

# Re Crandall

IN THE MATTER OF:

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

**and**

**Robert Adrian Crandall**

2016 IIROC 37

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

Heard: September 7, 2016

Decision: October 3, 2016

**Hearing Panel:**

Robert Monette, Chair, Elaine C. Phénix and Gilles Archambault

**Appearances:**

Melissa J. MacKewn, Enforcement Counsel for IIROC

Robert Adrian Crandall, not present.

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## DECISION ON SANCTION

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**Preamble**

¶ 1 On April 23, 2015, Staff of the Investment Industry Regulatory Organization of Canada (IIROC) issued a Notice of Hearing concerning Robert Adrian Crandall (the Respondent).

¶ 2 Pursuant to Dealer Member Rule 20, this Hearing Panel (the Panel) held a hearing on the merits on February 1 and 2, 2016, at which the Respondent was present and represented himself (the “Merits Hearing”).

¶ 3 On May 26, 2016, the Panel rendered its decision on the merits which found the Respondent guilty of the following charges:

- the Respondent did engage in excessive trading in the accounts of D.R. that was not within the bounds of good business practice, the whole contrary to Dealer Member Rule 1300.1 (o);
- the Respondent did engage in unauthorized discretionary trading in the accounts of D.R. without the accounts first having been approved as discretionary accounts, the whole contrary to Dealer Member Rule 1300.4; and
- the Respondent did make unsuitable recommendations for the personal account of D.R., the whole contrary to Dealer Member Rule 1300.1 (q).

¶ 4 Consequently to the decision on the merits, the Panel ordered that a hearing on sanction (the “Sanction Hearing”) be scheduled.

¶ 5 The Sanction Hearing was held on September 7, 2016; the Respondent was absent. After a short suspension of the hearing, the Panel determined that the Respondent had been duly informed of the date of the

said hearing since, in a decision dated August 19, 2016, a motion for an adjournment brought by the Respondent had been dismissed.

¶ 6 The Panel directed IIROC to proceed in the absence of the Respondent in conformity with the Rules of Practice and Procedure.

### **Submissions**

¶ 7 IIROC produced a compendium<sup>1</sup> of documents, authorities and submissions.

¶ 8 IIROC also presented a witness, Y.C., who gave evidence to the amount resulting from the commissions earned by the Respondent as a result of his wrongful conduct (approximately \$119,000). The witness had also testified on the same subject at the Merits Hearing.

¶ 9 Before proceeding to the **Discussion** section, the Panel will summarize IIROC's submissions.

¶ 10 IIROC submitted that the goals of securities regulation are principally of a preventive and protective nature such that a consideration of general deterrence is appropriate.

¶ 11 IIROC also referred to the Sanction Guidelines (the Guidelines).

¶ 12 As to the Sanction principles set out in the Guidelines, IIROC proposed that there are aggravating factors due to the existence of a prior disciplinary record, a financial benefit from the misconduct and a pattern of misconduct.

¶ 13 IIROC suggested that the Panel should consider the following Key Factors in determining the sanctions:

- The number, size and character of transactions at issue
- Whether the Respondent engaged in numerous acts and/or a pattern of misconduct
- Whether the Respondent engaged in misconduct over an extended period of time
- Whether the misconduct was intentional, willfully blind, or reckless with respect to regulatory requirements
- Level of vulnerability of the injured or affected clients
- The Respondent's relevant disciplinary history
- Extent to which the Respondent obtained or attempted to obtain a financial benefit from the misconduct
- In the case of individuals, whether the Respondent accepted responsibility.

¶ 14 IIROC also commented on the list of authorities which the Panel will review in the **Discussion** section.

¶ 15 IIROC concluded their submissions by proposing these sanctions:

- A fine of \$150,000;
- A 5-year prohibition on the Respondent's re-registration with IIROC;
- The Respondent must successfully re-write the Conduct and Practices Handbook (CPH) exam, as a condition of re-registration;
- Strict supervision for 18 months, should the Respondent return to the industry; and
- Costs in the amount of \$35,000.

