to the public upon its acceptance by the hearing panel and CIRO will post a copy of this Settlement Agreement on the CIRO website. CIRO will publish a notice and news release of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement and the hearing panel's written reasons for its decision to accept this Settlement Agreement.

39. If this Settlement Agreement is accepted, the Respondent agrees that neither they nor anyone on their behalf, will make a public statement inconsistent with this Settlement Agreement.

40. This Settlement Agreement is effective and binding upon the Respondent and Enforcement Staff as of the date of its acceptance by the hearing panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

41. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

42. An electronic copy of any signature will be treated as an original signature.

DATED this 14th day of February 2025.

"Witness"
Witness

"Michael Rowland Tomkins"
Michael Rowland Tomkins

DATED this 26th day of February 2025.

"Jagdeep Khun-Khun"
Jagdeep Khun-Khun
Enforcement Counsel on behalf of
Enforcement Staff of the
Canadian Investment Regulatory
Organization

The Settlement Agreement is hereby accepted this 25th day of March 2025 by the following hearing panel:

"C. Lynn Smith"
Per: _____
Chair

"Brian Worth"
Per: _____
Industry Member

"Richard Thomas"

Per: _____

Industry Member

[1] The Canadian Investment Regulatory Organization ("CIRO") has adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies of the MFDA (the "Interim Rules"). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and the rules and certain by-laws and policies of the MFDA that were in force immediately prior to amalgamation. Where the rules of IIROC and the rules and by-laws and policies of the MFDA that were in force immediately prior to amalgamation have been incorporated into the Interim Rules, Enforcement Staff have referenced the relevant section of the Interim Rules.
Section 1105 (Transitional provision) of the Investment Dealer and Partially Consolidated Rules sets out CIRO's continuing jurisdiction, including that CIRO shall continue the regulation of any person subject to the jurisdiction of the Investment Industry Regulatory Organization of Canada that was formerly conducted by the Investment Industry Regulatory Organization of Canada.