

Re Dalpé and Milette

IN THE MATTER OF:

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

and

**The By-Laws of the Investment Dealers Association of Canada
(IDA)**

and

Marc Dalpé

and

Jean-Marc Milette

2013 IIROC 18

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

Hearing held on March 14, 2013
Decision rendered on April 15, 2013

Hearing Panel

Robert Monette (Chair), Normand Durette, Marcel Paquette

Appearances

Me Martin Hovington, Counsel for IIROC

Me Yves Robillard, Counsel for the Respondents.

DECISION ON SETTLEMENT

¶ 1 At a hearing held On March 14, 2013, the Hearing Panel (Hearing Panel) heard the pleadings of the legal counsel for both parties, which requested approval of the Settlement Agreement concluded between them on February 22, 2013, in accordance with IIROC Dealer Member Rule 20.36 and Rule 15 of the Rules of Practice and Procedure¹.

¹ Unless otherwise specified, the Hearing Panel is referring here to IIROC's Rules of Practice and Procedure

¶ 2 Following the submissions by counsel for both parties, and after deliberation, the Hearing Panel accepted the Settlement Agreement, reserving the right to issue its reasons at a later date.

¶ 3 This decision now explains the reasons for the acceptance of the Settlement Agreement.

¶ 4 The content of the Settlement Agreement observes the formalities provided under Rule 14 of the Rules of Practice and Procedure, which is appended to this decision so as to form an integral part hereof.

¶ 5 The Hearing Panel will begin with a brief summary of the facts described in the Agreement and then present the terms of Settlement.

THE AGREEMENT

¶ 6 The Respondents Dalpé and Milette² have been a team since 1998, first in the employ of National Bank Financial (NBF) until 2003, and then at Desjardins Securities Inc. (DS) until their dismissal in November 2011.

¶ 7 The Respondents admit to the following contraventions of IIROC Rules and Guidance, described in the paragraphs below.

¶ 8 First, between May 2003 and October 2011, the Respondents received a consideration paid through financial institutions other than their employer DS, in regard to securities-related activities that they performed for the latter, contrary to IIROC Rule 18.15.

¶ 9 Thus it appears that since 1998, while a representative at NBF, Respondent Dalpé had engaged in investment advisor activities for clients with offshore accounts; these activities were generally conducted in the same manner as for the accounts held in Québec, with the difference that the consideration was paid directly to the Respondents.

¶ 10 When he transferred to DS in 2003, Dalpé allegedly informed the president of the existence of these offshore accounts; apparently the latter did not object to the Respondents handling these accounts and did not request that the consideration be shared.

¶ 11 From May 2003 to October 2011, Dalpé received \$75,000 in management fees in connection with activities in these offshore accounts.

¶ 12 From May 2003 to October 2011, Milette received \$52,468 in management fees pursuant to Dalpé's activities in the offshore accounts.

¶ 13 Secondly, from November 2007 to October 2011, Dalpé held authorizations to trade in the accounts of certain clients without such trades being recorded in the books of his employer DS, and Milette permitted Dalpé to engage in such conduct with their common clients, contrary to IIROC Rule 1300.4 and 1300.5.

¶ 14 It seems that in November 2007, the offshore financial institution with which most of the clients had an off-book account was acquired by a new institution, and it was then that the clients signed authorizations to trade in favour of Dalpé.

¶ 15 This concludes our brief review of the material facts presented in the Settlement Agreement.

¶ 16 As for the terms of settlement, these are as follows:

- a fine of \$15,000 per Respondent
- disgorgement of the sum of \$75,000 by the Respondent Dalpé, representing the profits realized by reason of the violations
- disgorgement of the sum of \$52,468 by the Respondent Milette, representing the profits realized by

² Use of the last name or initials is intended solely for purposes of readability and should not be interpreted as a sign of disrespect or familiarity.

reason of the violations

- costs in the amount of \$10,000, payable to IIROC.

¶ 17 It is extremely relevant to add two important events that were disclosed during the hearing.

