Unofficial English Translation

Re Desautels

IN THE MATTER OF:

The Dealer Member Rules of the Investment Industry Regulatory Organization of Canada

and

Daniel Desautels

2017 IIROC 21

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

Hearing held on October 14, 2016, in Montréal, Québec
Decision rendered on October 14, 2016
Decision published on April 10, 2017 in Montréal, Québec

Hearing Panel:
Me Alain Gélinas, Panel Chair, Mr. Jean Morin and Mr. Yves Julien
Appearances:
Me Fanie Dubuc, Enforcement Counsel
Me Éric Azran, for Daniel Desautels
Daniel Desautels

DECISION

BACKGROUND

¶ 1 This Hearing Panel (or the "Panel") was appointed to conduct a Settlement Hearing. On September 8, 2016, the Investment Industry Regulatory Organization of Canada (IIROC) and the Respondent signed a settlement agreement concerning matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to Part C of Schedule C.1 to Transition Rule No. 1 of IIROC. The settlement hearing was held on October 14, 2016. A settlement agreement signed by the Respondent (hereinafter the Settlement Agreement) was submitted at this settlement hearing.

¶ 2 At the close of the proceedings, after hearing the arguments of counsel for IIROC and counsel for the Respondent and after examining the documents and terms and conditions of the Settlement Agreement, the Hearing Panel accepted the Agreement.

¶ 3 Below are the Hearing Panel's reasons for accepting the Settlement Agreement.

THE SETTLEMENT AGREEMENT

¶ 4 The Settlement Agreement is reproduced and appended to this decision. It contains a statement by which the Respondent admits to the following contraventions of IIROC Dealer Member Rules, Guidance, Regulations or Policies. The Respondent admits to the following misconduct:

a) Between January 27, 2009 and March 22, 2011, while a registered representative with Industrial Alliance Securities Inc., the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to one of his clients and to every order and account accepted, contrary to IIROC Dealer Member Rule 1300.1(a);

b) Between January 27, 2009 and March 22, 2011, while a registered representative with Industrial Alliance Securities Inc., the Respondent executed trades in the accounts one of his clients, based on instructions received from an individual who was not authorized to give instructions on the account and, in so doing, failed to observe high standards of ethics and conduct and engaged in conduct unbecoming and detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1; and

c) Between January 27, 2009 and March 22, 2011, while a registered representative with Industrial Alliance Securities Inc., the Respondent executed a transfer of funds from the accounts one of his clients to an account with another financial institution, based on instructions received from an individual who was not authorized to give instructions on the account and, in so doing, failed to observe high standards of ethics and conduct and engaged in conduct unbecoming and detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1.

¶ 5 Staff and the Respondent have accepted the following terms of settlement:

- A fine in the amount of $20,000;
- Disgorgement of the commissions earned in connection with the alleged contraventions, in the amount of $2,084; and;
- The obligation to pass the Conduct and Practices Handbook examination within twelve (12) months following acceptance of this Settlement Agreement by the Hearing Panel;
- The Respondent agrees to pay IIROC costs in the amount of $5,000.
- The Respondent agrees to pay IIROC, by cheque, an amount of $13,542, which is equal to 50% of the aggregate financial penalty (fine, disgorgement of commissions and costs) on the date of acceptance of the Settlement Agreement by the Hearing Panel.

¶ 6 To begin with, the Respondent is alleged to have failed to use due diligence to learn the essential facts relative to his client and to every order and account accepted. Such conduct is contrary to IIROC Dealer Member Rule 1300.1(a). The Respondent is also alleged to have failed to observe high standards of ethics and conduct and to have engaged in conduct unbecoming and detrimental to the public interest, by executing trades in his client's accounts on the instructions of an individual who was not authorized to do so and by transferring funds from his client's accounts to other financial institutions. These last two contraventions are contrary to IIROC Dealer Member Rule 29.1.

