

Re Lemay

IN THE MATTER OF:

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

and

Jean-François Lemay

2012 IIROC 69

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

Hearing held on July 4 and 5, 2012
Decision rendered on December 13, 2012

Hearing Panel:

The Honourable Benjamin J. Greenberg, Q.C., C. ARB., Hearing Panel Chair
Mr. Guy L. Jolicoeur
Mr. Marcel Paquette

Appearances:

Me Sébastien Tisserand, Enforcement Counsel, for IIROC and the UMIR
Jean-François Lemay, RESPONDENT, for himself

UNANIMOUS DECISION ON THE MERITS

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I. JUDICIAL AND DISCIPLINARY HISTORY AND THE FACTS IN THIS MATTER

¶ 1 At all material times, UNION Securities Ltd. (UNION) was a “Participant”¹ or “Access Person”² and the RESPONDENT, an “employee”³ and a “representative with unrestricted practice” as defined in UMIR, and they were therefore subject to Part 10.4 (1) of UMIR,⁴ which fact RESPONDENT acknowledged in his testimony.

¶ 2 It is useful to review the various procedures initiated in this matter, along with their disposition, as applicable.

¶ 3 Following receipt by IIROC of «ComSet»⁵ report number 95B572⁶ concerning an allegation of misappropriation of funds filed by UNION in regard to the activities of RESPONDENT and another representative at UNION, said ComSet became a “complaint” filed with IIROC against the RESPONDENT.

¶ 4 Following an evaluation of said complaint by IIROC Staff, the latter launched a formal investigation on August 21, 2009; the investigation was conducted by Yannick Béland who has been an investigator with IIROC since 2005.

¶ 5 The latter had been an investigator at the Montréal Exchange between 2003 and 2005, where he performed functions similar to those he fulfills today at IIROC.

¶ 6 During the investigation, Mr. Béland determined that UNION’s allegations of a misappropriation of funds by the RESPONDENT and the other representative were unfounded. Still, in the course of the investigation, Mr. Béland uncovered the seventeen (17) stock transactions that are at issue here.⁷

¶ 7 Mr. Béland shifted his focus at this point, and the investigation into an alleged misappropriation of funds became an investigation involving the UMIR.

¶ 8 During Mr. Béland’s investigation of this matter, on March 15, 2011, he questioned the RESPONDENT under oath regarding the facts of the matter, in the presence of court stenographer Claude Morin. The transcript of this interview is appended to the case file as Exhibit P-40 and is very revealing.

¶ 9 Following the aforesaid investigation, on February 9, 2012, Carmen Crépin, Vice-President, Québec at IIROC, published a Notice of Hearing detailing the count brought by IIROC against the RESPONDENT.

¶ 10 In addition to outlining the RESPONDENT’s alleged misconduct in some detail, the Notice of Hearing informed the RESPONDENT that a hearing on the merits would be held at 10 a.m., on April 11 and 12, 2012, at

¹ Defined in UMIR Part 1.1: “Participant” means:(a) a dealer registered in accordance with securities legislation of any jurisdiction and who is: (i) a member of an Exchange, (ii) a user of a QTRS, or (iii) a subscriber of an ATS; or (b) a person who has been granted trading access to a marketplace and who performs the functions of a derivatives market maker.

² Defined in UMIR Part 1.1: “Access Person means a person other than a Participant who is:

- (a) a subscriber; or
- (b) a user.”

³ Defined in UMIR Part 1.1: “Employee includes any person who has entered into principal/agent relationship with a Participant in accordance with the terms and conditions established for such a relationship by any self-regulatory entity of which the Participant is a member”

⁴ Part 10.4: “Extension of Restrictions (1) A related entity of a Participant and a director, officer, partner or employee of the Participant or a related entity of the Participant shall:

- (a) comply with the provisions of UMIR and any Policies with respect to just and equitable principles of trade, manipulative and deceptive activities, short sales and frontrunning as if references to “Participant” in Rules 2.1, 2.2, 2.3, 3.1 and 4.1 included reference to such person; and
- (b) in respect of the failure to comply with the provisions of UMIR and the Policies referred to in clause (a), be subject to the practice and procedures and to penalties and remedies set out in this Part.

⁵ All investment dealers in Canada are required to issue and file with IIROC a report, known as “ComSet”, concerning a representative with unrestricted practice against whom there has been a complaint or regarding whom the dealer has opened an internal investigation of its own accord.

⁶ See Exhibit P-1.

⁷ Fourteen (14) of which on the TSXV and three (3) “over-the-counter”. See line 6 to 9 on page 25 of the Transcript of the July 4, 2012 Hearing.

Centre Mont-Royal, 2200 Mansfield Street, Montréal, Québec, Mansfield 2 room.

¶ 11 The count against the RESPONDENT concerns seventeen (17) stock transactions that were allegedly fictional and for which he allegedly entered orders or executed trades on the TSX Venture Exchange (TSXV) or on an over-the-counter bulletin board (OTCBB)

¶ 12 The UMIR provision that applies in respect of the violations allegedly committed by the RESPONDENT is UMIR PART 2.2, which states:

PART 2 - ABUSIVE TRADING

2.2 Manipulative and Deceptive Activities

(1) A Participant or Access Person shall not, directly or indirectly, engage in or participate in the use of any manipulative or deceptive method, act or practice in connection with any order or trade on a marketplace if the Participant or Access Person knows or ought reasonably to know the nature of the method, act or practice.

(2) A Participant or Access Person shall not, directly or indirectly, enter an order or execute a trade on a marketplace if the Participant or Access Person knows or ought reasonably to know that the entry of the order or the execution of the trade will create or could reasonably be expected to create:

(a) a false or misleading appearance of trading activity in or interest in the purchase or sale of the security; or

(b) an artificial ask price, bid price or sale price for the security or a related security.

(3) For greater certainty, the entry of an order or the execution of a trade on a marketplace by a person in accordance with the Market Maker Obligations shall not be considered a violation of subsection (1) or (2) provided such order or trade complies with applicable Marketplace Rules and the order or trade was required to fulfill applicable Market Maker Obligations.”⁸

¶ 13 POLICY 2.2.⁹ which is associated with PART 2.2 cited above, states:

"POLICY 2.2 - MANIPULATIVE AND DECEPTIVE ACTIVITIES

Part 1 - Manipulative or Deceptive Method, Act or Practice

There are a number of activities which, by their very nature, will be considered to be a manipulative or deceptive method, act or practice. For the purpose of subsection (1) of Rule 2.2 and without limiting the generality that subsection, the following activities when undertaken on a marketplace constitute a manipulative or deceptive method, act or practice:

(a) making a fictitious trade;

(b) effecting a trade in a security which involves no change in the beneficial or economic ownership;

(c) effecting trades by a single interest or group with the intent of limiting the supply of a security for settlement of trades made by other persons except at prices and on terms arbitrarily dictated by such interest or group; and

⁸ It is clear to us that, based on the facts in the matter, the exception stipulated in UMIR PART 2.2, subparagraph (3), finds no application here.

