

Re Roland

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rules and the Dealer Members Rules

and

Lucie Roland

2024 CIRO 72

Hearing Panel
of the Canadian Investment Regulatory Organization
(Québec District)

Heard: August 16, 2024 (by videoconference)

Decision: October 8, 2024

Hearing Panel

Guy Lemoine, Retired Lawyer, Chair, François Demers and Danielle Le May

Appearances

Francis Larin, Enforcement Counsel

Lucie Roland, Respondent (present)

PENALTY DECISION

I. INTRODUCTION

¶ 1 In our decision on the merits rendered on June 11, 2024 we held that:

“... [b]etween September 23 and October 12, 2021, the Respondent engaged in conduct unbecoming when she facilitated unauthorized transfers of funds to third parties from the accounts of three clients, contrary to Investment Dealer and Partially Consolidated Rule 1400.”

¶ 2 Ms. Roland was advised of her right to be represented by counsel at the beginning of the penalty hearing on August 16, 2024. She said she wanted to go ahead with the hearing representing herself.

¶ 3 We now have to decide which penalties to impose on her.

II. SUBMISSIONS OF ENFORCEMENT COUNSEL

¶ 4 The Enforcement Counsel for the Canadian Investment Regulatory Organization (CIRO) filed an affidavit stating that some of the costs of investigation and prosecution for this matter amounted to \$94,268.79 (Exhibit P-4).

¶ 5 He also produced a copy of Rule 1400 (Exhibit P-6), taken from the Corporation’s Investment Dealer and Partially Consolidated Rules, which sets out the general standards of conduct that apply to Regulated Persons.

¶ 6 The Enforcement Counsel submitted to us Rule 8200 (Exhibit P-7) relating to enforcement procedures, taken from the Corporation’s Investment Dealer and Partially Consolidated Rules, article 8210 which sets out the penalties applicable to Regulated Persons other than Dealer Members. Article 8214 also states that a panel

may impose the payment of costs incurred in connection with the hearing and investigation.

¶ 7 Mr. Larin also produced the CIRO's Sanction Guidelines (Exhibit P-9), which
"promote consistency, fairness and transparency by providing a framework to guide the exercise of discretion in determining sanctions which meet the general sanctioning objectives." They "are intended to provide a summary of the principles and key factors upon which that discretion may be exercised consistently and fairly."

¶ 8 The Enforcement Counsel submitted fourteen precedents on sanctions (Exhibits P-10 to P-23).

¶ 9 The Enforcement Counsel suggested that we impose the following sanctions on the Respondent:

- a permanent bar to registration (or employment)
- a fine ranging from \$50,000 to \$100,000
- costs of \$20,000

III. SUBMISSIONS OF THE RESPONDENT

¶ 10 Ms. Roland was of the opinion that in the precedents provided by the Enforcement Counsel the hearing panels had proof beyond reasonable doubt that the respondents in those cases were guilty.

¶ 11 In her representations on penalties the Respondent raised a new argument with regard to the facts underlying our merits decision. She stated that the evidence about the phone calls that was submitted to us, and to which we referred in our merits decision, was incomplete and lacking. She alleged that no review had been done as to whether the phone calls intended for the representative she worked for had been forwarded to him. If they had, that could explain why some of the calls she said she received did not show up on the call logs submitted to us.

¶ 12 She stated that the precedents relied on by the Enforcement Counsel referred to cases that were more serious than the one before us.

¶ 13 She pointed out that the transfers of funds from clients to third parties had all been cancelled, so neither the clients nor NBF suffered any financial losses.

¶ 14 The Respondent recounted several damages she had suffered in this case, including the loss of her job at the brokerage firm as well as personal and financial hardships.

¶ 15 She pointed out that this case was written about in a major newspaper and cited in social media reports. Her new employer fired her after the news broke; she submitted a letter to that effect.

¶ 16 She said she had no intention of going back to work in the financial sector.

¶ 17 According to her, the only fault she committed was to take previous client letters and alter them so that money could be transferred to third parties.

¶ 18 She emphasized that she is now receiving employment insurance benefits and that the payments are low.

IV. ANALYSIS

A- Contravention

¶ 19 Rule 1400 (Exhibit P-6), taken from the Corporation's Investment Dealer and Partially Consolidated Rules, 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).

¶ 20 In our merits decision, this panel concluded that the Respondent had contravened those provisions.

