

Re Bélisle

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Philippe Bélisle

2021 IIROC 23

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

Heard: September 13, 2021 in Montréal, Québec, by videoconference
Decision: October 12, 2021

Hearing Panel:

Robert Monette, Chair, François Breton and François Demers

Appearances:

Fanie Dubuc, Enforcement Counsel

Gérald Soulière, Counsel for Phillippe Bélisle

Philippe Bélisle (absent)

PENALTY DECISION

¶ 1 On December 14, 2020, Staff of the Investment Industry Regulatory Organization of Canada (IIROC) issued a Notice of Hearing in the matter of Phillippe Bélisle (the Respondent).

¶ 2 This Notice of Hearing references a statement of allegations that identifies the contraventions alleged by IIROC in regard to the Respondent. Those contraventions are:

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).

¶ 3 Following the Respondent's appearance, the parties agreed on a schedule in which the first step was the filing by the Respondent of a motion to stay proceedings (the motion); said motion was heard on April 27, 2021.

¶ 4 In its decision dated May 17, 2021, the Hearing Panel rejected the motion filed by the Respondent. The hearing on the merits was then set for June 28, 2021.

¶ 5 On June 28, 2021, the Hearing Panel was informed by Counsel for the Respondent that the latter intended to admit his liability in regard to the three contraventions alleged in the Statement of Allegations. In its decision of July 5, 2021, the Hearing Panel confirmed the Respondent's liability and, with the consent of both parties, set the penalty hearing date for September 13, 2021.

¶ 6 At the penalty hearing held on September 13, 2021, the respective parties presented their arguments and submitted their pleadings on the nature of the proposed sanctions. The Hearing Panel, having taken the matter under advisement, now issues this decision.

Jurisdiction

¶ 7 In compliance with Rule 20.33, a Hearing Panel may impose any sanctions that it deems appropriate on an Approved Person who is found liable for contravening the applicable securities legislation:

20.33 Approved Persons

(1) Upon conclusion of a disciplinary hearing, a Hearing Panel may impose the penalties set out at 20.33(2) if, in the opinion of the Hearing Panel, the Approved Person:

(a) failed to comply with or carry out the provisions of any federal or provincial statute, regulation, ruling or policy relating to trading or advising in respect of securities or commodities;

(b) failed to comply with the provisions of any Rule or Ruling of the Corporation; or

(c) failed to carry out an agreement or undertaking with the Corporation.

(2) Pursuant to subsection (1), a Hearing Panel may impose any one or more of the following penalties upon the Approved Person:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) \$1,000,000 per contravention; and

(ii) an amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention.

(c) suspension of approval for any period of time and upon any conditions or terms;

(d) terms and conditions of continued approval;

(e) prohibition of approval in any capacity for any period of time;

(f) termination of the rights and privileges of approval;

(g) revocation of approval;

(h) a permanent bar from approval with the Corporation; or

(i) any other fit remedy or penalty.

¶ 8 Pursuant to Rule 20.49, the Hearing Panel may also order the Respondent to pay any investigation costs determined to be appropriate and reasonable in the circumstances.

¶ 9 In the exercise of its jurisdiction, a hearing panel is invested with broad discretionary powers that may be exercised according to the facts in the matter, the enabling provisions and the circumstances of the misconduct.¹

The relevant facts

¶ 10 From May 16, 2014 until his dismissal on December 13, 2016, the Respondent was a registered representative employed with National Bank Financial Inc. (NBF), an IIROC-regulated firm. The Respondent has not been employed with an IIROC-regulated firm since that time.

¶ 11 In May 2014, the client opened three discretionary accounts with the Respondent, with an investment objective of the “growth” type. The client is in fact the spouse of the Respondent’s father.

¶ 12 In November 2014, the client opened two margin accounts, one in Canadian dollars and the second in US dollars, to be managed as non-discretionary by the Respondent.

¶ 13 When the margin accounts were opened, the client signed the account opening documents, including an options trading agreement which states that the management offered by the Respondent would be non-discretionary and that no other person has power, control, or authority over these accounts. The margin accounts were opened with an objective of “maximum growth”.

¶ 14 The information on the margin accounts states, erroneously, that the client has experience with options contracts. The Respondent declared that he has no financial interest in the margin accounts.

¶ 15 According to the Respondent, it was arranged with the client’s spouse (the spouse) that the margin accounts would be managed as discretionary, without requiring the client’s prior authorization to execute trades in these accounts. Still according to the Respondent, the spouse had a verbal power of attorney from the client, authorizing him to give instructions regarding the latter’s accounts.

