

Re Giroux-Garneau

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization of
Canada**

and

The By-Laws of the Investment Dealers Association of Canada

and

Denyse Giroux-Garneau

2016 IIROC 17

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

Hearing held on: January 21, 2016
Decision rendered on: May 12, 2016

Hearing Panel

Me Jean Martel Ad. E., Chair; Me Jacques Lemay and Mr. Marcel Paquette

Appearances

For IIROC: Me Pascale Dionne-Bourassa

For Respondent: Me Jacques Patry

DECISION ON THE MERITS

I. THE PROCEEDING

¶ 1 A contested enforcement hearing was held pursuant to Part 10 of Rule 20 of the Investment Industry Regulatory Organization of Canada (**IIROC**).

¶ 2 The Amended Notice of Hearing dated August 7, 2015 alleges, in the following terms, that Ms. Denyse Giroux-Garneau (the **Respondent**), while she was a representative and employee of an IIROC-regulated firm, Industrial Alliance Securities Inc. (**IAS / the Firm**) violated certain provisions of the IIROC Dealer Member Rules (**the Rules**):

1. *On February 11 and 14, 2014, whereas the account of a client deceased on October 12, 2013 had not been designated as a “discretionary” or “managed” account, the Respondent engaged in business conduct or practice which was unbecoming when she carried out two unauthorized and liquidative securities transactions in the client’s TFSA account, by cancelling the client’s TFSA account and by giving instructions to transfer an amount of \$15,294.63 to the client’s bank account, without obtaining the prior authorization of the*

liquidator of the client's succession, contrary to Rule 29.1, Rule 1300.4 and Rule 1300.5 of IIROC;

2. *On February 14, 2014, the representative Giroux-Garneau engaged in business conduct or practice which was unbecoming by unlawfully appropriating, by means of a blank cheque signed by the client while he was still living, the sum of \$15,972.88, contrary to IIROC Rule 29.1;*
3. *Effective October 12, 2013, the representative Giroux-Garneau engaged in business conduct or practice which was unbecoming by not informing her employer of the client's death, by not updating the client's account opening form following the latter's death, and by not changing the client account to an estate account, contrary to IIROC Rule 29.1 and to IIROC Rule 1300.1(a);*

¶ 3 Through her legal counsel, the Respondent filed an amended defence which, while not denying the facts alleged by IIROC, argues the following:

- a) she was the de facto spouse of the client concerned by the Notice of Hearing (“**J.**”);
- b) she looked after him at a time when he “*had numerous limitations*”;
- c) she spent considerable sums for this purpose;
- d) inasmuch as he had the means, J. wanted her to be compensated for this;
- e) J.’s family members had abandoned him and he did not want to leave them anything after his death;
- f) he gave the Respondent a signed blank cheque for her to fill out and collect the sums that he wanted to leave her;
- g) she was merely respecting his wishes.

¶ 4 The Respondent, being elderly and sick, was represented by counsel at our hearing of January 21, 2016.

¶ 5 The latter made certain representations and attempted to introduce into evidence a narrative history (“**Narrative History**”) which he attributed to the Respondent, and in which she describes in detail the circumstances of her past relationship with J.

¶ 6 After adjourning the hearing a first time in order to give counsel for IIROC a chance to familiarize herself with this Narrative History, we adjourned the hearing *sine die* to allow the document to be introduced into evidence by mutual consent of the parties, in the form of a sworn statement by the Respondent. This was to be the only evidence filed in her defense.

¶ 7 In a decision rendered on February 8, 2016, the Hearing Panel approved the introduction into evidence of the Narrative History, along with the presentation of closing addresses by the counsels for the parties in the form of written arguments.

¶ 8 The hearing record was completed on March 9, 2016 and taken under advisement by our Hearing Panel that same day.

II. THE FACTS

¶ 9 Here is what we retain from the evidence, in a three-part description: first, we examine the facts concerning the personal relationship that developed between the Respondent and her client; secondly, those that concern the role the Respondent was called upon to play in the material direction of the couple, by reason of this relationship; and finally, the facts more directly connected with the three violations of the Rules as alleged by IIROC in this matter.

The Respondent's relationship with the client

¶ 10 The Respondent has been a registered representative in the securities industry since 1978. She met J. in

the course of her work, in 1988. He was practicing law as a notary and occasionally referred clients to her in the course of settling estates.

¶ 11 In the late 90s, J. experienced professional troubles. He was ultimately stricken from the roll of l'Ordre de la Chambre des notaires and lost his right to practice. He then went back to school and lived very frugally.