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<sup>1</sup> Exhibit 10

## Discussion

¶ 16 In conformity with Dealer Member Rule 20.33, the Panel has the discretion to impose sanctions on the Respondent; these sanctions may include a fine and a bar of approval with IIROC.

¶ 17 As the Organization which oversees the trading activity on debt and equity marketplaces in Canada and has an objective to maintain a high standard of conduct for its members, it is appropriate for IIROC to make recommendations on sanctions to the Panel; though obviously the Panel will not be bound by such recommendations.

¶ 18 The Panel recognizes that the Guidelines proposed by IIROC are of assistance in disciplinary proceedings involving behaviour and conduct in the investment industry; through the principles and key factors mentioned they provide a framework to guide the exercise of discretion in determining sanctions which meet the general sanctioning objectives.

¶ 19 But here again, as the Guidelines establish, these general principles and key factors are not intended to fetter the discretion of the Panel;<sup>2</sup> it is understood that any disciplinary case is a fact-specific process for which the Panel retains the discretion to impose the appropriate sanction.

¶ 20 These notions of exclusive discretion being established, the Panel will proceed to the discussion of the appropriate sanction in this case.

¶ 21 The Panel agrees that the great majority of the key factors listed by IIROC are relevant to the present case and they apply in the following fashion.

¶ 22 Firstly, as demonstrated in the decision on Merits, the facts alleged against the Respondent pertained to one client, D.R. The Panel has concluded that, between July 2006 to June 2012, all the benefits possibly achieved in D.R.'s Accounts were nullified by the excessive number and amount of the commissions deliberately charged by the Respondent and that by committing to this pattern of trading, the Respondent engaged in unsuitable and improper trading practices, preferring his own interests to those of his client.<sup>3</sup>

¶ 23 It follows that the Respondent did engage in a pattern of misconduct consisting of excessive trading over an extended period of time of very close to six years. The majority of the trades were unauthorized and the misconduct was reckless with respect to regulatory requirements.

¶ 24 Secondly, the Panel did also determine that there was a change made in D.R.'s risk tolerance increasing it from 30% to 50%. There was no objective reasonable explanation for this increase, in view of an 88-year-old investor who had just lost her spouse, considered the educated investor of the couple<sup>4</sup>. Thus the Panel had already considered D.R. as a very vulnerable client since she placed her complete trust in the Respondent.

¶ 25 Thirdly, from the testimony of Y.C, the Panel found that all the benefits obtained from the activities in D.R.'s Accounts were nullified by the number and amount of the commissions charged by the Respondent<sup>5</sup>. As a consequence, the Respondent did obtain a financial benefit from his misconduct.

¶ 26 Taking into account the facts of the case, the Panel determines that the previous key factors must be considered in determining the appropriate sanctions.

¶ 27 As an aggravating factor, IIROC also asks the Panel to admit the prior disciplinary history of the Respondent as he was sanctioned in 1991 for engaging in unsuitable trading relative to an elderly couple's investment account.

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<sup>2</sup> Sanction Guidelines, p. 2

<sup>3</sup> Decision on Merits, para. 73, 81

<sup>4</sup> Ibid para. 119

<sup>5</sup> Ibid para. 80

¶ 28 Despite the fact that this disciplinary record involves misconduct similar to the present case the Panel is reluctant to consider this as an aggravating factor for the following reason.

¶ 29 Though effectively, the previous misconduct is certainly not recent since it occurred more than twenty years ago, the important particularity of the situation is that the Respondent was named a member of IIROC'S New Brunswick District Council (the "Council") in 2004, thirteen years after the previous misconduct. The Panel assumes that, at the time of the nomination, the Council had taken into account the gravity of the previous misconduct and decided accordingly.

¶ 30 However, we must not forget that the Respondent was still a member of the Council when the recent misconduct occurred; this circumstance may surely be considered as an aggravating factor.

¶ 31 It is recognized that the Council ensures regional input into the regulatory process, an integral component of self-regulation and that the work of its members should be carried out in an ethical manner.

