Re Ewing

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rules and the Dealer Member Rules

and

Matthew Philip Ewing

2025 CIRO 39

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard:
April 24-25, 2025, April 28-May 2, 2025 and June 4, 2025 (in person)
Decision: July 31, 2025

Hearing Panel
Louise Barrington, Chair
Randee Pavalow, Industry Representative
Ron Smith, Industry Representative

Appearances
Jennie Brodski, Enforcement Counsel
April Engelberg, Senior Enforcement Counsel
Michael Byers, for Matthew Philip Ewing
Matthew Philip Ewing (present)

REASONS FOR DECISION ON LIABILITY

I. Overview

A. The Parties

[1] This procedure was initiated by a Notice of Hearing filed on September 9, 2024, by the National Hearings Officer of the Canadian Investment Regulatory Organization (**CIRO**), pursuant to the Investment Dealer and Partially Consolidated Rules (**IDPC Rules** or **the Rules**) against the Respondent, Matthew Philip Ewing. It is uncontested that the Respondent had been employed with registrant corporations in the financial sector since May of 2011, originally with BMO Nesbitt Burns, then with RBC Dominion Securities (**RBC**), and most recently with National Bank Financial (**NBF)**. Mr. Ewing was at all material times working as a Registered Representative (**RR**). He joined NBF in March 2021 and his employment there ended in November 2022. His RR status terminated on November 18, 2022[1] and the Respondent has not worked in the financial industry since leaving NBF.

B. Allegations

[2] According to the Statement of Allegations (**Allegations**), the Respondent engaged in conduct which contravened the Rules, putting the reputation of the securities industry into disrepute over a lengthy period of

[1] Liability Enforcement Compendium (**LEC**) 10 Notice of End of Individual Registration.

time and with multiple clients. Specifically, the Allegations are that the Respondent, as a Registered Representative:

a) between June 2021 and August 2022, falsified portfolio overview documents of two related clients, contrary to IDPC Rule 1400;

b) between September 2019 and November 2022, engaged in personal financial dealings with six of his clients, including loans and compensation for losses and commissions, contrary to Dealer Member Rule 43 (prior to January 1, 2022) and IDPC Rule 3100 (after January 1, 2022); and

c) between April 2021 and November 2021, engaged in discretionary trading in several different accounts, contrary to Dealer Member Rule 1300.4.

C. The Respondent's Position

[3] The Respondent, in its response to the Allegations (**Response**), denied all allegations of misconduct save for certain financial dealings alleged with respect to Contravention 2.

[4] The Respondent does not dispute[2] that he personally compensated some clients for trading losses in their accounts, borrowed money from a client and loaned clients' funds.

[5] He denies falsifying any documents or statements, stating that the alleged alterations could have been completed by his associates or other NBF employees, and states that at all times, NBF and its affiliate, the National Bank of Canada, had access to full portfolio information and summaries.

[6] According to the Response, some of the transactions alleged to be inappropriate were in fact bona fide transactions involving wine purchases by auction and were authorized by NBF as an outside activity.

[7] Other transactions alleged to be inappropriate financial dealings were in fact conducted on behalf of the Respondent's then girlfriend (now wife), who shared a joint account with the Respondent, and were not his own personal financial transactions with clients.

[8] The Respondent demanded particulars of the Allegations at paragraphs 21 and 30 regarding a pattern of account value falsification and instances of eight personal finance dealings, some of which involved purchases of cognac and wine. The Respondent stated that he engaged in bulk trading for certain clients, who pre-authorized the transactions, by using a model and strategy expressly authorized by NBF.

[9] The Respondent denies that these transactions were discretionary trading, but if indeed they did amount to discretionary trading, it was authorized and permitted by NBF.

[10] The Respondent alleges that NBF sought to blame him for its own shortcomings in the supervision and management of other employees, conducting an internal investigation to make the Respondent a scapegoat for activities commonly accepted and tolerated by NBF.

[11] The Respondent states that at all material times he endeavoured to act in the interests of the clients, and to the extent that he personally did not compensate clients for losses, NBF has handled this.

II. Preliminary Matters

A. Witness Testimony

[12] CIRO Enforcement Staff (**Staff**) called Mike Hull, a CIRO investigator assigned to the present investigation, and Colin Lovegrove, Manager of Trading Review and Analysis (and formerly a senior investigator at CIRO) to testify in-person at the hearing.

[13] The Respondent testified on his own behalf. No other witnesses were invited to testify orally at the hearing.

[14] A Confidential Standstill Agreement in an Ontario Superior Court action provided for mediation between over 70 claimants, with NBF and Mr. Ewing as respondents. The ensuing Mediation Agreement, dated September 24, 2023, provides that the parties to the mediation understand that anything communicated during

[2] Transcript April 30, 2025 and Staff's Closing Statement.

the mediation process is confidential and cannot be used in any proceeding. No further explanation was offered for the absence of other sworn oral or written testimony, but with the agreement of Staff, Respondent's Counsel read in and filed excerpts from unsworn videoconference interviews with the following persons:

- Paula Watts, Senior Manager of Compliance at NBF (interviewed by Mr. Lovegrove)
- Lynne Sutton of NBF (interviewed by Mr. Lovegrove)
- Robert Hatfield, a Regional Manager at NBF (interviewed by Mr. Lovegrove) and
- Robert RC of Canaccord, an investment firm (interviewed on two occasions by Mr. Lovegrove).[3]

B. Standard of Proof

[15] Counsel confirmed in the course of the proceedings that the standard of proof is the civil standard, on the balance of probabilities. On the first day of the evidentiary hearing, questions arose with respect to the admissibility of evidence.

C. Admissibility of New Evidence

[16] Early in the hearing, Counsel informed us that they were unable to agree on the admissibility of certain documents proffered by Enforcement Staff. Staff wished to put into evidence documents to show that there had actually been falsification of documents of seven clients, when the Statement of Allegations specified only two related clients.

[17] Respondent's Counsel objected that the disputed documents were inadmissible because they were unrelated to the contravention pleaded in the Allegations and could only be relevant as similar fact evidence, which is presumptively (in criminal cases at least) inadmissible. If Staff had wanted to expand the original Allegations, they should have amended and particularized the Allegations at the first opportunity, to avoid ambushing the Respondent.

[18] Staff argued that, in a civil case such as the one at hand, the probative value of the evidence outweighed any prejudice to the Respondent, and the use of the evidence from the Allegations could permit the Panel to make a finding of seven cases of document falsification. Referring to the recent *Deeb v Real Estate Council of Ontario*[4] case, Staff suggested that the Panel should not approach the Allegations in an overly technical manner but could broaden the scope of the investigation by showing a pattern of conduct. Staff had put into evidence a letter from NBF to CIRO indicating that five additional similar occurrences had been found.
[19] The Respondent also objected to the submission of other documents on the basis that they were not relevant to the Allegations pleaded by CIRO.

[20] The Panel, after considering the arguments, decided that the evidence pertaining to the additional clients as alleged, could be admitted without a formal amendment of the pleading, as there was no element of surprise and its probative value was open to the discretion of the Panel. In any event, nothing in the Panel's decision turned on any of the disputed documents.

D. Scope of Settlement Privilege Protection

[21] Respondent's Counsel also objected to documents which had been attached to an affidavit concerning one or more confidential standstill agreements which included an agreement to mediate. The agreements alluded to the standstill agreements. The Parties disagreed about the admissibility of the documents. Respondent's Counsel contended that the documents were protected by settlement privilege, and Staff argued that the attachments were not protected as they were not prepared in the context of attempting to settle a dispute.