¶ 12 The Respondent and he renewed contact and began seeing each other regularly. Their relationship grew closer and, in 2001, J. moved in with her.¹

¶ 13 From then on, they conducted themselves publicly as spouses, and each of them, from time to time, attended events that involved the other's family.

¶ 14 Then, J. was diagnosed with Parkinson's disease. In the beginning, this did not prevent him from pursuing his university graduate studies in the field of taxation, an activity that his disability benefits allowed. But his life was not easy.

¶ 15 As long as they were together, the Respondent looked after J. She took great care of him. She stood by him and supported him in all of the challenges that his condition involved: medical consultations of all types, physical therapy and treatments to improve his balance and mobility, discussing appropriate medication choices with doctors, applying to government social services agencies to get him a living allowance, and so on.

¶ 16 On a material level she handled the majority of the couple's housing, furniture, phone, food and housekeeping expenses; she paid off some of his personal debts.

¶ 17 J.'s health deteriorated. In 2008, he had to be admitted to a long-term care facility for the severely disabled (a CHSLD). He remained in this establishment until his death.

¶ 18 In June of that same year, the Respondent entered the employ of IAS as a securities representative.

¶ 19 The Respondent helped J. with his admission process to the CHSLD. Once he was admitted, she continued to act as if she was his spouse. She visited J. regularly, she did his laundry, she bought him clothes and food and made sure that the other necessities of life were available to him. For instance, she purchased some more expensive items for him, such as a laptop computer and a television set. She dressed him, took him to social activities and made sure he could participate without injury. Most of the time, she paid out of her own pocket, since J. really did not have the means to contribute to such expenditures.

¶ 20 At an unspecified time, J. gave the Respondent blank cheques which he had signed so that she could draw money on his current account at the Bank of Montréal whenever she needed to – notably to reimburse some of the many expenses that she handled for him for his well-being.

¶ 21 In fall 2013, the Respondent used some of these cheques to pay expenses in connection with the care that J.'s state of health now required and to obtain cash.²

¶ 22 While the Respondent was acting as J's caregiver, his family members were not in any way involved in the care and support that his struggle against the disease required.

The Respondent's role in the material direction of the couple

¶ 23 On the financial level, her spousal relationship with J. led the Respondent to take on certain responsibilities in the material administration of their household.

¶ 24 Without a doubt, the Respondent had an apparent mandate to act and incur certain expenses to this end. She did this with her own income in the majority of cases.

¶ 25 From 2005 on, J. allegedly gave her a formal mandate to act in his name for wealth management

¹ Interview P-39 between the IIROC investigator and the Respondent, Exhibit P-39, p. 12.

² Exhibit P-9.

purposes, in the form of a notarized power of attorney that gave her authority generally.³

¶ 26 The Respondent states that this document was to be renewed every six months to remain in force. At some point, she abandoned this to avoid the related legal costs and the risk of being held responsible for all of J.'s debts, as his financial position was precarious.⁴

¶ 27 The power of attorney itself, at least in the form in which it would have applied, is not in evidence before the Hearing Panel. What is in evidence is that the usefulness of the authorizations that it conferred was relative. Indeed, J. claimed that he was far richer than he was, since in reality he had almost nothing.

Respondent's conduct as a representative

¶ 28 Until 2010, when J. received an inheritance.

¶ 29 He then decided to use the Respondent's services to invest the proceeds. To this end, he became a client of the Firm where his spouse worked.

¶ 30 On or around January 26, 2010, he opened an untaxed brokerage account (a "**cash account**") with IAS and, through the same Firm, a tax-free savings account (a "**TFSA account**") (we refer hereinafter in aggregate to the cash account and the TFSA account as J.'s "**accounts**").

¶ 31 The Respondent was the one who helped J. fill out the documentation in P-23, namely the cash account opening form, as well as the relevant documents for setting up the TFSA account.

¶ 32 This documentation is filled out by the Respondent and signed by J., as the new client. The address he states as his own is the same as the Respondent's, which went unnoticed at the Firm.

¶ 33 Even though the client was the representative's de facto spouse, and they lived together under the same roof, neither of them reported their relationship to the Firm. Quite the contrary, on the cash account opening form, J. stated that his spouse – who happened to be, we repeat, the representative who helped him fill out the form – was not employed with an IIROC-regulated firm. This is patently false.

¶ 34 This false declaration, to which the Respondent was an accomplice by helping J. make it, kept J.'s accounts from being coded "PRO" by the Firm, as they should have been given the client's ties with the Representative. Thus, they avoided the additional controls that the broker normally applies to trades conducted in such accounts.

¶ 35 Moreover, we note that when the accounts were opened, J. did not, and he stated that he did not, confer any power over the cash account to a third party (by power of attorney, for example) or any power to manage the account, as the Rules would have allowed.

