

Re Trudeau

IN THE MATTER OF:

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

and

Jean-Louis Trudeau

2018 IIROC 21

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

Penalty Hearing Date: April 10, 2018
Decision date: June 18, 2018

Hearing Panel:

The Honourable Benjamin J. Greenberg, Q.C., C. Arb., Hearing Panel Chair
Mr. Guy L. Jolicoeur and Ms. Éline C. Phénix

Appearances:

Me Francis Larin, Enforcement Counsel
Me Jean Louis Trudeau, Respondent

UNANIMOUS DECISION ON PENALTY

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I. INTRODUCTION, HISTORY AND FACTS OF THE MATTER

- ¶ 1 To protect the identity of persons other than the RESPONDENT mentioned in this DECISION, these shall be designated by their initials.
- ¶ 2 This case concerned the notion of a « discretionary account » and the activities of the RESPONDENT with respect to JR’s account at Mackie Research Capital Corporation (“MACKIE”). The Hearing on the Merits was held on November 15, 2017.
- ¶ 3 The RESPONDENT was approved as a registered representative of MACKIE and, from 2002 on, was a registrant of the PLAINTIFF, as well as its predecessor, the Investment Dealers Association of Canada (IDA).
- ¶ 4 JR had been a client at MACKIE since 1990, and her representative was FC. On or about October 26, 2012, FC left Mackie’s employ, and it was decided between FC and MACKIE, that the client JR would henceforth be served at MACKIE by the RESPONDENT, to which JR and the RESPONDENT consented.
- ¶ 5 However, even though from that moment on, JR’s registered representative at MACKIE was now the RESPONDENT, FC remained involved and advised JR in regard to her investments at MACKIE.
- ¶ 6 What’s more, through a formal power of attorney, JR authorized FC to deal with the RESPONDENT in her name and to order the purchase and sale of securities for JR’s accounts.
- ¶ 7 On November 25, 2014, JR had sent MACKIE and the RESPONDENT a letter of complaint which read as follows:

« By Registered Mail
November 25, 2014
WITHOUT PREJUDICE
Jean Trudeau (jtrudeau@mackieresearch.com)
Mackie Research Capital Corporation
4, Place Ville-Marie
Suite 100
Montréal, QC
H3B 2E7
Re : JR
File : XXXX
To the attention of Mr. Trudeau

This letter is further to our meeting of November 18, 2014 which FC, attended.

I am hereby putting you in default so as to reimburse me \$81,826 within ten days of receipt of this default letter failing which we will advise the L’Autorité des Marchés Financiers. This amount represents the losses my investment account incurred from October 1, 2012 to November 18, 2014, inclusive.

These losses stem uniquely from your carelessness in that you did not respect the fundamental rule which applies to all facets of the relationship between a broker and their client namely: **KNOW YOUR CLIENT WELL**. In fact, you purchased for my account highly tax beneficial investments when you should have known that my annual tax rate is low.

As you are aware, my investment account with your firm did not grant you a discretionary mandate. Despite that:

- You purchased stakes without first communicating with me or FC. Some of the positions were too substantial for a portfolio such as mine.

- You sold investments which F and I would have kept. Again, you should have communicated with me prior to undertaking such transactions.
- The fixed income securities which you purchased, without my authorization, do not correspond to the AAA rated government securities that were sold so as to purchase such investment.

In addition, my account should have been managed conservatively as such represent a substantial portion of my assets.

I HEREBY REQUEST THAT EFFECTIVE IMMEDIATELY YOU CEASE TO UNDERTAKE ANY TRANSACTION ON MY BEHALF WITHOUT FIRST COMMUNICATING WITH ME. NOW THEREFORE ACT ACCORDINGLY

JR

Montréal, Qc

Telephone: XXXX

C.c. Geoff Whitlam, President (gwhitlam@mackieresearch.com)

Don Stevenson, Montréal branch manager (dstevenson@mackieresearch.com)

Mark Censale, Director of Compliance (mcensale@mackieresearch.com)”¹.

¶ 8 As a consequence of the aforesaid letter, a « COMSET » was registered regarding the RESPONDENT and the PLAINTIFF initiated an investigation.

