

Re Maurice

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Paul Maurice

2022 IIROC 18

Investment Industry Regulatory Organization of Canada
Hearing Panel (New Brunswick District)

Heard: May 11 and 12, 2022 via videoconference
Reasons for Decision: July 29, 2022

Hearing Panel:

Edward W. Keyes, Q.C., Chair, Ken Wheelans and Thomas Kostandoff

Appearances:

Francis Larin, Senior Enforcement Counsel
Alexander Bien-Aime, for Paul Maurice

REASONS FOR DECISION

Introduction

¶ 1 The Respondent, Paul Maurice, is a Registered Representative. The Investment Industry Regulatory Organization of Canada (IIROC), in its Statement of Allegations (SOA), dated October 22, 2021, alleges he contravened its Rules. The specific allegations against him are as follows:

- (i) In January and February 2020, the Respondent engaged in discretionary trading in the joint account of two clients, without this account having been previously approved and accepted as a discretionary account, contrary to Dealer Member Rules 1300.4 and 1300.5; and
- (ii) Between May and December 2020, the Respondent made misrepresentations to Enforcement Staff during the course of an investigation, contrary to Consolidated Rule 1400.

¶ 2 The Respondent filed a Response to the SOA, dated November 24, 2021.

¶ 3 Not in dispute are the following facts:

- The Respondent has been a Registered Representative with IIROC and its predecessor, the Investment Dealers Association of Canada since March of 2003.
- Since August 2005, the Respondent has been employed with CIBC World Markets (CIBC).
- The Respondent has no disciplinary history with IIROC.
- In or around October 15, 2019, clients AH and LH opened a joint, fee-based account with CIBC through the Respondent.

- Soon thereafter, the Respondent had a general discussion with AH and LH about different securities he felt may be suitable for them.
- The joint account opened for AH and LH had not been approved, nor accepted, as a “discretionary” account.
- 21 trades were made by the Respondent in the joint account from October 25, 2019 to February 26, 2020, however IIROC alleges only the 9 trades made between January 14, 2020 and February 26, 2020 were executed by the Respondent on a discretionary basis.
- In the course of Enforcement Staff’s investigation of this matter, the Respondent maintained that he had discussed all details pertaining to the 21 trades with his clients before executing them.
- In the course of the IIROC investigation, the Respondent provided Enforcement Staff with notes he had taken and which, according to him, referred to the discussions he had with LH and AH at the time the trades were made.
- The Respondent stated in his interview with Enforcement Staff that, with respect to the 9 trades in question, he had specifically discussed them with his clients beforehand by phone.
- Enforcement Staff obtained phone records for LH and AH’s home phone and AH’s cell phone from their carrier Rogers Communication Canada Inc. (Rogers).

¶ 4 In his Response to the SOA, the Respondent denies he carried out any discretionary trading in the account and reaffirmed that the 9 trades were executed by him after having obtained instructions from the clients. He claims that the Rogers phone records were incomplete and presented only a partial picture of the telephone exchanges between the Respondent, his staff and the clients.

Burden of Proof

¶ 5 IIROC bears the burden of demonstrating, on a balance of probabilities, that each of the allegations against the Respondent have been proven. The evidence required to satisfy the balance of probabilities test must be “sufficiently clear, convincing and cogent” as was set out in the Supreme Court of Canada decision of *F.H. v. McDougall*.¹

¶ 6 If this Panel is not satisfied that an allegation has been proven, on a balance of probabilities, we are required to dismiss the allegation.

¶ 7 Under the IIROC Rules of Practice and Procedure, hearing Panels are permitted to admit relevant evidence including certain hearsay evidence not usually admissible in civil matters.

¶ 8 In the matter before us where the veracity of the evidence was challenged, particularly by the Respondent, we carefully considered if the evidence was shown to be reliable and whether the Respondent had a meaningful opportunity to test that evidence, all with a view to ensuring the Respondent received a fair hearing.

¶ 9 On May 11, 2022, the hearing of this matter was commenced via videoconference.

¶ 10 Although not all of the evidence entered in this matter is specifically referred to in these reasons, the Panel carefully considered all of the evidence tendered by both parties including the *viva voce* testimony, the exhibits, the interviews of LH, AH and the Respondent during the IIROC investigation of the complaint and the oral submissions of counsel. Both counsel declined the opportunity to provide written post-hearing

¹*F.H. v. McDougall*, [2008] SCJ No.54 at para 43

submissions in this matter.

¶ 11 The Panel heard from six witnesses. Four called by IIROC and two on behalf of the Respondent, including, the Respondent himself.

¶ 12 At the outset, the Respondent requested that the complainants not be present together while each testified. Although the hearing was conducted remotely, via videoconference, the complainants complied with this request, and each testified separately with the other being in a different room of their house. The following summarizes the evidence that was given in this matter.