¶ 16 The Hearing Panel notes that the spouse is the Respondent’s father.

¶ 17 In January 2015, the client and her spouse signed guarantee agreements. The client’s margin accounts are guaranteed by her discretionary accounts and the spouse stands surety for the client’s obligations to NBF. The spouse declined to receive, as surety, duplicates of the client’s portfolio statements.

¶ 18 According to the Respondent, it was arranged 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; this would allow the Respondent to borrow funds belonging to the client without her authorization. It was also agreed with the spouse that the margin accounts would also be managed on a discretionary basis, without the client’s prior authorization.

¶ 19 On February 16, 2015, a first amount of \$150,000 was transferred by the Respondent from the client’s margin accounts to her spouse’s bank account at NBF. At the time of this transfer, the Respondent instructed his assistant to forge the client’s signature on the transfer request. As well, the Respondent asked his assistant to change the document transmission mode for the margin accounts so that only the client’s spouse was notified.

¶ 20 It should be noted that the assistant is the Respondent’s spouse.

¶ 21 Three additional \$20,000 transfers that did not require the client’s signature were made using the same process. Ultimately, a total of \$210,000 was transferred to the Respondent’s account, all without the

¹ *Re St-James* 2021 IIROC 02, par. 59

client's knowledge. This amount was to allow the Respondent to carry out renovations on his home.

¶ 22 Subsequently, and still with the spouse's consent, the Respondent managed the client's margin accounts on a discretionary basis in order to generate gains to cover the \$210,000 amount.

¶ 23 The Respondent's objective was to execute options trades according to a risky leveraging strategy; consequently, 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.

¶ 24 As a follow-up to these events, the spouse repaid the money to his wife's accounts; namely in 2016, an amount of \$210,000² and in 2018-2019, an amount of \$280,000³ with interest.

¶ 25 The Hearing Panel notes that the client has not filed any complaint against the Respondent.

¶ 26 These are the essential facts which the Respondent admits to having committed.

¶ 27 In the course of its analysis of the relevant factors, the Hearing Panel may refer to other facts that support the parties' arguments.

The parties' arguments

¶ 28 IIROC argues that the following sanctions should be imposed on the Respondent:

- a. a permanent prohibition from approval in any capacity;
- b. a fine in the amount of \$100,000 for count 1
- c. a fine in the amount of \$50,000 for count 2
- d. a fine in the amount of \$50,000 for count 3
- e. disgorgement of the amount of financial benefit unduly obtained, for a total of \$222,600
- f. a portion of the costs incurred, namely an amount of \$30,000.

¶ 29 As for the Respondent, he proposes the following outcomes:

- a. a maximum suspension of five years starting from November 2016
- b. that no fine be imposed on the Respondent
- c. that no costs be imposed on the Respondent.

¶ 30 Counsel for IIROC is proposing sanctions and claim amounts that fall in the upper range of penalty decisions, while counsel for the Respondent is in favour of a more lenient approach by the Hearing Panel.

Analysis factors

¶ 31 It is appropriate that IIROC, as the organization which oversees all trading activity on debt and equity marketplaces in Canada and has an objective to maintain a high standard of conduct for its members, make recommendations on sanctions to the Hearing Panel, it being understood, of course, that the Hearing Panel is not bound by these recommendations.

¶ 32 The Hearing Panel recognizes that the Guidelines invoked by IIROC are useful in disciplinary proceedings pertaining to misconduct in the investment industry: the principles and key factors indicated provide a framework for exercising its discretionary power in order to determine sanctions that are consistent with the general sanction objectives.

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³1-22

¶ 33 As we mentioned previously and as specified in the Guidelines, these general principles and key factors are not intended to fetter the discretion of a hearing panel in determining an appropriate sanction⁴; it is understood that every given case is discretionary and a fact specific process in which hearing panels retain the discretion to impose the sanctions they consider appropriate.

¶ 34 The Hearing Panel intends to rely on these principles and analytical factors, while recognizing that the sanctions imposed must be adapted to the conduct at issue, which implies having an appreciation of the mitigating or aggravating factors in the matter.

Aggravating factors

¶ 35 The Respondent's misconduct allowed him to appropriate a sum of \$210,000 belonging to his client, and which he planned to use to finance renovations on his personal residence.

¶ 36 The Respondent committed these violations by forging signatures, encouraging an assistant to fill out the documents required by the firm, without the client's authorization.

