

Re Turenne

IN THE MATTER OF:

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

and

Jacques Turenne

2015 IIROC 23

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

Hearing held on: May 14, 2105
Decision rendered on: July 2, 2015

Hearing Panel

Me Claire Richer, Msrs. Jean Élie and Denis Marc Gagnon

Appearances

Me Myriam Giroux-Del Zotto, Enforcement Counsel for IIROC

Mr. Nicolas D'Astous, Investigator at IIROC and witness

Mr. Jacques Turenne, Respondent, not represented by counsel

DECISION

¶ 1 Our hearing panel (the Hearing Panel) was seized of a complaint from IIROC concerning the Respondent in the matter of two counts contained in a Notice of Hearing dated January 8, 2015, a copy of which is appended hereto and is deemed to be an integral part hereof (Notice of Hearing). The counts read as follows:

COUNT 1: On or around June 19, 2003 and March 12, 2009, Respondent engaged in personal financial dealings with a client, by borrowing money from her without the knowledge and without the consent of the IIROC Dealer Member with whom he was employed, contrary to IIROC Dealer Member Rule 29.1 (formerly By-law 29.1 of the IDA);

COUNT 2: On October 31, 2012 and December 13, 2012, Respondent made false statements to Staff of IIROC in the course of a prior disciplinary matter, thus hindering the evaluation of the complaint and the conduct of the investigation in the present matter, contrary to IIROC Dealer Member Rule 29.1.

EVENTS PRIOR TO THE HEARING OF MAY 14, 2015

¶ 2 The Hearing Panel met a first time on February 25 with the parties to set the limits of the debate and set a hearing date.

¶ 3 At this hearing, the Respondent challenged, among other things, the amount of the loan mentioned in

Count 1 of the Notice of Hearing, while admitting having borrowed money. The Hearing Panel asked the parties to agree on the amount before the actual hearing.

¶ 4 After an exchange between the parties concerning the documents to be deposited as evidence and the witness list for the hearing, the dates of April 1 and 2, 2015 were selected.

¶ 5 However, on March 23, 2015, IIROC's legal counsel was forced to absent herself from work for an indeterminate period. On March 30, 2015 a conference call took place between the Hearing Panel members, the Respondent, and Me Pascale Dionne-Bourassa acting for IIROC, during which it was agreed to postpone the hearing until May 14 and 15, 2015.

HEARING OF MAY 14, 2015

¶ 6 The hearing was held in one day, on May 14, 2015 (the May 15 date was not used). The Respondent was still not represented by counsel.

¶ 7 Counsel for IIROC began by informing the Hearing Panel that an agreement had been reached between the parties regarding the amount borrowed by the Respondent pursuant to Count 1 in the Notice of Hearing, namely \$12,000, rather than the \$13,000 initially mentioned in Count 1, in order to limit the time and costs in the matter. She confirmed moreover that the breach of discipline in Count 1 is maintained, having been admitted previously by the Respondent in his February 2, 2015 response to the Notice of Hearing.

¶ 8 The hearing therefore related to Count 2 in the Notice of Hearing, the only matter still at issue.

IIROC'S EVIDENCE AND ARGUMENTS

¶ 9 In a decision dated July 25, 2013, a previous hearing panel accepted a settlement agreement entered into in June 2013 between Staff of IIROC and the Respondent, in a matter that also involved a loan contracted by the Respondent with another client (CD), contrary to the aforesaid Rule 29.1. CD's complaint had been submitted on October 12, 2012.

¶ 10 On October 31, 2012, Respondent replied by email to a request for information from Mr. Robert Favreau, IIROC's case assessment officer in the CD matter; in this email, Respondent wrote the following, among other things: [TRANSLATION] "I never took out any loan with another client during my career."

¶ 11 On December 13, 2012, during an interview conducted at IIROC's offices in Montréal, still in reference to the CD matter, Respondent answered this question asked by Nicolas D'Astous (who was the one interviewing him):

[TRANSLATION]

Q : Have you solicited other clients?

A: Never

Q : to borrow money from them?

A: Never have I borrowed money from a client, apart from my parents..."

¶ 12 Yet the Respondent had already contracted loans with CRM, the client in question in Count 1 of this Notice of Hearing, in June 2003 and in March 2009, namely before CD's complaint and before the interview referenced in paragraph 11.