Summary of the Evidence

AH

¶ 13 AH, a 77-year-old dairy farmer, testified that in October 2019 he was referred to the Respondent by the CIBC representative who managed his farm account. He and his wife first met the Respondent at their house on the Saturday of the Thanksgiving weekend where they discussed their investment objectives with the Respondent.

¶ 14 At the meeting, the Respondent was told that LH had received a \$350,000 inheritance from her mother and was looking to invest it in the stock market as opposed to mutual funds as they already had investments in that type of holding.

¶ 15 Following that first meeting, AH and LH next met with the Respondent three days later on October 15, 2019 at his office in Moncton, New Brunswick where they signed account documents.

¶ 16 AH testified that he and his wife next met with the Respondent for lunch on December 5, 2019. AH said that the Respondent discussed a number of companies during the lunch using terms such as “I like this stock” or “I like that stock”, but he stated that at no time did he say he was going to invest in the companies he had mentioned.

¶ 17 AH stated that, in addition to their home telephone, he had a cell phone and confirmed the respective telephone numbers for their home and his cell phone.

¶ 18 It was AH’s evidence that between the December 5, 2019 meeting and February of 2020, he had no conversations with the Respondent regarding the trades that the Respondent made in their joint account.

¶ 19 On direct, AH was questioned regarding his whereabouts on February 26, 2020, the date that four of the alleged discretionary trades were made in their joint account.

¶ 20 AH responded that on February 26, 2020, he and his wife left the Halifax airport at 8:30 am on an Air Canada flight bound for Florida where they were going to vacation.

¶ 21 It was his evidence that he and his wife had arrived in the Halifax area on the evening of February 25th and stayed with friends who lived approximately 15 minutes from the airport so that they could be close to the airport for the flight the next day.

¶ 22 On the morning of February 26th, he stated he received a call on his cell phone at approximately 5:15 am from the people they were staying with, in order to make sure they were up. Their friends then drove them to the Halifax airport arriving at around 6:30 am.

¶ 23 At approximately 8:00 am, AH realized that he had lost his cell phone. On checking with personnel at the airport he discovered that it had been found by the curb where they had been dropped off earlier that morning and was taken to the lost and found.

¶ 24 He said that he must have lost his phone when he was getting out of the car and because his flight was leaving soon, he was not able to retrieve it from the lost and found. His son picked up his phone from the lost and found and delivered it to him in Florida four days later. As a result, he said he did not use it until he

received it from his son late on February 29, 2022.

¶ 25 AH and LH's Air Canada booking confirmation, included in Exhibit E-1, confirmed that their flight left Halifax at 8:30 am on February 26, 2020. The fact that AH and LH left for Florida on February 26th at 8:30 am was not challenged by the Respondent.

¶ 26 When specifically asked on direct if he had spoken to the Respondent that morning about the trades made in the account on February 26, 2020, AH was adamant that he did not speak to the Respondent on that date.

¶ 27 AH also stated that shortly after he and his wife gave the Respondent the \$350,000, he asked for \$50,000 back, as he needed it for farm equipment. He told the Hearing Panel that they had directed the Respondent to leave "what they had in cash to be left in cash" as they were concerned about volatility in the markets.

¶ 28 Just prior to leaving for Florida, AH testified that he and LH met with their other financial advisor, a person named Dan Noel, and signed paperwork to move their investments held with the Respondent to Mr. Noel, as they had decided to consolidate their investments with one advisor.

¶ 29 On cross-examination, AH was questioned at length about his memory of details and discussions that he and LH had with the Respondent.

¶ 30 AH confirmed that the Respondent held lengthy meetings with him and his wife to gather information and discuss various companies. Notwithstanding that, he said he did not understand the explanation of the "portfolio account" given to him by the Respondent, he did acknowledge that he signed the form.

¶ 31 AH also agreed that the Respondent had met with him and LH for at least two hours on October 12, 2019, but he did not remember the call he had made to the Respondent on November 12, 2019 that the Rogers records at Exhibit E-11 confirm took place. He acknowledged that if the phone records showed that a call took place, then he must have spoken to the Respondent on that day.

¶ 32 During his testimony, AH stated that he receives numerous phone calls every day and it was a challenge at times to remember whether they came in on the home phone or his cell phone. He also agreed that it was a challenge to even remember that he answered some calls. During the course of his testimony before the Panel, which lasted for no more than an hour, he was interrupted by three calls to his cell phone before turning it off, commenting that it was the life of a farmer.

¶ 33 AH could not remember if they went back to the Respondent's office after the December 5, 2019 lunch for a meeting, but he did state that he remembered receiving a parking ticket from the Respondent or his secretary after the lunch.

¶ 34 AH stated that he found out that the Respondent was not a discretionary trader on February 24th from Mr. Noel, but did not call the Respondent to tell him to stop trading in his account because, as he stated to the Respondent's counsel, "I didn't I think I had to".