¶ 36 Consequently, the cash account was not opened under a "discretionary" or "managed" designation, which might have allowed the Respondent to execute discretionary trades validly in the account, according to parameters predetermined with the client.

¶ 37 If J. had had the intention of investing the Respondent with this kind of management power, he could easily have done so. He was a client with a legal background and a graduate degree in taxation, and he could rely on the help of an experienced representative to fill out the account opening documents. Yet he did no such thing.

¶ 38 The Respondent was therefore never relieved of her obligation, under the Rules, to obtain J.'s authorization, or that of his assigns, in order to execute trading activities in his accounts. Among these possible assigns, one must include the liquidator of the client's succession, since the estate was the designated beneficiary of the TFSA account.⁵ The Respondent had to have known this.

³ Narrative History, *Mandate and/or General Power of Attorney*, 2015.

⁴ Ibid.

⁵ See Statement of Account P-24.1.

¶ 39 Then, on October 12, 2013, J. died.

¶ 40 The Respondent was quickly informed. She had witnessed the rapid deterioration of his condition over the preceding days, when he had to be rushed to the hospital. She went to the hospital for the usual confirmations. She saw to obtaining J.'s death certificate and made his funeral arrangements. It was normal: she had been looking after him on her own for years.

¶ 41 As the deceased's spouse and securities representative, she knew full well that investments were held in his accounts at IAS.

¶ 42 A representative who, like the Respondent, has over 35 years' experience in the industry, has to know that upon the death of a client, the latter's assets devolve to the deceased's estate, and fall under the control of an executor, the liquidator of the succession, and the representative of the deceased client must inform his employer of this, and conduct himself accordingly.

¶ 43 The Respondent did not see it this way. She abstained from informing the authorities at IAS of the death, which she should have done by updating the account opening form and asking that the accounts be converted to estate accounts.

¶ 44 As the representative in charge of the client, she was thus disregarding an obligation that was very clearly incumbent upon her.

¶ 45 If such disclosure had been made to the Firm, its monitoring policies and procedures would have required the assets in the deceased's TFSA account to be frozen, and any subsequent transactions in the account would be prohibited without the authorization of the liquidator of the succession.⁶ The Respondent did not want this, and the subsequent events explain why.

¶ 46 Between December 2013 and February 2014, the Respondent had a will search performed at her expense to see if J. had left a will. She thus learned that there was indeed one, and obtained the contact information for the notary before whom it was signed.

¶ 47 This will was signed some thirty years prior while J. was a student, but was never amended or revoked. It names, as liquidators, J.'s father, since deceased, his sister (Mrs. C.), and a trust company to be determined. At J.'s death, his sole heir was C. and she acted as the liquidator.

¶ 48 Four months later, in February 2014, the Respondent was informed that she was not an heir of J.'s estate.

¶ 49 Confronted with this news, the Respondent acted quickly, between February 11 and 14, 2014.

¶ 50 Through unauthorized sell transaction which she initiated on the equity market, she monetized the investments held in the client's TFSA account and had the account closed by canceling the relevant agreements. She then gave cash management instructions within the Firm to have the net cash balance transferred from the TFSA account to the cash account. Finally, she gave instructions to transfer a sum of \$15,294.63 from this cash account to the deceased's current account, which was still operational at the Bank of Montréal.

¶ 51 To IAS, all these transactions were carried out under conditions that would lead one to believe that the account holder had duly authorized their execution. Moreover, they are trades that a registered representative of the Firm is routinely permitted to carry out. They were therefore not of a nature to raise suspicions.

¶ 52 On February 14, 2014, the Respondent completed her appropriation of the assets in J.'s estate. She filled out one of the signed blank cheques in her possession and presented it for payment. The cheque was honoured by the client's bank, the deceased's current account was debited, and the Respondent collected a sum of \$15,972.88 at the estate's expense.

¶ 53 Two months later, Mrs. C contacted the Firm to obtain, in her capacity as liquidator of the succession, information on her brother's investments.

⁶ Statement by Alain Goyer, Exhibit P-51, par. 8.

¶ 54 C. soon found that after J.'s death, a sum of \$15,294, whose transfer she did not authorize, was drawn on the TFSA account.

¶ 55 On April 24, 2014, C. filed a complaint with the Firm and requested restitution of the misappropriated amount.

¶ 56 IAS then conducted an internal investigation. On this occasion, the Respondent admitted having liquidated the TFSA account and maneuvered to retrieve the balance.

¶ 57 The Respondent was dismissed by the Firm on May 16, 2014, without having reimbursed the estate for the amount she had taken from it.