¶ 7 By virtue of IIROC Dealer Member Rule 20.36, the Hearing Panel has the power to accept or reject the Settlement Agreement. It must exhibit restraint at a settlement hearing. It is useful to recall the following principles stated in *Re Milewski*[1]:

> *"… a District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement*

[1] [1999] I.D.A.C. No. 17.

process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness."

¶ 8 In *Re Hayes*[2], the hearing panel borrows from Honourable Justice Winkler's position in *Gilbert v. CIBC*[3] to explain the hazards of the negotiation process and the compromises that must be made in a settlement.

¶ 9 *Re BMO Nesbitt Burns* summarizes the role of the Hearing Panel at a settlement hearing:

> "8. It is clear from jurisprudence emanating from the courts and from Hearing Panels of IIROC, Investment Dealers Association and the Mutual Fund Dealers Association, that our task is not to decide whether, in this case, we would have arrived at the same decision as that reached by the parties. Rather, our duty is to determine whether the penalty is a reasonable one and that it meets the objectives of the disciplinary process which are to maintain the integrity of the investment industry. We cite from the recent decision of the Hearing Panel in *Re CIBC World Markets Inc.,* [2011] IIROC No. 38: Re BMO Nesbitt Burns 2012 IIROC 21 Page 3 of 8 13 Finally, hearing panels will not lightly interfere with a negotiated settlement. As was said in Re Milewski, [1999] IDACD No. 17, … a District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. 14 Or, as put by Winkler J. (albeit in another context) in *Gilbert v.* CIBC, [2004] O.J. 4260: There is a presumption of fairness when a proposed class settlement negotiated at arm's length … is presented to the court for approval. A court will only reject a proposed settlement when it finds that the settlement does not fall within a range of reasonableness. The test to be applied is whether the settlement is fair and reasonable… This allows for a range of possible results ant there is no perfect settlement. Settlement is a product of compromise, which by definition, necessitates give and take. 15 In our view, the settlement, negotiated as it was by the parties assisted by capable counsel, does not clearly fall "outside a range of appropriateness" and it should therefore be, and was, accepted by the panel[4].

¶ 10 The Hearing Panel also notes, albeit in another context, this restraint of the courts with respect to joint recommendations. Thus, in such a situation, as recently ruled by the Supreme Court of Canada, a trial judge may not set aside such a recommendation unless it is of the opinion that the suggested penalty would tend to bring the administration of justice into disrepute or would otherwise be contrary to the public interest[5]. Here is an important passage from the *Anthony-Cook* decision:

> [31] Having considered the various options, I believe that the public interest test, as amplified in these reasons, is the proper test. It is more stringent than the other tests proposed and it best reflects the many benefits that joint submissions bring to the criminal justice system and the corresponding need for a high degree of certainty in them. Moreover, it is distinct from the "fitness" tests used by trial judges and appellate courts in conventional sentencing hearings and, in that sense, helps to keep trial judges focused on the unique considerations that apply when assessing the acceptability of a joint submission.

¶ 11 We are unanimously of the opinion that the sanctions recommended by the parties fall within

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[2] 2014 IIROC 31.

[3] 2004 O.J. 4260.

[4] 2012 IIROC 21.

[5] *R. v. Anthony-Cook*, 2016 CanLII 43 (SCC), par. 25 and following.

a reasonable range, address IIROC's public interest concerns and support the objectives of general and specific deterrence sought by the disciplinary sanctions. The Hearing Panel is of the opinion that the joint recommendation before it is reasonable.

ANALYSIS

¶ 12 The Hearing Panel has analyzed the facts mentioned in the Settlement Agreement. It has also taken into consideration the arguments of counsel for IIROC as well as counsel for the Respondent.

¶ 13 Though we are not bound by the IIROC Dealer Members Disciplinary Sanction Guidelines[6], we have analyzed them. In this regard, the General Principles outlined in the Guidelines may serve as a guide for our Hearing Panel to ensure that the proposed penalties are achieving the objectives sought.

¶ 14 It is useful to bear in mind that the primary purpose of IIROC disciplinary proceedings is to maintain high standards of conduct in the securities industry and to protect market integrity.

