

Re Turenne

IN THE MATTER OF:

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

and

Jacques Turenne

2013 IIROC 43

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

Hearing held in Montréal on July 16, 2013

Decision rendered on July 25, 2013

Hearing Panel

Me Michèle Rivet, Chair; John Ballard and Lise Casgrain

Appearances

Me Myriam Giroux-Del Zotto, Enforcement Counsel

Me Julien Massicotte-Dolbec, Counsel for Respondent.

DECISION ON SETTLEMENT AGREEMENT

¶ 1 This decision concerns a Settlement Agreement signed by the Respondent on June 21, 2013 and accepted by IIROC Enforcement Staff on June 25, 2013 and submitted pursuant to Rule 14 and Rule 15 of the Rules of Practice and Procedure;

¶ 2 The Settlement Agreement is appended hereto in its original to form part of this decision as though herein cited at length;

¶ 3 The complaint brought against Mr. Turenne reads as follows:

“On or about March 19, 2012, Respondent engaged in a personal financial dealing with a client, by borrowing money from her, without the knowledge and consent of the IIROC Dealer Member with whom he was employed, contrary to IIROC Dealer Member Rule 29.1.”;

¶ 4 The settlement agreed to by the parties includes the following penalty:

- a. A fine of \$10,000;
- b. Suspension of approval for one month;
- c. Pass the exam based on the Conduct and Practices Handbook Course within six months of applying for reapproval;
- d. Strict supervision for 12 months with mandatory submission of a monthly report to the IIROC

Registration Department;

- ¶ 5 Moreover, the Respondent agrees to pay costs to IIROC in the amount of \$1,000;
- ¶ 6 Starting from the end, around April 26, 1994, Respondent was approved as a financial planner with Services financiers T.P.R. inc. On or around March 25, 1996, he was appointed the ultimate designated person for the Trois-Rivières branch and acted in this capacity until about October 1996;
- ¶ 7 Subsequently, namely around October 4, 1996, he was hired by the Retirement Option Group, where he carried on activities as a financial planner;
- ¶ 8 Around February 26, 1999, Respondent was acting as a registered representative with unrestricted practice with the Retirement Option Group, in addition to carrying on his activities as a financial planner. He would resign from this role around January 2, 2004.
- ¶ 9 On or around February 6, 2004, Respondent was hired by Desjardins Securities Inc. with whom he was approved as an unrestricted registered representative until June 2009;
- ¶ 10 On June 1, 2008, Respondent became a registrant of IIROC;
- ¶ 11 On or around August 7, 2009, Respondent was hired by PEAK Securities Inc. (PEAK) for whom he acted as a Registered Representative, Retail;
- ¶ 12 On or around September 14, 2012, PEAK dismissed the Respondent for cause;
- ¶ 13 Currently, Respondent is no longer a registrant with an IIROC-regulated firm.
- ¶ 14 The facts of the matter are very simple and led to an investigation by IIROC following a complaint filed by Mrs. A with the IIROC Dealer Member, on September 10, 2013;
- ¶ 15 IIROC Dealer Member Rule 29 concerns business conduct, of the representative among others, and prescribes how the various parties must conduct themselves;
- ¶ 16 Paragraph 1 of this Rule stipulates that high standards of ethics and conduct must be observed and prohibits any business conduct or practice that is unbecoming;
- ¶ 17 In principle, personal business dealings between a representative and his client should be avoided as these can create situations in which the representative is likely to put his own interest ahead of his client's. There may be exceptions, for example in the case of family ties, however the Dealer Member employing the representative must in all cases be informed and give its approval;
- ¶ 18 The question for the Hearing Panel is whether, given the misconduct, the penalties fall within "a reasonable range of appropriateness". The Hearing Panel can either accept or reject the Settlement Agreement. It may not in any way alter the agreement or have knowledge of facts not in evidence in the Agreement. The Hearing Panel powers end there.
- ¶ 19 Counsel for IIROC cited several decisions on the role of the hearing panel in a settlement agreement, and on the determination of penalties considered reasonable given the alleged misconduct.
- ¶ 20 Regarding the jurisdiction of the Hearing Panel, the regulatory provisions and the jurisprudence that interprets them are both very clear¹. The case law is consistent.
- ¶ 21 The Dealer Members Disciplinary Sanction Guidelines² enumerate the key considerations in determining a penalty.
- ¶ 22 Disciplinary sanctions are a means of deterrence. As the second paragraph of section 2 of the Guidelines states:

¹ *Renolds and Chang (Re)*, 2009 IIROC 50; *Re Rao*, 2011 IIROC 12, January 27, 2011.

