

## **Re Lalonde**

**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**

**Pierre Lalonde**

2012 IIROC 6

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

Hearing held on October 31, 2011 and December 8, 2011  
Decision rendered on February 7, 2012  
(27 paragraphs)

**Hearing Panel:**

Me Claire Richer (Chair), Ms. Éline C. Phénix, Mr. Jean Morin

**Appearances:**

Me Myriam G. Del Zotto and Me Sébastien Tisserand, Legal Counsels for IIROC

Me Pascal A. Pelletier, Legal Counsel for the Respondent

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## **Decision on Penalties**

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**Preamble**

¶ 1 In the Notice of Hearing dated June 7, 2011, IIROC set September 15, 2011 as the date of the disciplinary hearing to determine whether the Respondent committed the contraventions alleged by Staff of IIROC, the whole as detailed more fully in the aforesaid notice (Notice of Hearing) appended hereto as Schedule A.

¶ 2 On September 14, 2011, the Respondent, through his legal counsel, entered a guilty plea on all counts.

¶ 3 Consequently, the disciplinary hearing that was to be held on September 15, 2011 was converted to a pro forma hearing to set the date for a penalty hearing.

¶ 4 At the pro forma hearing, IIROC was represented by Me Del Zotto and the Respondent was represented by Me Pelletier. The Respondent was not present.

**The Penalty Hearing**

¶ 5 The penalty hearing was subsequently held before the Hearing Panel over the course of two days, namely October 31, 2011 and December 8, 2011. The Respondent was not present. Me Tisserand replaced Me Del Zotto on December 8, due to the latter's illness.

¶ 6 The pleadings of the legal counsel of both parties were accompanied by abundant case law, as well as

by a statement of the various relevant IIROC Rules, including IIROC's Dealer Member Disciplinary Sanction Guidelines (Guidelines), which were developed by IIROC to help hearing panels with their evaluation when assessing penalties.

¶ 7 IIROC's Legal Counsel suggested the following penalties as appropriate in the circumstances of the matter before the Hearing Panel, namely i) a permanent bar from approval; ii) an aggregate fine of \$150,000; and iii) a maximum of up to \$10,000 in investigation and enforcement costs.

¶ 8 In support of his suggestion, IIROC's Legal Counsel mentions that, with the exception of the Respondent's precarious state of health, which moreover is posterior to the alleged violations, there are few mitigating factors militating in favour of a different penalty. Though the Respondent entered a guilty plea, he did so the day before the hearing, namely belatedly. As for the aggravating factors, the Respondent's alleged misconduct is of a very serious nature; among other things, forging signatures, misappropriating funds, and the loss incurred by the employer. In fact, the Respondent's employer had to reimburse the Respondent's client the amount of \$100,000, which the latter had misappropriated; thus far, the employer has yet to be reimbursed for said amount.

¶ 9 While the suggested financial penalty is aggregate, IIROC's legal counsel mentioned that he drew his inspiration from the guidelines which mention fines of up to \$80,000, and added \$100,000 which is the amount appropriated by the Respondent, thus arriving at an aggregate sum of \$150,000.

¶ 10 The Respondent's Legal Counsel objected to the imposition of an aggregate fine for all five counts; he claimed that this was not allowed and that it affected the Respondent's right to "make full answer and defence" against the penalty. What's more, the Respondent's Legal Counsel declared that the latter did not admit to the facts described in the Notice of Hearing when he entered his guilty plea and that, consequently, IIROC would have to prove them.

¶ 11 Respondent's Legal Counsel also mentioned that there were several mitigating factors, other than the Respondent's state of health, that should be upheld and that would justify a less onerous penalty than that proposed by IIROC's Legal Counsel. Among others, the Hearing Panel should take into account the fact that the guilty plea corresponded to remorse, that the Respondent had no disciplinary history, and that the risk of repetition of the misconduct was nonexistent.

¶ 12 The Respondent's Legal Counsel suggested a financial penalty of \$20,000 (\$10,000, \$5000 and \$5000 for counts 3, 4 and 5 respectively) in addition to a permanent ban on approval for counts 1 and 2.

¶ 13 As for the deadline for payment of the financial penalties, the Respondent's Legal Counsel submitted to the Hearing Panel documents showing that the Respondent had an annual income of approximately \$125,000 because of his disability and the termination of his employment, but offered no information regarding the Respondent's other income sources.

### **The Hearing Panel's Decision with Reasons**

¶ 14 After deliberation, examination of the parties' representations and analysis of the case law they submitted, the Hearing Panel accepts the suggestions made by IIROC's Legal Counsel.

¶ 15 The Hearing Panel's reasons follow.

