

Re Poulin

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rules

and

Patrick Poulin

2023 IIROC 03

Hearing Panel of the Investment Industry Regulatory Organization of Canada
Québec District

Hearing held virtually on April 4, 2023, at Montréal, Québec
Decision rendered on April 25, 2023

Hearing Panel

Michèle Rivet, *C.M., Ad.E.*, Panel Chair, Normand Durette and Yves Ruest

Appearances

Francis Larin, Enforcement Counsel

Patrick Poulin (present)

DECISION ON THE MERITS AND ON SANCTIONS

INTRODUCTION

¶ 1 On January 23, 2023, the National Hearing Coordinator of New Self-Regulatory Organization of Canada (New SRO), a consolidation of IIROC and MFDA, released a notice of hearing for an initial appearance, which was served on Mr. Poulin on February 2, 2023.¹

¶ 2 The alleged violations, as mentioned in the Statement of Allegations dated January 23, read as follows:

Count 1: On or around October 26, 2021, the Respondent executed unauthorized transactions in the accounts of three (3) clients, contrary to Rule 1400 of the Investment Dealer and Partially Consolidated Rules.

Count 2: On or around May 26, 2021, the Respondent offered a client compensation in order to settle the latter's complaint without his employer's knowledge, contrary to Rule 1400 of the Investment Dealer and Partially Consolidated Rules.

¶ 3 New SRO By-law No. 1 states² that "[a]ny Regulated Person, in accordance with the provision of any Rule, shall remain subject to the jurisdiction of the Corporation in respect of any action or matter that

¹ Filed jointly as Exhibit R-3.

² New Self-Regulatory Organization of Canada By-law No. 1, section 14.6(1).

occurred while that person was subject to the By-laws and Rules, including for certainty any predecessor by-laws or rules of IIROC [...]"

¶ 4 Since the allegations against Mr. Poulin date back to 2021, the rules of IIROC are the rules that apply.

¶ 5 The same therefore applies to Rule 1400 *Standards of Conduct*, Rule 8200 *Enforcement Proceedings*, Rule 8400 *Rules of Practice and Procedure*, as well as the IIROC Sanction Guidelines.

¶ 6 According to subsection 8415 of the Rules of Practice and Procedure, which discusses the Response to a Notice of Hearing, Mr. Poulin was supposed to serve and file a response within 30 days from the date of service of the notice of hearing, namely 30 days after February 2, 2023.

¶ 7 Mr. Poulin did not serve or file a response as stipulated in subsection 8415(1).

¶ 8 M^e Larin sent Mr. Poulin multiple emails, the last being dated March 14, 2020; all of them remained unanswered by Mr. Poulin.³

¶ 9 Mr. Poulin was present at the hearing on April 4, 2023.

THE FACTS

¶ 10 From June 2020 to March 2022, the Respondent was registered in the employ of Manulife Securities Inc. (MSI). Mr. Poulin was initially registered in 2002 as a representative with IIROC as well as its predecessor, the IDA. He is no longer a registrant of IIROC and New SRO since March 2022.

¶ 11 The alleged contraventions concern unauthorized transactions and the payment of compensation to a client.

- **Unauthorized transactions**

¶ 12 The clients LG, AG and ASP opened accounts with the Respondent on or around August 24, 2020, March 23, 2021 and August 19, 2020 respectively. None of these accounts were preapproved or designated as "discretionary accounts".

¶ 13 On or around October 26, 2021, the Respondent executed the following three (3) mutual fund investment transactions in the accounts of his clients LG, AG and ASP, all without the prior approval of any of these clients: a total of \$43,000 for LG, \$15,500 for AG, and \$29,000 for ASP.

¶ 14 Mr. Poulin did not benefit financially from the three (3) unauthorized transactions executed in the accounts of his clients LG, AG and ASP; and he reimbursed his employer for the compensation that MSI paid to the clients LG, AG and ASP in connection with the three (3) unauthorized transactions in question.

- **Compensation paid to a client**

¶ 15 On or around August 19, 2020, the client GSD opened accounts with Mr. Poulin, one of which was for a company for which GSD was the duly authorized representative (FSDI).

