

Re Brunet

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization of
Canada (IIROC)**

and

The By-Laws of the Investment Dealers Association of Canada

and

Guy Brunet

2013 IIROC 34

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

Hearing held on May 14, 2013
Decision rendered on June 7, 2013

Hearing Panel

Me Claire Richer, Chair; Mr. Denis Marc Gagnon and Mr. Yves Julien

Appearances

Me Martin Hovington, Counsel for IIROC, Yanick Béland and Nicolas d'Astous, Investigators
Mr. Guy Brunet, Respondent, and his Legal Counsel Me Bernard Amyot

DECISION APPROVING A SETTLEMENT AGREEMENT

¶ 1 A hearing was held on May 14, 2013 before the Hearing Panel, pursuant to IIROC Rules, to consider and, if deemed appropriate, accept a settlement agreement entered into in April 2013 between Staff of IIROC and the Respondent (the Agreement) relative to the latter's conduct as Manager of the Montréal branch of Canaccord Capital Inc. (Canaccord). The Settlement Agreement is appended hereto and is deemed to be an integral part hereof.

¶ 2 The Respondent admitted that, between 2004 and 2009, he did not use due diligence and failed to fulfill his supervision duties adequately relative to trades effected by two Canaccord representatives in the accounts of their respective clients, contrary to IIROC's Dealer Member Rules. In fact, the representatives were each the object of disciplinary sanctions pursuant to settlement agreements that were accepted by decision of a hearing panel.

¶ 3 In summary, in 2003, the Respondent had delegated his supervisory responsibilities to a credit and compliance officer within his firm, which he was permitted to do, but failed to ensure that the tasks thus delegated were performed adequately.

¶ 4 Particularly noteworthy, this officer had little or no experience in compliance since, prior to his hiring in

2002, he mainly looked after credit matters.

¶ 5 The Hearing Panel heard the representations made by Counsel for IIROC, which included an analysis of the case law, as well as the representations by Counsel for the Respondent.

¶ 6 After deliberation, the Hearing Panel informed the parties that it was accepting the Agreement forthwith, that it would become binding that very day, and that the reasons for its acceptance would follow later.

¶ 7 As will be recalled, the penalties imposed on the Respondent by virtue of the Settlement Agreement are as follows:

- a) an aggregate fine in the amount of \$40,000;
- b) a three(3)-year temporary prohibition from approval as a supervisor of Approved Persons; and
- c) the obligation to successfully complete the Branch Managers Course before applying for reapproval as a supervisor of Approved Persons.

The Respondent agreed to pay IIROC costs to a maximum of \$5,000.

¶ 8 While the Respondent did not participate directly in the misconduct of the two disciplined representatives, conduct that was not supervised adequately by the officer to whom such supervision had been delegated, the Hearing Panel can but note the laxness and the serious lack of follow-up by the Respondent in the discharge of his obligations as branch manager. The Hearing Panel finds Respondent's behaviour all the more difficult to understand given that the latter retained full responsibility for any acts performed by the representatives, the delegation of his duty to provide supervision notwithstanding.

¶ 9 IIROC Rule 2500 – Minimum Standards for Retail Customer Account Supervision – is clear:

“D. Delegation

1. Supervisors may delegate tasks but not responsibility.

...

3. The Supervisor delegating the task must ensure that these tasks are being performed adequately and that exceptions are brought to his or her attention. ...”

¶ 10 Yet, as paragraph 29 of the Settlement Agreement mentions: “In actual fact, from the very first delegation of tasks in October 2003, Respondent left it up to C and to the Vice-President Compliance to perform the bulk of the supervision activities...”

¶ 11 The Hearing Panel wishes to underline the comments of the hearing panel in *Re Mills*, regarding the role of a branch manager (comments that were also reiterated in *Re MacDonald* [2012] IIROC 68, one of the decisions submitted to us by Counsel for IIROC in its book of authorities):

“Branch managers have an important role under the self-regulatory system in our securities markets. The obligations requiring supervision of retail client accounts are intended to ensure appropriate handling of client accounts for the benefit of both the client and the firm.

.... A branch manager should be alert to facts that, even with honest and trustworthy registered representatives, may indicate a need for further investigation. It is sometimes necessary that a manager go beyond discussions ...”