¶ 9 On or around November 28, 2014, the RESPONDENT left his job at MACKIE and he has not been a registrant of the PLAINTIFF since, and is no longer active in the securities industry.

¶ 10 Pursuant to its investigation, the PLAINTIFF alleged two contraventions by the RESPONDENT, which stated as follows:

« ALLEGED CONTRAVENTIONS

1. During the material period between January 29, 2013 and October 29, 2014, the Respondent executed unauthorized trades in a client's accounts, contrary to IIROC Dealer Member Rule 29.1;
2. Subsidiarily, between January 29, 2013 and October 29, 2014, the Respondent engaged in discretionary trading in a client's accounts, without the accounts having been preauthorized by the firm as “discretionary” accounts, contrary to IIROC Dealer Member Rule 1300.4 and 1300.5; »

¶ 11 Following the investigation conducted by the PLAINTIFF, JR and FC informed Staff of the PLAINTIFF that they did not intend to appear and give evidence at the Hearing on the Merits in this matter, and they did not appear, nor did they attend the Penalty Hearing.

¶ 12 Proving Contravention No. 1 would have required the testimony of JR and FC and, given the current state of the law, the PLAINTIFF does not have the authority to compel witnesses to appear. Therefore, at the Preliminary Hearing on September 12, 2017, as well as at the opening of the Hearing on the Merits in this matter on November 15, 2017, Me Francis Larin, prosecutor for the PLAINTIFF, announced that he was dropping the 1st count, and confining himself to the second.²

¹ See exhibit 2.

² See lines 1 to 19 on page 12 of the Transcription of the Hearing on the Merits dated November 15, 2017.

¶ 13 Accordingly, on November 15, 2017, we proceeded with the adversarial HEARING on the 2nd Count against the RESPONDENT.

¶ 14 In our UNANIMOUS DECISION ON THE MERITS dated December 12, 2017, we found the RESPONDENT guilty of the remaining count against him.

¶ 15 On April 10, 2018, we proceeded with the HEARING on Penalties and this step of the proceedings was reserved for deliberation.

II. PLAINTIFF'S POSITION

¶ 16 Me Larin has argued that, because the first date mentioned in the count on which we are proceeding goes back to January 29, 2013, and therefore pre-dates the coming into force of IIROC's "new" *Consolidated Rules* and *IIROC's Dealer Member Disciplinary Sanction Guidelines* (the « **Guidelines** ») on September 1, 2016, it is Rule 20.33, as it existed on August 31, 2016, that "officially" governs the question of penalties here.

¶ 17 Based on the foregoing, the maximum amount that might be imposed on the RESPONDENT Trudeau is one million dollars rather than the maximum of five million dollars under the new rules.

¶ 18 In this respect, the PLAINTIFF has also invited us to express an opinion on the approximately three thousand dollars (\$3,000) in commissions earned by the RESPONDENT on thirty (30) faulty trades over a period of twenty-one (21) months, as cited in Count 2, and which concerned a single client, Mrs. JR.

¶ 19 Among the seven (7) examples of case law invoked by Me Larin, the latter argues that *Re Shamseer* – a copy of which decision dated January 24, 2011 was produced under tab 12 of the Book of Jurisprudence that Me Larin filed under the cover of his letter dated March 26, 2018 – is the one that most resembles the RESPONDENT's case.

¶ 20 The facts of the aforesaid matter share certain similarities with the facts in the matter before us, and the IIROC Hearing Panel seized of the Shamseer matter imposed the following sanctions on January 24, 2011:

- a) A fine in the amount of \$50,000;
- b) Part of the costs, up to a maximum of \$5,000;
- c) A six(6)-month suspension effective the date of the Hearing Panel's Decision;
- d) Successful completion of the examination based on the Conduct and Practices Handbook, before seeking reapproval in any capacity with IIROC;
- e) Twelve (12) months of strict supervision, upon reapproval with IIROC; and
- f) Six (6) months of close supervision following the end of the strict supervision.

¶ 21 In tab 12 of his Book of Jurisprudence, Me Larin submitted the January 24, 2011 decision regarding offences committed by Ms. Shamseer between September 2006 and February 2007. Also entered into evidence in 2011, an earlier decision (2006) regarding Ms. Shamseer concerned her conduct between February 2002 and December 2003, a conduct similar to that which led to her finding of guilt in January 2011 for actions she committed between September 2006 and February 2007. Thus, she had persisted in the same blameworthy conduct in both 2002-2003 and 2006-2007.