¶ 18 After their dismissal from DS, the Respondents were hired in December 2011 by Richardson GMP Limited, an IIROC-regulated firm.

¶ 19 In order to qualify for reapproval with IIROC, the Respondents had to accept two conditions:

- they successfully completed the Conduct and Practices Handbook Course in January 2012, and
- their work has been under close supervision since their hiring at Richardson GMP Limited.

DISCUSSION

¶ 20 The case-law is well-established regarding the role of a hearing panel at a hearing on a settlement agreement.

¶ 21 While a hearing panel is not bound by the joint recommendation of the parties, it may only intervene in cases where such a suggestion is unreasonable; even so, the hearing panel must make sure to inform the parties of its intention not to follow the recommendation.³

¶ 22 When faced with a settlement agreement, the hearing panel will assess the reasonableness of the agreement. To this end, it ensures that the key factors cited in the Disciplinary Sanction Guidelines (the Guidelines) have been taken into consideration. Furthermore, it will verify that the proposed penalties fall within a range of sanctions that have been imposed before for similar violations.

¶ 23 The Hearing Panel is satisfied with the factors proposed by the parties in respect of the Guidelines.

¶ 24 Among the aggravating factors, should be mentioned:

- the lengthy time period over which the violations occurred,
- the negligent conduct of the Respondents in the face of repeated violations, and whose behaviour could not be excused by the unfounded consent of a superior,
- the Respondents' high degree of participation in the commission of the offences,
- the financial benefit realized by reason of the violations.

¶ 25 As for the mitigating factors, these are:

- no complaint was ever received from the clients,
- neither of the Respondents has any disciplinary history,
- cooperation in the investigation and acknowledgment of the misconduct,
- reimbursement of the financial benefit realized.

¶ 26 It must also be added that the Respondents' dismissal garnered media attention which may have had a negative impact on their clientele.

¶ 27 The factors that have been retained are appropriate given the alleged violations and the prescribed sanctions.

¶ 28 Finally, as we wrote in our paragraphs 17 and 18, it was critical that the parties complete the evidence

³ *Rault v. Law Society of Saskatchewan* [2009 SKCA 81 (Can Lii); Québec Court of Appeal *Sylvio Poulin c. Sa Majesté la Reine* 500-10-004614-101, October 13, 2010; *Re BMO Nesbitt Burns* 2012 IIROC 21.

on the terms of settlement since such a complement made it possible to comply with the penalties recommended in the Guidelines for such violations.

¶ 29 Without this, the Settlement Agreement gave rise to certain hesitations among the Hearing Panel.

¶ 30 In addition, the Hearing Panel does not believe that a suspension is indicated in this case; the amounts at stake are not high compared with the total assets under management and the Respondents did not exhibit any greed in the commission of the violations. Furthermore, the Hearing Panel considers that the Respondents have already served an implicit one-month suspension between their dismissal from DS and their reapproval as advisors at Richardson GMP Limited.

¶ 31 After reviewing the List of Authorities and, taking into account the specific facts in each matter, the Hearing Panel agrees that the penalties set out in this agreement fall within the range of sanctions imposed in similar matters.

¶ 32 Let us close by adding that the Settlement Agreement was negotiated by experienced attorneys.

CONCLUSION

¶ 33 The Agreement concluded between the parties is not unreasonable and the penalties provided meet the objectives sought by the regulatory process, namely the protection of the public and of the reputation of the securities industry.

FOR THESE REASONS:

¶ 34 The Hearing Panel accepts the Settlement Agreement.