B- Applicable sanctions

¶ 21 Rule 8200 (Exhibit P-7) on enforcement procedures, taken from the Corporation's Investment Dealer and Partially Consolidated Rules, includes the following provisions:

8210. Sanctions for Regulated Persons other than Dealer Members

(1) If after a hearing, a hearing panel finds that an Approved Person, a non-Dealer Member user or subscriber of a Marketplace for which the Corporation is the regulation services provider or an employee, partner, director or officer of such a user or subscriber has contravened Corporation requirements, securities laws, or other requirement relating to trading or advising in respect of securities, futures contracts, or derivatives, the hearing panel may impose on such person one or more of the following sanctions:

- (i) a reprimand,
- (ii) disgorgement of any amount obtained, including any loss avoided, directly or indirectly, as a result of the contravention,
- (iii) a fine not exceeding the greater of:
 - (a) \$5,000,000 for each contravention, and
 - (b) an amount equal to three times the profit made or loss avoided by the person, directly or indirectly, as a result of the contravention,
- (iv) suspension of the person's approval or any right or privilege associated with such approval, including access to a Marketplace, for any period of time and on any terms and conditions,
- (v) imposition of any terms or conditions on the person's continued approval or continued access to a Marketplace,
- (vi) prohibition of approval in any capacity, for any period of time, including access to a Marketplace,
- (vii) revocation of approval,
- (viii) a permanent bar to approval in any capacity or to access to a Marketplace,
- (ix) a permanent bar to employment in any capacity by a Regulated Person, and
- (x) any other sanction deemed to be appropriate under the circumstances.

...

8214. Costs

(1) After a hearing under Rule 8200, other than a hearing under section 8211, a hearing panel may order a person who is the subject of a sanction to pay any costs incurred by or on behalf of the Corporation in connection with the hearing and any investigation related to the hearing.

(2) Costs ordered under subsection 8214(1) may include:

- (i) costs for time spent by Corporation staff,
- (ii) fees paid by the Corporation for legal or accounting services or for services rendered by an expert witness,
- (iii) witness fees and expenses,
- (iv) costs of recording and transcribing evidence and preparation of transcripts, and
- (v) disbursements, including travel costs.

C- Sanction Guidelines

CIRO has drawn up Sanction Guidelines (Exhibit P-9). They “promote consistency, fairness and transparency by providing a framework to guide the exercise of discretion in determining sanctions which meet the general sanctioning objectives.” They “are intended to provide a summary of the principles and key factors upon which that discretion may be exercised consistently and fairly.”

¶ 22 The Guidelines set out certain principles for determining sanctions.

¶ 23 These are the ones most relevant to the matter before us:

Sanctions are preventative in nature and should protect the public, strengthen market integrity, and improve business standards.

The purpose of sanctions in a regulatory proceeding is to protect the public interest by deterring future conduct that may harm the capital markets. In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence) and to discourage others from engaging in similar misconduct (general deterrence).

When considering specific and general deterrence in the imposition of sanctions, consideration should be given to ensuring that the sanctions are proportionate, bearing in mind the extent and seriousness of the misconduct and the impact that the sanctions will have on the respondent. Consideration should be given to the size of the Dealer Member including the firm’s financial resources, nature of the firm’s business and the number of individuals associated with the firm. Similarly, with respect to an individual respondent, consideration may be given to a bona fide inability to pay when imposing a fine (see General Principle No. 5).

Deterrence can be achieved if a sanction strikes an appropriate balance by addressing a Regulated Person’s specific misconduct but is also in line with industry expectations. Any sanction should be similar to sanctions imposed on respondents for similar contraventions in similar circumstances. The sanction should be reduced or increased depending on the relevant mitigating and aggravating factors.

... Without effective deterrence, inappropriate conduct may continue and public confidence in the securities industry and the fairness of the capital markets may be seriously damaged. An appropriate sanction should achieve both specific and general deterrence and thereby strengthen market integrity and improve overall business standards and practices in the securities industry.

¶ 24 The principles also state that hearing panels may consider the respondent’s ability to pay when imposing monetary sanctions or costs.

Inability to pay is a relevant consideration in determining the appropriate financial sanctions to be imposed on a respondent. It should not be considered a predominant or determining factor, but it may be relevant depending on the circumstances and nature of the misconduct, and consideration of other applicable factors such as general and specific deterrence and the need to ensure public confidence in the disciplinary process.

The burden is on the respondent to raise the issue and provide evidence of financial hardship.