¶ 16 The Hearing Panel rejects the representation by Respondent's Legal Counsel that an aggregate penalty is not valid. Indeed, there is no law, nor any provision of IIROC's Rules that requires a determination to be made for each count. Plus, even though it was not specifically for each count, IIROC's legal counsel articulated a substantially detailed penalty scale at the hearing. In its decision on liability and penalty in the matter of David Michael Michaels in March 2007, the hearing panel imposed an aggregate penalty in these terms: "*We believe, however, that the conduct in this matter should be considered as a whole, giving consideration to all the elements discussed above. Accordingly, we have arrived at a global figure for the fine to be assessed in this matter.*" IDA Enforcement File No.0204/Feb/04

¶ 17 In the present case, the Hearing Panel accepts the aggregate recommendation submitted by IIROC

because the counts are interrelated.

¶ 18 The Hearing Panel does not subscribe either to the argument by the Respondent's Legal Counsel that the latter entered a guilty plea only with respect to the terms of the five counts stated on page 2 of the Notice of Hearing, and not to the facts stated in the Notice of Hearing. Not only does the Hearing Panel not see how it could isolate the guilty plea to just a fraction of the Notice of Hearing, it finds moreover that the requirements of Rule 7 of IROC's Rules of Practice and Procedure, which follows, were not respected:

**"RULE 7: RESPONSE TO NOTICE OF HEARING**

**7.1 Service of Response**

*For a discipline proceeding designated on the Standard Track, the Respondent shall serve a Response within 20 days from the effective date of service of the Notice of Hearing.*

...

**7.2 Failure to Serve Response**

*If a Respondent served with a Notice of Hearing fails to serve a Response in accordance with Rule 7.1:*

(a) ...

(b) *the Hearing Panel may, accept as proven the facts and violations alleged by the Organization in the Notice of Hearing, and may impose penalties and costs pursuant to Dealer Member Rules 20.33, 20.34 and 20.49.*

7.3 ...

**7.4 Deficient Response**

*Where the Respondent fails to:*

(a) *specifically deny a fact; or*

(b) *provide grounds for denial of a fact,*

(c) *the Hearing Panel may accept as proven any facts alleged by the Organization in the Notice of Hearing."*

¶ 19 The Hearing Panel accepts as having been proven the facts alleged by IROC in the Notice of Hearing. In this instance, the Respondent did not serve a reply following the Notice of Hearing and the guilty plea did not contain any disclaimer.

¶ 20 The penalty hearing is a hearing where the parties make representations on what penalties to assess, either when a respondent is found guilty following a disciplinary hearing, or when a guilty plea is entered following a notice of hearing, as in the present case.

¶ 21 One of the main concerns of a hearing panel when determining an appropriate penalty is prevention of a repetition of the conduct of the type under consideration, not only by the Respondent but by industry members. As the IROC hearing panel said in its penalty decision in the matter of Hector Wong, 2010 IROC 50: #41 "*A fine must have some significance*".

¶ 22 Without reanalyzing the principles stated in the numerous prior decisions, we mention more particularly the following text from the decision in *Re Mills* [2001] I.D.A.C.D. No. 7, April 17, 2001 :

*"Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its Members to expect for the conduct under consideration, it may undermine the goals of the Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the District Council in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its*

*primary purpose is prevention rather than punishment."*

¶ 23 The misconduct with which the Respondent is charged, and to which he pleaded guilty on the day before the scheduled date of the disciplinary hearing, are of a serious nature (including the misappropriation of funds) and occurred over a period of five years. At the material time, the Respondent already had many years of experience in the securities industry and, his guilty plea notwithstanding, the Hearing Panel was unable to judge his level of remorse, given that he was not present at the hearing.

¶ 24 These factors aside, the Respondent also had a disciplinary history with the Montréal Exchange, in 2003.

¶ 25 For the reasons stated above, the Hearing Panel imposes the following penalties on the Respondent pursuant to the terms of the penalty hearing, namely:

- i) a permanent ban on approval in any registered capacity with an IIROC-regulated firm;
- ii) an aggregate fine in the amount of \$150,000;
- iii) up to \$10,000 in investigation and enforcement costs (which totaled some \$50,000 as at September 15, 2011).

¶ 26 The payment schedule for the financial penalties shall be determined between the parties no later than thirty (30) days following the date of this decision, failing which, they shall be paid within ninety (90) days of this decision.

¶ 27 As for the permanent ban, it is effective from the date of this decision.

Signed this February 7, 2012

Claire Richer, Panel Chair

Élaine C. Phénix, Panel Member

Jean Morin, Panel Member