

Re Bélisle

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Philippe Bélisle

2021 IIROC 13

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

Heard: June 28, 2021 in Montréal, Québec (by videoconference)

Decision: June 28, 2021

Written decision: July 5, 2021

Hearing Panel:

Robert Monette, Chair, François Breton and François Demers

Appearances:

Fanie Dubuc, Enforcement Counsel

Gérald Soulière, for Phillippe Bélisle

Philippe Bélisle (absent)

LIABILITY DECISION

¶ 1 The Hearing Panel (the Panel) held a hearing on June 28, 2021. Originally, the parties were to proceed with the hearing of the matter on its merits.

¶ 2 However, at the beginning of the hearing, the Respondent's Counsel informed the Panel that the Respondent wanted to acknowledge his responsibility for all three counts alleged by IIROC's Enforcement Counsel.

¶ 3 The alleged violations are as follows:

Count 1

Between February and April 2015, the Respondent appropriated a client's funds for his personal use, contrary to IIROC Dealer Member Rule 29.1 and Rule 1400 of the IIROC Consolidated Rules (after September 1, 2016).

Count 2

Between February 2015 and November 2016, the Respondent executed unauthorized trades in a client's account, contrary to IIROC Dealer Member Rule 29.1 and Rule 1400 of the Consolidated Rules (after September 1, 2016).

Count 3:

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, contrary to IIROC Dealer Member Rule 1300.1(o).

¶ 4 The parties agree that the penalty hearing shall be held on September 13, 2021 and that they will present their submissions and list of authorities no later than August 27, 2021.

¶ 5 The parties also intend to refer to the Statement of Allegations appended to the Notice of Hearing and dated December 14, 2020.

¶ 6 **Having considered** the representations made by the parties:

The Panel finds the Respondent liable on all three counts alleged by IIROC and sets the date of the penalty hearing on September 13, 2021.

Dated at Montréal, this 5th day of July, 2021.

Robert Monette

François Breton

François Demers

STATEMENT OF ALLEGATIONS

Further to a Notice of Hearing dated December 14, 2020, Staff of the Investment Industry Regulatory Organization of Canada make the following allegations:

PART I - REQUIREMENTS CONTRAVENED

Count 1

Between February and April 2015, the Respondent appropriated a client's funds for his personal use, contrary to IIROC Dealer Member Rule 29.1 and Rule 1400 of the IIROC Consolidated Rules (after September 1, 2016).

Count 2

Between February 2015 and November 2016, the Respondent executed unauthorized trades in a client's account, contrary to IIROC Dealer Member Rule 29.1 and Rule 1400 of the Consolidated Rules (after September 1, 2016).

Count 3:

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, contrary to IIROC Dealer Member Rule 1300.1(o).

PART II - RELEVANT FACTS

Registration History

1. From February 2010 to May 2014, the Respondent was registered as a representative of CIBC World Markets Inc., an IIROC regulated firm.
2. From May 16, 2014 until his dismissal on December 13, 2016, the Respondent was a registered representative at National Bank Financial Inc. (NBF), an IIROC regulated firm.
3. The Respondent is not currently employed with an IIROC Dealer Member firm.

Background

The client and the accounts opened with the Respondent

The discretionary accounts

4. Client "A" (the client) is a family member of the Respondent.

5. In May 2014, the client opened three managed accounts with the Respondent, to be managed by the latter at his discretion (the discretionary accounts).
6. When the discretionary accounts were opened, the client signed the account opening documents, which stated the following information:
 - i) The client was 62 years old and married to “B”, the Respondent’s father (the spouse);
 - ii) The client had no paid employment;
 - iii) The client had an annual personal income of \$20,000 and an annual household income of \$200,000;
 - iv) The client held cash and investments valued at net \$850,000.
7. The discretionary accounts were opened with an investment objective of “growth”.

The margin accounts

8. In November 2014, the client opened two margin accounts, one in Canadian dollars and the other in US dollars (the margin accounts).
9. When the margin accounts were opened, the client signed the account opening documents, including an Options Trading Agreement (options agreement) which stated that the management provided by the Respondent would be non-discretionary and that no one other than the client would exercise any control, hold or authority over these accounts.
10. The margin account opening documents stated the following information:
 - i) The client’s investment knowledge was good and she had an investment time horizon of 10 years and up;
 - ii) The client had five years of experience with options contracts;
 - iii) The advisor had no direct or indirect financial interest in the margin accounts.
11. The margin accounts were opened with an investment objective of the “maximum growth” type. The “maximum growth” objective represented the most aggressive level in terms of the options trading strategy that could be applied.

No written authorization in the client’s file

12. Between May 2014, when the accounts were opened, and November 2016, no written authorization was placed in the client’s file by the Respondent, granting a third party authorization to exercise any control over the margin accounts.
13. According to the Respondent, between May 2014 and November 2016, the spouse had a verbal authorization given by the client, authorizing him to give instructions relating to the latter’s accounts.

The Margin Accounts Guarantee

14. In January 2015, the client and her spouse signed guarantee agreements to the following effect:
 - i) The spouse agreed to stand surety for the client’s obligations to NBF;
 - ii) The client’s margin accounts were therefore guaranteed by her own discretionary accounts.
15. In signing the guarantee agreement, the spouse waived the right to receive, as surety, duplicates of the client’s portfolio statements.

Count 1 — The appropriation of funds in margin accounts by the Respondent

The use of the margin accounts to appropriate client’s funds

16. According to the Respondent, in fall 2014, it was agreed with the spouse that margin accounts would be opened in the client’s name. The objective was to use the borrowing power of the assets in the discretionary accounts to allow the Respondent to borrow funds on behalf of the client, and without her consent.
17. According to the Respondent, this unauthorized use of the margin accounts would serve to finance renovation work on his private residence.