¶ 12 Finally, the Hearing Panel notes the long period of inadequate supervision of the two representatives.

¶ 13 The Hearing Panel furthermore takes note that the Respondent had no prior disciplinary history and that he cooperated with IIROC and admitted his guilt at the first opportunity.

¶ 14 The Hearing Panel is of the opinion that the penalties assessed by the Settlement Agreement reflect the seriousness of the Respondent's misconduct and are therefore within the bounds of the acceptable, based on IIROC's Disciplinary Sanction Guidelines and the past decisions that were examined by Counsel for IIROC at

the Hearing.

¶ 15 The Hearing Panel hopes that these penalties will also have a general deterrent effect.

¶ 16 For these reasons, the Hearing Panel accepted the Settlement Agreement, with effect on May 14, 2013.

Signed this June 7, 2013.

Claire Richer, Chair

Yves Julien, Panel Member

Denis Marc Gagnon, Panel Member

SETTLEMENT AGREEMENT

I. BACKGROUND

1. Enforcement Staff of the Investment Industry Regulatory Organization of Canada (Staff) and Guy Brunet (the Respondent) consent and agree to the settlement of these matters by way of this settlement agreement (Settlement Agreement);
2. The Enforcement Department of the Investment Industry Regulatory Organization of Canada (IIROC) has conducted an investigation (the Investigation) into the conduct of the Respondent.
3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada (IDA) and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between the IDA and IIROC, which came into force June 1, 2008, the IDA has retained IIROC to provide the necessary services for the IDA to carry out its regulatory functions;
4. The Respondent consents and agrees to be subject to IIROC's jurisdiction;
5. The Investigation disclosed matters for which the Respondent may be disciplined by a Hearing Panel appointed pursuant to Part C of Schedule C.1 to Transition Rule No. 1 of IIROC (the Hearing Panel).

II. JOINT SETTLEMENT RECOMMENDATION

6. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement;
7. The Respondent admits to the following contravention of the IIROC Rules and Guidelines:
 - a) Between 2004 and 2009, the Respondent, while a branch manager at Canaccord Capital Corporation, did not use due diligence and failed to fulfill his supervision duties adequately relative to the trades effected by representatives A and B, contrary to Dealer Member Rule 2500 [IDA Policy 2 prior to June 1, 2008], to Dealer Member Rule 1300.2 [IDA Rule 1300.2 prior to June 1, 2008] and to Dealer Member Rule 29.1 [IDA By-law 29.1 prior to June 1, 2008].
8. Staff and the Respondent have accepted the following terms of settlement:
 - a) a \$40,000 fine;
 - b) a three(3)-year temporary prohibition from approval as a supervisor of approved persons;
 - c) the obligation to successfully complete the Branch Managers Course before applying for reapproval as a supervisor of Approved Persons.
9. The Respondent agrees to pay IIROC costs in the amount of \$5,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

10. Staff and the Respondent agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

(ii) Factual Background

SUMMARY

11. It is alleged that the Respondent failed to discharge his supervisory responsibilities adequately with respect to trades effected by representatives A and B, which representatives have been the subject of disciplinary sanctions;
12. The Respondent, while acting as a branch manager, delegated his supervision duties but failed to ensure that the delegated tasks were adequately performed by the persons to whom the tasks were delegated in respect of representatives A and B relative to three of their clients;
13. Consequently, the Respondent is alleged to have failed to properly fulfill his supervisory responsibility in regard to these two representatives;

THE RESPONDENT

14. From June 28, 2002 to March 3, 2010, the Respondent was manager of the Montréal branch of Canaccord Capital Corporation (Canaccord), located at 1010 Sherbrooke St. W., Suite 1100, in Montréal, Québec, and was therefore responsible, notably, for supervising the activities of representatives A and B;
15. Since March 3, 2010, Respondent is no longer employed with Canaccord and is no longer a registrant of IIROC in any capacity.