² IIROC, *Dealer Members Disciplinary Sanction Guidelines*, March 2009.

"General deterrence will follow from an appropriate decision and deter others from engaging in similar misconduct and improve overall business standards in the securities industry. This can be achieved if a sanction strikes an appropriate balance by addressing a registrant's specific misconduct, but also being in line with industry expectations."

¶ 23 Section 3 of the Guidelines further states:

"Since sanctions should be tailored to address the misconduct involved in a particular case, a penalty must be proportionate to the gravity of the misconduct and the relative degree of responsibility of a respondent."

¶ 24 The Guidelines provide a non-exhaustive list of the factors that the Hearing Panel must consider: harm to clients, the employer and/or the securities market; blameworthiness; degree of participation; extent to which the respondent was enriched by the misconduct; prior disciplinary record; acceptance of responsibility, acknowledgment of misconduct and remorse; credit for cooperation; voluntary rehabilitative efforts; reliance on the expertise of others; planning and organization; multiple incidents of misconduct over an extended period of time; vulnerability of victim; failure to cooperate with the investigation; significant economic loss to the client and/or dealer member firm.

¶ 25 The imposed penalties support a goal of deterrence. Weighting the different aggravating and mitigating factors has enabled the Hearing Panel to accept this Settlement Agreement and to conclude that the penalties are reasonable under the applicable legislation. They are consistent with the main concerns inherent in determining an appropriate penalty, namely:

1. Protection of the investing public;
2. Protection of the Investment Industry Regulatory Organization of Canada's membership;
3. Protection of the integrity of the Investment Industry Regulatory Organization of Canada's process;
4. Protection of the integrity of the securities markets, and
5. Prevention of a repetition of conduct of the type under consideration.

¶ 26 The different decisions that have been brought to the Hearing Panel's attention are entirely in line with the range of penalties contained in the Settlement Agreement before us;

¶ 27 More specifically, the material facts of the matter and the sanctions contained in the Agreement fall somewhere between the Gunderson³ and Moran⁴ decisions.

¶ 28 Noteworthy among the aggravating factors are: the victim's tremendous vulnerability, both because of her age and her investment knowledge, considered nil or very poor; also, the facts that the Respondent has 14 years of experience in the industry, that there was no acknowledgement of debt, that the Respondent knew that such dealings are forbidden, and that he concealed it from everyone.

¶ 29 Among the mitigating factors, it must be noted that it was an isolated act, that the Respondent repaid the Dealer Member for the amount that the latter reimbursed to the victim, that he cooperated in the investigation and that he expressed remorse very convincingly at the hearing;

¶ 30 At the hearing, to a question from a division member, Counsel for IIROC explained that the 12 months of strict supervision, one of the sanctions that was retained, notably implies that each and every transaction executed by Mr. Turenne will need to be preapproved by his supervisor;

¶ 31 In conclusion, the various elements of the penalty agreed between the parties fall within the bounds of

³ 2102 IIROC 66, November 13, 2012.

⁴ 2012 IIROC 64, November 9, 2012.

what is reasonable and are consistent with the case-law in analogous matters.

¶ 32 **FOR THESE REASONS**, the Hearing Panel accepts the Settlement Agreement as appended and gives effect to it from this date.

Montréal, July 25, 2013

Michèle Rivet, Chair,

John Ballard

Lise Casgrain

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Enforcement Staff of the Investment Industry Regulatory Organization of Canada (Staff) and Jacques Turenne consent and agree to the settlement of this matter by way of this settlement agreement (“the 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 Jacques Turenne.
3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.
4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (“the Hearing Panel”).

II. JOINT SETTLEMENT RECOMMENDATION

6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
7. The Respondent admits to the following contravention of IIROC Dealer Member Rules and Guidelines:
 - a) On or about March 19, 2012, Respondent engaged in a personal financial dealing with a client, by borrowing money from her, without the knowledge and consent of the IIROC Dealer Member with whom he was employed, contrary to IIROC Dealer Member Rule 29.1.
8. Staff and the Respondent agree to the following terms of settlement:
 - a) A fine in the amount of \$10,000;
 - b) Suspension of approval for one month;
 - c) Pass the exam based on the Conduct and Practices Handbook Course within six months of applying for reapproval;
 - d) Strict supervision for 12 months with mandatory submission of a monthly report to the IIROC Registration Department.
9. The Respondent agrees to pay costs to IIROC in the sum of \$1,000.