¶ 35 On further questioning by the Respondent's counsel regarding why he did not call the Respondent to complain about the trades, AH said, "...for some reason or other it didn't hit me at that time that it was something I had to take action on. When I got back and saw the trades afterwards, maybe it's because I'm not an investment guru, but it did upset me when I saw how much money afterwards that got invested out of cash."

¶ 36 AH testified that upon reviewing the March statements when they returned from Florida, they noticed that transactions had been carried out while they were away. He said they then asked Mr. Noel for an explanation, and he told them that the Respondent was not a discretionary trader and needed their authorization to make the trades in question.

¶ 37 The Respondent's counsel questioned AH on whether it was Mr. Noel who actually prepared the complaint letter found at Exhibit E-1. AH denied that Mr. Noel had prepared it.

¶ 38 On redirect, AH reviewed his February 2020 account statement at Exhibit E-3 and confirmed that the cash balance as shown had reduced from approximately \$142,846.27 on January 31, 2020 to \$53,417.17 on February 28, 2020.

LH

¶ 39 LH, the 76-year-old wife of AH, testified that prior to leaving on a trip to Wyoming she had received a \$350,000 inheritance from the estate of her mother and was put in touch with the Respondent by their CIBC farm account representative.

¶ 40 LH confirmed the dates and general discussions they had with the Respondent at their house during the first meeting they had with him and the discussions they had in his office on October 15, 2019. She also testified that they met the Respondent for lunch on December 5, 2020.

¶ 41 LH gave evidence regarding their trip to Florida, stating that they travelled to Nova Scotia on February 25, 2020, and stayed with friends in the Halifax area the night before they left for Florida.

¶ 42 Regarding her husband's lost cell phone, she testified that someone found it on the ground where they had exited the car on arriving at the Halifax airport. She stated that they had arrived at the airport at approximately 6:30 am.

¶ 43 LH stated that it was not until they had a discussion with Mr. Noel that she found out the Respondent was not a discretionary trader and testified that "he should have been asking our permission, our approval, for any trades."

¶ 44 LH's evidence was that the discussion with Mr. Noel took place on either February 14 or 24, 2020.

¶ 45 LH evidence was that at no time did the Respondent advise them as to what stocks he was investing in and said that even when she looked at the monthly statements, she was looking at the totals only because they had requested a "good amount" to be kept in cash. On reviewing the account statements entered as Exhibit E-3, she stated that the cash in the account "went south" as she described it.

¶ 46 LH testified that she had no recollection of receiving confirmation notices of the trades that had been made in their account and emphasized that they were not aware that the Respondent should have been seeking their authorization for each trade he was making in their account.

¶ 47 On cross-examination, LH was challenged regarding the reasons for wanting to keep substantial amounts of their investments in cash. She denied raising COVID as a concern when they first met with the Respondent in 2019 and stated that she and her husband discussed it as a possibility that could cause volatility in the markets when they were flying home from Florida in March. LH reiterated that they had told the Respondent when they first met with him in October of 2019 that they wanted to keep a substantial amount in cash.

¶ 48 LH confirmed her husband's testimony that the decision to move their accounts to Mr. Noel was made before they learned of the Respondent's discretionary trading and was made to consolidate their investments under one advisor.

Stacey Letourneau

¶ 49 Stacey Letourneau, a specialist with the Lawful Access Response Team at Rogers testified as to her position and responsibilities with the Rogers Lawful Access Response Team and the telephone records of LH and AH entered as Exhibit E-11 in this matter.

¶ 50 The Lawful Access Response Team is the point of access for law enforcement and government

agencies such as IIROC to retrieve subscriber information detailing telephone calls made or received from or to customer phone numbers.

¶ 51 Ms. Letourneau testified that the Rogers Lawful Access Response Team receives and processes hundreds of requests monthly from all across Canada for Call Detail Records similar to those produced in Exhibit E-11 by Rogers being the Call Detail Records for AH and LH's home telephone number and AH's cellular telephone number for October 1, 2019 to March 30, 2020 inclusive.

¶ 52 She explained that the retention periods for home and wireless records is normally 14 and 13 months respectively after which the call records are in most cases purged from Rogers records. While discussing how the Call Detail Record retention rates can differ, she confirmed that the Call Detail Records for AH and LH's home number as set out in Exhibit E-11 for AH's cell phone number were accurate and complete for the period of October 1, 2019 to March 30, 2020.

¶ 53 Ms. Letourneau confirmed that Exhibit E-11 details all of the calls coming into or being made from the AH and LH's home phone number and AH's cell phone and shows the date and time of each call, the calling number, the called numbers, whether the call was answered or sent to voicemail and the duration of the call in seconds. She stated that the Rogers Call Detail Record for AH's cell phone also shows any communication that was sent or received by text message.