[22] Respondent's Counsel argued that documents attached to an affidavit, which itself is protected by settlement privilege, are themselves protected as forming part of the affidavit. A redacted affidavit sworn by client JF[5] during settlement proceedings in the Ontario Superior Court action was tendered, along with a number

[3] Hearing Exhibit 7.
[4] 2025 ONSC 1100.
[5] LEC 441 and 442 Affidavit of JF.

of documents attached. The Respondent objected to both the affidavit and its attached documents. Staff agreed to withdraw the affidavit itself but denied that the attachments were privileged. The Panel requested oral submissions from both parties before ruling on the issue.

[23] The affidavit with attachments was sworn by an unknown person, who was not present at the hearing and, to the best of the Panel's knowledge, had not been questioned by the Respondent's Counsel. The Respondent's Counsel argued that the privilege arose not from the content of the attachments (which admittedly were not prepared in the context of settlement), but from the context in which they were obtained – that is, as part of a privileged communication. After considering the arguments of both Counsel, the Panel decided that it would be unreasonable to be able to confer settlement privilege protection on otherwise unprivileged documents simply by including them in a privileged document and admitted the attachments.

[24] Consequently, the affidavit, its content completely redacted as to content and the identity of the affiants, was allowed in, and its attachments made available to the Hearing Panel. The attachments included a number of letters of complaint from former clients of the Respondent. These letters were addressed to CIRO and dated in 2023. The Respondent testified that he was unaware of any complaints during the time he was employed at NBF and there is no evidence to contradict this.

III. The Three Contraventions Alleged

A. Falsification of portfolio overview documents, contravening IDPC Rule 1400

The Rule

[25] The IDPC Rule 1400 sets out general standards of conduct applying to Registered Representatives. An RR must observe high standards of ethics and content and must act openly and fairly, according to just and equitable principles of trade, and must not engage in any business conduct unbecoming or detrimental to the public interest. Included are negligence, failure to comply with rules and regulations, departure from reasonable standards expected of an RR and conduct likely to diminish investor confidence in the integrity of the securities or derivatives market.

Client Portfolio Summaries (Overviews) at NBF for clients JP and DP

[26] The Respondent allegedly arranged for falsified account statements to be sent to JP and DP by email, so that they were unaware that the value of their investments had decreased from $1.9 million to $1.14 million between July 2022 and August 2022.

[27] At the hearing, CIRO investigator Michael Hull, after affirming his intention to tell the truth, was questioned by Staff, confirmed that he had been assigned to investigate the present matter in June 2021. He confirmed that the documents contained in the Enforcement Compendium[6] were obtained during the CIRO investigation and extracted from the CIRO database. For the examination of Mr. Hull, Staff asked him to confirm several Exhibits in the Compendium, consisting of several hundreds of documents, including some admitted under protest as set out above.

[28] Mr. Hull confirmed that the Respondent's employment with NBF was terminated for cause effective 18 November 2022. Mr. Hull was familiar with the Respondent as he had worked on another related investigation concerning the Respondent and Mr. C, a former associate of the Respondent at RBC. The reason for the Respondent's termination, according to the Canadian Securities Administrators form, was failing to cooperate with NBF during NBF's internal review into alleged misconduct, including alteration of client statements, financial dealings with clients, and use of personal email for registerable purposes. Notably, the letter did not mention discretionary trading.

[29] Mr. Hull identified and explained various documents concerning the portfolio of JP and DP while being questioned by the Respondent's Counsel.

[30] Staff also alleges that a similar pattern of falsification occurred in five other client portfolios between April 2022 and November 2022.

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[6] Exhibit 2 in this proceeding is the Enforcement Compendium consisting of documents collected by CIRO investigators and stored on CIRO's database.

[31] The Respondent denied personally falsifying documents or incorrectly altering client account statements. If indeed incorrect documents were sent to any of his clients, he denied that he made the changes and stated that other NBF employees or his associates, who had access at all times to full portfolio information and summaries, could have been responsible.

[32] The Respondent maintained that at all times he endeavoured to act in the best interests of his clients. He further alleged that NBF had sought to blame him for its own shortcomings in supervision and management of other NBF employees and its business, and conducted an internal investigation and review intended to scapegoat him for practices which were widespread and tolerated by NBF and/or were the fault of NBF.

Evidence

[33] A status letter from NBC to CIRO dated January 31, 2022 described the outcome of their internal review[7] and CIRO's investigation status report mentioned "forged documents" including seven instances of altered portfolio summaries. Staff described the process as follows:

- The Respondent sent an email from his NBF address to his personal address, with an Overview of the client's portfolio;
- He sent an email from the personal address back to NBF with a different version [allegedly falsified] of the Overview of that client's portfolio; and

He emailed the incorrect Overview from his NBF address to the client and/or NBC.

[34] Staff pointed to an incident with respect to client KK. On May 13, 2022, an email from the Respondent's NBF account contained an Overview of the KK portfolio with a value of $18,292.26. A message of the same day from Mr. Ewing's personal email to his NBF email showed the value of the portfolio as $39,292.26. This Overview was sent from NBF to client KK on May 13, 2022. The existence of two very different values within the same day led to an assumption that one had been falsified.

[35] Several of the alleged incidents concerned the Respondent's clients JP and DP, a married couple, with whom Mr. Ewing was friendly, who were buying a house. Their NBF investments were pledged to the National Bank of Canada (**NBC**) as security for the line of credit extended to them by NBC to finance their purchase. JP and DP frequently met socially with the Respondent and EL, and they spoke daily about their portfolio.

[36] One allegation with respect to JP and DP's account concerned a transaction in late July 2022. JP and DP had deposited $2 million into their margin account on July 21, 2022 and then set up a line of credit with NBC, secured against an escrow account. The Respondent testified that NBC had full oversight of the account.

[37] On July 27, 2022, an Overview was mailed from the Respondent's NBF account with an Overview showing JP and DP's margin account as negative $860. Later the same morning, a second Overview came from the Respondent's personal account to his NBF account. This second Overview showed a value of $2 million in the margin account. The Respondent forwarded the second Overview to Marta Lapena, a private banker at NBC.

[38] Staff went through examples in the portfolio of clients JP and DP. At the hearing, Mr. Hull relayed this information to the Panel by presenting a series of documents in sequence[8] to demonstrate the alleged falsifications, including:

- An Overview dated July 26, 2021, from the Respondent's NBF account to his personal account, attached to the email of July 27, 2021, with a balance shown of negative $860 in the margin.
- On July 28, 2022, an Overview dated July 26, 2021, sent to the Respondent's NBF account showed a balance of $2 million.
- On August 2, 2022, client DP asked for confirmation that approximately $2.2 million would be available for the following week. Ms. Lapena of NBC followed up the next day inquiring about funds for the house purchase.

[7] LEC 146. The review appears to have been launched because of NBF's concerns about unauthorized discretionary trading. This allegation is dealt with in Part III C below.
[8] LEC 30-36.

- Following a message to the Respondent's NBF email from DP dated August 2, 2022, stating that the balance needed for their house purchase would be $2,214,495.08, Ms. P., senior private banker "on the financial side" of NBF, confirmed the necessary amount by message of August 3, 2022 to the Respondent's NBF account.
- An email from the Respondent's NBF email "on the investment" side of NBF" of August 2, 2022, to Ms. P., attaching the July 21, 2022 Overview showing the $2 million balance, which would be required to close JP and DP's house purchase a few weeks later.[9]
- On August 7, 2022, it appears that the Respondent emailed a portfolio Overview for the JP and DP account, dated August 3, 2022, from his NBF email to his personal email. It showed a value of $1,140,468.42 for the portfolio.
- On August 8, 2022, an Overview dated August 8, 2022 for the JP and DP portfolio was sent from the Respondent's personal email address to his NBF email, with some attached receipts for wine and golf. The stated value on this Overview was $2,712,606.89[10] – a difference of approximately $1.57 million. The same document was also sent on the same day to Ms. Lapena of NBC. The Respondent acknowledged that the information sent to Ms. Lapena was incorrect and the real figure was insufficient for the closing.