¶ 32 As a member of the Council, the Respondent adopted an inexcusable conduct as he was in a position to represent the authority of IIROC but did not exercise due diligence in regards to IIROC's rules.

¶ 33 Thus, the Panel finds there is an aggravating factor in the present case since at the time of his misconduct the Respondent was a member of the Council.

¶ 34 Finally, the Panel underlines that the Respondent has shown no remorse or regret for his misconduct and there are no mitigating factors in his favour.

¶ 35 Therefore, weighing the relevancy of all the key factors identified - more specifically the Respondent's financial benefit from the pattern of misconduct and the existence of an aggravating factor- the Panel is of the opinion that the sanctions must include a fine and a suspension.

¶ 36 In support of their recommended sanctions, IIROC filed a Book of Authorities.

¶ 37 In the matter of *Re Mathews*,<sup>6</sup> the contraventions are of the same nature - unsuitable recommendations, discretionary trading and excessive trading- as the present case but they involve four clients. In determining the sanctions, the key factors were vulnerability of the clients, the pattern of misconduct over a period of time, financial loss by clients due to misconduct and the absence of remorse.

¶ 38 The sanctions imposed were: a global fine of \$200,000, a 5-year prohibition on the re-registration with IIROC and costs of \$20,000.

¶ 39 In the matter of *Re Newman*,<sup>7</sup> the client was a single elderly investor and the contravention was excessive trading (\$900,000 in commissions in three years). As part of a settlement, a permanent prohibition was agreed with costs of \$5,000. No fine was imposed since a mediated civil settlement was reached between the parties

¶ 40 In the matter of *Re Harding*,<sup>8</sup> the client was a 70-year-old widow. The contraventions were very similar to the present case: unsuitable recommendations in accounts where the risk tolerance had been overstated and unauthorized trading when the client was away. The sanctions imposed were a fine in the amount of \$125,000, disgorgement in the amount of \$17,861, a 5-year suspension and the costs in the amount of \$25,000.

¶ 41 The Panel is satisfied that the case law submitted by IIROC does support their recommendations and accordingly the sanction recommendations of IIROC are suited to the facts of the present case.

¶ 42 Pursuant to Dealer Member Rule 20.49, the Panel has discretion to order investigation and prosecution costs that are appropriate and reasonable in the circumstances. IIROC filed an affidavit to substantiate the

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<sup>6</sup> *Re Mathews* 2015 IIROC 02

<sup>7</sup> *Re Newman* 2012 IIROC 55

<sup>8</sup> *Re Harding* 2011 IIROC 65

amount claimed as costs.

¶ 43 That amount is much less than the actual costs incurred, taking into account the significant amount of time spent by IIROC in investigation and numerous procedural matters. Accordingly, the Panel finds it appropriate to grant the amount claimed for costs.

### **Conclusion**

¶ 44 The Panel's responsibility in a sanction decision is to determine the sanctions appropriate to the case before it.<sup>9</sup> In that objective, the Panel agrees that the sanctions should have more of a preventive purpose than a punitive one.

¶ 45 Moreover, the Panel must ensure that the sanction will promote subjective deterrence as to the Respondent and objective general deterrence to future misconduct.

¶ 46 The duty of the Panel is to promote the integrity of the investment industry and protect investors.

¶ 47 The Panel concludes that the recommendations by IIROC are well founded, appropriate to the present case and intended to safeguard the integrity of the investment industry and advocate the protection of the investors.

¶ 48 For these reasons, the Panel imposes the following sanctions on the Respondent:

- A fine of \$150,000;
- A 5-year prohibition on the Respondent's re-registration with IIROC;
- The Respondent must successfully re-write the Conduct and Practices Handbook (CPH) exam, as a condition of re-registration;
- Strict supervision for 18 months, should the Respondent return to the industry; and
- Costs in the amount of \$35,000.

Signed at Montréal, this 3 October 2016

Robert Monette

Chair

Élaine Phénix

Gilles Archambault

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<sup>9</sup> IIROC Sanctions Guidelines, p.4