⁹ A consistent body of case-law in the matter has conclusively established that the stated "POLICIES" have the same legal force and value as the actual "PARTS" of the UMIR.

(d) purchasing a security with the intention of making a sale of the same or a different number of units of the security or a related security on a marketplace at a price which is below the price of the last sale of a standard trading unit of such security displayed in a consolidated market display.

If persons know or ought reasonably to know that they are engaging or participating in these or similar types of activities those persons will be in breach of subsection (1) of Rule 2.2 irrespective of whether such method, act or practice results in a false or misleading appearance of trading activity or interest in the purchase or sale of a security or an artificial ask price, bid price or sale price for a security or a related security.

¶ 14 The Notice of Hearing also informed the RESPONDENT that he had the right to appear at the hearing and placed him on notice to serve upon staff of IIROC a response to the Notice of Hearing in accordance with the provisions of par. 9.1 of UMIR Policy 10.8.

¶ 15 Neither the RESPONDENT nor his attorney at the time, Me Eric Cadi, ever served a response to the Notice of Hearing, either before or after the stipulated deadline.

¶ 16 Once Me Cadi had ceased to represent Mr. Lemay in the matter¹⁰, Counsel for IIROC offered him a second opportunity to do so, as expressed in an email that was sent to him at 10:01 AM on June 12, 2012. Here is the content of the message:

[TRANSLATION]

«From: Sébastien Tisserand [mailto:STisserand@IIROC.CA]

Sent: June-12-12 10:01 AM

To: jflemay@avenuecapitalmarkets.com

Subject: RE: TR: Hearing set for July 4 and 5, 2012; Jean-François Lemay Ref.

No.: 12-0171

Dear Mr. Lemay,

First, I invite you to read UMIR Part 10.8, which governs the procedure applicable to disciplinary hearings.

http://www.ocrcvm.ca/industry/rulebook/Documents/UMIR1008_fr.pdf

*You will notice that you are supposed to provide a written response within 20 days of receiving the notice of hearing. Although you are in default, but taking into consideration that you are representing yourself, I invite you once again to send us your defense in writing **without further delay**. Otherwise, the panel may decide to accept all the facts alleged in the Notice of Hearing as having been proven without the need for IIROC to present any evidence or testimony.*

Similarly, if you wish to invoke and use any documents at the hearing, you must immediately send us a copy and provide four (4) additional copies for the hearing panel members and the stenographer.

Finally, if you wish to call people to testify as part of your defense, you must also send us a detailed list, including the name, address, and phone number of these persons, along with a summary of their testimony.

It is my understanding that you will therefore appear on July 4 to present your defense; failing this, IIROC will request that the hearing proceed even in your absence in order to seek a finding of guilt on the count against you.

¹⁰ See paragraphs 25 to 28 below.

Please be governed accordingly.

S. Tisserand

Sébastien Tisserand

Avocat de la mise en application | Enforcement counsel

Tel : 514-392-3425 | Fax : 514-878-6324

e : stisserand@iroc.ca»

¶ 17 The RESPONDENT never followed up on this offer and is therefore in default to this day in respect of his aforesaid obligation.

¶ 18 Getting back to the recital of the events that followed the sending of the Notice of Hearing to the RESPONDENT, in an email sent by Me Cadi to Me Sébastien Tisserand, the attorney representing IIROC in the matter, the RESPONDENT asked the HEARING PANEL to postpone the hearing set for April 11 and 12, 2012. IIROC informed us by way of the Hearing Panel Coordinator (the «**Coordinator**») that it would not challenge the aforesaid request for a postponement. Consequently, after verifying the availability of everyone involved, the hearing set for April 11 and 12, 2012 was postponed to May 23 and 24, 2012.

¶ 19 However, on May 4, 2012, by way of the Coordinator, Me Tisserand sent the following message to the HEARING PANEL Chair:

«Dear Mr. Greenberg,

Mr. Lemay, by way of his counsel Mr. Cadi, in cc. in this email, and IIROC are hereby requesting a postponement of the hearing in the here above mentioned file, scheduled for May 23 and 24 on the motive that serious settlement discussions are currently taking place. Hence, the parties will require more time to allow the ongoing discussions to be completed or to prepare for a contested hearing, which preparation has been suspended by common accord, to prevent undue costs. Therefore, the parties are proposing, subject to the availability of the panel members, June 26 and 27 as new hearing dates.

Yours truly,

(s) S. Tisserand

Sébastien Tisserand,

Avocat, Mise en application | Organisme Canadien de Réglementation du Commerce des Valeurs Mobilières - OCRCVM

Enforcement Counsel | Investment Industry Regulatory Organization of Canada – IIROC»

¶ 20 Given the mutuality of IIROC's and the RESPONDENT's positions regarding the requested postponement and considering the availability of the HEARING PANEL members, the attorneys and the RESPONDENT, the hearing was therefore postponed and set for July 4 and 5, 2012, but subject to two conditions imposed by the HEARING PANEL, which the Panel Chair expressed in an email to the Coordinator sent at 4:57 PM on May 15, 2012:

«Dear Ms. Ceban.

To confirm our telephone discussion of today:

You may confirm to both counsel that their mutual request for a postponement of the Hearing originally scheduled for May 23 and 24, 2012 is GRANTED, subject however to the following 2 conditions:

That new Hearing dates are now scheduled for July 4 and 5, 2012 to proceed in

the event that the case is not settled and that a usual Hearing Memorandum will now be distributed to that effect; and

Counsel must inform you by no later than June 15, 2012 as to whether or not the case will have been settled. If they will not confirm a settlement by that date, then we will proceed with the Hearing on July 4 and 5, 2012.

Thank you,

Honourable Benjamin J. Greenberg, Q.C., C. ARB.