¶ 37 The Respondent unduly received a net amount of \$12,600 in commissions.

¶ 38 Between February 2015 and November 2016, the Respondent executed large numbers of buy and sell transactions on options and stocks in the margin accounts, without informing the client. Thus, over a period of one year and 9 months, the Respondent executed more than 1,250 trades in the non-discretionary options margin accounts.

¶ 39 The Respondent applied a speculative strategy that was not within the bounds of good business practice.

Mitigating factors

¶ 40 IIROC initiated its investigation following an interview between the Respondent and his employer in which the Respondent related the events leading up to the allegations.

¶ 41 The client has not filed a complaint and acknowledges the actions taken by her spouse and the Respondent.⁵

¶ 42 The Respondent had intended to reimburse the client when he received his performance bonuses which were challenged and withheld by his ex-employer. As for the spouse, he guaranteed the client's accounts and subsequently reimbursed these accounts.

¶ 43 The Respondent cooperated fully in the investigation by promptly reporting the controversial facts and admitting responsibility with a plea of liability. After IIROC completed its investigation, the Respondent inquired about the progress of his disciplinary case.

¶ 44 The Respondent has no disciplinary history. This was an isolated incident in the course of his career, now abandoned since his dismissal.

¶ 45 The Respondent has been inconvenienced by the delay in IIROC's investigation in his regard.

The Guidelines

¶ 46 IIROC's *Sanction Guidelines* establish the following concepts.

¶ 47 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.

⁴ See the IIROC Sanction Guidelines

⁵ CP-66

¶ 48 The primary aim is prevention, not punishment. The goal is to prevent the respondent's behaviour from continuing, but also to send a clear message to those who might be tempted to follow suit that such conduct will not be tolerated.⁶

¶ 49 A sanction must strike an appropriate balance between a Regulated Person's specific misconduct and the industry expectations. A sanction must be significant enough to be a general deterrent but also proportionate in order to gain the support of market participants because the sanction is fair.

¶ 50 Where there are multiple violations, the overall sanction imposed should not be excessive or disproportionate to the gravity of the total misconduct at hand. The existence of multiple contraventions may be treated as an aggravating factor.

¶ 51 Finally, in the exercise of enforcing all of these principles, the hearing panel must ensure protection of the public, but it also has the obligation to deal fairly with "those whose livelihood is in its hands."⁷

Analysis of case law

¶ 52 In this analysis, we will point out certain aggravating or mitigating factors, but it must be understood that our reasoning was guided by the facts as a whole.

¶ 53 Counsel for IIROC has filed a summary of the case law on which it has relied to establish a range of sanctions for contraventions similar to those alleged against the Respondent.

Count 1 - Unlawful appropriation

¶ 54 Regarding count 1 concerning unlawful appropriation, the Hearing Panel retains four authorities that are especially relevant, the first two having been presented by Counsel for IIROC.

¶ 55 In *Re Scerbo*⁸, the contraventions committed are fraudulent acts (appropriation) against the respondent's spouse, for which the hearing panel ordered a permanent ban on registration. However, it differs from the present matter by its duration (four years), the number of withdrawals (57) and the irreversible harm caused to the client. Furthermore, the respondent never cooperated in IIROC's investigation.

¶ 56 In the settlement in *Re Silvaggio*⁹, a permanent ban on approval was ordered for unlawful appropriations involving clients who maintained family ties with the respondent. The respondent forged a series of documents which enabled her to execute 50 unauthorized trades and amass the sum of \$239,500.

¶ 57 In *Re Giroux-Garneau*¹⁰, the respondent was found guilty of unauthorized trading and the unlawful appropriation of funds (\$15,000). The respondent was the client's spouse and caregiver. The hearing panel, having considered the special family circumstances, imposed fines and a 10-year ban on approval in any capacity.

¶ 58 In *Re Chher*¹¹, the allegations against the respondent concerned the misuse of a power of attorney issued by the client, his mother. The respondent used the power of attorney to authorize himself to use the monies in the client's accounts for his own ends. Describing the modus operandi, the hearing panel concluded that the respondent had no intention of defrauding or stealing from his client. Referring to the family

⁶ *Re St-James* 2021 IIROC 02 par. 61 and ss.

⁷ *Ordre des ingénieurs du Québec c. Gilbert* 2016 QCCA 1323

⁸ *Re Scerbo* 2017 IIROC 57

⁹ *Re Silvaggio* 2011 IIROC 63

¹⁰ *Re Giroux-Garneau* 2016 IIROC 46

¹¹ *Re Chher* 2011 IIROC 79

circumstances, the hearing panel ordered a ban on approval in any capacity for 10 years and one year of strict supervision.