Evidence of inability to pay could result in the reduction or waiver of a fine, and/or in the imposition of an installment payment plan.

In cases in which a hearing panel reduces or waives a fine based on a bona fide inability to pay, the written decision should indicate the basis for doing this.

¶ 25 The Guidelines provide a non-exhaustive list of different key factors in determining sanctions. The ones most relevant to the case before us are:

1. *The scope of the misconduct, including the number, size, and character of the transactions at issue.*
2. *Whether the respondent engaged in numerous acts and/or a pattern of misconduct.*
3. *Whether the misconduct occurred over an extended period of time.*
4. *Whether the respondent's misconduct was intentional, willfully blind, or reckless.*
5. *Extent of harm to clients or other market participants.*
6. *Extent of harm to market integrity or the reputation of the marketplace.*
7. *Whether any affected client was vulnerable.*
8. *The respondent's prior disciplinary history (see Principle No. 3).*
9. *The amounts the respondent obtained or attempted to obtain, or the loss the respondent avoided or attempted to avoid, as a result of the improper activity (see Principle No. 2).*
10. *In the case of individuals, whether the respondent accepted responsibility for and acknowledged the misconduct to their employer or the regulator prior to detection and intervention by the Dealer Member or regulator.*
11. ...
12. *Whether an individual respondent was subject to internal discipline by the Dealer Member, discipline by another regulator, or criminal penalties for the same misconduct.*
13. *Whether the respondent voluntarily employed subsequent corrective measures to revise general and/or specific procedures to avoid recurrence of misconduct.*
14. ...
15. ...
16. *Whether the respondent attempted to delay CISO's investigation, conceal information or their conduct from CISO, or provided inaccurate or misleading information or testimony to CISO.*
17. *Whether the respondent demonstrated reasonable reliance on competent supervisory, legal, or other professional advice.*
18. *Whether the respondent received prior warnings or specific direction and training that should have alerted them that the conduct was improper, or contravened the Dealer Member's policies or procedures, or contravened CISO rules or securities legislation.*
19. *Whether the respondent attempted to conceal their misconduct or to lull into inactivity, mislead, deceive, or intimidate a client, regulatory authority or, in the case of an individual respondent, the Dealer Member with which they are/were associated.*
20. *Whether the respondent failed to heed regulatory guidance, or the Dealer Member's policies and procedures, with respect to the misconduct at issue.*

¶ 26 The Sanction Guidelines deal with the nature of some sanctions under the heading "Additional Considerations". We took the ones listed below into account during the course of our analysis:

Fines and disgorgements

...

The amount of the fine should be commensurate with the seriousness of the misconduct.

A fine should not be viewed as a "licensing fee" or "cost of doing business".

...

Permanent bars

Hearing panels may terminate or permanently bar a respondent from the securities industry. A permanent bar should be considered where, among other things:

- the contraventions involve significant harm to the investing public, the integrity of the market or the securities industry;*
- the misconduct had an element of criminal or quasi-criminal activity; or*
- there is reason to believe that the respondent cannot be trusted to act in an honest and fair manner in their dealings with the public, their clients, and the securities industry as a whole. ...*

A fine and disgorgement should be considered even where a permanent bar is imposed in cases involving significant harm to investors or to the integrity of the securities industry as a whole.

D- Special considerations

¶ 27 The Sanction Guidelines set out the principles and key elements upon which discretion may be exercised consistently and fairly. From among the principles listed, and based on the specific facts of the case before us, we have relied on the considerations listed below.

¶ 28 Within a few days – from September 23 to October 12, 2021 – the Respondent made three unauthorized funds transfers from three clients’ accounts for the benefit of third parties. Those transfers amounted to \$22,000, \$20,850 and \$18,400 respectively. They were all based on accepted instructions from people who were not authorized to conduct transactions in those clients’ accounts. She fabricated and used false documents in order to carry them out.

¶ 29 Some aspects of the Respondent’s conduct were deliberate, such as the fabrication and use of a false document, namely an authorization letter requesting the transfer of \$22,000 from one client’s account into the bank account of a third party. As related in Paragraph 12 of the decision in *Re Stoneburg*, 2010 IIROC 56 (Exhibit P-18):

“The question of forgery was dealt with in the decision of Lamontaigne (Re), [2009] IIROC No. 6, Alberta District Council Panel decision dated January 27, 2009. The hearing panel distinguished between serious versus less egregious instances of forgery in these words:

Forgery is always a serious regulatory matter because it shows that the Respondent lacks the honesty required of a professional in the securities industry. The trust and confidence between the registrant and the client is very often destroyed by the deceptive conduct on the part of the registrant. Forgery harms the Member firm as well. As a result, forgery often attracts severe sanctions. While there is no such thing as a ‘minor case’ of forgery, hearing panels may distinguish between more and less egregious examples of forgery.”