¶ 15 The determination of the appropriate sanction is however left to the discretion of the Hearing Panel. The appropriate sanction will depend on the facts and circumstances specific to each case. It is useful to mention that the factual background implicated the client's spouse and that the settlement avoids lengthy debate.

¶ 16 The principle has oft been repeated that disciplinary sanctions are preventative in nature and should be designed to protect the investing public and to strengthen market integrity and overall business practices. The Settlement Agreement meets these objectives.

¶ 17 Sanctions may have a specific deterrent effect against a respondent, but may also in a general manner deter others from engaging in similar misconduct. The proposed recommendation imposes a penalty that acts as both a specific and a general deterrent.

¶ 18 A respondent's disciplinary history constitutes an aggravating factor and justifies the imposition of more significant sanctions. The Respondent has no disciplinary history;

¶ 19 Moreover, in the case of multiple violations, the Hearing Panel must normally adopt a global approach to sanctioning in order to avoid a cumulative sanction that is excessive. The proposed penalty takes all three contraventions into account.

¶ 20 It is a fundamental tenet of effective supervision of the financial industry that wrongdoers should not benefit from their wrongdoing. This settlement includes a fine, the disgorgement of commissions, as well as costs. We note that the Respondent agrees to pay the equivalent of 50% of the aggregate fine on the date of acceptance of the Settlement Agreement by the Hearing Panel.

¶ 21 A suspension should be considered where: 1) there has been one or more serious contraventions; 2) there has been a pattern of misconduct; 3) the respondent has a prior disciplinary history; 4) the contraventions involved fraudulent, willful and/or reckless misconduct; or 5) the misconduct in question has caused some measure of harm to investors, the integrity of a marketplace or the securities industry as a whole. The facts in this matter do not justify a suspension.

¶ 22 Finally, sanctions in disciplinary proceedings are intended to prevent the recurrence of misconduct. In this case, the Respondent will have to pass the Conduct & Practices Handbook examination.

CONCLUSION

¶ 23 After hearing arguments from counsel for IIROC and counsel for the Respondent, after analyzing the case law submitted at the hearing and after analyzing the IIROC Dealer Members Disciplinary Sanction

[6] February 2, 2015.

Guidelines, the Hearing Panel is of the opinion that the Settlement Agreement before it is consistent with the objectives and considerations set out in the Guidelines.

¶ 24 The penalties address the public interest concerns that must be taken into account when determining sanctions.

¶ 25 The recommended sanctions have both a general and a specific deterrent effect.

¶ 26 For these reasons, the Settlement Agreement was accepted on the hearing date.

Dated at Montréal, Québec, this 10th day of April 2017.

Alain Gélinas

Jean Morin

Yves Julien

INVESTMENT INDUSTRY

REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

THE RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

AND

DANIEL DESAUTELS

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Enforcement Staff of IIROC and the Respondent, Daniel Desautels, consent and agree to the settlement of these matters by way of this settlement agreement ("the Settlement Agreement");

2. The Enforcement Department of IIROC has conducted an investigation ("the Investigation") into the conduct of Daniel Desautels;

3. The Investigation disclosed matters for which the Respondent may be disciplined by a Hearing Panel appointed pursuant to Part C of Schedule C.1 to Transition Rule No. 1 of IIROC (the Hearing Panel).

II. JOINT SETTLEMENT RECOMMENDATION

4. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement;

5. The Respondent admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

   a) Between January 27, 2009 and March 22, 2011, while a Registered Representative with Industrial Alliance Securities Inc., the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to one of his clients and to every order and account accepted, contrary to IIROC Dealer Member Rule 1300.1(a);

   b) Between January 27, 2009 and March 22, 2011, while a Registered Representative with Industrial Alliance Securities Inc., the Respondent executed trades in the accounts one of his clients, based on instructions received from an individual who was not authorized to give instructions on the account

and, in so doing, failed to observe high standards of ethics and conduct and engaged in conduct unbecoming and detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1; and

c) Between January 27, 2009 and March 22, 2011, while a Registered Representative with Industrial Alliance Securities Inc., the Respondent executed a transfer of funds from the accounts one of his clients to an account with another financial institution, based on instructions received from an individual who was not authorized to give instructions on the account and, in so doing, failed to observe high standards of ethics and conduct and engaged in conduct unbecoming and detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1.