¶ 16 After his client GSD verbally informed him of his dissatisfaction regarding FSDI's account, Mr. Poulin remitted to GSD a cheque in the amount of \$27,898.39 on or around May 26, 2021. On this same date, Mr. Poulin also executed and signed a release with this client; the release notably included an undertaking by the client GSD not to file a complaint with IIROC;

¶ 17 Both the compensation paid by the Respondent to his client GSD and the release signed between them on or around May 26, 2021 occurred without MSI's knowledge.

DECISION ON THE MERITS

³ Filed jointly as Exhibit R-6.

¶ 18 Subsection 8415(4) of the Rules of Practice and Procedure stipulates that the hearing panel may proceed with the hearing of the matter on its merits on the date of the initial appearance set out in the notice of hearing, without further notice to and in the absence of the respondent, and the hearing panel may accept as proven the facts and contraventions alleged in the statement of allegations and may impose sanctions and costs.

¶ 19 M^e Larin requested that the Hearing Panel proceed with the hearing of the matter on its merits and that it impose sanctions and costs in accordance with subsection 8415(4).

¶ 20 The situation is not the same as that described in subsection 8415(4). Mr. Poulin was present at the hearing. There had been no response from him for the past four (4) months. Apparently he did cooperate in IIROC's investigation.

¶ 21 Upon deliberation, in the interests of a sound administration of justice and "to secure fair and efficient proceedings on the merits"⁴, the Hearing Panel decided to proceed with the hearing on the merits, allowing Mr. Poulin the opportunity to be heard on both the allegations and the facts retained as evidence, as well as on the sanctions recommended by Enforcement Counsel.

¶ 22 As evidence, Enforcement Counsel filed the affidavit of the Senior Investigator for the New SRO Enforcement department, Mr. Stéphane Gauthier. Mr. Gauthier declared under oath⁵ that he has personal knowledge of the items obtained during the investigation carried out regarding Mr. Poulin and he affirmed that all of these facts are true.

¶ 23 When questioned by the Hearing Panel, Mr. Poulin for his part confined himself to indicating that the clients suffered no harm, no loss whatsoever both with regard to the unauthorized transactions and to the compensation paid to one client.

¶ 24 Consequently, the Hearing Panel accepts as proven counts 1 and 2 respecting the unauthorized transactions and the compensation paid to a client in a release that includes an undertaking by the client not to file a complaint with IIROC.

SANCTIONS

¶ 25 At the hearing, Enforcement Counsel recommended the following sanctions to the Hearing Panel:

- Regarding count 1, a fine ranging between \$10,000 and \$20,000.
- Regarding count 2, a fine ranging between \$10,000 and \$20,000.
- Prohibition of registration in any capacity for a period of 6 to 12 months, from the date the decision is rendered by the Hearing Panel.
- In the event of Respondent's reapproval, the obligation to submit to close supervision for a period of 12 months.
- In the event of Respondent's reapproval, the obligation to successfully rewrite the exam based on the the Conduct and Practices Handbook.
- Plus costs in an amount ranging between \$10,000 and \$20,000.

• The state of the law

¶ 26 The IIROC Sanction Guidelines⁶ state very clearly that sanctions have a dual purpose. They must be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence) and

⁴ Rule 1400, Rules of Practice and Procedure, subsection 8401(1).

⁵ Sworn affidavit admitted into evidence.

⁶ IIROC Sanction Guidelines, Part 1.

to deter others from engaging in similar misconduct (general deterrence). However, first and foremost, “disciplinary sanctions are preventative in nature and should be designed to protect the investing public, strengthen market integrity, and improve overall business standards and practices”.

¶ 27 Keep in mind that Rule 1400, Standards of Conduct states that a Regulated Person “must observe high standards of ethics and conduct and must act openly and fairly in accordance with just and equitable principles of trade.”⁷

¶ 28 The IIROC Sanction Guidelines enumerate key factors that a hearing panel must take into consideration when determining sanctions. The list is illustrative, not exhaustive. It includes 21 factors that must be considered. It is up to the hearing panel to weigh each in accordance with the various aspects of the contraventions in the case before it, taking into account both mitigating and aggravating factors, as well as similar decisions that have been rendered for each count. The hearing panel therefore has broad discretion that it must exercise in light of similar case law. These principles provide⁸ a required degree of continuity, proportionality and uniformity of general and specific deterrence.