¶ 30 Other aspects of her conduct reveal at very least recklessness or wilful blindness in relation to the identity of the people who requested transfers in favour of third parties. In two of the cases the email addresses of the people asking for transfers did not match the clients’ addresses, and in the third case the client had no email address and no email address was listed for her in the NBF records. The first two transfers of funds from unrelated clients were sent to the same person within five days of each other, but that did not give the Respondent cause for concern. It took three attempts in favour of three different people to make the third transfer from one client to a third party’s account.

¶ 31 The Respondent had an obligation to take reasonable steps to properly check the identity of the people who were requesting withdrawals from client funds in favour of third parties. The facts in this case should have led her to re-examine the transactions. Even though many aspects of those transfer requests were strange and suspect, she failed to check their sources properly, relying solely on the phone numbers displayed on the phone. In the circumstances, those requests would have demanded that a registrant make more widespread checks as to both the source of the phone calls and the existence and authenticity of the email addresses they were using before withdrawing large amounts out of her client’s accounts in favour of third parties. And yet the

Respondent showed no curiosity and remained indifferent.

¶ 32 There is every indication that, if the Respondent did not know she was dealing with fraudulent requests, she was reckless or refused to do further checks because she did not want to find out the truth. She preferred to remain willfully ignorant by deliberately failing to inquire when she had good reason to do so. As cited in Paragraph 14 of the decision in *Re Trenholm*, 2009 IIROC 52 (Exhibit P-22):

Our decision found that Trenholm “either tacitly participated in a questionable activity in the related accounts or he was totally oblivious to questionable activity ...The Supreme Court of Canada has defined wilful blindness as follows:

*“Wilful blindness is distinct from recklessness because, while recklessness involves knowledge of a danger or a risk and persistence in a course of conduct which creates a risk that the prohibited result will occur, wilful blindness arises where a person who has become aware of the need for some inquiry declines to make the inquiry because he does not wish to know the truth. He would prefer to remain ignorant. The culpability in recklessness is justified by consciousness of the risks and by proceeding in the face of it, while in wilful blindness it is justified by the accused fault in deliberately failing to inquire when he knows there is reason for inquiry.” *Sansregret v. The Queen* [1985] 1SCR 570 at par. 22*

¶ 33 The Respondent contended, however, that her conduct was appropriate in the circumstances. Her statement to the effect that she did not do anything really reprehensible raised great apprehension among the hearing panel. Her inability to acknowledge the impropriety of her conduct, even after the hearing of her case, raises a serious doubt as to her future conduct in similar situations. The panel can only conclude that the Respondent is either unaware of her professional obligations or is deliberately flouting them.

¶ 34 As stated in Paragraph 54 of the decision in *Re Suppal*, 2014 IIROC 45 (Exhibit P-11):

The Panel found the Respondent's conduct to be egregious and found the Respondent's attempts to justify his conduct at the initial hearing and at the Penalty Hearing to be incredulous. His lack of insight into the impropriety of his conduct or the significance of its potential impact on the Trust and its beneficiaries and on the integrity of the securities industry as a whole is most disturbing. His refusal to accept responsibility and his persistent denial that he did anything wrong is of grave concern to the Panel and constitutes a significant aggravating factor.

¶ 35 This panel has reasons to believe that the Respondent cannot be trusted to act with discipline and professionalism toward her clients and the securities industry.

¶ 36 The panel also considered the following facts when deciding which sanctions to impose.

¶ 37 Even though the clients who were victims of transfers they had not requested suffered total financial losses of \$61,250, it fortunately became possible to cancel those transfers later on and, despite the serious risks, there was no financial loss for the clients. Nevertheless, the Respondent's conduct affects investors' confidence in registrants.

¶ 38 The Respondent has no prior record.

¶ 39 There is nothing to indicate that the Respondent received or was supposed to receive any financial benefit in relation to the transactions.

¶ 40 She became bankrupt a few days before the facts related herein.

¶ 41 She lost her job at NBF.