6. Staff and the Respondent have accepted the following terms of settlement:

a) A fine in the amount of $20,000;

b) Disgorgement of the commissions earned in connection with the alleged contraventions, in the amount of $2,084; and

c) The obligation to pass the Conduct and Practices Handbook examination within twelve (12) months following acceptance of this Settlement Agreement by the Hearing Panel;

7. The Respondent agrees to pay IIROC costs in the amount of $5,000.

8. The Respondent agrees to pay IIROC, by cheque, an amount of $13,542, which is equal to 50% of the aggregate financial penalty (fine, disgorgement of commissions and costs) on the date of acceptance of the Settlement Agreement by the Hearing Panel.

III. STATEMENT OF FACTS

(i) Acknowledgement

9. Staff and the Respondent agree with the facts set out in this section and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

(ii) Factual Background

RESPONDENT'S PROFESSIONAL EXPERIENCE

10. The Respondent has been approved as a registered representative with IIROC, as well as its predecessor the Investment Dealers Association of Canada (IDA), since April 1998;

11. The Respondent has been employed with Industrial Alliance Securities Inc. (IAS) since September 2002.

FAILURE TO RESPECT THE KNOW-YOUR-CLIENT RULE

12. On or around January 27, 2009, the Respondent opened a CAD account in the name of the client J.P.

13. The New Account Application Form used for the CAD account was signed by the client J.P. on January 27, 2009.

14. On or around February 12, 2009, the Respondent opened a TFSA account in the name of the client J.P.

15. The New Account Application Form used for the TFSA account was signed by the client J.P. on February 12, 2009.

16. On or around March 17, 2011, the Respondent opened a US account in the name of the client J.P.

17. The Respondent stated to IIROC Staff that he opened the CAD, TFSA and US accounts at the request of the client's spouse, A.M., who did not have power of attorney for these accounts.

18. The Respondent stated to IIROC Staff that he had known A.M. since November 2000, and that the latter

was a trusted client with whom he maintained a good business relationship.

19. The Respondent stated to IIROC Staff that he had not met with the client J.P. in person when he opened the CAD, TFSA and US accounts.

20. The Respondent stated to IIROC Staff that when the CAD and TFSA accounts were opened, he did not communicate with the client J.P., nor ask to meet her in person in order to confirm that she understood the content of the new account application forms and to discuss her investment objectives.

21. The Respondent had entered on the new account application form for the CAD account that a meeting with the client J.P. had taken place.

22. The Respondent stated to IIROC Staff that he had, prior to opening the CAD and TFSA accounts, met the client J.P. briefly and informally on two (2) occasions at social events.

23. The Respondent stated to IIROC Staff that when the CAD account was opened, he had identified the client J.P. from an ID card supplied by A.M..

24. The Respondent has stated to IIROC Staff that the CAD account was opened according to instructions from A.M. and that the information entered on the New Account Application Form (investment knowledge, investment objectives and risk tolerance) corresponded to the latter's profile rather than that of the client J.P..

25. The Respondent had entered on the New Account Application Form for the CAD account that the client J.P.'s investment knowledge was good, that she had opted for a growth strategy and that her risk tolerance was high, that power of attorney over the account had not been delegated to a third party and that no one other than the account holder had powers or financial interests in regard to the account.

26. The Respondent stated to IIROC Staff that, during the material period from January 27, 2009 to March 22, 2011, he never contacted the client J.P. to discuss her investment objectives or update her client profile.