¶ 54 Rogers was requested to provide Call Detail Records for calls made or received by AH and LH's home telephone number and AH's cell phone number, which numbers were confirmed at the hearing. The three telephone numbers used by the Respondent were provided to IIROC by the Respondent's previous counsel, as the transcript of the Respondent's interview with Mr. D'Astous entered as Exhibit E-8 discloses.

¶ 55 Ms. Letourneau testified as to the results disclosed in the Call Detail Records in Exhibit E-11.

¶ 56 Exhibit E-11, the Call Detail Records for AH and LH's home phone, disclosed no calls made or received to or from the three numbers associated with the Respondent and for AH's cell phone number there were four outgoing calls and one incoming call made with the numbers associated with the Respondent. The five calls that were made to or from AH's cell phone are summarized below and were taken from Exhibit E-11 and shown separately on Exhibit E-12 that was filed in this matter.

¶ 57 Ms. Letourneau testified that Exhibit E-11 confirms that no telephone calls were received or made by AH's cell phone after 5:15 am on February 26 up until March 1, 2020, and that no calls were made or received to either the home or cell phone of AH and LH during the period between January 14, 2020 and February 2, 2020.

¶ 58 On cross-examination, Ms. Letourneau confirmed that blocked calls that were completed would show up on the Call Details Record and that the Lawful Access Team produces hundreds of Call Detail records annually as were provided in this matter.

Nicolas D'Astous

¶ 59 Mr. D'Astous has been a Senior Investigator with IIROC since 2005. He holds a bachelor's degree in accounting and is a CPA. All of IIROC's Exhibits (E-1 through E-12) were entered through Mr. D'Astous, the admissibility of IIROC's Exhibits being consented to by the Respondent.

¶ 60 Mr. D'Astous testified as to the nature of the Exhibits and described what they disclosed and how he used them in his investigation of the allegations against the Respondent.

¶ 61 Mr. D'Astous reviewed Exhibit E-5 being emails dated June 19, 2020 and June 29, 2020 from the Respondent to Josh Gurza of CIBC, wherein the Respondent provided comments on the complaint.

¶ 62 In the June 19th email, the Respondent advised Mr. Gurza that on February 4th, 2020 "I called AH..." and went on to state later in the email under the heading "February 26th 2020", "I thought I called [A] as

promised...”.

¶ 63 Mr. D’Astous reviewed the June 29th email at Exhibit E-5, where the Respondent was asked by Mr. Gurza to comment on the February 26, 2020 trade recommendation. The Respondent replied that the “recommendation on the 26th was based on the issue date of February 19, 2020”, which Mr. D’Astous said he took as meaning that the recommendation was made on the phone or face to face with AH and/or LH.

¶ 64 Mr. D’Astous reviewed Exhibit E-6, which contained a letter from CIBC dated August 31, 2020, wherein CIBC advised the clients *inter alia*, that a review of the matter resulted “in an inconclusive determination” on whether AH and LH were contacted prior to the Respondent proceeding with the transactions.

¶ 65 Mr. D’Astous testified to and highlighted various questions and answers that the Respondent gave in his December 9, 2020 interview with Mr. D’Astous, the transcript of which is part of Exhibit E-8, that he felt were important to his investigation. These included:

- that the Respondent stated that he did not recommend any investments at the first two meetings with the clients but only gave them examples of what he would invest in in the future;
- that it was the Respondent’s practice before he buys an investment “to call the client or have a face to face meeting with the client”.

¶ 66 Mr. D’Astous also testified to the following additional information that the Respondent provided in his December 9, 2020 interview:

- That CIBC does not keep a record of phone calls;
- The Respondent used CIBC phones to call clients;
- The Respondent spoke with AH on February 26, 2020 and discussed all of the trades but couldn’t remember the time he spoke to him;
- The response in the email to Mr. Gurza where he stated “I thought I called [AH] as promised” was described by the Respondent as “poor wording”;
- That for each and every transaction made in the clients account he stated he made a phone call prior to the trade and they agreed to the trade;
- The Respondent took handwritten notes during calls and then put them into the Croesus system used by CIBC;
- The Croesus note dated February 28, 2020 was a mistake and it should have been February 26, 2020;
- He did not immediately put his handwritten notes into the Croesus system;
- The Respondent entered in Croesus the notes for December 11, 2019, February 4, 2020, February 26 and February 28, 2020 on May 14, 2020.

¶ 67 Mr. D’Astous also testified that near the end of the interview, the Respondent agreed that if IIROC obtained the client’s phone records, the CIBC phone numbers would show up as proof that the Respondent had called the clients on the dates in question in this matter.

¶ 68 On receipt of the Rogers Call Detail Records, Mr. D’Astous stated he searched and found no record that any calls were made by the Respondent to AH or LH between January 14, 2020 and February 26, 2020 contrary to the Respondent’s claim that he had discussed all of the trades in question with the client’s before they were made.