¶ 22 At the time of her finding of guilt on January 24, 2011, Ms. Shamseer had a disciplinary history from 2006, concerning similar misconduct that occurred between February 2002 and December 2003. Thus, in 2006-2007 she had relapsed with similar misconduct.

¶ 23 That said, Me Larin reminds us that, by her second finding of guilt, Ms. Shamseer already had a similar disciplinary history.

¶ 24 Now in the matter before us, Mr. Trudeau was into his second repeat offence, and his third successive finding of guilt.

¶ 25 Therefore, insisted Me Larin, this third offence should necessarily be more blameworthy than Ms. Shamseer's second offence.

¶ 26 Consequently, Me Larin suggested, the penalties in Mr. Trudeau's current case should be more severe than those imposed on Ms. Shamseer in the decision handed down by the hearing panel in her case, on January 24, 2011.

¶ 27 In short, Me Larin recommends the following Sanctions against Mr. Trudeau:

- a) A fine ranging between FIFTY THOUSAND DOLLARS (\$50,000) and SIXTY THOUSAND DOLLARS (\$60,000), including disgorgement of the commissions earned by the RESPONDENT on the thirty (30) trades involving JR;
- b) Payment of part of the costs, between TEN THOUSAND DOLLARS (\$10,000) and FIFTEEN THOUSAND DOLLARS (\$15,000);
- c) A ban on reapproval ranging from six (6) to twelve (12) months;
- d) Successful completion of the exam based on the Conduct and Practices Handbook as a condition for reapproval;
- e) In the event of reapproval, twelve (12) months of strict supervision;
- f) Followed by six (6) months of close supervision.

III. THE RESPONDENT'S POSITION

¶ 28 In his argument, Mr. Trudeau principally debated the question of the \$50,000 to \$60,000 fine recommended by the PLAINTIFF.

¶ 29 He declared that he was in very precarious financial circumstances. He is 65 years old and has been unemployed since 2014.

¶ 30 Due to previous events that led to the complaint brought against him by the IDA (a predecessor of IIROC) in January 2006, he lost his house, he told us.

¶ 31 Currently, he resides in the house owned by his spouse.

¶ 32 He also informed us that he is living on his old age pension, that he has no other income and that his only assets are as stated in Exhibit I-1 filed by him. It is a very modest amount;

¶ 33 Said exhibit states that, as at January 31, 2018, his assets were worth a total of \$32,306.63;

¶ 34 He invoked his said circumstances in order to request that the fine, if there is one, be much less than the amount of \$50,000-\$60,000 requested by the PLAINTIFF;

¶ 35 He also reminds us that the GUIDELINES promulgated by IIROC provide the following in Part 1, Section 7;

“7. Inability to pay is a factor when considering an appropriate monetary sanction or costs only when raised by the respondent.

Inability to pay is a relevant consideration in determining the appropriate financial sanctions to be imposed on a respondent. It should not be considered a predominant or determining factor, but it is a relevant factor depending on the circumstances of the misconduct.”

¶ 36 The RESPONDENT also referenced an erroneous statement made by the Hearing Panel acting under the authority of the IDA in case No. 0694/June 04, paragraph 27, a penalty decision dated June 14, 2007:

[TRANSLATION]

« (27) The Association mentioned that the Hearing Panel must, in its decision, take into account the fact

that fines imposed by a self-regulatory organization on its Members and their approved persons may be deductible as business expenses for income purposes. »

¶ 37 The RESPONDENT stated in his testimony that he paid the IDA the fine that was imposed on him by the hearing panel in said proceeding No. 0694/June 04 and, as was stated in the IDA Hearing Panel Decision, the RESPONDENT attempted to deduct the amount on his tax return, but it was rejected as nondeductible by the tax authorities.

¶ 38 Thus, he estimates that, in reality, the fine that was imposed on him was doubled. Consequently, he requests that the HEARING PANEL here reduce the fine that it would otherwise have imposed on him.

¶ 39 He did not have a lot to say about the other elements of the Penalty recommended by the PLAINTIFF.