[39] After the Respondent's departure from NBF, other representatives, Messrs. S. and R., took over his client portfolios and pulled retroactively the value of this portfolio for the August 8, 2022 date. The value they received from the system was $1,218,427.12 - close to but less than the value in the Overview sent from the NBF email on August 7, 2022, but less than half the value shown in the August 8, 2022 message from Mr. Ewing's personal email to his NBF account.

[40] Staff prepared a chart, included in the Allegations, showing the two different versions of the August 3 and August 8, 2022 Overviews for JP, broken down into the four accounts comprising JP's portfolio. There was no objection to its production at the hearing to illustrate Mr. Hull's testimony, nor to the figures themselves, as the information came from Exhibits[11] produced at the hearing:

- RSP, original version showed CAD$21,470.46 with the second version at CAD$121,470.46;
- Margin, long, original version showed negative $8.47 with the second version at CAD$943,552.28;
- Escrow, CAD$115,255.01 with the second version unchanged;
- Escrow, USD$779,716.35 with the second version at USD$979,716.35 and CDN cash unchanged.

[41] Comparing the values shown on the August 3 and August 8, 2022 versions shows that the RRSP account showed an increase of precisely $100,000. The Escrow account showed an exact $200,000 increase. The margin account went from negative $8.47 to a positive $943,552.28, an increase of $943,560.75. Cash, unsurprisingly, remained constant at $115,255.01.

[42] The substantial discrepancies between the versions of August 3 and August 8, 2022 are interesting, not only for the difference of $1.57 million. It is a striking coincidence that the RRSP increased by exactly $100,000 and the Escrow by exactly $200,000. A gain of nearly $1,000,000 in the margin account also raises issues of credibility.

[43] The Respondent testified that he did not know who generated the portfolio Overview of August 8, 2022, but that he relied on it, and JP relied on it, as they saw it together on his telephone screen while golfing.[12] He stated that he did not know the true figure, but that it was consistent with JP and DP's overall wealth. He stated that he relied on the Overview to advise the clients and Ms. Lapena that the funds were sufficient for the closing.

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[9] LEC 56, 57 and 60.
[10] LEC 61 and 81.
[11] LEC 62.
[12] Transcript April 30, 2025 at pp. 141, 169-170, 179.

[44] When the Respondent attempted to wire $2.2 million for the house closing from NBF to JP, the transfer was rejected for insufficient funds. The Respondent instructed his lawyer to send from his trust account $894,000 by wire transfer to JP and DP's bank. This was done on August 10, 2022 with a further $680,000 sent on August 16, 2022. The Respondent testified that as he had relied on the incorrect Overview, he made up the difference from his own funds. There is no evidence of how the second Overview was created or by whom, nor of what parameters were entered into the Croesus[13] system to produce it. He also commented that it was unreliable for this reason. Yet he did rely upon it when asked to confirm the balance of the JP and DP portfolio.

[45] The Respondent's Counsel argued that without any information about who produced the Overviews, what parameters were fed into the system, or any motive, the only evidence available was the different amounts in email transmissions between the Respondent's NFB and personal accounts. The Overviews produced years later for that day, by the Respondent's 's successors, Messrs. S. and R., were different again, yet there is no suggestion of falsification with respect to the Overviews they produced. There is no expert or other evidence pointing to the Respondent. Mr. Hull, the CIRO investigator assigned to the case, could not explain why the values were different.

[46] Another similar series of emails was presented with respect to JP and DP's account:

- An Overview dated September 13, 2021 from the Respondent's NBF account to his personal account, attached to email of September 14, 2021, with balance shown of $1,806,075.90.
- An email from Mr. Ewing's Gmail account to his NBF account dated September 15 with an Overview of September 13, 2021 with a balance of $2,247,658.90.
- The Overview was addressed to DP in Newmarket, ON, including the notation "Your investment advisor: Matthew Ewing", but there is no evidence that either version was actually sent to DP.

[47] The Respondent denied responsibility for these anomalies. He pointed out that on May 13, 2022, when he was allegedly falsifying the Overview of the KK account, he had evidence showing that he was playing golf and without access to his computer. He offered no explanation for the emails of that day, other than that his colleagues could have used his computer to send the documents from his personal email to his NBF email. He did concede that it would have been possible to send the messages from his phone while on the golf course.

[48] No reason or alternate explanation being available for the discrepancies, CIRO investigators concluded that the larger numbers had been falsified to portray greater values than the real portfolio value.

[49] The Respondent argued that Staff failed to prove that the Overviews were falsified or that he sent falsified Overviews to anyone. He denied any wrongdoing, by falsifying the documents or by the transmission of inaccurate or misleading Overviews, pointing out that CIRO has the burden of proof, not the Respondent. The Respondent's Counsel pointed to the testimony of both Mr. Hull and the Respondent, that Overviews are *ad hoc* statements that could be generated with a "variety of inputs".

[50] The Respondent's Counsel also pointed to the disclaimer on the Overviews which states, in part:

> The information contained in this report was obtained from sources which we believe to be reliable. However, this information is not guaranteed... and may be incomplete. This report was generated to make it easier to manage your portfolio. We must underline that [our] liability shall be limited to the accuracy of the information contained in your Investment Portfolio Statement...[which] will always take precedence over [this] report.

[51] The Respondent's Counsel argued that there was no evidence proving that documents were falsified – by the Respondent or at all. Nor has Staff, in the Respondent's submission, shown that the Respondent was negligent in relation to the Overviews. The existence of two different values on two independently requested Overviews may generate questions, but unsupported suspicions cannot make the case. There is no forensic evidence of alterations to the Overviews. The Respondent's Counsel pointed out that if the evidence is equally balanced, then CIRO has failed on the balance of probabilities. This applies also to the question of wrongful

[13] Croesus is the NFB proprietary programme used to administer and produce financial information on client portfolios. At the relevant time, NBF was transitioning to use a new system, Salesforce.

intent: "If the Respondent puts forth an equally plausible alternative explanation, it would be improper for the Panel to infer improper intent."[14]

[52] At the hearing, the Respondent testified that since the pandemic he had worked from a home office. His computer was not password protected and thus available to his team members. At least two of his co-workers had open access to this computer, including his email accounts. One or both of them could have been responsible for the discrepancies.

[53] The Respondent had a printer in the home office, and they all used his computer for various reasons, including the printing of documents. He also testified that the other team members had the Adobe programme on their computers, so would be in a position to make changes to PDF documents, whereas, he did not have the programme and so would not be able to make those alterations.

[54] The Respondent was not asked and did not volunteer any plausible reason for his team members to falsify documents, nor to send them to the clients or to NBC. He also agreed that, with his phone, he was able to send messages from the golf course. At the hearing, he acknowledged responsibility for the incorrect information: "I assumed that the information was generated in a way that would have been incorrect but because it was my name on it, I took the responsibility for it and covered it." [15]

[55] No meta data was before the Panel to indicate the identity or location of the sender of the messages. There was no evidence about the mechanics of making a request for portfolio Overview from Croesus or how the Overviews were generally used by RRs.

[56] In their testimony, CIRO investigator Mr. Hull and the Respondent both agreed that values shown can vary according to the parameters of the search as well as fluctuations in the market. Neither Mr. Hull nor the Respondent could tell us whether it was possible to specify a particular exchange rate when "pulling" an Overview from the system.

[57] No one who testified, other than the Respondent, had any first-hand knowledge of how to pull an Overview of a portfolio for a given day, or how the values shown on an Overview could be different for the same portfolio. Neither could explain the fluctuations, but the Respondent suggested that the values shown on an Overview could vary according to what information was requested at the time.

[58] According to the Respondent's uncontroverted evidence, the request to the Croesus system could specify whether to include or exclude values for securities, cash, or exchange rates. The system also sometimes had data flaws which would not always give live prices but sometimes would. The Overviews were unofficial documents, subject to variations according to how the information was pulled. Thus, comparing an Overview created some years after the fact, with potentially different input, is unreliable.