¶ 69 Mr. D’Astous testified that he created Exhibit E-12, which set out the five calls between the phone numbers in question by reviewing the results disclosed in Exhibit E-11.

¶ 70 Based on the evidence gathered in the interviews and from Rogers, Mr. D’Astous felt there was evidence of discretionary trading by the Respondent in January and February 2020 in the joint account of AH and LH.

The Respondent’s Evidence

Paul Maurice

¶ 71 The Respondent testified that he has been an investment advisor with CIBC Wood Gundy since 2005. Exhibits R-1 to R-6 were entered through the Respondent.

¶ 72 The Respondent’s evidence was that on the Saturday of the Thanksgiving weekend of 2019, he received a telephone call from a CIBC commercial lender referring AH and LH to him as potential clients.

¶ 73 Following the call, he immediately went and met with AH and LH at their house for approximately three to four hours, gathering information and discussing possible investments.

¶ 74 While at the client’s residence, he filled out a “Know Your Client” form identifying information about AH and LH including their investment knowledge.

¶ 75 He stated that he explained what a portfolio partner account was and that for “any trade, for any change in the portfolio I would give them a call with my recommendations, and they would acknowledge those recommendations or changes”.

¶ 76 The Respondent explained that he next met with the clients on October 15, 2019 at his office to sign the account opening documents that his assistant, Karen Hari, had prepared.

¶ 77 In describing his subsequent interactions with AH and LH, the Respondent referred to Exhibit R-1, the Croesus transaction report, listing all of the trades in AH and LH’s account. He went through each transaction stating that for every trade listed, 21 in total, he had spoken to the clients to get their approval to make the trades.

¶ 78 Regarding the October 25, 2019 transactions in the account, the Respondent testified that he called AH that day he was travelling to Wyoming, as he needed permission to make the trade shown on Exhibit R-1.

¶ 79 With respect to the other trades shown on Exhibit R-1 dated October 31, 2019, November 8, 2019 and December 11, 2019, the Respondent testified that he spoke with AH by phone on each of those dates and that he received permission to make the trades as set out therein. In support of his assertion that he spoke with AH on November 8, 2019, he referenced Exhibit R-2 being an email dated November 8, 2019 from Ms. Hari wherein Ms. Hari tells him that AH had called.

¶ 80 Regarding the December 5, 2019 meeting with the AH and LH, the Respondent testified that the meeting was set up by Ms. Hari, but disputed LH’s evidence and stated that they met at his office after lunch and not before as LH had testified. The Respondent stated that at the meeting, he went through the October 2019 account statement entered as Exhibit E-3 and explained it to them.

¶ 81 Regarding the trades that were made on February 4, 2020 shown on Exhibit R-1, the Respondent testified that he had called AH on his cell phone to discuss them as the markets had “pulled back”, and he stated that he provided details of the companies being purchased, being TD, BNS, Manulife, and North West Healthcare Properties.

¶ 82 The Respondent testified as to how he said the February 26, 2020 transactions came about.

¶ 83 As to when on February 26, 2020 he spoke to AH, the Respondent testified, “I reached out to the [H’s]. I called, I believe, the home line first and I called the cell phone of [AH] early that morning.”

¶ 84 He was asked if he recalled when he called AH early that morning and he stated, “I recall it was around seven am.”

¶ 85 As to why he thought it was seven am the Respondent testified, “I had a list of clients that I called for this new issue and they were the first client I reached out to.”

¶ 86 The Respondent went on to describe what happened stating, “I called Mr. [H] on his cell phone, it seemed to be a bad connection. I explained to him the markets had pulled back and I believed it was an opportunity to add on and buy Telus... He agreed to the purchase. We got cut off. I called him back again. I started repeating and he agreed to what he had heard the first call.”

¶ 87 The Respondent also explained his use of the wording “I thought I called” as he set out in his June 19th email to Mr. Gurza found at Exhibit E-5 and if he was sure that this call took place to which the Respondent answered he was “sure it did.”

¶ 88 Explaining why he wrote in the email “I thought I called [A] as promised and offered the following” he testified that “The use of the word might be poor, but I was actually shocked that someone had filed a complaint that I never reached out by phone. So maybe out of exasperation I wrote “I thought” but I did call [A] that morning.”

¶ 89 The Respondent went on to testify as to the conversations that he had with AH and the steps he took to effect the transfer of the investments to Mr. Noel after he became aware of the transfer request in March of 2020.

¶ 90 The Respondent also testified that he had a “hostile” relationship with Mr. Noel dating back to the mid or late nineties involving a church and while Mr. Noel was at CIBC, but did not elaborate in any detail.