IV. THE PLAINTIFF'S RESPONSE

¶ 40 The PLAINTIFF objects to the RESPONDENT's request to this HEARING PANEL, regarding a possible fine based on the so-called doubling in reality of the fine imposed on him by the IDA hearing panel in case No. 0694/June 04.

¶ 41 He argues that what happened in this regard in said case No. 0694/June 04 has nothing to do with the current matter.

¶ 42 The PLAINTIFF also argues that this HEARING PANEL should not take into account the RESPONDENT's claims regarding his financial circumstances, since after the paragraph that was pointed out by the RESPONDENT and reproduced in full in paragraph [35] above, there are two other paragraphs that follow and declare:

“The burden is on the respondent to raise the issue and provide evidence of financial hardship. Evidence of financial hardship should be in the form of sworn affidavits or declarations, along with standard or commonly accepted documents, such as tax returns, audited financial statements or other externally verified financial statements.

Evidence of inability to pay could result in the reduction/waive of a fine and/or in the imposition of an installment payment plan. In cases in which a hearing panel reduces or waives a fine based on a bona fide inability to pay, the written decision should so indicate.”

V. ANALYSIS AND DISCUSSION

¶ 43 We concur with the argument advanced by Me Larin and reproduced in paragraph 16 above.

¶ 44 It must be kept in mind that the GUIDELINES are meant as a general guide, and do not mandate a specific result in any given case.

¶ 45 A hearing panel shall always retain its discretion and must apply it based on the facts and particular circumstances of the matter before it.

¶ 46 Regarding the arguments raised by the RESPONDENT relative to the error made by the hearing panel in the case involving the RESPONDENT and the IDA, No. 0694/June 04, on the deductibility or non-deductibility for tax purposes of the fine imposed on the RESPONDENT, it must be made clear that we, the HEARING PANEL in the present matter, are not here to restore what another hearing panel did or said, since we are neither a review body nor an appeal body.

¶ 47 Nevertheless, even the hearing panel in ACCOVAM No. 0694/June 04 went on as follows in its paragraph (28):

[TRANSLATION]

(28) *The hearing panel does not believe that this is grounds for increasing or reducing a monetary*

penalty.

¶ 48 As for the facts stated in paragraph [29] above, we believe that, considering his age and what he has been through since he was charged by the IDA in the aforesaid case No. 0694/June 04, it is highly improbable that he will seek a return to the securities industry.

¶ 49 Therefore, the elements of this DECISION concerning said question are more symbolic than practical and real;

¶ 50 So, with respect to the determination of the penalty that we will impose on the RESPONDENT, we are not considering what happened in the aforesaid case involving the RESPONDENT and the IDA;

¶ 51 The Sanctions that are imposed on an individual who is an IIROC registrant do not have retribution or punishment as their primary purpose³.

¶ 52 The Guidelines state, in a few succinct paragraphs, the purpose and aims of Sanctions.

We reproduce them here:

"Purpose of Sanction Guidelines

IIROC is the national self-regulatory organization which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada.

IIROC sets high quality regulatory and investment industry standards, protects investors and strengthens market integrity while maintaining efficient and competitive capital markets. IIROC carries out its regulatory responsibilities through setting and enforcing rules regarding the proficiency, business and financial conduct of dealer firms and their registered employees and through setting and enforcing market integrity rules regarding trading activity on Canadian equity marketplaces.

The primary purpose of IIROC disciplinary proceedings is to maintain high standards of conduct in the securities industry and to protect market integrity.

The Sanction Guidelines are intended to promote consistency, fairness and transparency by providing a framework to guide the exercise of discretion in determining sanctions which meet the general sanctioning objectives.

The *Sanction Guidelines* are intended to assist:

- IIROC Enforcement Staff and respondents in the negotiation of settlement agreements;
- hearing panels in determining whether to accept settlement agreements; and;
- hearing panels in the fair and efficient determination of appropriate sanctions after disciplinary hearings.

The determination of the appropriate sanction in any given case is discretionary and a fact specific process. The appropriate sanction depends on the facts of a particular case and the circumstances of the conduct. Hearing panels retain the discretion to impose the sanctions they consider appropriate.

(Our emphasis.)

The general principles and key factors set out in the *Sanction Guidelines* are not intended to fetter the discretion of a hearing panel in determining an appropriate sanction.