¶ 42 She found a new job in another industry but was fired after a newspaper article on this case appeared. The panel noted, however, that the new employer said she was fired because she failed to disclose relevant information about her employment history that could have affected her duties at the new job. The employer said that such failure to disclose amounted to a serious breach of trust of the company.

¶ 43 We also considered the fact that the Respondent, although registered with CIRO as a representative, was not acting directly in that capacity; she was acting as a senior assistant for another representative.

¶ 44 Sanctions are preventative in nature and should protect the public, strengthen market integrity, and improve business standards. In order to achieve this, “sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence) and to discourage others from engaging in similar misconduct (general deterrence).” “Any sanction should be similar to sanctions imposed on respondents for similar contraventions in similar circumstances.”

¶ 45 We have carefully reviewed each of the fourteen precedents submitted to us. Each case is unique and turns on its own set of circumstances. Some of those cases were settled, others were not. Some of the cases were based on more serious facts than the one before us. However, taken as a whole, those precedents enlighten us as to the principles we need to follow in our analysis and determination of the range of applicable sanctions in this matter.

Fine and Costs

¶ 46 We conclude that a fine must be imposed in light of the facts of this case, the applicable principles and the precedents submitted. We further conclude that the Respondent must reimburse part of the investigation costs, which amount to a total of \$94,268.79.

¶ 47 The fine must take into account the risk of loss to which she exposed her clients and her firm. The total transfers amounted to \$61,250 which was therefore the amount at stake. Nevertheless, we took into account first, that nothing pointed to her receiving any advantage, and second, that the clients did not actually suffer any financial loss.

¶ 48 Although the facts in *Suppal, supra*, were very different from those in the matter before us, we followed the approach of the panel in that case by considering the following in deciding the amount of the fine and the portion of the costs to be reimbursed:

- the Respondent’s financial situation
- her bankruptcy
- the fact that she lost her job at NBF
- the fact that she lost her subsequent job
- the fact that she is drawing employment insurance benefits at this time
- her current limited ability to pay

¶ 49 We also considered that, in the circumstances, it would be appropriate to divide the payment of these amounts into a set of monthly payments over an extended period of time in order to relieve her immediate financial burden.

¶ 50 Those adjustments are aimed at keeping the sanctions deterrent while at the same time taking the Respondent’s personal circumstances into account.

Permanent bar

¶ 51 We studied every one of the precedents submitted to us. In nine of them the panels imposed revocations or permanent bars.

¶ 52 As the panel pointed out in Paragraph 36 of its decision in *Re Rutledge*, 2022 IIROC 36:

Misappropriation of client funds is among the most serious misconduct a registrant can engage in. It goes to the very heart of the trust clients put in registrants and their firms. As such, it clearly harms the integrity and reputation of the capital markets. The Panel agrees with the sentiment expressed in Re McCarthy, above, at para 1:

In an industry that has trust as its most fundamental principle, theft is a repudiation of the most basic industry value.

¶ 53 The panel went on to state in Paragraph 43:

The facts relating to the misappropriation underscore that Mr. Rutledge cannot be trusted to participate in the industry in the future. The Panel has already concluded that Mr. Rutledge should be permanently barred from participation in regulated activities because of his failure to cooperate with the investigation.

Were that not the case, it would impose a permanent bar as a result of the misappropriation allegations alone.

¶ 54 The Respondent's conduct was misleading, reckless or negligent, repeated and deliberate. She betrayed the trust that her clients, her employer and the securities industry placed in her. We conclude that a permanent bar is warranted and in no way unreasonable, given the seriousness of the misconduct in the three cases before us.

¶ 55 The panel concludes that it must impose the sanctions set out below on the Respondent in order to reflect the seriousness of the offences while remaining consistent with the CIRO's precedents.

V. DECISION ON PENALTY

¶ 56 For the reasons set out above, the panel imposes the following sanctions on Ms. Roland:

- revocation of her registration and a permanent bar to any future registration with the Canadian Investment Regulatory Organization
- a total fine of \$10,000, payable in ten equal monthly installments of \$1,000, starting on November 1, 2024
- costs in the amount of \$10,000, representing a portion of the Corporation's investigation costs, payable in ten equal monthly installments of \$1,000, starting on September 1, 2025

DATED at Montreal, Quebec this October 8, 2024.

"Guy Lemoine"

Guy Lemoine, Chair

"François Demers"

François Demers

"Danielle Le May"

Danielle Le May

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