¶ 13 It was not until November 29, 2013, in an interview held at the IIROC offices in reference to the present matter, that Respondent admitted that he had lied in the 2012 interview and that he had in fact contracted loans with another client, namely the loans which are the subject of the Notice of Hearing.

¶ 14 Counsel for IIROC argued that the Respondent had lengthy experience in the securities industry, having acted as a representative with unrestricted practice since February 1999, and that he was familiar with the prohibition against borrowing money from clients without the knowledge and consent of his employer, all of

which was contrary to the Rules of IIROC (formerly the IDA).

¶ 15 Furthermore, the Respondent contravened IIROC Dealer Member Rule 29.1 in that he failed to observe high standards of ethics in the performance of his duties and engaged in conduct unbecoming by not diligently and honestly answering the questions asked by IIROC on at least two occasions.

¶ 16 Counsel for IIROC emphasized that the Respondent could have corrected the misrepresentations on numerous occasions, but did not do so.

RESPONDENT'S SUBMISSIONS

¶ 17 The Respondent testified that he had no choice but to borrow from his clients, due to the high costs of a personal family litigation to which he was party (which he qualified as a "SLAPP" – Strategic Lawsuit against Public Participation) and which imposed a heavy financial burden on him.

¶ 18 The Respondent also claims that he had misunderstood certain of the questions that were asked him at the December 13, 2012 interview with IIROC, in particular regarding past loans. He thought he was being asked about clients he represented specifically while he was employed with Peak, and not all past clients. The Respondent claims that CRM was not his client at Peak.

DECISION AND REASONS

¶ 19 **COUNT 1.** Considering the Respondent's admission of guilt in respect of the financial transactions with CRM alleged in the Notice of Hearing, and the agreement entered into between the parties regarding the amount, the Hearing Panel takes note of the guilty plea of the Respondent.

¶ 20 The Hearing Panel finds that the Respondent did contravene IIROC Dealer Member Rule 29.1 in the matter of Count 1.

¶ 21 **COUNT 2.** According to the preponderance of the evidence, the Hearing Panel has no choice but to find that the Respondent did make false statements on October 31, 2012 in the email sent to Mr. Robert Favreau, the case assessment officer at IIROC, and on December 13, 2012, during the interview with the IIROC investigator N. D'Astous.

¶ 22 The Hearing Panel also upholds IIROC's argument that the Respondent would have had the opportunity to correct his false statements before 2013, which would certainly have avoided delays and additional costs in the second investigation concerning CRM, but that he chose to do nothing.

¶ 23 The Hearing Panel was not convinced by Respondent's argument that he had misunderstood the investigator's questions regarding past loans from clients during the December 13, 2012 interview. Neither was it an isolated loan, as he led the investigator to believe during the aforesaid interview. The Respondent admitted several times before our Hearing Panel that he contracted loans that were unauthorized under the rules that governed him; he attempted to justify his actions, citing a personal financial burden, which is regrettable, we agree.

¶ 24 As well, the Hearing Panel cannot uphold Respondent's argument that CRM was not his client: i) she was his client when he borrowed money from her, ii) all of CRM's account opening documents as a Peak client had been signed by the time the Respondent left Peak, and iii) CRM's name appears on the list of clients attached to the sales contract of September 21, 2012 between the Respondent and an individual who acquired the Respondent's clients after he left Peak.

¶ 25 The Hearing Panel is of the opinion, having heard the parties, including the testimony of the investigator N. D'Astous and the testimony of the Respondent, and having examined the case law submitted, that IIROC has met the burden of proof recognized repeatedly by the courts, namely on a balance of probabilities.

¶ 26 For these reasons, the Hearing Panel finds that the Respondent did contravene IIROC Dealer Members Rule 29.1 by making false statements to Staff of IIROC on two occasions as alleged in COUNT 2 of the Notice of Hearing.

¶ 27 The Hearing Panel summons IIROC and the Respondent to a penalty hearing on Counts 1 and 2 of the Notice of Hearing on a date to be determined by the Hearing Coordinator.

Signed, July 9, 2015

Jean Élie, Member of the Hearing Panel

Denis Marc Gagnon, Member of the Hearing Panel

Claire Richer, Chair of the Hearing Panel

Copyright © 2015 Investment Industry Regulatory Organization of Canada. All rights reserved.