18. On November 30, 2014, the client signed a series of documents to open the margin accounts, as well as an options agreement that permitted options trading in these accounts.
19. According to the Respondent, the client signed these documents without fully understanding their meaning, their consequences, and without knowing that the margin accounts would be used by the Respondent to finance renovation work.
20. According to the Respondent, despite the fact that the margin accounts were not discretionary by nature, it was agreed with the spouse that these accounts would be managed as such, that is, without obtaining the client's prior authorization to execute transactions or trades in the accounts.

The unauthorized fund transfers effected by the Respondent for a total of \$210,000 CAD

21. On February 16, 2015, a first amount of \$150,000 CAD was transferred by the Respondent from the client's margin accounts to the bank account held by the latter's spouse at NBF.
22. Subsequently, on February 19, March 12 and April 8, 2015, three additional transfers, in the amount of \$20,000 CAD each, were effected by the Respondent from the margin accounts, according to the same process.
23. Thus, the Respondent admitted to Enforcement Staff that, between February and April 2015, he transferred a total of \$210,000 CAD from the margin accounts to the client's spouse's account, without her prior authorization and without her knowledge.
24. The totality of the funds transferred by the Respondent from the client's account to the spouse's account was ultimately transferred to the Respondent's personal account, without the client's knowledge.

The forgery of client's signature at Respondent's request

25. The Respondent admitted to Enforcement Staff that he instructed his assistant to forge the client's signature on the \$150,000 CAD transfer request document dated February 13, 2015.
26. This transfer request document was required by virtue of NBF's internal policies respecting fund transfers of more than \$25,000 CAD.
27. The Respondent also admitted to Enforcement Staff that the subsequent \$20,000 CAD amounts were settled on to avoid having to submit written requests to the firm before effecting said transfers.

The change of document transmission mode for the client's margin accounts, preventing her from receiving her transaction statements

28. The Respondent admitted to Enforcement Staff that he instructed his assistant to change the document transmission mode for the margin accounts. The documents relating to the margin accounts notably included portfolio statements and trade confirmations.
29. Thus, the initial document transmission mode, which was delivery by mail to the client's domicile, was changed to the online mode only, with access requiring a personalized user code.
30. Furthermore, the Respondent admitted to Enforcement Staff that he instructed his assistant to change the specifications for sending document availability notices. The consequence of this other change was that the client was not sent any notifications regarding the margin accounts.
31. When the document transmission mode was changed, the spouse's email address was the one entered to enable access with a user code.
32. According to the Respondent, the client did not have a personal email address.
33. These changes in the document transmission mode and notification specifications were made on February 16, 2015, which is the same date the \$150,000 CAD transfer was effected by the Respondent from the client's margin account to the spouse's account.
34. Consequently, the client did not receive any portfolio statements or trade confirmations between February 2015 and November 2016. She was therefore not informed of the fund transfers made by the Respondent from her margin accounts during this period.

Count 2 — The unauthorized trades executed in the margin accounts by the Respondent between February 2015 and November 2016

35. The Respondent admitted to Enforcement Staff that he arranged with the spouse to manage the client's margin accounts on a discretionary basis in order to generate profits to cover the \$210,000 CAD amount that he had previously transferred out of these accounts, and thus reduce the capital amount that he had appropriated without the client's consent.
36. According to the Respondent, his objective was to execute options trades according to a risky leveraging strategy (the strategy).
37. From February 2015 to November 2016, the Respondent applied this strategy by executing a very large number of call or put transactions involving the options and shares in the margin accounts, namely approximately 1,250 trades.
38. Because of the change in the document transmission mode and notification specifications made on February 16, 2015 at the Respondent's request, the client did not receive any portfolio statements or trade confirmations between February 2015 and November 2016. She was therefore not informed of the existence of the trades effected by the Respondent in her margin accounts during this period.
39. In late October 2016, as a result of the strategy involving the numerous trades effected by the Respondent, the debit side of the client's margin accounts hit close to \$543,000 CAD, including the \$210,000 CAD initially appropriated by the Respondent.
40. Between February 2015 and November 2016, the average debit balance in the client's margin accounts was close to \$360,000 CAD.
41. During the same period, the gross commission on the margin accounts was approximately \$33,800 CAD, and the net commission paid to the Respondent was close to \$12,600 CAD.
42. The Respondent admitted to Enforcement Staff that the client had not given her prior consent to apply the strategy in her margin accounts.
43. Furthermore, the Respondent admitted to Enforcement Staff that at no time between February 2015 and November 2016 was the client informed of the existence of any trading in her margin accounts, nor did she ever give her prior consent.

Count 3 — The trades effected by the Respondent in the margin option accounts that were not within the bounds of good business practice

44. From February 2015 to November 2016, the options trading carried out by the Respondent in the client's margin accounts was not within the bounds of good business practice, given the large number of trades, the excessive amount of margin used in the accounts, and the speculative nature of the applied strategy, which went against the client's interests.
45. During this period, the Respondent employed a speculative strategy by effecting a very large number of call or put transactions involving the options and shares in the margin accounts, namely close to 1,250 trades.
46. The margin options accounts always had a debit balance that fluctuated between \$168,227 CAD (February 2015) and \$542,502 CAD (October 2016).
47. The client's margin options accounts had an average debit balance of nearly \$360,000 CAD. Consequently, these accounts would have had to yield an annualized rate of return of more than 10% to attain profitability, indicating a high volume of trades.
48. From February 2015 to November 2016, the gross commission on the margin accounts was approximately \$33,800 CAD, and the net commission paid to the Respondent was close to \$12,600 CAD.

DATED at Montréal (Québec), this 14th day of December, 2020.