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 of Respondent's Alleged Misconduct

11. On or about March 19, 2012, Respondent borrowed the sum of eight thousand dollars (\$8,000) from one of his retired clients, an elderly widow, for his own personal ends, thus allowing his personal interest to conflict with his client's interest. The money was borrowed without the knowledge and consent of the IIROC Dealer Member with whom the Respondent was employed.

Respondent's Professional Experience

12. Around April 26, 1994, Respondent was approved as a financial planner with Services financiers T.P.R. inc. On or around March 25, 1996, he was appointed as the ultimate designated person for the Trois-Rivières branch and acted in this capacity until about October 1996;
13. Subsequently, namely around October 4, 1996, he was hired by Retirement Option Group, where he carried on activities as a financial planner;
14. Around February 26, 1999, Respondent was acting as a registered representative with unrestricted practice with Retirement Option Group, in addition to carrying on his activities as a financial planner. He would resign from this role around January 2, 2004.
15. On or around February 6, 2004, Respondent was hired by Desjardins Securities Inc. with whom he was approved as an unrestricted registered representative until June 2009;
16. On June 1, 2008, Respondent became a registrant of IIROC;
17. On or around August 7, 2009, Respondent was hired by PEAK Securities Inc. (PEAK) for whom he acted as a Registered Representative, Retail;
18. On or around September 14, 2012, PEAK dismissed the Respondent for cause;
19. Currently, Respondent is no longer a registrant with an IIROC-regulated firm.

Personal Financial Dealing with a Client

20. On or around September 29, 2009, Mrs. A opened a RRIF account with PEAK. The Respondent was assigned to this account as the Registered Representative, Retail;
21. Mrs. A is retired, age 70, a widow with no children, who has had to handle the management of her assets since her husband's death in 2007;
22. When the RRIF account was first opened, Mrs. A's knowledge of investing was qualified as poor or non-existent;
23. Mrs. A was put in touch with the Respondent by her sister, who had been using the Respondent's professional services for many years;
24. There are no family ties between Mrs. A and the Respondent;
25. On or around August 19, 2011, Mrs. A opened a cash account;
26. Mrs. A opened the cash account in order to deposit the proceeds from the sale of her home;
27. On or around January 30, 2012, Mrs. A opened a margin account to replace her cash account;
28. On or around March 19, 2012, Mrs. A remitted to the Respondent a personal cheque in the amount of eight thousand dollars (\$8,000) made out in his name and drawn on her bank account with the Caisse populaire. The amount was a loan that Respondent had obtained from Mrs. A for his own personal ends;
29. When he borrowed the eight thousand dollars (\$8,000) from Mrs. A, Respondent did not explain to her

that the loan placed him in a conflict of interest with her;

30. After obtaining the loan for eight thousand dollars (\$8,000) from Mrs. A, the Respondent did not sign an acknowledgment of debt in her favour;
31. On or around March 20, 2012, a withdrawal in the amount of eight thousand dollars (\$8,000) was made from Mrs. A's margin account to cover the amount debited from her personal bank account with the Caisse populaire;
32. The Respondent did not disclose the existence of this personal loan to PEAK even though he knew that this kind of activity was forbidden to him;
33. On or around September 10, 2012, PEAK received the written complaint from Mrs. A. It was then that PEAK learned of the existence of a personal loan between her and the Respondent. In her complaint, Mrs. A alleged that the Respondent had never reimbursed her;
34. PEAK reimbursed Mrs. A on or around September 18, 2012. The reimbursement amount from PEAK notably covered the money loaned to the Respondent;
35. The Respondent has reimbursed PEAK for the money it paid to Mrs. A.

IV. TERMS OF SETTLEMENT

36. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
37. The Settlement Agreement is subject to acceptance by the Hearing Panel.
38. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
39. 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.
40. 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.
41. 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.
42. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
43. 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.
44. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
45. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at the City of Shawinigan in the Province of Québec, this 21st day of June, 2013.

(s) Witness

(s) Jacques Turenne

WITNESS

JACQUES TURENNE

RESPONDENT

AGREED TO by Staff at the City of Montréal, in the Province of Québec, this 25th day of June, 2013.

(s) Linda Vachet

(s) Myriam Giroux-Del Zotto

WITNESS

ME MYRIAM GIROUX-DEL ZOTTO

Enforcement Counsel, on behalf of Staff of IIROC

Copyright © 2013 Investment Industry Regulatory Organization of Canada. All rights reserved.