Montréal, April 15, 2013

Robert Monette, Chair

Normand Durette

Marcel Paquette

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Enforcement Staff of the Investment Industry Regulatory Organization of Canada ("IIROC") (Staff) and Messrs. Marc Dalpé and Jean-Marc Milette consent and agree to the settlement of these matters 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 the Respondents.
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 Respondents consent and agree to be subject to IIROC's jurisdiction;
5. The Investigation disclosed matters for which the Respondents 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 Respondents jointly recommend that the Hearing Panel accept the Settlement Agreement;

7. The Respondents admit to the following contraventions of IIROC Rules and Guidance:
- a) Between November 2007 and October 2011, Respondent Dalpé held authorizations to trade and exercised discretionary authority over the accounts of certain of his clients, without such trades being recorded in the books of his employer, contrary to IIROC Rule 1300.4 and 1300.5 (formerly IDA Rule 1300.4 and 1300.5, prior to June 1, 2008);
 - b) Between November 2007 and October 2011, Respondent Milette permitted his associate, Respondent Dalpé, to hold authorizations to trade and exercise discretionary authority over the accounts of certain of their common clients, without such trades being recorded in the books of his employer, contrary to IIROC Rule 1300.4 and 1300.5 (formerly IDA Rule 1300.4 and 1300.5, prior to June 1, 2008);
 - c) Between May 2003 and October 2011, Respondent Dalpé received a consideration paid through financial institutions other than his employer in regard to securities-related activities that he performed for the latter, contrary to IIROC Rule 18.15 (IDA By-Law 18.15 prior to June 1, 2008);

8. Staff and the Respondents have accepted the following terms of settlement:

Payment by each Respondent, of a financial penalty in the following amounts:

- A fine of \$15,000 each;
- From Mr. Dalpé, disgorgement of \$75,000 representing the profits realized by reason of the violations;
- From Mr. Milette, disgorgement of \$52,468 representing the profits realized by reason of the violations.

9. Staff and the Respondents also agree to costs of \$10,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

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

(ii) Factual Background

SUMMARY OF THE RESPONDENTS' ALLEGED MISCONDUCT

11. Respondent Dalpé, from 2003 to 2011, while in the employ of Desjardins Securities Inc. (DS), acted as investment advisor to more than nine (9) of his clients, in respect of accounts which the latter held with offshore financial institutions, without such transactions being recorded in the books of DS;
12. As of November 2007, Respondent Dalpé was managing the foreign accounts of just six (6) clients by means of authorizations to trade; subsequently, that number was gradually reduced to four (4) clients by October 2011;
13. From May 2003, Respondent Dalpé received a consideration pursuant to his activities on behalf of his clients who held foreign accounts, which consideration was paid to him without being recorded in the books of DS;
14. Respondent Dalpé had a commission-sharing agreement with Respondent Milette for their common clients, as is usual between associated advisors;
15. From May 2003, Respondent Milette received part of the consideration generated pursuant to his associate Dalpé's activities on behalf of their common clients who held foreign accounts, which compensation was paid to him without being recorded in the books of DS;

THE RESPONDENTS

16. Respondent Dalpé was employed with Lévesque Beaubien Geoffrion (now National Bank Financial Inc. (NBF)) from 1981 to May 2003; before becoming a representative with unrestricted practice in 1990, Mr. Dalpé worked in corporate financing;
17. As for Respondent Milette, he worked in the IT field until 1998 when he became a representative with unrestricted practice on the Brault Sénécal Dalpé team at NBF;
18. In 1998, the Respondents formed the Dalpé Milette Team at NBF. On this team, Mr. Dalpé mainly looked after the client accounts, while Mr. Milette mainly handled business development;
19. In May 2003, the Respondents left NBF to join DS. They remained there until their dismissal in November 2011;
20. Since December 2011, the Respondents have been in the employ of Richardson GMP Limited, an IIROC-regulated firm;
21. At all relevant times, the Respondents were in the employ of DS;
22. Respondent Dalpé acted in the capacity of portfolio manager;
23. On June 1, 2008, the Respondents became registrants of IIROC.

BACKGROUND OF IIROC INVESTIGATION

24. On November 3, 2011, DS dismissed the Respondents for cause, notably for non-disclosure of outside business activities involving foreign accounts held by some of their clients;
25. On November 8, 2011, IIROC initiated an investigation of the matter.