[59] The Respondent also pointed out that although Staff alleged that the Respondent's explanation of how his colleagues had open access to his unprotected computer might seem far-fetched, there was no evidence to contradict it, so the Panel should take it at face value.

[60] When shown the allegedly falsified statement of July 27, 2021, CIRO investigator admitted that the negative Overview appeared to be incorrect, as $2 million had just been deposited into the account, but did not show up the first time they checked. Thus, the negative $860 value was inaccurate. Mr. Hull had no explanation for the discrepancy unless "something was mis-clicked", possibly causing the Overview to report only a cash balance of a single account. The allegation regarding this incident was withdrawn.

[61] Did the Respondent's conduct fail to meet the standards expected of an RR? In *Trenholm*[16], the IIROC panel stated that conduct which "diverges widely from that of a reasonable person" was sufficient to ground a finding of conduct unbecoming. Falsification of client documents in this context diverges widely from that of a reasonable person, and is "always serious, never minor' and is unequivocally condemned[17].

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[14] *Re Agueci* 2015 ONSEC 2 at para. 166.
[15] Transcript of Mr. Ewing at p. 1427.
[16] 2009 IIROC 40.
[17] *Re Milstein and Ontario College of Pharmacy et al* (1977) 13 O.R. (2d) 700.

[62] The Respondent's position is that CIRO has failed to prove the allegation of falsifying documents, because its investigation was flawed, due to its reliance on findings of NBF regarding the scope of review in its investigation. CIRO investigators did not read the NBF final report and not one person with first-hand knowledge of the events of 2021 and 2022 was there to contradict the Respondent's testimony.

[63] The Respondent did not deny his practice of sending emails between his NBF and personal accounts. However, he did deny transmitting the particular series of emails as alleged. He offered no concrete evidence but his own testimony. In this case, the process of evaluating the probabilities is hampered by the lack of first-hand evidence to explain the creation and transmission of these documents. Staff relied on the very existence and content of the messages transmitted to conclude that there had been wrongdoing. The Respondent supposed at the hearing that either or both of his colleagues, with free access to his computer and email, could have authored the disputed messages. He could not think of any motivation for this action. Neither of the colleagues was called upon to testify, either in favour or opposing this explanation.

IV. Analysis

[64] In deciding this issue, the Panel is asked to conclude from the circumstances presented by Staff that it is more likely than not that the Respondent authored the emails, altered the attached Overviews and then sent them to some third party to rely upon them. Alternatively, we are invited to believe the Respondent's uncorroborated statement that he did not author the messages sent from his own business and personal emails, but that someone else could have done this.

[65] The Respondent's explanation of what might have occurred was unsupported by evidence and is, in the view of the Panel, implausible. As Rotstein J. observed, in a criminal case, "lack of credibility on the part of the accused does not equate to proof of his or her guilt beyond a reasonable doubt." However, lacking a plausible explanation, this Panel may still find that it is more likely than not that the Respondent was responsible for the creation and/or transmission of the disputed messages and the Overviews attached to each of them.

[66] Staff acknowledged that to establish a disputed fact, evidence must be "clear, convincing, and cogent" to prove the fact on a balance of probabilities, that is, whether it is more likely than not that an alleged event occurred.[18] The Panel, in deciding the case, must not seek to decide on the stricter basis of "beyond a reasonable doubt." That said, Staff acknowledged that the Panel's evaluation of circumstances should include the nature and consequences of the facts to be proved, the seriousness of the allegations and the gravity of the consequences that will flow from a particular finding. Grave charges cannot be established to the reasonable satisfaction of a discipline committee by fragile or suspect testimony.[19]

[67] On the other hand, with respect to credibility, Staff referred to the case of *Faryna v Chorny*, where O'Halloran J.A. commented:

> Counsel for the appellant argued that since S remained uncontradicted by evidence when he testified...that there was no libel...But the validity of evidence does not depend in the final analysis on the circumstance that it remains uncontroverted or that the judge may have remarked favourably or unfavourably on the evidence or the demeanor of a witness...these things are elements in testing the evidence but they are subject to whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time.

[68] The evidence shows that incorrect statements were produced and sent to third parties who would rely on them. It does not support a finding on the balance of probabilities of willful deceit or falsification of the documents by the Respondent . It does not prove that the Overviews were "falsified", that they were indeed misused, or were intended for an improper purpose, or that they were created by Mr. Ewing.

[69] Nevertheless, after consideration of the evidence, law and arguments, the Panel has concluded that with respect to clients in all circumstances, Staff proved that the conduct of the Respondent was below the standard expected of a professional in his position. The Respondent has admitted "carelessness" as his Counsel noted in his closing remarks. He let Ms. Lapena and clients JP and DP rely on data which he later acknowledged could

[18] *Re Maurice* 2022 IIROC 18; *McDougall et al v The Order of the Oblates* [2008] R.C.S. 41.
[19] *Re Floyd & McDonald* 2013 IIROC 27.

be flawed by the way they were generated. And he himself relied on data which he now criticizes as being susceptible to error.[20]

[70] Even accepting the explanation offered by the Respondent - that his co-workers could have manipulated the Overviews and sent the disputed messages, raises the question of departure from the conduct expected of a reasonable professional. He permitted his associates, for whose conduct he was responsible, to have unbridled access to his own computer and business and personal email accounts. This demonstrates a casual disregard for his supervisory responsibility as an RR and leader of a professional team. No matter who actually sent the emails and incorrect attachments, the Respondent, as a team leader, was responsible; it was with his implicit permission that his associates had free and unsupervised access to his computer and emails. By using his personal email for business transactions, he obscured the field, making it difficult for anyone to supervise or check his transactions and prevent the wrong information from being diffused. He knew or should have recognized the danger that errors or even fraud could occur when clients and/or other parties relied on incorrect documents.

[71] After consideration of the evidence, law and arguments, the Panel has concluded that Staff proved, on the balance of probabilities, that the Respondent has contravened IDPC Rule 1400 by failing to adhere to good professional practices as to the use of private emails for business, reliance on Overviews that he admits could be unreliable, and his failure to supervise the associates who worked on his team.[21] Even accepting the explanation offered by the Respondent, that his co-workers could have manipulated and transmitted the disputed messages, the Respondent, as the RR and team leader, has exposed both himself and NBF to unauthorized activities and even fraud. His conduct over the 18 months of his employment at NBF put the reputation of the securities industry at risk with clients JP and DP, in breach of IDPC Rule 1400.

B. Personal financial dealings with six clients, contravening Dealer Member Rule 43 (prior to January 1, 2022) and IDPC Rule 3100 (after January 1, 2022)

The Rule

[72] The IIROC Dealer Member Rule 43, and now IDPC Rule 3100, regulates personal financial dealing with clients and was in force at the time of the alleged contraventions. Subject to the limitations and exceptions set out in the Rule, it provides that no employee or Approved Person of a Dealer Member may, directly or indirectly, engage in any personal financial dealings with clients. Personal financial dealings include, but are not limited to:

- accepting consideration, including remuneration, gratuity or benefit, of any person other than the Dealer Member for any activities conducted on behalf of a client;
- entering into a settlement agreement without the Dealer Member's prior written consent or paying for client account losses out of personal funds without the Dealer Member's prior written consent;
- borrowing from clients or receiving a guarantee from a client;
- lending money or providing a guarantee to a client; and
- acting as attorney, trustee, executor, or otherwise having full or partial control or authority over the financial affairs of a client.