THE FACTS

16. The Respondent, in his capacity of branch manager, was responsible for ensuring compliance with IIROC Rules, and for the supervision of the activities of the representatives with unrestricted practice in respect of the retail client accounts at the Montréal branch;
17. As supervisor, the Respondent was responsible for ensuring that the handling of client business is within the bounds of ethical conduct, consistent with just and equitable principles of trade and not detrimental to the interests of the securities industry;
18. Moreover, according to his job description at Canaccord, the Respondent notably had the following responsibilities:
“Compliance: Adhere to corporate and regulatory compliance requirements necessary to meet standards, safeguard assets of shareholders, monitor and control branch performance and take responsibility for the quality of business within the branch, keep up to date with industry trends and developments;”
19. In October 2003, the Respondent delegated the entirety of his supervision tasks pursuant to the terms of several documents entitled "DELEGATION OF SUPERVISORY ROLE";
20. The majority of the Respondent's supervisory responsibilities were delegated to C, a credit and compliance officer at Canaccord, pursuant to a series of three (3) delegations, namely in October 2003, April 2006 and January 2009. Another part of his responsibilities was delegated to a succession of vice-presidents Compliance at Canaccord;
21. C had little or no experience in compliance when he was hired by Canaccord in 2002, since in his previous job, at Groupe Option Retraite, he looked after credit matters mainly;
22. C was a credit and compliance officer at Canaccord from June 2002 to March 2010. In this capacity, he supervised the activities of over fifty (50) representatives on a daily basis and carried out the bulk of the compliance supervision tasks at Canaccord's Montréal branch;

23. The delegation of the Respondent's tasks to C, in October 2003, was worded as follows:

“By these presents, the undersigned hereby delegates to (C), credit and compliance officer, the supervisory role for all client accounts in Quebec. Not to limit the generality of what precedes, the following duties will include:

- *Review of all new account application forms and documentation prior to the assignment of an account number,*
- *Morning review of all RR commission reports for previous day's trading,*
- *Review credit extensions, prepayment requisitions, trade cancellations and account switches,*
- *Review client monthly statements where the RR's commission is in excess of \$1,500.00,*
- *Review credit extensions,*
- *Review trading activity for RR's,*
- *Review trading activity to NAAF for client to determine suitability,*
- *Monthly supervision and reporting of newly licensed staff,*

The present mandate shall not be exclusive and may be terminated at any time by the undersigned, by written notice. It is expressly understood that the delegation herein of supervisory duties for client accounts and activity does not in any way limit the ultimate responsibility for such duties which resides with the Branch Manager according to industry rules and regulations.

(S) Guy Brunet

Senior Vice President Retail Sales and Director”

24. The Respondent signed two (2) new task delegations in favour of C over the years, namely in April 2006 and in January 2009;
25. The April 2006 task delegation was to the same effect as the previous delegation, whereas the January 2009 task delegation no longer mentioned the monthly supervision aspects;
26. However, despite these task delegations, the Respondent retained responsibility for the proper execution of the supervision tasks thus delegated;
27. Plus, he was responsible for ensuring that the person to whom he delegated his supervision tasks, in this instance C, performed these tasks appropriately;
28. The Respondent therefore had to ensure that C had the necessary training to perform his tasks, that he was familiar with IIROC's rules, that he was capable of recognizing red flags in regard to the representatives' activities, that he could read and understand the relevant reports or, as applicable, identify what tools were missing for him to adequately perform his supervision tasks;
29. In actual fact, from the very first delegation of tasks in October 2003, Respondent left it up to C and to the Vice-President Compliance to perform the bulk of the supervision activities, although the Respondent retained responsibility;
30. In this respect, Respondent admitted during IIROC's investigation that aside from the daily commissions reports, he did not know what other reports C consulted in his compliance supervision work;
31. Respondent admitted that he did not look at the physical supervision reports to verify whether the record-keeping of representatives A and B was adequate;
32. Respondent admitted that he never checked whether C had enough time to perform the compliance supervision tasks in addition to the other tasks that had been assigned to him;