¶ 91 The Respondent described his note taking process as “maybe messy” but stated he did “write notes for every call that involved a trade or a change in the account” and further entered them into the Croesus system “...that day or at a later point.” The Respondent testified that he did not falsify any notes.

¶ 92 On cross-examination, the Respondent restated that his note taking was messy and that he sometime shredded his handwritten notes once they were put into the Croesus system.

Karen Hari

¶ 93 Ms. Hari testified that she worked as an Administrative Assistant for Mr. Maurice and gave evidence as to her duties and how the Respondent interacted with new clients and the length of meetings he usually had with them.

¶ 94 Ms. Hari testified as to her involvement with AH and LH generally and stated that she had called them to set up the December 5, 2019 lunch.

¶ 95 Regarding the telephone call the Respondent said he had with AH on February 26, 2020, Ms. Hari testified she overheard him calling them and stated, “It was early in the morning because I was in quite early. It may have been around 8:00.”

The Applicable Rules

¶ 96 Rules 1300.4 and 1300.5 applicable to the allegations read as follows:

1300.4. A Registered Representative may not exercise discretionary authority over a customer account unless:

- (a) the Dealer Member has designated a Supervisor or Supervisors to be responsible for discretionary accounts;
- (b) the customer has given prior written authorization in compliance with Rule 1300.5;

- (c) a Supervisor designated under subsection (a) has approved the account as a discretionary account and recorded that approval;
- (d) the Registered Representative authorized to effect discretionary trades for the account has actively dealt in, advised on or performed analysis for a period of two years with respect to all types of products which are to be traded on a discretionary basis; and
- (e) the account is maintained at the Dealer Member of the Registered Representative.

1300.5. The prior written authorization provided for by clause (a) of Rule 1300.4 must:

- (a) define the extent of the discretionary authority which has been given to the Dealer Member;
- (b) except for a managed account have a term of no more than twelve months, unless the Dealer Member has satisfied the Corporation that a longer term is appropriate and the customer is aware of such longer term;
- (c) except for a managed account only be renewable in writing;
- (d) only be terminated by the customer by notice in writing, effective on receipt of the notice by the Dealer Member except with respect to transactions entered into prior to the receipt; and
- (e) only be terminated by the Dealer Member by notice in writing, effective not less than 30 days from the date of delivery to the customer.

¶ 97 Regarding contravention 2, Consolidated Rule 1400 reads as follows:

Standards of Conduct

1401. Introduction

Rule 1400 sets out the general standards of conduct that apply to Regulated Persons.

1402. Standards of conduct

- (1) A Regulated Person:
 - (i) in the transaction of business must observe high standards of ethics and conduct and must act openly and fairly and in accordance with just and equitable principles of trade, and
 - (ii) must not engage in any business conduct that is unbecoming or detrimental to the public interest.
- (2) Without limiting the generality of the foregoing, any business conduct that:
 - (i) is negligent,
 - (ii) fails to comply with a legal, regulatory, contractual or other obligation, including the rules, requirements, and policies of a Regulated Person,
 - (iii) displays an unreasonable departure from standards that are expected to be observed by a Regulated Person, or
 - (iv) is likely to diminish investor confidence in the integrity of securities, futures or derivatives markets,

may be conduct that contravenes one or more of the standards set forth in subsection 1402(1).

1403. Applicability

- (1) For purposes of IIROC requirements:
 - (i) Dealer Members are responsible for all acts and omissions of their employees,

partners, Directors and officers, and

- (ii) non-Dealer Member users and subscribers to a Marketplace for which IIROC is the regulation services provider are responsible for all acts and omissions of their employees, partners, directors, and officers.
- (2) In addition to complying with all IIROC requirements:
- (i) an Approved Person must avoid any act or omission that would cause their Dealer Member to violate any IIROC requirements, and
 - (ii) an employee, partner, director or officer of a non-Dealer Member user or subscriber of a Marketplace for which IIROC is the regulation services provider must avoid any act or omission that would cause the user or subscriber to violate any IIROC requirements.
- (3) For purposes of section 1402, the obligation of Regulated Persons that are non-Dealer Member users or subscribers of a Marketplace for which IIROC is the regulation services provider is limited to the obligation to transact business openly and fairly when trading on a Marketplace or otherwise dealing in securities that are eligible to be traded on a Marketplace.

¶ 98 The evidence of AH, LH and the Respondent while not complex was, on the key points in dispute, contradictory.

¶ 99 The Respondent denied that he had engaged in discretionary trading in the joint account and stated that he spoke with AH before making all of the nine trades in question. He denies that he made any misleading statements during the IIROC investigation. AH and LH testified that the Respondent did not speak to them before the trades in question were made in their account.

¶ 100 Accordingly, in considering the evidence before us, the Panel is required to assess the credibility of AH, LH, the Respondent. In our opinion, the credibility of Ms. Letourneau and Mr. D’Astous was not challenged in this matter. Ms. Hari’s evidence was not helpful to the Panel overall as she was an employee of the Respondent and offered little evidence of any value.