The Allegations

[73] Enforcement Staff, in their Allegations, alleged that the Respondent held a joint personal bank account with his spouse EL (**BMO Account**). He arranged for EL to open an account at Canaccord Genuity Corp (**Canaccord Account**) with his former associate, RC, as the Registered Representative. EL's address on record was the Respondent's personal address. The RR at Canaccord was RC, the former RBC colleague. He dealt in private placements, which were not accessible to professional traders. Although the Respondent made all the

[20] Transcript April 30, 2025 at pp. 105 12-7, para 13.
[21] Transcript April 30, 2025 at pp. 105 12-7, para 13.

arrangements and completed the application form, he denied that he was involved in these transactions except on behalf of EL.

[74] On the application, the Respondent was listed as a spouse with his occupation listed as "Real Estate Deve" [sic] rather than Registered Representative, his correct title, which RC knew from their time working together at RBC. In answer to the question, "Is the Client related to and residing at the same address as an Employee of Canaccord or [another investment firm]" the answer given is "No". This is inconsistent with the address provided on the application and the ensuing account which was shown as the address of the Respondent. The address on EL's 2019 tax return was the same as the Respondent's. The Respondent referred to "my fiancé" in a letter dated November 11, 2020[22]. He and EL subsequently married and now live together at the same address. The Respondent's explanation was that while undergoing treatment and reconstruction for cancer, EL moved back to her mother's house so that her mother could assist her during her treatments and appointments, and he was handling EL's financial affairs during this period.

[75] The Respondent first testified that he had only "viewing privileges" over the BMO Account without authority to transfer by wire or email or move money to his own account. However, on cross-examination, he conceded that that was an error, that he had confused two account numbers.[23]

[76] According to Staff, the Respondent and EL received into the BMO Account a total of $330,000 from four of the Respondent's clients:

- $280,000 from JM,
- $10,000 from DA, and
- $30,000 from KO, plus
- $10,000 from FP.

The $280,000 from Client JM

[77] Staff alleged that the sum of $280,000 came into ELs Canaccord Account in relation to a contract between EL and Pure Exotics Corp, in which client JM had an interest. Pure Exotics bought high value cars and exported them to the Middle East where they produced impressive profits. An email trail[24] shows that on November 13, 2020, the Respondent instructed an associate to withdraw $80,000 and wire it to "that BMO account". On the same day, $80,000 came out of JM's Royal Bank account. The Respondent testified at the hearing that the destination BMO Account referred to belonged to JM. The same amount was deposited, and marked "Transfer from JM" on November 16, 2020 to the BMO Account held jointly by the Respondent and EL. The same day, the same amount was withdrawn from their BMO Account and sent to EL's account with Canaccord.

[78] The Respondent testified that he did not know that the $80,000 was being withdrawn from JM's account to be sent to his own joint BMO Account. It was he who emailed proof of the funds sent to Canaccord. The Respondent testified that the funds were meant for EL and produced an unsigned contract between EL and JM's company, saying that he, the Respondent, had no interaction with the company.

[79] At the hearing, Staff Counsel showed the Respondent an unsigned version of the same contract with the same company but with his name, not that of EL,[25] and emailed from the company to his email address. Asked to explain why his name would be on the contract, he answered, "I could have looked at doing ---I honestly don't recall from five years ago...at doing an investment as well, I just really don't recall."

[80] Then, on December 2, 2020, the Respondent instructed an associate, "need to ETF [client] JM (send an electronic transfer) 200 k lol [...] the man spends." The $200,000 was withdrawn on that day and sent to JM's bank account.

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[22] LEAD 1.
[23] See Transcript May 1 2025 at p. 122 and following.
[24] LEC 72-74.
[25] LEAD 12.

[81] On December 4, 2020, the same amount was deposited into the Respondent's joint BMO Account and on December 9, 2020, the Respondent emailed RC at Canaccord re "funds", "still held – should be released tomorrow."[26] On December 10, 2020, the Respondent sent an email with a bank draft for $200,000 from his joint BMO Account to EL's Canaccord Account.

[82] The Respondent maintained that it was EL purchasing new private issues not available to professionals such as the Respondent. The Respondent's Counsel argued that there was no proof that the funds transferred out of JM's portfolio to his account were in fact destined for the BMO Account, and that it could be a series of coincidences. The Panel does not consider this explanation to be plausible.

$10,000 from Client DA

[83] On July 2, 2020, EL sent an email to client DA asking that he make a $10,000 wire transfer to the BMO Account for a private placement. At the hearing, the Respondent said he had been unaware of the $10,000 transfer before IIROC began its investigation. However, Staff Counsel showed the Respondent an email written by himself to himself about the transfer prior to the initiation of IIROC's investigation in February of 2021[27]. The Respondent later enquired of an associate about why the transfer had not gone through. It did go that day - to the BMO Account.[28] The Respondent testified that this money was for EL alone; he simply looked into the delay.

$30,000 from Client KO

[84] On July 15, 2020, the Respondent asked an associate to set up client KO for a wire transfer. In response to the associate's request for KO's home address, the Respondent furnished his own home address. The following day, the associate emailed the Respondent to advise that the transfer had been done. On that same day, $30,000 was deposited into the BMO Account.[29] The Respondent testified that the $30,000 was money owed to EL for (undisclosed) work done for KO's restaurant.

$10,000 from Client FP

[85] FP was a client of Respondent, but his company, KBS was not. On April 27, 2020, the Respondent received $10,000 from KBS, not FP. The Respondent testified that this was for cognac, which he was able to purchase at less than LCBO prices. He testified that he sold the cognac to the company in a transaction unrelated to his business relationship with FP. The evidence does not support a finding of personal financial dealing.[30]

[86] The common thread among these transactions is the joint BMO Account with his fiancé, now spouse EL. The Respondent insisted that these transactions were hers alone and that she had business dealings with these clients, which had nothing to do with him. He was merely handling her affairs when she was ill and receiving treatments, and not in a position to conduct her own business.

[87] Staff's stance is that the $280,000 from JM, $30,000 from KO and $10,000 from DA were all investments of NBF clients' funds into alternate investments through his spouse. The application form used to open EL's Canaccord Account was clearly misleading due to the description of the Respondent as "Real Estate Deve" rather than his true occupation and the answer "No" as to whether they lived together. These do not appear to be accidental mistakes, such as a wrong date or postal code.

[88] JM and the Respondent were friends and former colleagues. There is adequate evidence that money went from client JM to the BMO Account and then to Canaccord. The fact that EL's name is on the transaction does not establish that the Respondent was unaware of the transaction.

[89] The co-mingling of funds from his clients with personal funds in an account with the Respondent's name on it may or may not constitute unlawful consideration, including remuneration, gratuity or benefit, but at the very least it creates the risk, which is the basis for the prohibition against unauthorized personal financial dealings. This conduct is likely to diminish the public's trust in the financial system.

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[26] LEC 256, 257, 262.
[27] Exhibit 7, LRF 1ER1.
[28] Transcript April 30, 2025 at pp. 66, 125-126.
[29] LEC 100, 273-275.
[30] LRF IDR1.

$94,650 Compensation for Portfolio Losses to JK

[90] Staff also alleged that between 2020 and 2022, the Respondent sent approximately 53 e-transfers of his personal funds to client JK, totaling approximately $94,650[31], allegedly to compensate JK for losses from his RBCDS portfolio, all without the approval or knowledge of NBF or RBC. The Respondent admits the transfers but denies that they compensated for investment losses. He stated that he gave JK money – $500, $1,000, the largest being $3,000 - because they were friends and because JK needed it. At the hearing, he said he found out the (total) amount was much larger – around $98,000 over four years.

$109,566 Compensation for Commissions to JF

[91] When JF's portfolio was converted from fee-based to commission-based, JF complained about commissions of $109,566. NBF Compliance notified the Respondent of the complaint and the Respondent personally compensated JF for the commissions, without the knowledge of NBF. This allegation was not pursued at the hearing.