III. THE ALLEGED MISCONDUCT

¶ 58 Reconciling these facts with IIROC's complaint, the Organization alleges that the Respondent contravened Rule 29.1 through breaches of conduct which she committed while acting as a representative of one of its dealer members.

¶ 59 These contraventions have to do with the fact that, in each case, the Respondent engaged in "business conduct or practice which is unbecoming" or detrimental to the public interest, causing her to deviate from her duty to observe high standards of ethics and conduct.

¶ 60 In two cases, the Respondent's alleged misconduct may also have contravened other Rules.

¶ 61 First, IIROC submits that the Respondent engaged in practices which are unbecoming (Rule 29.1) in connection with J.'s TFSA account, by exercising discretionary management powers over the count without the required prior authorization (Rule 1300.4 and Rule 1300.5).

¶ 62 The Hearing Panel finds that the Respondent did indeed initiate liquidative transactions in J.'s TFSA account, an account over which she had no discretionary power or trading authorization, that she had this account closed and gave cash management instructions to electronically transfer an amount of \$15,294.63 to the client's cash account at the Firm, and then from this account to the client's personal bank account, without C., the liquidator of the succession of the former account holder, having authorized these various transactions.

¶ 63 Second, IIROC alleges that the Respondent resorted to business conduct or practice which is unbecoming (Rule 29.1) by unlawfully appropriating a sum of \$15,972.88 at the expense of J.'s succession.

¶ 64 This is indeed what the Respondent did, knowingly and consciously, by filling out and presenting for payment a signed blank cheque which the deceased client had given her while he was alive, when they were de facto spouses.

¶ 65 Finally, IIROC alleges that when the Respondent failed to inform the Firm of the death of her spouse and client, she was again engaging in business conduct or practice which is unbecoming (Rule 29.1), while failing in her obligation to use due diligence to learn and remain informed of the essential facts relative to her clients and to the orders accepted (Rule 1300.1(a)).

¶ 66 It was indeed unbecoming for the Respondent to conduct herself as though the essential new fact of her client's death, an event she was aware of but concealed from the Firm, had never occurred.

IV. ANALYSIS

¶ 67 In this matter, the facts pertaining to IIROC's complaint are not contested, and do not give rise to any real debate.

¶ 68 The Respondent initially admitted these facts in her statement P-39 to Staff of IIROC.⁷ She did so in the presence of her legal counsel, who was assisting her at the time.

¶ 69 At the hearing on January 21, 2016, the Respondent reiterated her admissions before us, through her

⁷ Respondent's Statement to IIROC investigators, Exhibit P-39, pp. 34 to 40.

legal counsel:

[TRANSLATION]

"And regarding the facts, my colleague said it, the allegation against her, we don't deny it, but we explain the context in which it happened, this document [referring to the narrative history]. Perhaps had she been questioned, it would have been about that. We don't deny what she did. That's clear. Okay. We made no "confirm/deny" defense. No. She did it."⁸

(our insertion)

¶ 70 Aside from these admissions, all of the evidence presented to us, in our opinion, confirms the allegations made in the Notice of Hearing with all due preponderance (*Duchaine (Re)* [2015] IIROC 01; and *Schoer (Re)* [2011] IIROC 33).

¶ 71 The Respondent argued in her defense that she was J.'s spouse, that she provided help, care and assistance throughout the illness that finally took him, and that he wanted, out of affection and gratitude, for her to be compensated for the time and money that she had devoted to this.

¶ 72 The circumstances are such that, now, the wishes expressed by J. in his will are those that prevail. They are the opposite of the wishes he may have expressed more recently to the Respondent, but which he did not turn into reality. It is not surprising that she may have felt "burned" when she learned from the notary who drew up the papers that the will left her nothing.

¶ 73 Nevertheless, the disciplinary authority that we exercise aims to determine whether the Respondent is or isn't guilty of the Rule violations alleged against her. It requires us, at this stage, to focus our attention on her professional conduct with respect to her client (even if he was her spouse) and not on their spousal relationship, or the personal or familial disappointments that it may have engendered (*Re Chher* [2013] IIROC 79, pars. 42 and 46).

¶ 74 The evidence shows that between the date of her client's death and the date that she cashed the amount of \$15,972.88, which is the amount that would normally have gone to his designated heir, the Respondent used her role as a representative to engage in unlawful transactions that allowed her to appropriate this amount even though she was not entitled to it.

¶ 75 The fact that the client consented, even actively encouraged the Respondent to proceed in this manner when the time came, did not relieve her of her obligation to respect IIROC's Rules in her capacity as a registered securities representative and Approved Person acting on behalf of an IIROC-regulated firm.