¶ 29 In *Re Bélisle*, rendered in 2021⁹, the respondent, between February 2015 and November 2016, engaged in unauthorized trading in a client’s account with the objective of executing options trades according to a risky leveraging strategy; as a result, 1,250 trades were executed between February 2015 and November 2016, all without the client’s knowledge. During this same period, the average monthly debit balance in the margin accounts was \$360,000, and the net commissions generated were \$12,600. As well, between February 2015 and November 2016, the respondent executed trades in a client’s account that were not within the bounds of good business practice. The hearing panel notes that these are both serious contraventions but they are so intertwined that it would be more appropriate to set an aggregate fine.¹⁰ The hearing panel ruled that the penalty on counts 2 and 3 should be an aggregate fine of \$50,000.

¶ 30 In 2020, in *Re Locke*¹¹, a respondent, between January 2010 and September 2014, conducted unauthorized trades in the accounts of three clients. Her misconduct occurred over several years and, according to the hearing panel, demonstrated “a blatant disregard for her professional regulatory and ethical obligations to her clients, dealer and the industry.”¹² The respondent had no prior disciplinary history. The hearing panel imposed a \$20,000 fine.

¶ 31 In *Re Paquette* (2019)¹³ the hearing panel provides a clear summary of the penalties ordered by past jurisprudence in regard to unauthorized trades:

Regarding the monetary penalties, the range is between \$10,000 for one unauthorized trade (with a supervision and monitoring penalty) and \$120,000 for unauthorized trades unsuitable for the client and executed over a three-year period (with a permanent ban from registration). Within this broad range, many of the monetary penalties range between \$30,000 and \$50,000, depending on the duration of the contravention, the number of trades and the existence of other contraventions, such as a failure to meet the suitability requirement.

¶ 32 The case law has also ruled many times on the offence of a registrant compensating clients without the knowledge and consent of the dealer member that employed them. This offence is viewed as a serious contravention since it deprives the client of “the options of pursuing civil dispute resolution channels and to

⁷ Rule 1400, Standards of Conduct, subsection 1402(1).

⁸ *Locke (Re)*, 2020 IIROC 27, para. 14.

⁹ *Bélisle (Re)*, 2021 IIROC 23.

¹⁰ *Ibid.* at para. 70.

¹¹ *Locke (Re)*, *op.cit.*, note 8.

¹² *Ibid.* at para. 16.

¹³ *Paquette (Re)*, 2019 IIROC 32, at para. 34.

seek compensation from the Member firm, as well as to complain to appropriate regulatory authorities who could consider possible disciplinary action. [...] The clients may sustain harm occasioned by such activity, and [...] might not make informed decisions or might be coerced to accept settlements.”.¹⁴

¶ 33 The financial penalties ordered for a registrant who personally compensates clients’ claims for losses suffered in their accounts, without the employer’s knowledge or authorization, will vary depending on the case, based on whether one or more clients are involved, the size of the amounts involved, as well as the respondent’s own circumstances: for instance aggravating factors such as a prior disciplinary history, or mitigating factors such as cooperating in the investigation, or whether there has been a settlement agreement accepted by a hearing panel¹⁵, or a proceeding on the merits¹⁶.

¶ 34 Thus in *Re Storelli*¹⁷, the respondent paid financial compensation to five clients, provided unauthorized account statements to clients, made misrepresentations to Enforcement staff and subsequently failed to cooperate with the investigation. The hearing panel decided to proceed in the absence of the respondent. The latter had no prior disciplinary history. For all of these contraventions, the hearing panel ordered payment of a fine of \$50,000.

¶ 35 Subsection 8214 stipulates that “a hearing panel may order a person who is the subject of a sanction to pay any costs incurred by or on behalf of the Organization.” Costs ordered under subsection 8214(1) may include: costs for time spent by Organization staff under subsection 8214(2), fees paid by the Organization for legal or accounting services, and disbursements.

¶ 36 Thus in 2012, in *Re McErlean*¹⁸ the applicable costs were estimated at some \$25,000; the hearing panel decided to order payment of \$15,000.

¶ 37 In 2021, a hearing panel ordered the payment of \$15,000 in costs after receiving evidence that IIROC’s actual costs were significantly higher than that amount.¹⁹ In *Re Storelli*²⁰, the bill of costs was \$48,750, the hearing panel ordered costs in the amount of \$10,000.