Financial Dealings with JF

[92] The Respondent's client JF had several accounts. In January 2022, the Respondent signed a letter agreeing to compensate JF for approximately $600,000 in portfolio losses.[32] He admitted to having personally compensated client JF for trading losses of $600,000 without notifying or obtaining permission from NBF. At the hearing, the Respondent identified Document LRC 474 as the record of "the verbal agreement or conversation that myself and JF had in regards to three of his personal accounts... and the agreement that we came to bring his accounts... up to specific values." The goals were $600,000 for JF's personal account, JF Corp 1 to $300,000 and JF Corp 2 to $814,595.44.

[93] The Respondent testified that he understood that "when these accounts went back up, the funds that I had put in would be returning. So that's why I said it was more of an interest-free loan that I provided, than anything else." The time frame for this arrangement was until April 7, 2022. Further details regarding calculations and returns were memorialized in a release displayed at the hearing,[33] and a total payment of $962,721 resulted. The Respondent stated, "...I will admit that this would, obviously, be a contravention because this is me compensating a client for a loss, but it was in the best interest of the situation." He further stated that the bank (NBF) was not aware of the release or the fact that he had paid the money. He stated that he never did get anything back because "we got into the National Bank problems...if I had remained at NBF and the portfolio had continued, I would have, but I was no longer at National Bank so didn't get to follow up on these."

[94] Staff alleged that the Respondent borrowed $500,000,[34] then $400,000 from client JF, misrepresenting that the loan was secured by the investment assets in the account of JP. According to Staff, the Respondent did not at the time have assets to secure the loan. He had the funds sent by bank draft to his lawyer's trust account. He avoided detection by using his personal Gmail account to borrow money from a client and loan funds to another client. According to CIRO's information, $400,000 has been repaid, with $500,000 remaining outstanding.

[95] The Respondent admitted the loans but insisted that they have been repaid. He denied failing to repay any funds borrowed from a client. According to him, amid the compensation arrangements referred to above, was liquidating his own assets and it "just wasn't going fast enough", so he needed a bridge loan. He provided JF with a promissory note, unsigned. There is no dispute that he had borrowed the funds. There were two separate transactions, with $500,000 for a 1-year term and $400,000 for perhaps two weeks. He kept them separate, and stated that he had paid.

[96] Staff alleged that the Respondent had not repaid the loans but adduced no evidence in support. The Respondent testified that he repaid both, using cash and wire transfers through his lawyer. The Respondent also produced copies of text messages between himself and JF in which JF was asking for repayment of $500,000 in

[31] Transcript April 30, 2025 at pp. 207, 209.
[32] LEC 407 and Transcript at pp. 175-179 and 181.
[33] LRC 480.
[34] EC 439.

October 2022. On October 21, 2022, the Respondent texted JF "OTW" (on the way). In a further exchange, JF provided his address and specified where to meet. It was the Respondent's testimony that he brought cash to JF that day. Staff argued that the absence of a receipt gives rise to a reasonable inference that there was no payment, whereas the Respondent argued that this would be to reverse the onus of proof. There are no official receipts for any of these payments, only in some cases, bank statements.

[97] According to the Respondent's Counsel, Staff never put the question to the Respondent. Citing *Browne v Dunn,*[35] and having failed to put the contrary proposition to him, Staff cannot expect the Panel to draw an inference that he did not pay.

[98] The unsigned promissory note was expressed to be "secured by the following security: NBF 05-JIP. The Respondent identified this partial number as pertaining to the accounts of JP and DP and admitted that JP and DP had never agreed that their accounts would be pledged. He said that notation was probably an error in "copying and pasting". JP and DP had nothing at all to do with this transaction, and there was never meant to be any security on the loan.[36]

[99] The funds from JF came to the Respondent's lawyer, JA. The Respondent, on August 10, 2022, directed his lawyer to send a wire transfer from the Respondent's personal funds held in his lawyer's trust account to JP and DP's NBC bank account. The transfer was for $894,000. The Respondent at that time also registered a charge against a home of which he was a co-owner with his mother.

[100] The Respondent acknowledged that he sent a total of $1,574,000 to JP and DP's account at NBC, because he had inadvertently relied upon an incorrect Overview of the clients' portfolio and his friends needed the funds to buy the house. He admitted that he did not discuss the $1.57 million discrepancy between the two Overviews with anyone at NBF to inquire about who had created the false Overview and why it had been sent to him.

[101] He stated that some transactions alleged to be improper were in fact *bona fide* non-business transactions he engaged in with clients. These involved buying fine wines at auctions referred to above, and speakers, as well as transactions on behalf of EL alone, using their joint account. He denied these allegations of improper financial dealings with clients and Staff did not pursue them.

The Evidence and the Law

[102] As is evident from the passages above, the Respondent does not deny having financial dealings with clients without the authorization or knowledge of NBF. He admitted to the rather complex private agreement for the repayment of losses incurred by his clients JP and DP and that he borrowed funds from one or more clients. There is clear evidence that client funds from JF went into the BMO Account, and from there to Canaccord, where investments were being made, apparently in EL's name.

[103] While he may justify his actions as being always in the best interests of his clients, the Respondent admitted to improper conduct on the occasions described above. Taken at best, these justifications do not change the fact that money from his clients found its way into an account bearing his name and over which he had control. The co-mingling of funds from clients in the BMO Account is unacceptable, even if the Respondent had had nothing at all to do with the account and the transactions going through it. However, the Panel considers that there is ample evidence with respect to the funds entering and leaving the BMO Account to prove, on the balance of probabilities, that the Respondent was dealing improperly with his client's money while trying to circumvent the limitation on purchase of private issues by professionals.

[104] The Respondent maintained that the transactions with respect to cognac, as well as the proceeds of sale of some expensive speakers, were authorized, but we have no evidence of that authorization. Given his admissions and the evidence on the more serious issues, these two issues are of minimal importance, and his explanation is plausible.

[105] As to the $30,000 received from client JP, ostensibly payment to EL for work she had done earlier for client KO, the Panel saw no evidence that EL had ever worked for KO, or that she had been paid to do so. In

[35] 1893 CanLII 65 (FOREP), 6 R. 67 (H. L.).
[36] Transcript April 30, 2025 at pp. 193-196.

any case, the payment came from KO's portfolio, not his company account where it would have been a proper and deductible business expense. The Panel finds that the $30,000 was improperly borrowed from JP and improperly deposited into the BMO Account.

[106] As to the wine and speakers, the Panel accepts the documentary evidence showing the nature of the transactions but does not accept that these were sanctioned by NBF. Again, these transactions were improperly made from an account under the Respondent's control - again a poor business practice which reflects badly on the Respondent, the NBF and the securities industry at large.

The Panel's Findings

[107] Staff have the burden of proof to establish, on a balance of probabilities, the alleged improper financial dealings with clients.

[108] The Panel finds as follows:

- The Respondent has admitted to improper reimbursement of client losses without the knowledge or authorization of NBF.
- He has admitted to borrowing funds from client JP and submitted that all have been reimbursed but had no receipts to prove this. Whether repayment is full or only partial is immaterial, as the act of borrowing was sufficient to ground the contravention.
- The Respondent took clients' money through his own joint BMO Account to buy securities from his old friend RC at Canaccord. Again, whether this was for himself or for EL, his fiancé at the time, is immaterial as the money was improperly comingled in their joint account.
- There is no evidence to corroborate the Respondent's contention that $30,000 from client KO paid EL for work she had done for his company; this leaves no plausible explanation for the transfer that could justify the improper transfer into the BMO Account.
- The allegations that the Respondent paid client JF $109,566 to reimburse his commissions on JF's portfolio losses were not pursued by Staff and no finding was made.
- Generally, with respect to the monies funneled through the BMO Account, there is ample evidence in the email trail to establish the events. The Respondent, having first said he had oversight only, admitted that he did deal with the funds in the joint BMO Account. There is no independent evidence to refute the presumption that the funds in the joint BMO Account were the property of both the Respondent and EL. Underlying this issue is that the comingling of client funds with personal funds is an unacceptable business practice in itself.