Chairman of the Hearing Panel»

¶ 21 Consequently, a « Memorandum » in the usual format was sent to those concerned as an attachment to an email sent by the Coordinator on May 17, 2012 at 2:23 PM. It reads as follows:

[TRANSLATION]

"MEMORANDUM

TO: *Me Benjamin Greenberg*

Mr. Marcel Paquette

Mr. Guy Jolicoeur

FROM: *Inna Ceban*

Hearing Panel Coordinator

DATE: *May 17, 2012*

SUBJECT: *Jean- François Lemay – IIROC– Contested
Disciplinary Hearing*

This is to confirm that the hearing in the above-mentioned matter will be held:

Date: July 4 and 5, 2012

Time: 10 a.m.

*Location: Centre Mont- Royal
2200 Mansfield Street
Montréal*

Mansfield 2 Room

Telephone: (514) 844-2000

Hearing Panel: Me Benjamin Greenberg

Mr. Marcel Paquette

Mr. Guy Jolicoeur

Enforcement Counsel: Me Sebastien Tisserand

Counsel for Respondent: Me Eric Cadi "

¶ 22 Evidently, the matter between IIROC and the RESPONDENT was not settled.

¶ 23 Indeed, between May 15, 2012 and July 4 and 5, 2012, the dates set a third time for the Hearing on the Merits, more precisely in an email sent at 4 p.m. on May 31, 2012, by Me Cadi to the Coordinator, with cc to Me Tisserand, Counsel for RESPONDENT requested a third postponement. Said email reads as follows:

«**From:** *Éric Cadi [mailto:ecadi@imk.ca]*

Sent: *Thursday, May 31, 2012 4:00 PM*

To: *Inna Ceban*

Cc: *Sébastien Tisserand; jflemay@avenuecapitalmarkets.com*

Subject: *RE: Lemay*

Dear Mrs.(sic.) Ceban :

I had already advised Me Tisserand and have obtained confirmation from my client that he will be on vacation during the 2 first weeks of July. As such, he would ask IIROC to postpone his trial to another date.

Please confirm.

Regards,

Éric Cadi»

¶ 24 After deliberating on this request, the HEARING PANEL denied said third request for postponement by way of a letter from the Chair, sent by email to the two attorneys at 11:32 a.m. on June 5, 2012. Said letter is cited here *in extenso* :

[TRANSLATION]

"Honourable Benjamin J. Greenberg, Q.C., C. ARB.

Telephone: (514) 397-3051

Fax: (514) 397-3631

Email: bgreenberg@stikeman.com

BY EMAIL *June 5, 2012*

Me Éric Cadi

Irving Mitchell Kalichman LLP

2, Place Alexis Nihon

Suite 1400

3500 de Maisonneuve Blvd. West

Montréal QC H3Z 3C1

Counsel for Mr. Lemay

Me Sébastien Tisserand,

Enforcement Counsel

Investment Industry Regulatory Organization of Canada (IIROC)

5, Place Ville Marie

Suite 1550

Montréal QC H3B 2G2

Subject: *IIROC and Mr. Jean-François Lemay*

Our ref.: *010741-1009*

Dear Counsels,

The Hearing Panel is seized of a third request to postpone the Hearing on the Merits in this matter. Here is the chronology in this matter.

The Hearing on the Merits was initially set for April 11 and 12, 2012. A first postponement was requested by Me Cadi on March 28, 2012 and Me Tisserand confirmed on March 29, 2012 that IIROC would not challenge said request. The postponement was granted by the Hearing Panel on March 30, 2012 and the hearing was again set for May 23 and 24, 2012.

A second request for postponement, this time presented jointly by both parties, was submitted on May 4, 2012. The motive for this joint request, as stated by Me Tisserand in his communication at the time to Ms. Inna Ceban, the Hearing Panel Coordinator, was expressed in the following terms:

"... on the motive that serious settlement discussions are currently taking place".

On May 9, 2012 (reconfirmed on May 15, 2012), the Hearing Panel granted the second postponement, but under two (2) conditions:

That new Hearing dates be scheduled for July 4 and 5, 2012; and

That Counsel had to inform us by no later than June 15, 2012 as to whether or not the case was settled.

Yet here we are three weeks later and there is still no news regarding the "...serious settlement discussions..."

The third postponement request, this time from Mr. Lemay's attorney, was submitted on May 31, 2012 in an email sent by Me Cadi to the Hearing Panel Coordinator on grounds that:

"I had already advised Me Tisserand and have obtained confirmation from my client that he will be on vacation during the 2 first weeks of July".

If said (third) postponement request were granted based on the availability of the Hearing Panel members, the Hearing on the Merits could not be held until next October, which the Hearing Panel finds unacceptable.

*For all these reasons, the third postponement request is **DISMISSED** unanimously by all three members of the Hearing Panel. The Hearing on the Merits will take place on July 4 and 5, 2012, as scheduled in the Memorandum from IIROC sent to all concerned on May 17, 2012.*

The Honourable Benjamin J. Greenberg, Q.C., C. ARB., Chair

For and in the name of the Hearing Panel

BJG/j.d

c.c.

Mr. Marcel Paquette,

Mr. Guy Jolicoeur,

Ms. Inna Ceban, Hearing Panel Coordinator»

¶ 25 Subsequently, before the Hearing on the Merits was held on July 4 and 5, 2012, specifically by way of an email sent at 4:43 PM on June 6, 2012, and possibly as a consequence of the HEARING PANEL's refusal to grant a third postponement, Me Eric Cadi, until now the legal counsel for the RESPONDENT, entered into the case file a "Motion to Cease Representing" which reads as follows:

[TRANSLATION]

**“INVESTMENT INDUSTRY
REGULATORY ORGANIZATION OF CANADA**

IN THE MATTER OF:

THE RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC) (REF.: 1 2-0171)

AND

THE UNIVERSAL MARKET INTEGRITY RULES

AND

JEAN-FRANÇOIS LEMAY

*TO: Me Sébastien Tisserand
IIROC
5 Place Ville-Marie, suite 1550
Montréal (Québec)
H3B 2G2*

*AND: Jean-François Lemay
21 Rue du Voltigeur
Blainville, Québec J7C 5P4*

TAKE NOTE that Counsel for the Respondent JEAN-FRANÇOIS LEMAY intends to cease representing.

Indeed, Counsel for the Respondent has a great deal of difficulty communicating with the Respondent JEAN-FRANÇOIS LEMAY and has received no instructions from the latter since appearing in this matter. They do not have a mandate to represent him. The undersigned attorneys have already informed the Respondent JEAN-FRANÇOIS LEMAY both verbally and in writing that they no longer intend to act on his behalf.