THE CASE OF REPRESENTATIVE A

33. Representative A worked at Canaccord's Montréal branch at the material time, and notably had D as a client;
34. Between July 2003 and September 2006, client D's accounts showed a number of transactions that should have raised questions as to the nature and suitability of the trades;
35. Notably, there were several periods where over twenty (20) transactions a month were executed, which was inconsistent with client D's profile;
36. Moreover, Canaccord's Policies and Procedures Manual stated that twenty (20) transactions in one month in the account of one client was a sign of excessive trading by a representative;
37. Yet neither the Respondent, nor C intervened in any way with representative A concerning the account of client D, despite the existence of red flags;
38. In fact, representative A was the subject of disciplinary sanctions following a hearing panel's decision to accept a settlement agreement;
39. As part of that settlement agreement, A pleaded guilty to the following infractions relative to trades in the account of his client D:

“Contravention 1:

From January to September 2006 inclusive, the Respondent engaged in unauthorized discretionary trading in the accounts of a client, although such accounts had not been approved as discretionary accounts by the firm, contrary to IDA Regulation 1300.4 and 1300.5;

Contravention 2:

From July 2, 2003, to September 15, 2006 inclusively, the Respondent engaged in excessive trading for the purpose of generating commissions and without regard to the client's investment objective, contrary to IDA Regulations 1300.1 (b) and (c) (which later came IDA Regulations 1300.1 (o) and 1300.1 (p) in 2004-2006);”

THE CASE OF REPRESENTATIVE B

40. Representative B also worked at Canaccord's Montréal branch;
41. between August 2004 and June 2009, the joint account of two (2) clients of B showed several transactions that ought to have raised questions, notably as regards their abnormally high number;
42. Only once was representative B cautioned regarding the trades appearing in this joint account, despite the existence of several red flags;
43. Even so, this intervention by C was not adequately followed up;
44. As with representative A, representative B was the subject of disciplinary sanctions pursuant to a decision to accept a settlement agreement in which he pleaded guilty to the following infractions relative to the trading in the account of two (2) of his clients:

“a) From August 2004 to June 2009 inclusive, the Respondent effected discretionary transactions in the joint accounts of two clients, without either of those accounts having been previously authorized by the firm as discretionary accounts, contrary to IDA Regulation 1300.4 and 1300.5;

b) From 2005 to 2008 inclusive, the Respondent engaged in unsuitable and improper sales practices by excessively trading in the joint accounts of both clients without proper consideration of the clients best interest, contrary to IDA By-law 29.1(ii);”

INADEQUATE SUPERVISION OF REPRESENTATIVES A AND B

45. Due diligence and adequate supervision by the Respondent, as related above, could possibly have detected in a timely fashion the actions of the disciplined representatives, A and B;
46. Given the Respondent's supervision role and the resulting responsibility, the latter is liable for the failure to supervise that occurred in the cases of representatives A and B;
47. Therefore, Respondent failed to fulfill his supervisory responsibility and to ensure that the delegated tasks were adequately performed in respect of representatives A and B;
48. Respondent was consequently unable to observe C's deficiencies with regard to his tasks in connection with the supervision of representatives A and B;

IV. TERMS OF SETTLEMENT

49. This settlement is agreed to in accordance with Dealer Member Rule 20.35 to 20.40 inclusive, and Rule 15 of the Dealer Member Rules of Practice and Procedure.
50. The Settlement Agreement is subject to acceptance by the Hearing Panel;
51. The Settlement Agreement shall become effective and binding upon the Respondent and Staff from the date of its acceptance by the Hearing Panel;
52. The Settlement Agreement will be presented to the Hearing Panel at a hearing ("the Settlement Hearing") for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.
53. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his right, under IIROC rules and any applicable legislation, to a disciplinary hearing, review or appeal.
54. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
55. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel;
56. Staff and the Respondent agree that, if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.
57. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately on the effective date of the Settlement Agreement.
58. Unless otherwise stated, suspensions, prohibitions, expulsions, restrictions and other conditions or terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent, at _____, Québec, this _____, 2013.

« WITNESS »

WITNESS:

(please print)

« **GUY BRUNET** »

GUY BRUNET

RESPONDENT

AGREED TO by Staff, at Montréal, Québec, this April 23, 2013.

« WITNESS »

WITNESS:

(please print)

« **MARTIN HOVINGTON** »

MARTIN HOVINGTON

ENFORCEMENT COUNSEL

FOR STAFF OF IIROC