C. Discretionary trading without authorization, contravening Dealer Member Rule 1300.4

The Rule

[109] The Dealer Member Rule 1300 provides generally that each Dealer Member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted. The rule identifies responsibilities including verifying client identity, use of good business practices, determining the suitability of an order for the circumstances of the client and ensuring that the positions held in an account are suitable for the client and the client's accounts. Rule 1300.3 specifically addresses discretionary and managed accounts. Rule 1300.4 provides that a Registered Representative may not exercise discretionary authority over a customer account except in certain circumstances (inapplicable to the present case), and with prior written authorization from the customer.

[110] Previous IIROC decisions have described discretionary trading. The Alberta Securities Commission stated, "when a person effects a securities transaction for a client without obtaining from the client, in advance, specifics as to four elements of the transaction – quantity, security, price and timing – that person is exercising discretion."[37]

[37] *Re Li* 2026 IIROC 7, citing *Re Wenzel*.

[111] Staff cited *Re Tersigny*, where an IIROC panel stated that unauthorized or discretionary trading is a fundamental breach of the advisor's duty to his or her client. Investment advisors act in breach of their obligations whenever they trade without prior authorization and confirmation of all four elements.[38]

[112] It is not necessary to show that a client has lost money or complained, and the conduct need not be widespread. In the *Re Li* case, the IIROC panel found that even one single trade executed without client instructions may constitute discretionary trading.[39]

[113] In the case of *Re Garries,*[40] an MFDA panel remarked that trading by a portfolio model does not lend itself to obtaining instructions on every trade because of the need to execute large volumes of trades in a time-sensitive manner.

The Allegations

[114] CIRO Staff, in their Allegations, alleged that the Respondent was not qualified as a Portfolio Manager, never had been, and none of his client accounts were approved by NBF as discretionary accounts. None of this was denied by the Respondent. He acknowledged that he could not trade without specific authorization in advance from the client. He then went on to explain how he was able to obtain the authorization in the limited time available.

The Evidence and Arguments

[115] Excerpts from the transcript of a conversation of February 2024 with Ms. P.W., Transactional Compliance Officer of NBF, was read in by the Respondent's Counsel. Ms. Watts explained that the usual procedure for an RR to make a trade for a client was to contact the client and discuss the proposed trade and its suitability for the client. The conversation would include the name and current market price of the stock, the quantity of shares to be traded, when the trade would take place, and the reasons for adding/subtracting this holding from the client's portfolio. The client would then confirm the order to go ahead, and the RR would execute the order.[41] The trade would then be noted by the RR. Notes were originally on paper, but NBF had been using a proprietary system called Croesus and was in the process of switching over to Salesforce, a more efficient system to record and administer trades.

[116] Mr. Hatfield, NBF Regional Manager, testified that he was reviewing trade notes and noticed that the Respondent and his associates were executing an extremely high volume of trades. This prompted him to order a review by the Compliance Department into the Respondent's trading records. For example, in the month of April 2021, the Respondent and his associates executed 5887 trades. On nine days of that month there were over 300 trades in the day, with 700 trades on one single day. Some days there were 200 trades per day, and in November 2021, on two days, they executed trades for approximately 50 client accounts.

[117] Ms. Watts said that before she was asked to review the Respondent's trades, she was aware of his investment strategy for his security selections and that he had told her about his Excel workbook and had sent her a copy of his list of models. When asked if she had asked how he could confirm 35 trades in four minutes, he had explained that he started early, around 5:00 AM, calling clients in other time zones and queuing up the orders to be executed at the opening of the market at 9:30 AM. She was aware that the Respondent was not a Portfolio Manager.

[118] Furthermore, Staff alleged, the Respondent's notes recording the clients' instructions were either insufficient or nonexistent, referring to the portfolio model rather than to a specific security, quantity, price or time. When asked about the notes, Ms. Watts said they were in line with regulations and firm policies and mentioned that the whole firm was involved in the note-taking project, which involved switching from Croesus to Salesforce in an effort to improve everyone's notes.

[119] Staff produced as evidence a single page of the Respondent's notebook, containing notations in his own personal shorthand about a few trades. At the hearing, the Respondent read the notes to establish who he had

[38] *Re Tersigny* 2016 IIROC 19.
[39] *Supra* note 38.
[40] 2016 CanLII 87277 (CA MFDAC).
[41] Read-in transcript of an interview.

called, and various details of the trades to be executed. It is unfortunate that the entire notebook, or at least a much larger sample, was not produced by Staff, as it might have shed light on whether most of the notes either did or did not comply with the guidelines and the Rules.

[120] As it happened, however, the notes were not a problem. Both Ms. Watts' transcript and Mr. Hatfield's testimony acknowledged that note-taking was a general problem, for all the investment advisors at the time, as they were all learning to use the new Salesforce system. Mr. Hatfield stated that the Respondent's notes were, if not "adequate", generally "in line" with those of other RRs at the time.

[121] Mr. Hatfield also acknowledged at the hearing that when the Respondent joined NBF, they had discussed his trading models. The recollections of the two differ somewhat, with the Respondent saying that Mr. Hatfield approved of his methods, while Mr. Hatfield testified that he told the Respondent that the models were a research tool, but that he must still contact clients to confirm every order.

[122] The Respondent testified that he was able to execute a large volume of trades for three reasons. First, he spent the early morning hours preparing. He would begin calling his clients as early as 5:00 A.M. He would explain the trade, get a green light from the client and then prepare the trade order. Some clients had multiple portfolios – for example, TFSA, RIF, margin, US$ accounts. Many of his clients were married couples, or even their children and extended family, so that with a single call he might get dozens of trades confirmed. He would queue the trades in the system, ready for the market to open.

[123] Second, he had set portfolios based on clients' needs, such as growth, income and stability. He had different portfolios for different client profiles. Often, the same trade would be executed for multiple clients almost simultaneously. As soon as the market opened, he or his associate would "click" to execute automatically all the trades lined up in the preceding hours. The Respondent stated that both the models and strategy were expressly authorized by NBF and were discussed extensively with NBF.

[124] Third, he was assisted by up to three associates, who would work with him by confirming orders with clients and then physically executing the orders when the market opened.

[125] Staff did not argue that the practice of "queuing" trade orders was itself improper, but rather relied on the sheer volume of clients and trades, which even with the use of the model portfolio, would not have been possible if the Respondent had not been conducting discretionary trading. Counsel produced a chart focusing on the Respondent's trade records for April 14, 2021 and April 20, 2021. It showed client initials, the time frame, number of orders inputted and number of different stocks.

[126] Staff argued that this chart showed how implausible it would be to obtain instructions, even with the assistance of his associates. The volume requires an objective observer to believe that the Respondent discussed each trade with the client when the trades were based on an "automated portfolio". The large volume of trades over such a short period of time could not plausibly be authorized by each client, nor was any "recommendation" required since the model dictated the trades. Counsel urged the panel to reject the Respondent's testimony.

[127] Based on the volume of trades, Staff invited the Panel to conclude that it is "highly unlikely" that the Respondent could have obtained the necessary instructions from clients prior to making each trade and to find that he was unlawfully conducting discretionary trades. He was using a model allegedly designed for discretionary account management, but he was not approved to conduct discretionary trades.

[128] The Respondent denied discretionary trading, but in any case, stated that his model was authorized and permitted; he "relied on NBF" to approve and authorize his approach and strategy.

[129] The Respondent also mentioned that during his employment at NBF, no clients complained about his conduct. The NBF internal review was not in response to client complaints, but because he appeared to be placing too many trades to be doing them properly.

[130] Staff produced the heavily redacted affidavit (all content save the signatures and some initials blocked out) and settlement agreement mentioned above, which included a list of over 70 redacted names of complainants and contained a confidentiality clause. The attachments included a number of messages from the Respondent's former clients. The Respondent commented at the hearing that after his departure, clients were

invited by his successors at NBF to comment on his conduct and that the resulting messages may have been provoked. The content and form of these letters appear to indicate that they are answers to a set of questions.