Please be governed accordingly.

MONTRÉAL, this 6th day of June 2012

IRVING MTCHELL KALICHMAN, s.e.n.c.r.l.

Counsel for the Respondent

JEAN-FRANÇOIS LEMAY

[Emphasis from the original.]

¶ 26 At 2:41 PM on June 11, 2012, Me Tisserand sent an email to the Members of the HEARING PANEL, without CCing the RESPONDENT. This email states:

«From: Sébastien Tisserand [mailto:STisserand@IIROC.CA]

Sent: Monday, June 11, 2012 2:41 PM

*To: Benjamin J. Greenberg; Marcel Paquette (marcelpaquette@sympatico.ca);
guy jolicoeur (gljolicoeur@yahoo.ca)*

Cc : NHC

Subject: RE: Declaration to cease representing, In the matter of Jean-François Lemay Ref.: 12-0171

Dear Panel Members,

IIROC do not contest the notice send (sic) by Mr. Lemay's counsel to cease to represent Mr. Lemay, and will be ready to present its evidences (sic) on July 4th as scheduled.

Best regards,

S. Tisserand

Me Sébastien Tisserand,

Avocat, Mise en application - Enforcement Counsel

Organisme Canadien de Réglementation du Commerce des Valeurs Mobilières - OCRCVM

Investment Industry Regulatory Organization of Canada - IIROC

****Visit our updated and enhanced Web site at www.iiroc.ca***

5 Place Ville-Marie, Suite 1550

Montréal, Québec H3B 2G2

Tel.: 514-878-2854 - Fax: 514-878-6324»

¶ 27 The aforesaid email was followed up by the email sent by the HEARING PANEL Chair at 4:10 PM the same day and which reads as follows:

[TRANSLATION]

«From: Benjamin J. Greenberg [mailto:BGreenberg@stikeman.com]

Sent: June 11, 2012 4:10 PM

To: Sébastien Tisserand; Marcel Paquette (marcelpaquette@sympatico.ca); guy jolicoeur (gljolicoeur@yahoo.ca)

Cc: NHC

Subject: RE: Hearing set for July 4 and 5, 2012; Jean-François Lemay Ref.: 12-0171

Maitre Sébastien (sic)

The members of the Hearing Panel have taken cognizance of your email below and of the fact that you did not send a copy to Mr. Lemay, who henceforth will be representing himself in this matter or, if he chooses, will appoint another attorney to represent him.

From now on, please copy Mr. Lemay on any communication issued by you for our attention in this matter. We take for granted that you have already notified Mr. Lemay, or will do so without delay, regarding IIROC's intention to proceed with the Hearing on the Merits on July 4 and 5, 2012 in compliance with the IIROC Memorandum dated May 17, 2012, and that you will be prepared to provide us with proof of mailing to Mr. Lemay in this regard when the Hearing is called to order this July 4.

Once you have informed him of this, please also send him a true copy of this email.

Also, since Mr. Lemay will henceforth be representing himself and he is francophone, we request that any communications to us be in French.

Thank you.

Honourable Benjamin J. Greenberg, Q.C., C. ARB., Chair

For and in the name of the Hearing Panel »

¶ 28 Consequently, in his email sent to the RESPONDENT at 4:27 p.m. on June 11, 2012, with a cc to all three Members of the HEARING PANEL, Counsel for the PLAINTIFF informed the RESPONDENT that

IIROC did not intend to challenge the motion to cease representing filed by Me Cadi. Here is the text of this email:

[TRANSLATION]

«**From:** Sébastien Tisserand <STisserand@IIROC.CA>

Date: Mon, 11 Jun 2012 16:27

To: JF Lemay

(jflemay@avenuecapitalmarkets.com)<jflemay@avenuecapitalmarkets.com>

Cc: Inna Ceban<ICeban@IIROC.CA>;

BGreenberg@stikeman.com<BGreenberg@stikeman.com>; Marcel

Paquette<marcelpaquette@sympatico.ca>; guy

jolicoeur<gljolicoeur@yahoo.ca>

Subject: TR: Hearing set for July 4 and 5, 2012; Jean-François Lemay Ref.: 12-0171

Mr. Lemay,

For your information, and as mentioned to your former attorneys, IIROC does not intend to challenge the motion to cease representing filed by Me Cadi. Moreover, as already mentioned as well, IIROC will be prepared as of this July 4 to prosecute the count detailed in the Notice of Hearing and the Statement of Allegations, which have been in your possession since last February 10. Also, please find at the end of this email, the email from the Hearing Panel Chair, who is also cc-ed in this message.

Please be governed accordingly.

S. Tisserand

Sébastien Tisserand

Avocat de la mise en application | Enforcement counsel

Tel : 514-392-3425 | Fax : 514-878-6324

e : stisserand@iiroc.ca»

¶ 29 Thus, at the Hearing on the Merits held on July 4 and 5, 2012, the RESPONDENT was present throughout the proceeding. He represented himself, cross-examined the only witness called to testify for IIROC, testified himself in his own defense and, after the close of evidence and arguments by Me Tisserand, Mr. Lemay presented his own arguments.

¶ 30 There had been some question before and during the Hearing on the Merits that the RESPONDENT would call another witness in his defense, namely Mr. Serge Beausoleil. Initially, the RESPONDENT attempted to enter into evidence a letter from Mr. Beausoleil, to which Me Tisserand objected in his email sent to the RESPONDENT at 10:05 AM on June 28, 2012, which stated:

[TRANSLATION]

«**From:** Sébastien Tisserand [mailto:STisserand@IIROC.CA]

Sent: Thursday, June 28, 2012 10:05 AM

To: JF Lemay

Cc : NHC; Benjamin J. Greenberg; Marcel Paquette

(marcelpaquette@sympatico.ca) (marcelpaquette@sympatico.ca); guy jolicoeur

(gljolicoeur@yahoo.ca) (gljolicoeur@yahoo.ca)

Subject: RE: TR: Hearing set for July 4 and 5, 2012; Jean-François Lemay Ref.: 12-0171

Mr. Lemay,

The hearing will take place at Centre Mont-Royal, located at 2200 Mansfield Street, Montréal in the Mansfield 2 room, on July 4 and 5 beginning at 10 AM.

Please note, moreover, that IIROC will object to entering your settlement offer into evidence, as it is confidential and protected under UMIR Part 10.8, par. 3.5.

IIROC will also object to entering into evidence the letter from Mr. Beausoleil. If you wish to enter this document into evidence, you must call Mr. Beausoleil to appear before the Hearing Panel to testify and explain himself.

