

Re Bergeron

IN THE MATTER OF:

**THE DEALER MEMBER RULES OF THE
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

AND

THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

ANDRÉ BERGERON

2008 IIROC 17

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

Heard: September 10, 2008 in Montreal, Quebec

Decision: October 3, 2008

(33 paras.)

Hearing Panel:

Mtre Alain Arsenault, Chair

Lise Casgrain, Panel Member

Gilles Archambault, Panel Member

DECISION ON PENALTY

Unofficial English Translation

THE FACTS:

1. On July 30, 2008, the Hearing Panel found the Respondent, André Bergeron, guilty on Counts 2 and 4 of the four counts, namely:
 - 2) Between November 2001 and May 2002, the Respondent, while employed as a registered representative at Desjardins Securities Inc., a Member firm of the Association, engaged in business conduct or practice unbecoming, failed in his duty to protect the public and showed wilful blindness, contrary to Association By-law 29.1, by systematically opening forty-seven (47) new delivery-against-payment accounts with Desjardins Securities Inc. for accounts held with B2B Trust, at the request of a third party, without having met or spoken with each of the clients, although he knew or should have known that the circumstances surrounding the new client applications were or could be an indication of suspicious activity or activity contrary to the interests of the clients;
 - 4) Between November 2001 and May 2002, the Respondent, while employed as a

registered representative at Desjardins Securities Inc., a Member firm of the Association, engaged in business conduct or practice unbecoming or detrimental to the public interest, contrary to Association By-law 29.1, by failing to advise forty-seven (47) clients for whom he had opened delivery-against-payment accounts with Desjardins Securities Inc. for accounts held with B2B Trust, in the following circumstances:

- a) upon the purchase of private placements by two of his clients while he was employed as their registered representative and although he knew or should have known that the circumstances surrounding such private placements were or could be an indication of suspicious activity or activity contrary to the interests of the said clients;
- b) by holding accounts most of which contained private placements bought by his clients, although he knew or should have known that the circumstances surrounding such private placements were or could be an indication of suspicious activity or activity contrary to the interests of the clients.

THE PARTIES' REPRESENTATIONS:

2. At a hearing held on September 10, 2008, Me Diane Bouchard, on behalf of the Staff of the Investment Industry Regulatory Organization of Canada (hereinafter, "IIROC"), made representations to justify the penalties that she was recommending to the Hearing Panel;
3. Me Bouchard more particularly called attention to paragraphs 18, 27, 53, 55, 56, 57, 58, 59, 60, 61 and 62 of the decision;
4. Me Bouchard emphasized said paragraphs of the decision to demonstrate that the Respondent, in this matter, showed wilful blindness;
5. Subsidiarily, Me Bouchard asked the following question: Why did the Respondent show wilful blindness? Was the Respondent's conduct in this matter intentional?;
6. According to Me Bouchard, if the answer is affirmative, then the penalty must be greater;
7. This question is important for the purpose of imposing a penalty, and we will see the Respondent's answer to this question later;
8. In the course of her representations, Me Bouchard added the following points:
 - a. the Respondent has been active in the securities industry for over twenty (20) years and has been acting as a branch manager since 2004;
 - b. the Respondent has no disciplinary history;
 - c. the Respondent knew, very early on in this matter, that the investments in question were worthless, and did not advise his clients of this at the outset;
 - d. the Respondent ignored sure signs of suspicious activity, notably the absence of a prospectus and financial statements, the promoter Claude Lavigne's refusal to send him financial information, the payment of cash member dividends in return for the transfer of RRSPs, etc.;
 - e. the Respondent's lack of regret, remorse, or acknowledgment of misconduct;
 - f. the Respondent's clients were often vulnerable clients, and the misappropriated funds came from their RRSPs;
9. Me Bouchard also filed an affidavit from Linda Vachet, of IIROC, detailing the costs inherent in the investigation and hearing of this matter, which amount to \$119,975.54;

10. Finally, Me Bouchard presented the Hearing Panel with a book of authorities which, in her opinion, apply in the present case;
11. For these reasons, Me Bouchard suggests that the Hearing Panel impose the following penalties on the Respondent:
 - a. payment of half of the costs incurred by IIROC in this case, namely the sum of \$59,987.77;
 - b. suspension of approval as an authorized representative which will also entail suspension of approval as a branch manager, for a period of twelve (12) months;
 - c. the obligation, at the end of the suspension period, to apply to IIROC for re-approval as an authorized representative;
 - d. the obligation, at the end of the suspension period, to apply to IIROC for re-approval as a branch manager;
 - e. in the event of acceptance by IIROC of his application for re-approval as an authorized representative, the obligation that he remain under "close supervision" for a period of three years;
 - f. that "close supervision" reports be filed every month for the duration of this three-year period;
 - g. successful completion of the Conduct and Practices Handbook examination within six months of this decision;
 - h. the obligation to pay all fines, as well as half of the costs incurred by IIROC in this matter;
 - i. on Count 2, payment of a fine in the amount of \$50,000;
 - j. on Count 4, payment of a fine in the amount of \$50,000.
12. The Respondent André Bergeron also made representations regarding the decision, although some of these related to the merits of the case rather than the ruling itself;
13. The Respondent stated at the outset that his interest in this matter was in the potential of the forty-seven (47) clients for the future, although clearly he never had the time to meet his new clients;
14. The Respondent claims that there was no market manipulation and that he was disciplined before by his former employer, Desjardins Securities Inc.;
15. The Respondent claims that all or nearly all of his clients' investments had been made prior to his arrival as representative, and that he himself never advised his forty-seven (47) clients to invest their RRSPs in Claude Lavigne's investment clubs;
16. The Respondent claims that he feels remorse over the fact that he was unable to help his clients;
17. The Respondent reiterates that he cooperated during the investigation of Claude Lavigne, as well as during the investigation that was initiated into his own conduct;
18. The Respondent considers that he did not hide anything, that he received no money or commission;
19. The Respondent claims that he does not have the ability to pay the amounts claimed;
20. However, the Respondent did not present any documents evidencing his income over the last four (4) years;
21. Consequently, the Respondent suggests that he not be imposed any monetary penalty, nor any suspension of his approval as an authorized representative, adding however that he has no objection to the supervision of his work;
22. In closing, the Respondent adds that representatives are not responsible for their clients' actions;
23. Following the representations of the Respondent, Me Bouchard again stressed the deterrent effect of the penalty which is, in her opinion, an important element, given the fact that the Respondent still has no