V. The Panel's Findings

[131] The record[42] shows that the Respondent's employment was terminated for cause after about three years at RBC and that discretionary trading was involved in this previous job. While the Panel takes note of this information, it is not in evidence that any similar activity took place during the Respondent's employment at NBF. NBF's Form 33, Notice of Termination of Registration, states that the Respondent was terminated for cause. It includes questions about factors which could have been involved in the termination. Question 9 asks "Did the individual engage in discretionary management of client accounts *or other registrable activity* without appropriate registration or without the firm's authorization? [43] The answer was "Yes". Below, under Reasons/Details, it is stated, "Mr. Ewing was terminated for cause. He failed to cooperate with NBF during NBF's internal investigation. The investigation is still ongoing, but we have uncovered significant wrongdoing... including the following: Alteration of client statement, Financial dealings with clients and the Use of personal email for registrable purposes."[44]

[132] The Panel has no reliable evidence that any client complained of the Respondent's conduct during the time he worked at NBF. We have no evidence to prove the genesis or the purpose of these letters, which were dated in 2023, months after the Respondent's employment was terminated. We have no proof that the authors of these letters were being candid, or of why they failed to complain before the Respondent abruptly left NBF. These were not sworn testimony. Their authors were not present at the hearing to confirm or clarify the statements contained in the letters. The Respondent did not have an opportunity to question their statements and to test their credibility. Consequently, the Panel accords no probative value to these letters.

[133] There was no evidence that the notes recording the Respondent's clients' orders were any less acceptable than those of his peers at NBF. Both Ms. Watts and Mr. Hatfield said the notes were "in line" with NBF policies and practices. The single 2-page excerpt of the Respondent's notebook, once he translated his personal shorthand, does not prove that he failed to note hundreds of other transactions in the same way, or that these or other notes were inadequate. The remainder of his notebook was not produced.

[134] There was no evidence from the Respondent's associates, Messrs. S., J. and A., that the Respondent was acting improperly. These are the colleagues who worked with him to physically execute the multiple orders and confirm to clients that they had been made.

[135] There are differing versions of how much Mr. Hatfield knew, and the extent of his "approval" of what the Respondent was doing. To the extent that they do differ, this may have been a misunderstanding and does not materially affect the credibility of either witness.

[136] The inordinately high volume of trading noticed by Mr. Hatfield was certainly a red flag - an indication of potential discretionary trading, which the Respondent was not authorized to do. Mr. Hatfield acted appropriately in asking for a review. However, the report of that review was not in evidence. At the hearing, Counsel said that Staff had not relied on the NBF report.

[137] Basically, Staff asked the Panel to find that based on the sheer volume of trades, it is highly unlikely that the Respondent could have contacted every client regarding every order. If he failed to do that, he was conducting discretionary trading. Staff argued that the volume itself is enough to make any other conclusion implausible.

[138] The Respondent contended that his efficient system allowed him and his associates to complete a perhaps incredible, but not unlawful, number of transactions in a given period.

[139] When does the number of trades in a given timeframe become impossible? At what volume does an RR cross the line between efficiency and discretionary trading? We are unaware of any numerical benchmark or policy which can, by itself alone, justify a finding of discretionary trading.

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[42] LEAD 2.
[43] Emphasis added by the Panel.
[44] LEC 10 at p. 4.

[140] The Panel finds that there was inadequate evidence before us to prove that the Respondent engaged in discretionary trading. Suspicion alone is inadequate to support a finding on the balance of probabilities. Without credible evidence from those actually involved in the transactions, it is impossible to know whether the Respondent failed to consult with them prior to each trade.

VI. Conclusions

[141] Credibility of a witness involves more than just candor. Credibility is the quality of being believable. The testimony of the CIRO investigators, however diligent, thorough and candid, cannot match the weight of testimony from a witness involved first-hand in a transaction. The investigators must depend on documents they did not author, and reports by those who may or not have been directly involved in an event. Because they never had the opportunity to observe and recall the full story, their credibility is always filtered and circumscribed by remoteness – in circumstances and in time – from the events as they happened.

[142] After a careful and comprehensive review of the allegations, evidence presented, the law and the arguments, the Panel finds as follows:

Contravention A

[143] There is insufficient evidence to find that the Respondent has falsified portfolio overview documents as alleged. At the hearing, the Respondent admitted to carelessness. The Panel finds that his conduct with respect to the portfolio Overviews of JP, DP and KO was negligent in that he relied upon and caused others to rely on documents which he knew or should have known were incorrect.

[144] As to the other clients, there is insufficient evidence of wrongdoing, for example, that it was the Respondent who produced the incorrect Overviews, or that the incorrect Overviews were sent to or relied upon by DBF or clients. No one who testified could state with certainty that some of the Overviews were incorrect, rather than just the result of framing the search with different parameters. The element falsification is therefore unproven.

[145] However, the Respondent's use of his personal email for dealings with clients obscured the situation, made it impossible to access information via a complete audit trail. He exacerbated the situation by allowing his associates unlimited and unsupervised access to his personal computer and email accounts. These practices hampered the ability of the Respondent himself, his associates and NBF Compliance personnel to monitor his compliance, with legal and policy standards. As an RR, the Respondent was responsible for the actions of the associates working on his team. No matter who produced the incorrect Overviews, it was done from his own accounts and concerned his clients' portfolios. The Panel finds the Respondent's practice inconsistent with good professional practice and the expectations of the public, and thus in contravention of IDPC Rule 1400.

Contravention B

[146] The Respondent has admitted to reimbursing the losses of clients JP and DP including approximately $1.57 million of his own personal funds. He also paid client JK $94,650 for reasons which remain unclear. He has admitted to borrowing money from JF and insisted that it has been repaid in full, although without any receipts as evidence of the repayment, which he testified was partially by cash. Whether or not he has made full repayment, the loan should never have taken place. The Panel finds insufficient evidence to ground a finding on the allegation of $109,566 in returned commissions.

[147] The transactions which went through the joint account held by JP and the Respondent's then fiancé EL were improper. Despite his insistence that he acted only on behalf of EL, the fact that the account was legally in his name and hers, and that he did in fact deal with the money in that account, he was improperly co-mingling client funds with his own.

[148] The Panel considers the evidence clear and convincing that the $280,000 and $10,000 came from clients JM, DA and KO to the joint BMO Account and found its way to private placements, which may or may not be "pro-eligible", through the Respondent's former colleague, RC of Canaccord. Absent corroboration of the Respondent's explanation, these transactions were far more likely to involve him than EL.

[149] The transactions concerning wine and speakers may well be “innocent” and not business-related, but they still display a lack of concern for the propriety of comingling personal and client funds.

[150] With respect to the $30,000 “back pay” for EL, the Panel finds no evidence to support the Respondent’s contention that EL had earned this money for work at KO’s business. Furthermore, there was no explanation for why she would be paid from KO’s client portfolio rather than through his company, with no receipt issued for payment. And EL was not present to enlighten us as to her role in these transactions.

[151] The Panel therefore finds that the Respondent did engage in improper financial transactions, in contravention of Dealer Member Rule 43 and IDPC Rule 3100.

Contravention C

[152] The Panel finds that the evidence tendered is insufficient to discharge the burden of proving a balance of probabilities that the Respondent engaged in unauthorized discretionary trading.

[153] For the reasons outlined above, the Panel will issue an order setting the date for a hearing by video conference with respect to sanctions and the costs of this matter.

DATED at Toronto this 31st day of July 2025.

“Louise Barrington”
Louise Barrington
Chair

“Ron Smith”
Ron Smith
Industry Representative

“Randee Pavalow”
Randee Pavalow
Industry Representative