Finally, I foresee that it will take a full hearing day to present IIROC's evidence. You should therefore be prepared to present your defense on the morning of July 5.

S. Tisserand

Sébastien Tisserand

Avocat de la mise en application | Enforcement counsel

Tel : 514-392-3425 | Fax : 514-878-6324

e : stisserand@iroc.ca»

¶ 31 At the hearings on July 4 and July 5, 2012, Mr. Lemay repeated his request to enter into evidence the letter from Mr. Beausoleil¹¹. Me Tisserand maintained his objection. The HEARING PANEL sustained his objection.

¶ 32 Subsequently, there was question of a possible reopening of the investigation in order to give the RESPONDENT the opportunity to have Mr. Beausoleil testify before the HEARING PANEL, but Mr. Lemay never took them up on this offer.¹²

¶ 33 There was also the letters from Mr. Jean-Luc Bernier and Doctor Colette Landry, which Mr. Lemay wanted to enter into the case file, but was not willing, for all that, to call these people to give evidence.¹³

¶ 34 Therefore, we are of the opinion that the RESPONDENT benefited from every latitude in order to present a full and complete defense, but that he opted, by his own choice, not to follow through to the fullest.

¶ 35 The RESPONDENT was approved as a representative with unrestricted practice at UNION from February 23, 2004 until January 23, 2009, the date he resigned from this firm.

¶ 36 Prior to UNION, he was approved as a representative with unrestricted practice with Canaccord Capital Inc. (**Canaccord**) from July 15, 2002 until January 28, 2004.

¶ 37 Before his stint with Canaccord, the RESPONDENT was with CIBC Financial Planning Inc. from October 26, 2001 until June 20, 2002 and prior to that, he was at Scotia Capital Inc., from August 11, 1995 to August 4, 2000.¹⁴

¶ 38 Since resigning from UNION, he has worked as "Managing Partner" at Avenue Modelcom Capital Partners Inc.¹⁵

¹¹ See line 17 on page 20 to line 9 on page 21 of the Transcript of the July 4, 2012 Hearing.

¹² See line 2 on page 107 to line 21 on page 108 of the Transcript of the July 5, 2012 Hearing, the email sent by the RESPONDENT to the HEARING PANEL Members at 11:42 AM on August 1, 2012, the email sent by the HEARING PANEL Chair to the RESPONDENT at 12:55 PM on August 8, 2012, the email of August 13, 2012 sent at 1:59 PM from the RESPONDENT to the HEARING PANEL Members, as well as the letter sent by the HEARING PANEL Chair to the RESPONDENT on August 15, 2012. See also the letter of September 4, 2012 sent by the HEARING PANEL Chair to the RESPONDENT. These letters, emails and excerpts from the transcripts are appended to this DECISION in a bundle, as SCHEDULE "A".

¹³ See line 4 to line 14 on page 11 of the Transcript of the July 5, 2012 Hearing.

¹⁴ See Exhibit P-2.

¹⁵ See his email to the HEARING PANEL Chair sent at 11:42 AM on August 1, 2012, a copy of which is appended in SCHEDULE

¶ 39 Apart from the RESPONDENT and UNION, which is mentioned above, here are the other actors in this instance:

- i) Mr. Serge Beausoleil, a client and longtime friend of the RESPONDENT. Mr. Beausoleil was a sophisticated investor, having himself been a representative with unrestricted practice.¹⁶ His existence and identity were well known to UNION, where he held and operated several accounts. The RESPONDENT was at all material times the representative at UNION assigned to Mr. Beausoleil's accounts.¹⁷
- ii) Rahn & Bodmer («**R&B**»), a Swiss bank, whose place of business was in Zurich.
- iii) *Bozo*¹⁸, the alias used by an R&B client for whom several stock transactions were carried out at UNION, including the seventeen (17) transactions in question here.¹⁹

¶ 40 R&B held and operated an *omnibus* account at UNION, for which the RESPONDENT was the representative. Therefore, UNION was aware when R&B executed a transaction but did not know for which R&B client any one transaction was carried out.

¶ 41 The seventeen (17) stock transactions involved in this case, executed for R&B by the RESPONDENT at UNION, had a value of \$180,500 if one calculated only the buy side or the sell side in each instance; but an overall value of \$361,000 if one calculated both sides of each transaction.²⁰

¶ 42 In all of these seventeen (17) stock transactions, UNION was on both sides of the transactions; which is commonly referred to as a "cross trade" in stock market jargon.

¶ 43 Each of these seventeen (17) stock transactions was preceded and or accompanied by an exchange of emails involving the RESPONDENT.²¹

¶ 44 According to the investigator Yannick Béland, *Bozo* is Beausoleil and Beausoleil is *Bozo*.²²

¶ 45 So, to Investigator Béland, the main elements that were harmful to the investment industry in this instance were that each of the seventeen (17) cross trades was fictional; that each side of each trade had the same beneficial owner; that there was no real change in the ownership of the security, making them *wash trades* in stock market parlance.

¶ 46 Serge Beausoleil, though linked and implicated in each of the seventeen (17) stock transactions at issue here, was not called to give evidence before the HEARING PANEL, by either IIROC or the RESPONDENT.

¶ 47 Consequently, apart from the testimony of the RESPONDENT and investigator Béland, all we have as evidence concerning the seventeen (17) stock transactions executed by the RESPONDENT is the voluminous documentation entered into evidence by the PLAINTIFF.

II. THE PLAINTIFF'S ARGUMENTS

¶ 48 Throughout said documentation, IIROC argues that all of its claims are based on a strong preponderance of the evidence.

¶ 49 The PLAINTIFF accepts that a *cross-trade* may be legitimate, but only inasmuch as two independent persons are involved.

¶ 50 PLAINTIFF argues that the evidence in this matter establishes, in a strong preponderance, that the seventeen (17) transactions at UNION, which the RESPONDENT entered for *Bozo* on behalf of R&B, were

"A".

¹⁶ See line 3 on page 83 to line 11 on page 85 of the Transcript of the July 4, 2012 Hearing.

¹⁷ See line 21 on page 87 to line 13 on page 88 of the Transcript of the July 4, 2012 Hearing.

¹⁸ Borrowed from the famous Barnum & Bailey circus clown.

¹⁹ See line 22 on page 212 to line 16 on page 213 of the Transcript of the July 4, 2012 Hearing. See also exhibits P-69 and P-72.