¶ 59 As the case law frequently reminds us, Counsel for IIROC has good reason to emphasize the serious nature of the allegations of misappropriation leveled at the Respondent. The dealer-client relationship is based exclusively on trust. The client's expectation is that the dealer will handle the nest egg entrusted it in good faith, especially since most of the time, this money is the result of many years of hard work: a breach of this ethical obligation by the respondent has a major negative impact on the integrity of the entire field.

¶ 60 Likewise, the cooperation of his assistant which the Respondent required in order to falsify the client's documents is inexcusable. Creating a forgery is objectively an offence.

¶ 61 Nevertheless, the Hearing Panel finds that the Respondent had no firm intention to defraud the client; he deferred to her spouse and planned to repay the stolen sums. The Respondent's acts fall at the lower end of the gradation of severity, compared to, for instance, cases of intentional widescale fraud. Keep in mind that the assistant is the Respondent's spouse and is employed at NBF.

¶ 62 That said, the matter before us still represents a special circumstance involving the members of one family. Thus, the Respondent authorized himself based on the consent of the client's spouse, who was in fact his father, to engage in the inappropriate management of funds; keep in mind that the spouse was also the surety for the client accounts from which the funds were withdrawn. This special family circumstance goes on, since the spouse decided to return the missing sums to the accounts of the client, who was his wife.

¶ 63 Despite the spouse's assent, which may have lulled the Respondent into engaging in this conduct, the latter should have stuck with his ethical duty. The Respondent was beholden only to his client; the family circumstance did not exonerate the Respondent from his duty of responsible management.

¶ 64 Finally, the Hearing Panel considers that the Respondent's cooperation was very adequate during the investigation, specifically during questioning or when it came to submitting requested information; furthermore, the Respondent expressed interest in the investigation follow-up and possible mediation¹². It must be noted that the Respondent was the one who decided to enter a liability plea; this gesture has an effect both for himself and the members of the family.

¶ 65 Consequently, while the family circumstance in this matter is relevant, it does not excuse the Respondent. The sanction must be severe, but the Hearing Panel does not believe that a permanent ban is required.

¶ 66 We have decided that the penalty for count 1 should be a temporary ban on approval for 10 years, a period of strict supervision for the first two years in the event of reapproval, a fine of \$50,000 and disgorgement of \$12,600.

¶ 67 In the exercise of our discretion and since we have already acknowledged that IIROC caused an additional delay due to a lack of diligence, we are in agreement that the Respondent be credited a period of 14 months to be deducted from the temporary ban on approval.

Counts 2 and 3

¶ 68 As for counts 2 and 3, in aggregate and taking into account the particularities of each matter, the monetary penalties proposed by IIROC fall within an acceptable range. It must be added that the fines are obviously higher when the hearing panel finds a lack of cooperation on the respondent's part.

¶ 69 Counts 2 and 3 nevertheless concern the same type of trades effected in the client's accounts, but from two different angles; the trades were not authorized and they were not within the bounds of good

¹² I-11

business practice.

¶ 70 These are both serious contraventions, but they are so intertwined that it would be more appropriate to set an aggregate fine.

¶ 71 We are ruling that the penalty on counts 2 and 3 should be an aggregate fine of \$50,000.

Costs

¶ 72 As mentioned above, we had already ruled ¹³ that the Respondent suffered an excessive delay due to a lack of diligence during IIROC's investigation. As well, in our decision, we concluded that an appropriate remedy would be to exercise our discretion when it came to costs.

¶ 73 Consequently, we hereby order costs against the Respondent in the amount of \$10,000.

Conclusion

¶ 74 While we emphasize the special character of this matter, we are satisfied that the sanctions imposed are preventative in nature and designed to strengthen market integrity.

¶ 75 They are significant enough to discourage future misconduct by the Respondent, and to deter others from engaging in similar misconduct.

For these reasons, the Hearing Panel imposes the following penalties:

- a. on count 1, a temporary ban on approval for 10 years less 14 months, two years of strict supervision, a fine of \$50,000 and disgorgement of \$12,600;
- b. on counts 2 and 3, an aggregate fine of \$50,000;
- c. costs in the amount of \$10,000.

Dated at Montréal, October 12, 2021.

Robert Monette

François Breton

François Demers

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¹³ Judgment on the motion to stay proceedings