³ In *Re Mills*, [2001] I.D.A.C.D. No 7 at p. 3, the Hearing Panel observed: "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 [hearing panel] 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.**" [emphasis added]

(Our emphasis.)

Overview of *Sanction Guidelines*

The *Sanction Guidelines* are divided into two parts:

Part I – Sanction Principles for IIROC Disciplinary Proceedings provides a framework that should be considered in connection with the imposition of sanctions in all cases.

Part II – Key Factors in Determining Sanctions provides a list of factors commonly taken into consideration when making a determination as to an appropriate sanction.

Part I – Sanction Principles for IIROC Disciplinary Proceedings

The following principles provide a framework that should be considered in connection with the imposition of sanctions in all cases.

- 1. Disciplinary sanctions are preventative in nature and should be designed to protect the investing public, strengthen market integrity, and improve overall business standards and practices.**

The purpose of sanctions in a regulatory proceeding is to protect the public interest by restraining future conduct that may harm the capital markets¹. In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence), and to deter others from engaging in similar misconduct (general deterrence).

When considering specific and general deterrence in the imposition of sanctions, consideration should be given to the size of the Dealer Member, including the firm's financial resources, nature of the firm's business, and the number of individuals associated with the firm, with a view toward ensuring that the sanctions imposed are sufficient to achieve deterrence. Similarly, with respect to an individual respondent, consideration should be given to a bona fide inability to pay when imposing a fine (see General Principle No. 7).

General deterrence can be achieved if a sanction strikes an appropriate balance by addressing a Regulated Person's specific misconduct but is also in line with industry expectations². Any sanction imposed must be proportionate to the conduct at issue and should be similar to sanctions imposed on respondents for similar contraventions in similar circumstances. The sanction should be reduced or increased depending on the relevant mitigating and aggravating factors.

- 2. Disciplinary sanctions should be more severe for respondents with prior disciplinary records.**

A respondent's prior disciplinary record is an aggravating factor and may warrant a harsher sanction than would be required had this been the respondent's first disciplinary contravention.

¹See for example, paragraph 43 of the decision in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132

² See footnote No. 3 above.

A prior disciplinary record for a similar or identical contravention strongly suggests that the prior sanction was not a sufficient deterrent, thereby necessitating an increased sanction in order to address specific deterrence. However, a prior record where the misconduct is different may nonetheless be a factor to consider and it may demonstrate a respondent's general disregard for compliance with regulatory requirements, the investing public or market integrity in general. A prior disciplinary record generally becomes less relevant as it becomes more dated.

¶ 53 After considering and weighing all of the facts and circumstances, we have decided to rely on our discretion and to vary certain elements of the Sanctions proposed by Me Larin and reproduced in paragraph [27]

above.

VI. FINAL DISPOSITION

¶ 54 This UNANIMOUS DECISION ON PENALTIES will be signed by the HEARING PANEL members in multiple copies. Each of these signed copies shall be equally valid and authentic and shall avail for all legal purposes.

VII. CONCLUSIONS

¶ 55 FOR ALL OF THESE REASONS:

WE, the Members of the HEARING PANEL, hereby IMPOSE on the RESPONDENT the following SANCTIONS:

- A. a **FINE** in the amount of **FIFTY THOUSAND DOLLARS (\$50,000)**, including disgorgement of the commissions earned by the RESPONDENT on the thirty (30) trades involving JR;
- B. Payment of part of the **COSTS** incurred by IIROC in the matter, up to a maximum of **FIVE THOUSAND DOLLARS (\$5,000)**;
- C. A **ban on reapproval** of the RESPONDENT with IIROC for a period of **twenty-four (24) months** from the date of this DECISION;
- D. **Successful completion of the exam based on the Conduct and Practices Handbook** as a condition for reapproval;
- E. In the event of reapproval, **twelve (12) months of strict supervision**;
- F. Followed by **six (6) months of close supervision**.
- G. The amounts of the penalty and costs awarded against the RESPONDENT in this matter shall be paid to IIROC.

VIII. SIGNATURES

Signed at Montréal (Québec), this June 18, 2018

Benjamin J. Greenberg

Guy L. Jolicoeur

Élaine C. Phénix

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