²⁰ See the testimony of Yannick Béland, line 10 to line 25 on page 214 of the Transcript of the July 4, 2012 Hearing.

²¹ See the testimony of Yannick Béland, line 11 on page 213 to line 9 on page 214 of the Transcript of the July 4, 2012 Hearing.

²² See line 6 on page 178 to line 19 on page 181 of the Transcript of the July 4, 2012 Hearing.

wash trades, since there was no change of beneficial owner.

¶ 51 In each case, the economic owner of the securities involved was alleged to be the same person, both before and after the stock transaction. This, Me Tisserand argued, is a violation of the UMIR.

¶ 52 So, Me Tisserand is also arguing that *Bozo* is Beausoleil and Beausoleil is *Bozo* and that the various emails implicating the RESPONDENT establish that the RESPONDENT knew this.²³ Indeed, other than the RESPONDENT's claim, there is no objective and independent evidence to the contrary.

¶ 53 The RESPONDENT had explained that his *modus operandi* was to confirm transactions to his clients by email. However, for the transactions performed for *Bozo*, the RESPONDENT always confirmed with emails that he sent to Mr. Beausoleil.

¶ 54 What's more, when Mr. Beausoleil would ask the RESPONDENT questions by email regarding *Bozo*'s account, he would express himself along these lines: "*Am I short?*"²⁴

¶ 55 Me Tisserand offers us no theory as to the Why of these false and misleading transactions. We have no motive to offer. Who might have benefited from the transactions? At first glance, no one.

¶ 56 He argues that when the RESPONDENT tells us that he was only confirming and executing orders from others, without knowing anything, the RESPONDENT is lying to us.

¶ 57 IIROC also argues that, even though, objectively speaking, the amounts at stake in the seventeen (17) stock transactions were minimal, because of what is described in clauses ¶ 73 and ¶ 74 below, the impact that these transactions had on the stock market was "major", "enormous".²⁵

III. THE RESPONDENT'S ARGUMENTS

¶ 58 According to the RESPONDENT, he did not and does not know who *Bozo* was. He was merely entering and executing orders.

¶ 59 What's more, he was informed originally²⁶ that there was a complaint of misappropriation of funds against him, but the investigation has focused on issues of stock market manipulation. This, he says, is fundamentally unjust and should not be tolerated by the HEARING PANEL.

¶ 60 In 2009, UNION closed its Montréal office²⁷ and, according to the RESPONDENT, owed him the balance of his commissions, as well as his severance pay, which the RESPONDENT claims UNION did not want to pay him²⁸. The RESPONDENT put pressure on them to pay him and, to get back at him, he says, UNION accused him of misappropriation of funds.²⁹ Therefore, according to the RESPONDENT, this information was bogus and ridiculous.

¶ 61 Therefore, when he appeared before Mr. Béland for questioning on March 15, 2011, the RESPONDENT was neither prepared, nor in a position to discuss the allegedly fictional and manipulative stock transactions.

IV. ANALYSIS AND CONCLUSIONS

A. THE COUNT

¶ 62 According to the Notice of Hearing in this instance, the RESPONDENT is alleged to have violated the UMIR in that:

"He entered orders or executed transactions on the Toronto Venture Exchange (TSX-V) and on a quotation and trade reporting system (Over-the-Counter

²³ See the chain of emails, Exhibit P-23.

²⁴ See line 6 to line 18 of the Transcript of the July 4, 2012 Hearing.

²⁵ See line 24 on page 64 to line 6 on page 66 of the Transcript of the July 5, 2012 Hearing.

²⁶ See the letter of August 21, 2009, Exhibit P-9.

²⁷ See line 10 to line 19 on page 6 of the Transcript of the July 5, 2012 Hearing.

²⁸ See the text referenced in . Footnote 27

²⁹ See line 10 on page 6 to line 3 on page 7 of the Transcript of the July 5, 2012 Hearing.

Bulletin Board - OTCBB) when he knew, or ought reasonably to have known, that the entry of such orders or the execution of the transactions would create, or could reasonably be expected to create, a false or misleading appearance of trading activity with respect to the security, contrary to UMIR 2.2(2)(a), to Policy 2.2, with which he is required to comply pursuant to UMIR 10.4."

B. THE BURDEN OF PROOF

¶ 63 Since the RESPONDENT did not file a response to the Notice of Hearing nor enter a plea regarding the count against him, the HEARING PANEL held the hearing on the assumption that the RESPONDENT had denied the allegations against him and pleaded “not guilty” on the sole count against him.

¶ 64 Consequently, it fell to the Enforcement Counsel to prove the allegations made by IIROC against the RESPONDENT.

¶ 65 Disciplinary law is founded principally on notions of civil law. Nevertheless, it is, in a sense, a hybrid field of law, lying somewhere between civil and penal law.

¶ 66 Since this is not a penal action, the burden of proof in penal law, namely “proof beyond all reasonable doubt”, finds no application here.³⁰

¶ 67 Consequently, a plaintiff is not required to prove either malicious intention or *mens rea* on the part of a respondent unless the wording of the regulatory provision or the count make reference to it.

¶ 68 Some claim that, in a disciplinary matter, considering the possible consequences for the targeted person and therefore the person charged, the burden of proof imposed on a plaintiff should be more demanding than the mere balance of probabilities that is well known in civil law.

¶ 69 It is often argued that the evidence offered by a plaintiff should establish all of the vital elements of each count in a clear and convincing way (*clear and convincing proof*) and include evidence that is both convincing and compelling (*cogent evidence*).

¶ 70 We believe that the burden that applies to the PLAINTIFF is essentially that used in civil law, namely that of the “balance of probabilities”, also referred to as the “preponderance of the evidence”.

¶ 71 Nevertheless, because a guilty verdict can entail revocation of the RESPONDENT’s right to practice his profession or business activity, we are of the opinion that in this present disciplinary proceeding, the evidence against him must be strong, clear and convincing. In other words, to find Mr. Lemay guilty of the allegations that have been made, the evidence must be reliable and particularly convincing.

C. ANALYSIS OF THE FACTS AND THE LAW: THE CONCLUSIONS

¶ 72 The RESPONDENT was, at all material times in this matter, and still is a highly experienced and knowledgeable individual in the fields of stock and capital market investing and therefore should have known and fully understood what he was doing in the seventeen (17) transactions in question in this matter.

¶ 73 It is essential to consider the major proportions that the RESPONDENT’s market activities took on in terms of the securities he traded vis-à-vis the global market activity for the securities concerned.