¶ 76 At best, had he still been alive, this consent by the client might have permitted the Respondent to act as she did. But as a legal expert whose practice had focused on estates – which is in fact how he met the Respondent – he never deemed it useful or necessary to alter the terms of a will that left her nothing.

¶ 77 It would have been easy for J. to favour the Respondent during his lifetime and to confer her rights over the assets in his TFSA account. He could just as easily, and at very little cost, have revoked his 1974 will. But he did not do this. On the contrary, he even named his estate as beneficiary of his TFSA when he opened the account with the Respondent's help.

¶ 78 The unchallenged evidence is to the effect that J. wanted to leave property to the Respondent in return for the love, affection and support that she showed him throughout their relationship. But it also demonstrates that J., with the Respondent's assent, preferred this wish to be respected, not in a lawful manner enforceable against third parties but by more risky means which the Respondent knew did not meet the standards of the industry in which she worked.

¶ 79 When J. opened his accounts at the Firm, he made false statements with the complicity of the

⁸ Hearing of January 21, 2016, s.n. p. 87.

Respondent. These statements kept the transactions that would be carried out in the account from being subject to the monitoring mechanisms specific to PRO accounts, thus enabling the Respondent to operate more discreetly.

¶ 80 When J. died, the Respondent intentionally did not inform the Firm. In so doing, she was protecting her ability to influence the price of market or currency transactions which would in turn be deposited to the TFSA account and allow her to appropriate the assets.

¶ 81 The Respondent tells us that her spouse had expressed to her his will to favour her upon his death, but here too her behaviour was that of a person who doubted what she had been told.

¶ 82 The Respondent began by taking steps to verify that she was J.'s heir. Had this been the case, it would have been the ideal scenario. But when she learned that he had left her nothing, she put an alternate plan into effect.

¶ 83 To do so, she deliberately took advantage of her function as the representative of the Firm in charge of J.'s accounts. She used administrative means routinely available to representatives to carry out her plan. She knew that by acting in this way, she would be contravening IIROC's rules, but she did so despite the possible disciplinary consequences.

¶ 84 The fact that her conduct in respect of her client was to redress a situation which she made clear to us was unfair, or to seek justice for herself in the wake of a failure to respect the last wishes informally expressed by her spouse, in no way alters the fact that her actions after his death were inappropriate, since she did not have the authorizations required by the Rules.

V. CONCLUSIONS

¶ 85 The Respondent engaged in business conduct or practice which was unbecoming by liquidating the investments in the account of a deceased client, her spouse, without the authorization of the liquidator of the succession.

¶ 86 She knowingly evaded the vigilance of her employer, leading it to dispose of the client's liquid assets, believing that the latter had duly authorized the transfer.

¶ 87 She acted to extend this professional misconduct by using a blank cheque given her by the client for the material direction of their household.

¶ 88 She unlawfully appropriated these assets to the detriment of the client's heir.

¶ 89 These actions contravened the Rules, as described in the Amended Notice of Hearing.

FOR THESE REASONS, THE HEARING PANEL:

¶ 90 **FINDS** the Respondent **GUILTY** of having, on February 11 and 14, 2014, engaged in business conduct or practice which is unbecoming when she carried out two unauthorized and liquidative securities transactions without obtaining the prior authorization of the liquidator of the client's succession, contrary to Rule 29.1, Rule 1300.4 and Rule 1300.5 of IIROC;

¶ 91 **FINDS** the Respondent **GUILTY** of having, on February 14, 2014, engaged in business conduct or practice which is unbecoming by unlawfully appropriating, by means of a blank cheque signed by the client while he was still living, the sum of \$15,972.88, contrary to IIROC Rule 29.1;

¶ 92 **FINDS** the Respondent **GUILTY** of having, effective October 12, 2013, engaged in business conduct or practice which is unbecoming by not updating the client's account opening form after the latter's death, and by not changing the client account to an estate account, contrary to IIROC Rule 29.1 and to IIROC Rule 1300.1(a);

¶ 93 **REQUESTS** that IIROC, through the National Hearing Coordinator, set an appropriate date for a hearing to be held before our Hearing Panel to consider the penalties to be imposed as a result of this decision, communicate this decision to the parties and their respective counsel, and give them sufficient prior notice of the penalty hearing.

Signed at Montréal, Québec this May 12, 2016.

Jean Martel

Chair of the Hearing Panel

Jacques Lemay

Panel Member

Marcel Paquette

Panel Member

Copyright © 2016 Investment Industry Regulatory Organization of Canada. All rights reserved.