¶ 38 In *Re Ng*²¹ (2022), the costs incurred for investigating and prosecuting the matter, some \$194,000, were accepted in full.

- **The appropriate fines for Mr. Poulin**

¶ 39 The IIROC Sanction Guidelines stipulate very clearly that “disciplinary sanctions should be more severe for respondents with prior disciplinary records.”²²

¶ 40 On September 21, 2018, before the Chambre de la sécurité financière disciplinary committee, Mr. Poulin pleaded guilty to the offence of having, in July 2015, witnessed the signatures of his clients E.B. and J.M. on the “Policy Service Application” form for the settlement of policy number [...], without the latter being present.” On the joint recommendation of the parties, Mr. Poulin was ordered to pay a fine of \$5,000, with costs, in accordance with section 151 of the Québec Professional Code.²³

¶ 41 On May 20, 2021, before the Chambre de la sécurité financière disciplinary committee, Mr. Poulin

¹⁴ *Kwok (Re)*, 2010 IIROC 38, at para. 37, cited in *Re Storelli*, 2021 IIROC 20, at para.49.

¹⁵ *Re Latta*, 2014 IIROC 05 (\$10,000, settlement agreement, a single count).

¹⁶ *Re McErlean*, 2012 IIROC 12 (\$10,000, hearing on the merits, multiple counts).

¹⁷ *Re Storelli*, 2021 IIROC 20.

¹⁸ *McErlean (Re)*, *op.cit.*, note 16.

¹⁹ *Re Rha*, 2021 IIROC 12, at para. 28.

²⁰ *Re Storelli*, *op.cit.*, note 17.

²¹ *Re Ng*, 2022 IIROC 15.

²² IIROC Sanction Guidelines, Part I, section 2.

²³ *CSF c. Poulin*, 2018 QCCDCSF 68.

pleaded guilty of the following offence: from June 2017 to July 2019, Mr. Poulin placed himself in a conflict of interest situation by paying a sum of \$50,000 to his client G.P. and by allowing this client to act as guarantor on a mortgage loan, contrary to sections 16 of an *Act respecting the distribution of financial products and services* and 18 of the *Chambre de la sécurité financière* code of ethics.²⁴ The CSF disciplinary committee accepted the parties' recommendation to temporarily ban Mr. Poulin from membership for a three-month period and to order the payment of costs in accordance with the provisions of section 151 of the *Québec Professional Code*.

¶ 42 The Hearing Panel notes that Mr. Poulin pleaded guilty before the *Chambre de la sécurité financière* disciplinary committee on May 20, 2021, just 5 days before May 26, 2021, on which date he "offered a client compensation in order to settle the latter's complaint without his employer's knowledge, contrary to Rule 1400 of the *Investment Dealer and Partially Consolidated Rules*" as stated in Count 2. Now it is up to us to decide on the appropriate sanction here.

¶ 43 Does this not demonstrate, as section 2 of the *IIROC Sanction Guidelines* states: "a respondent's general disregard for compliance with regulatory requirements, the investing public or market integrity in general?"

¶ 44 On the first count, that of executing unauthorized transactions: Mr. Poulin interfered in the accounts of three clients. Overall, the transactions executed totalled some \$87,000. Mr. Poulin did not benefit financially from the three unauthorized transactions and he has reimbursed his employer for the compensation that was paid by MSI in connection with those transactions. The misconduct occurred over a short period, the clients suffered no monetary losses. Nevertheless, these are contraventions committed by a dealer with a prior disciplinary history for which sanctions were imposed almost concomitantly. Therefore, the Hearing Panel, in line with the range of penalty amounts imposed in the case law, orders Mr. Poulin to pay the sum of \$12,000.

¶ 45 On the second count, namely that of offering a client compensation in order to settle the latter's complaint without his employer's knowledge, the case law²⁵, with which we agree completely, has consistently emphasized the gravity of this offence since it deprives the victim of the options to pursue civil dispute resolution channels and to seek compensation from the member firm, as well as to complain to appropriate regulatory authorities who could consider possible disciplinary action. There is also a concern that clients might not make informed decisions. This offence must be treated sternly. In the compensation paid by Mr. Poulin, it was clearly stipulated that the victim waived all rights to seek other remedies. Given Mr. Poulin's prior disciplinary history, the Hearing Panel orders Mr. Poulin to pay the sum of \$20,000.