¶ 74 During the period under study here, the RESPONDENT’s stock transactions with respect to said securities at times represented as much as 100% of the total daily activity in that security.³¹

¶ 75 First of all, we are of the opinion that, when there is a *wash trade*, which – bottom line – is a fictional transaction, there is market manipulation going on.

³⁰ *Belhassen c. Avocats*, [2000] D.D.O.P. 238, 10 and 11 (T.P.), *Osman c. Médecins*, [1994] D.D.C.P. 257, 263 (T.P.); *Psychologues c. Da Costa*, [1993] D.D.C.P. 266, 270 (T.P.); *Notaires c. Champagne*, [1992] D.D.C.P. 268, 280 (T.P.).

³¹ See lines 2 to 6 on page 169 of the Transcript of the July 4, 2012 Hearing. See also line 21 on page 201 to line 4 on page 204 of the Transcript of the July 4, 2012 Hearing. And again from line 17 on page 215 to line 8 on page 216 of the Transcript of the July 4, 2012 Hearing.

¶ 76 We agree with the arguments advanced by Me Tisserand when he based his pleadings on *Leckie*, [2005] R.S.D.D. No. 2, July 19, 2005:³²

[TRANSLATION]

“The fact that there was a wash trade, whether the client benefits or not, is unimportant. The problem is: Is it in violation of 2.2? Did he execute transactions knowing that there was no change of ownership? If yes, there has been a violation, even if there was no intent to manipulate the market, even if there was no intent to manipulate the price, even if it was with the best intentions in the world to protect the client, there has been a violation of 2.2”

¶ 77 We also concur with the argument of Counsel for IIROC that the only logical conclusion that can be drawn from the array of emails that the RESPONDENT sent, taken in context of the seventeen (17) transactions at issue here, is that *Bozo* is Beausoleil and Beausoleil is *Bozo*; and the RESPONDENT knew it.

¶ 78 Consequently, the RESPONDENT’s actions in this matter, in the wording of the Notice of Hearing, were taken even though he knew or ought reasonably to have known that entering each of these seventeen (17) orders and executing the seventeen (17) stock transactions at issue here would create or could reasonably be expected to create a false or misleading appearance of trading activity in the securities concerned.

¶ 79 The evidence presented to us against the RESPONDENT is very clear, solid, convincing and overwhelming.

¶ 80 In the face of the body of evidence that we have heard, we are completely convinced and have concluded that the RESPONDENT must be found guilty of the count brought against him by IIROC.

V. THE NEXT STEP IN THE DISCIPLINARY PROCESS

¶ 81 The MEMBERS of the HEARING PANEL shall instruct the COORDINATOR to communicate this UNANIMOUS DECISION ON THE MERITS without delay to the RESPONDENT and to Counsel for IIROC, and to communicate with Counsel for IIROC and the RESPONDENT and, in cooperation with the undersigned, establish as quickly as possible the procedures for submissions by the Parties and for holding a Hearing on the penalty or penalties to be imposed on the RESPONDENT and, if deemed just and appropriate, the assessment of costs on the RESPONDENT.

VI. FINAL DISPOSITION

¶ 82 This **DECISION** shall be signed by the members of the HEARING PANEL in multiple copies. Each of these signed copies shall be equally valid and authentic and shall avail for all legal purposes.

VII. DISPOSITION:

¶ 83 **FOR ALL THESE REASONS, THE HEARING PANEL FINDS AND DECLARES THE RESPONDENT GUILTY OF THE COUNT AGAINST HIM.**

VIII. THE SIGNATURE PAGE

Signed at Montréal (Québec), this December 13, 2012

Honourable Benjamin J. Greenberg, Q.C., C. ARB., HEARING PANEL Chair

Guy L. Jolicoeur

Marcel Paquette

The following documents constitute SCHEDULE «A» of the UNANIMOUS DECISION ON THE MERITS dated December 13, 2012 in the above-cited matter.

³² See line 6 to line 16 on page 87 of the Transcript of the July 5, 2012 Hearing.

July 5, 2012

ARGUMENT
M. J. – F. Lemay

-107-

1 will confirm this to you.

2 CHAIR:

3 Mr. Lemay, it's too easy to say "in

4 forty-eight (48) hours I could have it for you,

5 or get it or something else for you." The evidence

6 is now at a close. However, there are,

7 in legal procedure, opportunities to reopen an

8 investigation, the investigative portion of the proceeding if one comes across

9 a compelling piece of evidence after the evidence portion of the proceeding has been

10 declared closed. And especially because you

11 have no attorney to defend you, it

12 behooves me to tell you this. If in... We won't have the

13 transcripts for a few weeks because the

14 stenographer is going on vacation. This is the time of

15 year when everyone is on vacation and, in

16 10 days' time, I myself am leaving on vacation.

17 So, nothing will be done in your case. We

18 cannot meet and examine the transcripts

19 and deliberate together before approximately mid-August.

20 So, if in the days to come you

21 come across one or more pieces of conclusive documentary

22 evidence, which if we had them now

23 would probably affect the case's

24 outcome, then consult an attorney and

25 file an application to reopen the investigation.

July 5, 2012

ARGUMENT M. J.-F. Lemay

- 108 -

1 I'm not saying that, if you file

2 such an application, that we'll grant it.

3 JEAN-FRANÇOIS LEMAY

4 Hum, hum.

5 CHAIR

6 It depends on the reasons for such an application and

7 said application should provide all of the details of
8 what you want to enter into evidence and the reason why
9 you did not do so until now. If applicable,
10 we will look at it carefully and dispose of it
11 appropriately in accordance with the law. But it is not sufficient
12 to say “I can get you this or
13 something else in forty-eight (48) hours.
14 JEAN-FRANÇOIS LEMAY :
15 Fine.
16 CHAIR
17 We have to have it.
18 JEAN-FRANÇOIS LEMAY
19 Fine.
20 CHAIR
21 Continue, please.
22 JEAN-FRANÇOIS LEMAY :
23 During the interview, it’s... When you go
24 before... before IIROC, it’s very difficult,
25 it’s something you don’t want

[TRANSLATION]

From: JF Lemay <jflemay@avenuecapitalmarkets.com>
Sent: Wednesday, August 01, 2012 11:42 AM
To: Benjamin J. Greenberg; marcelpaquette@sympatico.ca; gljolicoeur@yahoo.ca
Subject: Lemay vs IIROC

Gentlemen,

As mentioned at the hearing, I intend to file an application to reopen the matter in order to be able to file evidence that shows that Serge Beausoleil did indeed have power of attorney in several accounts. As you can imagine it has been very difficult to find his[sic] people and have them sign the documents. My attorney, Me Eric Cadi, is out of the office until August 8. You should receive this application as well as the supporting documents toward the end of next week.