¶ 101 As stated above, this Panel’s task was to decide, on a balance of probabilities, on considering all of the evidence, whether or not the Respondent, in January and February 2020, engaged in discretionary trading in the joint account of AH and LH contrary to Rules 1300.4 and 1300.5. We were also required to determine whether the Respondent made misleading statements between May and December 2020 during the IIROC investigation, contrary to Consolidated Rule 1400.

Test for Credibility of a Witness

¶ 102 *Faryna v. Chorney*, 1951 CanLII 252 (BC CA), [1951] B.C.J. No.152 (BCCA) sets out the test for determining credibility (at paragraph 6):

[...] the test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of the witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and those shrewd persons adept in the half-lie and of long and successful experience in combining skillful exaggeration with partial expression of the truth.

¶ 103 The Court in *Re Northern Securities Inc., et al*, 2013 ONSEC 48 noted that in assessing the credibility of a witness’s evidence it was relevant to consider what the witness would hope to gain from the testimony and the outcome of the case, his appearance of sincerity and truthfulness, whether he was candid, frank and responsive to questions asked or evasive and hesitant, inconsistencies in his testimony, whether he had

previously given a statement that is inconsistent with his testimony at trial and whether his personal demeanour carried the conviction of truth.

¶ 104 In assessing the credibility of AH, LH and the Respondent's evidence we considered all of the factors set out in *Re Northern Securities Inc.*

Analysis of the Evidence

Count 1

¶ 105 The Respondent argued that there were a number of reasons that the evidence of the Respondent on the issues in dispute should be preferred over the testimony of AH and LH. He suggested that their age affected their memory on the issues in dispute and that the notes made by the Respondent supported his version of the events.

¶ 106 The Respondent also argued that AH and LH were motivated to complain suggesting they were in financial trouble as evidenced by a divorce their son was going through and the fact that AH requested \$50,000 back from the \$350,000 inheritance he was given to put into their farm. He also attempted to suggest that Dan Noel was behind their complaint to IIROC in this matter.

¶ 107 The Panel finds that the evidence before it does not support the Respondent's claim that AH and LH were in financial trouble; that Dan Noel was behind the complaint; nor that their memory on key details of the issues in dispute was faulty or questionable and should not be believed.

¶ 108 In the Panel's opinion, AH and LH had nothing to gain by complaining about the Respondent's conduct in this matter. They turned down an offer of compensation from CIBC set out in its August 31, 2020 letter to them entered as Exhibit E-6 in this matter.

¶ 109 We find that AH and LH were clear, cogent and convincing when they testified, readily admitting that they could not remember certain details on issues that the Panel notes were not germane to the allegations before us. They were honest and forthright when testifying and were adamant that the Respondent did not call them before making the nine trades in question in January and February 2020.

¶ 110 The Respondent claims that the handwritten and Croesus note detailing his calls with AH is determinative that he called AH before he made each of the trades. IIROC argues that the Croesus note prepared by the Respondent on May 14, 2020 is self-serving, and is not to be relied upon, as it contains much more detail than the handwritten notes and was written six months after some of the calls referred to were actually made.

¶ 111 The Respondent in his testimony stated that he called AH on his cell phone at 7 am on February 26, 2020. Ms. Hari testified that the Respondent made the call to AH around 8 am on February 26, 2020. The Croesus note at Exhibit E-9 prepared by the Respondent on May 14, 2020 states that a call took place with AH on February 26, 2020 but does not mention a time. The Respondent's handwritten note for the February 26, 2020 call with AH, which is included in Exhibit E-9, does not have the time on it that the call took place either.

¶ 112 Interestingly, in his interview with Mr. D'Astous on December 9, 2020, the Respondent could not tell Mr. D'Astous when he spoke with AH yet when he testified before us, he said it was at 7am. If the Respondent did speak with AH on February 26, 2020, it is probable in our opinion that his memory two years ago would be more accurate as to the time he spoke with AH.

¶ 113 Notwithstanding that the Croesus and handwritten notes state that a call was held with AH on February 26, 2020, we find that the evidence clearly establishes that the Respondent did not speak to AH on that date. Further, we find that on a balance of probabilities, the evidence does not support the Respondent's claim that he spoke with AH on the other dates in January and February 2020 when the remaining trades in question were made.

¶ 114 AH and LH both testified that AH lost his cell phone at approximately 6:30 am on February 26, 2020 as AH was exiting the vehicle dropping him off at the Halifax airport prior to leaving for Florida.

¶ 115 The evidence that AH lost the cell phone at approximately 6:30 am is clear and convincing in our opinion. That it was lost was not challenged by the Respondent. Further, the evidence of Ms. Letourneau and Mr. D'Astous who both testified regarding the contents of the Rogers Call Detail Records entered into evidence as Exhibit E-11 corroborates the testimony of AH that he did not speak to the Respondent on February 26, 2020.