- **Prohibition of approval and reapproval**

¶ 46 Section 5 of the *IIROC Sanction Guidelines* lists the circumstances in which a suspension should be considered:

- there has been one or more serious contraventions;
- there has been a pattern of misconduct;
- the respondent has a prior disciplinary history;
- the contraventions involved fraudulent, willful and/or reckless misconduct; or
- the misconduct in question has caused some measure of harm to investors, the integrity of a marketplace or the securities industry as a whole.

¶ 47 The main reason to order a suspension is, without a doubt, Mr. Poulin's prior disciplinary history. On September 21, 2018, Mr. Poulin pleaded guilty to the offence of signing as a witness on a form without his

²⁴ *CSF c. Poulin*, 2021 QCCDCSF 31.

²⁵ See notes 14 and 17, *Re Kwok* in 2011, referenced in *Re Storelli* in 2021.

clients being present. He was ordered to pay a \$5,000 fine.

¶ 48 These past disciplinary actions clearly did not have the required deterrent effect. In fact, some 5 days later, namely on May 26, 2021, Mr. Poulin offered a client compensation in order to settle the latter's complaint without his employer's knowledge. This time, the sanctions must be significant enough to prevent and discourage any future misconduct by the respondent, as stated in Part 1, section 1 of the IIROC Sanction Guidelines.

¶ 49 Add to that the fact that on both counts, the unauthorized transactions and the compensation paid to a client, the contraventions involved "fraudulent, willful and/or reckless misconduct". This misconduct must necessarily have caused some measure of harm to the integrity of the marketplace.

¶ 50 Suspension of approval for a long period is therefore an appropriate sanction in this case. The Hearing Panel rules that Mr. Poulin be prohibited from approval in any capacity for twelve (12) months from the date of service of this decision. In the event of reapproval, Mr. Poulin must submit to close supervision for twelve (12) months and must successfully rewrite the exam based on the Conduct and Practices Handbook.

- **Costs**

¶ 51 As proof of the costs incurred, Enforcement Counsel entered into evidence the sworn affidavit of Ms. Linda Vacher²⁶, who audited the accounting for the case, the total costs of which fees and disbursements amount to \$41,055.53.

¶ 52 The amount imposed in regard to costs must, as with all penalties, send a message of specific deterrence to the respondent as well as general deterrence to other industry members. As noted in *Re Movassaghi*²⁷, "an award that is too low might result in a loss of public confidence in IIROC's ability to effectively regulate the markets generally". Likewise, cost awards should not discourage respondents from advancing what they feel are defences of merit.²⁸

¶ 53 To determine the appropriate amount, we must consider the following factors:

- the facts in the matter concern only a few victims, three in count 1 and one in count 2, and all are limited in time;
- the victims suffered no financial harm;
- there is no evidence that Mr. Poulin sought to hinder the investigation in any way;
- Mr. Poulin has not denied the allegations and was present at the hearing even though he did not submit a written response;
- Mr. Poulin had previously pleaded guilty to violations before the Chambre de la sécurité financière disciplinary committee, on September 21, 2018 and May 20, 2021.

¶ 54 Taking into account these different factors, as well as the applicable case law, and to ensure stability and coherence in the matter, the Hearing Panel hereby orders Mr. Poulin to pay costs in the amount of \$10,000.

CONCLUSION

¶ 55 For the reasons set out above, the Hearing Panel:

- **ORDERS** Mr. Poulin, on count 1, to pay the sum of \$12,000;

²⁶ The amounts can be found in IIROC's Bill of Costs.

²⁷ *Movassaghi (Re)*, 2022 IIROC 2, at para. 86.

²⁸ *Ibid*, at para. 81.

- ORDERS Mr. Poulin, on count 2, to pay the sum of \$20,000;
- PROHIBITS Mr. Poulin from approval in any capacity for a period of twelve (12) months from the date of service of this decision;
- ORDERS Mr. Poulin, in the event of reapproval, to submit to close supervision for twelve (12) months and to successfully rewrite the exam based on the Conduct and Practices Handbook.
- ORDERS Mr. Poulin to pay costs in the amount of \$10,000.

Dated at Montréal, Québec, on April 25, 2023.

M^e Michèle Rivet, C.M., Ad.E.

Normand Durette

Yves Ruest

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