Hoping that you shall find the whole to your satisfaction, I remain

Yours truly

JF Lemay

Jean-Francois Lemay
Managing Partner
Avenue Modelcom Capital Partners Inc.
W:514-395-1221
C:514-214-8388

From: Benjamin J. Greenberg
Sent: Wednesday, August 08, 2012 12:55 PM
To: JF Lemay; marcelpaquette@sympatico.ca; gUolicoeur@yahoo.ca
Cc : NHC (NHCl@iiroc.ca)
Subject: RE: Lemay vs IIROC

Thank you, Mr. Lemay.

So, since your attorney is supposed to be back this very day, if you still wish it, you have until August 17 to file the application you mentioned.

Sincerely

Honourable Benjamin J. Greenberg, Q.C., C. ARB.,
Chair of the HEARING PANEL

From: JF Lemay [mailto:jflemay@avenuecapitalmarkets.com]
Sent: Wednesday, August 01, 2012 11:42 AM
To: Benjamin J. Greenberg; marcelpaguette@sympatico.ca; gljolicoeur@yahoo.ca
Subject: Lemay vs IIROC

Gentlemen,

As mentioned at the hearing, I intend to file an application to reopen the matter in order to be able to file evidence that shows that Serge Beausoleil did indeed have power of attorney in several accounts. As you can imagine it has been very difficult to find his[sic] people and have them sign the documents. My attorney, Me Eric Cadi, is out of the office until August 8. You should receive this application as well as the supporting documents toward the end of next week.

Hoping that you shall find the whole to your satisfaction, I remain

Yours truly

From: JF Lemay <jflemay@avenuecapitalmarkets.com>
Sent: Monday, August 13, 2012 1:59 PM
TO: Benjamin J. Greenberg; marcelpaquette@sympatico.ca; gUolicoeur@yahoo.ca
Cc : 'NHC'
Subject: RE: Lemay vs OCRCVM
Attachments: Jean-Luc Bernier- Jean-François Lemay.pdf; Jean-Luc Bernier- UNION Securities limited.pdf; Landry 1.pdf; Landry 2.pdf

Dear Me Greenberg,

Thank you for your reply.

You will find below the reply from my attorney, Me Cadi, who says that unfortunately he cannot represent me for the motion to reopen the matter in order to file evidence in my defense... And it isn't because of the amount owed for I have a very good relationship with Me Cadi. I was merely awaiting his return to settle his bill.

As Me Cadi suggested, I contacted Me Tisserand to find out the procedure for this motion. No surprise, Me Tisserand informed me that he could not help me because he represented the opposing party.

I am therefore taking the initiative of writing to you to have you agree to reopen the matter. You will understand that his[sic] evidence is important for my defense. IIROC has accused me of being a liar. They have insinuated that Serge Beausoleil had no authority to order transactions in his[sic] accounts, which is false, and the signature on his[sic] documents proves it. Once again, Serge certainly could have had power of attorney in BOZO's account.

You will find attached seven (7) accounts or[sic] Mr. Serge Beausoleil had power of attorney. Unfortunately, for personal reasons, his former wife and his daughter, Guylaine Cormier and Véronique Cormier, were not willing to sign the documents for me (4 accounts) immediately and sent them to their attorney, Me Caroline Lavoie, for a legal opinion... Serge and Guylaine did not leave each other on very good terms....

I am still waiting for the ones from Guylaine and Véronique. I trust you shall find everything to your satisfaction.

Honourable Benjamin J. Greenberg, Q.C., C. ARB.

Telephone: 514-397-3051

Fax: (514) 397-3631

Email: bgreenberg@stikeman.com

BY EMAIL

August 15, 2012

Mr. Jean-François Lemay

Managing Partner

AVENUE MODELCOM CAPITAL PARTNERS INC.

Subject: IIROC and yourself

Our ref.: 010741-1009

Sir:

I read your email dated August 13 this morning, along with the attachments.

Approximately ten days ago, the three Members of the HEARING PANEL (and probably yourself as well) received from Mr. Claude Morin, official stenographer, the transcripts of the two days of hearings last July 4 and 5. When your aforesaid email came in, we were studying the transcripts with the intention of then meeting to continue our deliberations.

However, like Me Tisserand, but for a different reason, the members of the HEARING PANEL are not allowed to give legal advice. This is why you must consult your own attorney. Nevertheless, I emphasize that just as you have the right to be represented by an attorney, you also have the right to represent yourself. However, in either case, you must follow the rules of procedure and the rule of law.

Consequently, if you wish to file a "Motion to Strike Out the Deliberation and Reopen the Investigation" (**Motion**), said motion must be properly prepared and filed. With this in mind and in order to continue to give you the opportunity to present a full and complete defense, you have until Friday, August 31 to file this Motion. If your Motion is not received by or before August 31, 2012, we will continue with our deliberations.

Yours truly,

Honourable Benjamin J.

Greenberg, Q.C., C. ARB.

HEARING PANEL Chair

BJG/sb

cc : *Mr. Marcel Paquette,*
Mr. Guy Jolicoeur,
Ms. Inna Ceban, Hearing Panel Coordinator

Honourable Benjamin J. Greenberg, Q.C., C. ARB.

Telephone: 514-397-3051

Fax: (514) 397-3631

Email: bgreenberg@stikeman.com

BY EMAIL

September 4, 2012

Mr. Jean-François Lemay

Managing Partner

AVENUE MODELCOM CAPITAL PARTNERS INC.

Subject: IIROC and yourself

Our ref.: 010741-1009

Mr. Lemay,

I refer you to your email to my attention last August 13 and to my letter of reply, which was sent to you by email as well, last August 15.

Not having received any formal “Motion to Strike Out the Deliberation and Reopen the Investigation”, I wish to inform you that the three Members of the HEARING PANEL shall continue their deliberation and our Decision, once it is made, will be communicated to you at the proper place and time.

Yours truly,

Honourable Benjamin J. Greenberg, Q.C., C. ARB.,
Chair of the HEARING PANEL

BJG/db

cc: *Mr. Marcel Paquette,*
Mr. Guy Jolicoeur,
Ms. Inna Ceban, Hearing Panel Coordinator

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