THE RESPONDENTS' OFF-BOOK ACTIVITIES

26. It appears that since 1998, Respondent Dalpé had engaged in investment advisor activities for a limited number of clients with offshore investment accounts, who would ask him for advice;
27. These activities were generally conducted in the same manner as for the accounts held by said clients here in Québec, with the difference that the consideration was paid directly to the Respondents;
28. The investigation revealed that between May 2003 and October 2011, Respondent Dalpé handled the management of at most nine (9) client accounts with foreign financial institutions;
29. The client accounts, which numbered nine (9) in May 2003, were reduced to six (6) in 2007, and then to four (4) until October 2011;
30. The clients connected with these nine (9) client accounts during the period from May 2003 to October 2011 were all clients of DS, and the portfolio held outside the country was essentially identical to the portfolio held through their DS accounts;
31. In the context of managing these foreign accounts, Respondent Dalpé could, depending on the case, make recommendations to the nine (9) clients or exercise discretionary authority over their accounts since he had an authorization to trade for each of them;
32. When the Respondents transferred to DS in May 2003, it appears that Mr. Dalpé allegedly shared certain information verbally with the president of DS at the time, "A", concerning the existence of foreign accounts for which he was acting as investment advisor;
33. The aim of this disclosure was to be able to transfer the foreign accounts to an offshore institution affiliated with DS;
34. In the course of the discussions that allegedly took place between Respondent Dalpé and "A" on this subject, the number of clients and the value of the assets held in foreign accounts were discussed, but not the clients' names; it seems that "A" did not request that the consideration be shared;

35. It appears that "A" did not object to the Respondents continuing to look after these off-book foreign accounts in the same manner as before as long as they did not promote and/or develop them to the detriment of DS, the latter having no affiliation with any offshore financial institution at the time;
36. The Respondents understood from this conversation that they could engage in such activities for their clients;
37. In November 2007, the offshore financial institution with which most of the clients had an account was acquired by a new institution and authorizations to trade were signed by the clients in favour of Respondent Dalpé;
38. From May 2003 to October 2011, Respondent Dalpé's activities for his clients holding foreign accounts generated management fees for the Respondents, and these were paid in accordance with the terms and conditions of the investment programs offered by the offshore institutions where the client accounts were held;
39. From May 2003 to October 2011, Respondent Dalpé received seventy-five thousand dollars (\$75,000) in management fees pursuant to his activities on behalf of his clients holding foreign accounts;
40. From May 2003 to October 2011, Respondent Milette received fifty-two thousand four hundred and sixty-eight dollars (\$52,468) in management fees pursuant to the activities of his associate Dalpé on behalf of their clients who held foreign accounts;
41. The Respondents' clients have not filed any complaints respecting the Respondents' conduct.

IV. TERMS OF SETTLEMENT

42. In accordance with Dealer Member Rule 20.35 to 20.40 inclusively, and Rule 15 of the Dealer Member Rules of Practice and Procedure;
43. The Settlement Agreement is subject to acceptance by the Hearing Panel;
44. The Settlement Agreement shall become effective and binding upon the Respondents and Staff as of the date of its acceptance by the Hearing Panel;
45. 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.
46. If the Hearing Panel accepts the Settlement Agreement, the Respondents waive their right, under IIROC Rules and any applicable legislation, to a disciplinary hearing, review or appeal.
47. If the Settlement Agreement is rejected by the Hearing Panel, it shall lapse and become null and void. Staff and the Respondents may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation;
48. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel;
49. 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;
50. Unless otherwise stated, any monetary penalties imposed upon the Respondents are payable immediately on the effective date of the Settlement Agreement.

AGREED TO by the Respondents at Montréal, Québec, this 22nd day of February, 2013:

(s) WITNESS

(s) MARC DALPÉ

WITNESS

RESPONDENT MARC DALPÉ

(S) JEAN-MARC MILETTE

RESPONDENT JEAN-MARC MILETTE

AGREED TO by Staff at Montréal, Québec, this 22nd day of February, 2013:

(S) WITNESS

(S) MARTIN HOVINGTON

WITNESS

**MARTIN HOVINGTON, Enforcement Counsel, for Staff of
IIROC**

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