real appreciation of the seriousness of his actions and, especially, the actions that he failed to take with respect to his clients;

DISCUSSION:

24. The Hearing Panel finds that the Respondent still does not fully appreciate his role in the matter of Claude Lavigne's investment clubs;
25. The Respondent still does not grasp that, through his actions and omissions, he helped Claude Lavigne to get money out of his clients illegally;
26. The Respondent consequently helped Claude Lavigne to cover up and to continue his unlawful actions;
27. The Hearing Committee reminds the Respondent of its assessment of his actions, notably in paragraphs 75 to 77, and 79 of its decision of July 30, 2008, namely:
 - 75) In the opinion of the Hearing Panel, the evidence clearly shows that the Respondent never had any intention of advising his clients or warning them of the substantial risks associated with the investment clubs set up by Claude Lavigne with the help of Jacques Allard.
 - 76) This failure is all the more serious as the Respondent had this information in his possession and had concluded that these investment clubs were of substandard quality after assessing them in the fall of 2001. Furthermore, the evidence is clear that the Respondent showed no concern for his clients and that he did not even attempt to meet them when opening their accounts;
 - 77) The Respondent has been grossly negligent with respect to his clients. He was reckless and did not have their best interests at heart, whether or not they had already invested in Claude Lavigne's investment clubs. Indeed, as early as in the fall of 2001, the Respondent knew that the investment clubs were a bad investment;
 - ...
 - 79) The Respondent never asked himself any questions on the issue of compliance with the law and, more particularly, the Securities Act in regard to the filing of a prospectus or grant of an exemption and the limits imposed by the Securities Act on this type of investment clubs.
28. Consequently, the Hearing Panel considers, for the purpose of imposing a penalty on the Respondent, that the following points constitute aggravating factors:
 - the Respondent's number of years of experience as a representative, namely 24 years, should have prepared him to know what to do to advise his clients properly;
 - in spite of the information he had on Claude Lavigne's investment clubs, the Respondent never attempted to advise any of his clients in this regard;
 - the Respondent knew that these investments were of substandard quality (scrap [garbage]), that there was no prospectus as required by the Securities Act, and that there were cash member dividends in return for the transfer of RRSPs to the investment clubs;
 - the Respondent helped to cover up and prolong Claude Lavigne's illegal stratagem;
 - the Respondent's actions caused harm to both his clients and the profession;
 - even at the penalty hearing, the Respondent did not seem to comprehend or recognize the seriousness of his actions or omissions.
29. Moreover, the Hearing Panel considers that the following points constitute mitigating factors for the purpose of imposing a penalty on the Respondent in this matter:

- the Respondent did not benefit financially in any way;
 - the Respondent showed a certain naïveté;
 - the five-week suspension that was imposed on him and the termination of his employment with Desjardins Securities Inc.;
 - the Respondent cooperated fully in the investigation of Claude Lavigne, as well as in that initiated by IIROC into his own conduct;
 - the Respondent did not personally carry out the transactions which transferred his clients' RRSPs to Claude Lavigne's investment clubs accounts at B2B Trust;
 - the Respondent has no disciplinary history.
30. The Hearing Panel considers it necessary to impose on the Respondent a period of suspension of his approval as an authorized representative, given his inability to understand his duty to protect the public and his clients;
31. The suspension of 12 months requested by Me Bouchard is adequate;
32. As for the financial aspect, IIROC's demands must be toned down given that the Respondent did not act as he did in order to obtain immediate financial gain;
33. Furthermore, this decision is given more than six (6) years after the fact;

CONSEQUENTLY, THE HEARING PANEL IMPOSES THE FOLLOWING PENALTIES ON THE RESPONDENT:

- A On Count 2, a fine of \$25,000, payable within a maximum of three (3) years;
- B On Count 4, a fine of \$25,000, payable within a maximum of three (3) years;
- C Payment of part of IIROC's costs in the matter, in the amount of \$25,000, payable within a maximum of three (3) years;
- D The Respondent shall pay a minimum amount of \$12,500 per year, effective the date of this decision, for all of the monetary penalties;
- E Suspension of approval as an authorized representative for a period of twelve (12) months from the date of service of this decision on the Respondent;
- F Successful completion of the Conduct and Practices Handbook examination, before the Respondent may reapply for approval as an authorized representative;
- G If the Respondent is granted such approval as an authorized representative, the obligation that he be placed under "close supervision" for a period of three (3) years following his reapproval;
- H "Close supervision" reports shall be filed monthly for the full duration of the supervision.

Montreal, this 3rd day of October 2008

Me Alain Arsenault, Chair
 Lise Casgrain, Panel Member
 Gilles Archambault, Panel Member

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