¶ 116 Exhibit 11 shows that only five calls were made between the telephone numbers of AH and LH and the Respondent and that none of the five calls took place on the dates the nine trades were made, including February 26, 2020.

¶ 117 The Respondent's counsel suggested on cross-examination of Ms. Letourneau, and in his submissions, that the Rogers Call Detail Records entered as Exhibit E-11 can not be relied upon, yet he provided no evidence to support this assertion or to refute the accuracy of the Rogers Call Detail Records. Ms. Letourneau was clear that even blocked calls from another carrier would show up in Exhibit E-11 if they connected to a Rogers cell phone such as AH's. The Panel rejects the Respondent's argument on this point as being baseless and without merit.

¶ 118 The evidence before the Panel establishes, on a balance of probabilities, that the Respondent did not speak with AH on February 26, 2020. The Rogers Call Detail Records at Exhibit E-11 is clear, cogent and convincing and establishes, on a balance of probabilities, that no calls took place to AH's cell phone after 5:15 am on February 26, 2020. Accordingly, we find that the Respondent did not speak to AH at 7 am as he testified to or at 8 am as Ms. Hari testified.

¶ 119 On considering the testimony of the Respondent, when considered against all of the evidence before us, we do not find credible the Respondent's assertion that he spoke with AH before each of the nine trades in question. When taken together with the evidence from Ms. Letourneau explaining the Call Detail Records for the telephone numbers in question at Exhibit E-11 we consider his claim to have spoken with AH on February 26, 2020 to be untrue.

¶ 120 We find that the May 14, 2020 Croesus note as well as the Respondent's handwritten notes are not accurate and cannot be relied upon to support the Respondent's claims that he spoke with AH or LH before making each of the nine trades in question.

¶ 121 The Panel finds based on the clear, convincing, and cogent evidence before it, that on a balance of probabilities, the Respondent did engage in discretionary trading in the account of AH and LH with respect to the nine trades he made in their joint account between January 14 and February 26, 2020.

Count 2

¶ 122 Turning to the allegations contained in Count 2, based on the clear, cogent, and convincing evidence before the Panel we find that the Respondent did in fact make misrepresentations to IIROC staff during the course of its investigation.

¶ 123 The Respondent told IIROC staff during its investigation that he spoke with AH on his cell phone prior to each of the trades in question made between January 14, 2020 and February 26, 2020.

¶ 124 The evidence as set out above clearly establishes that the Respondent did not speak with AH on his cell phone on February 26, 2020, as he claimed in his December 9, 2020 interview with IIROC staff. The testimony of AH and LH established that AH had lost his phone at approximately 6:30 am on that day. The Rogers Call Detail Records at Exhibit E-11 also confirm that no calls were made between the Respondent and AH's cell phone or their home phone on any of the days the nine trades in question were made including February 26, 2020.

¶ 125 The Respondent also told IIROC staff during his December 9, 2020 interview with them that the Rogers phone records, when obtained, would confirm that he had spoken with AH on the dates that the trades in question were made. As stated above, the Rogers Call Detail Records at Exhibit E-11 disclose no calls between the Respondent and AH or LH in January or February 2020.

¶ 126 The Panel accordingly finds that the evidence establishes, on a balance of probabilities, that the Respondent made misrepresentations to IIROC staff during its investigation of this matter.

¶ 127 Consolidated Rule 1400 requires a Registered Representative such as the Respondent to observe high standards of conduct and not engage in any business conduct that is unbecoming or detrimental to the public interest.

¶ 128 The misrepresentations made by the Respondent to IIROC staff during its investigation between May and December 2020 in our opinion constitute a failure by the Respondent to observe high standards of ethics and conduct and constituted business conduct and practice which was both conduct unbecoming and detrimental to the public interest, all contrary to Consolidated Rule 1400. By making misrepresentations during the course of the IIROC investigation as we find the evidence has established, on a balance of probabilities, the Respondent breached Consolidated Rule 1400.

Conclusion

¶ 129 The Panel therefore concludes, based on the clear, convincing, and cogent evidence in this case, that:

- (i) Between January and February 2020, the Respondent, Paul Maurice, engaged in discretionary trading in the joint account of AH and LH, without this account having been approved and accepted as a discretionary account, contrary to Dealer Member Rules 1300.4 and 1300.5; and
- (ii) Between May and December 2020, the Respondent made misrepresentations to Enforcement Staff during the course of an investigation, contrary to Consolidated Rule 1400.

¶ 130 The Panel directs that IIROC schedule a penalty hearing in this matter.

Dated this 29 day of July 2022.

Edward W. Keyes

Ken Wheelans

Thomas Kostandoff

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