TRANSACTIONS EXECUTED BASED ON INSTRUCTIONS RECEIVED FROM AN UNAUTHORIZED INDIVIDUAL

27. Between January 27, 2009 and March 22, 2011, the client J.P.'s file at IAS did not contain any power of attorney that would authorize A.M. to give the Respondent trading instructions regarding client J.P.'s CAD, TFSA and US accounts.

28. The Respondent stated to IIROC Staff that he had provided A.M. with a power of attorney form to give to client J.P., and that it was never signed.

29. The Respondent stated to IIROC Staff that, during the material period from January 27, 2009 to March 22, 2011, he received his trading instructions for client J.P.'s CAD and TFSA accounts from A.M. and not the client J.P.

30. Between January 27, 2009 and March 22, 2011, the Respondent executed sixteen (16) buy and sell trades in client J.P.'s CAD and TFSA accounts, as described in Schedule A;

31. The sixteen (16) trades generated commissions valued at approximately $2,100.

TRANSFER OF FUNDS EXECUTED BASED ON INSTRUCTIONS RECEIVED FROM AN UNAUTHORIZED PERSON

32. Between January 27, 2009 and March 22, 2011, the client J.P.'s file at IAS did not contain any power of attorney that would authorize A.M. to instruct the Respondent to transfer funds from client J.P.'s CAD, TFSA and US accounts to accounts with other financial institutions.

33. The Respondent has stated to IIROC Staff that he had provided A.M. with a power of attorney form to give to client J.P., and that it was never signed.

34. The Respondent has stated to IIROC Staff that, for the material period from January 27, 2009 to March 22, 2011, he received his instructions to transfer funds from the client J.P.'s CAD, TFSA and US accounts from A.M. and not the client J.P.

35. Between January 27, 2009 and March 22, 2011, the Respondent executed one transfer of funds from the client J.P.'s CAD, TFSA and US accounts to a joint account that she held with A.M. at another financial institution.

36. The Respondent has stated to IIROC Staff that, in early March 2011, A.M. contacted him to ask him to liquidate his personal accounts, as well as the client J.P.'s CAD and TFSA accounts, in order to finance a property purchase in the United States.

37. On or around March 17, 2011, the Respondent opened a US account in the name of the client J.P.

38. The Respondent has stated to IIROC Staff that he opened the US account using a photocopy of a passport belonging to the client J.P., which was supplied by A.M.

39. On or around March 22, 2011, the Respondent converted the entire amount held in the client J.P.'s CAD and TFSA accounts to American dollars.

40. On or around March 22, 2011, the Respondent transferred all of the funds in the CAD and TFSA accounts to the US account.

41. On or around March 22, 2011, the Respondent transferred all of the funds deposited in the US account, an amount of US$70,298.12, to an account held jointly by the client J.P. and A.M. at another financial institution, as described in Schedule A.

42. The Respondent stated to IIROC Staff that during the material period from January 27, 2009 to March 22, 2011, he never contacted client J.P. to obtain her authorization before transferring the funds in the CAD, TFSA and US accounts.

IV. TERMS OF SETTLEMENT

43. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40 inclusive, and Rule 15 of the Dealer Member Rules of Practice and Procedure.

44. The Settlement Agreement is subject to acceptance by the Hearing Panel.

45. The Settlement Agreement shall become effective and binding upon the Respondent and Staff from the date of its acceptance by the Hearing Panel.

46. The Settlement Agreement will be presented to the Hearing Panel at a hearing ("the Settlement Hearing") for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.

47. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his right, under IIROC rules and any applicable legislation, to a disciplinary hearing, review or appeal.

48. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the investigation.

49. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

50. Staff and the Respondent agree that, if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.

51. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable

immediately on the effective date of the Settlement Agreement.

52. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at _____, in the Province of Québec, this 8th day of September 2016.

_____	(s) Daniel Desautels
WITNESS	**DANIEL DESAUTELS**
	RESPONDENT

AGREED TO by Staff, at Montréal, Québec, this 9th day of September 2016.

(s) Émilienne Robichaud	(s) Fanie Dubuc
WITNESS	**FANIE DUBUC**
	Enforcement Counsel, for Staff of IIROC