

Re Turenne

IN THE MATTER OF:

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

and

Jacques Turenne

2015 IIROC 38

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

Hearing held on: Wednesday, October 7, 2015, at Montréal, Province of Québec
Decision rendered on: October 28, 2015

Hearing Panel

Me Claire Richer, Chair, Jean Élie and Denis Marc Gagnon

Appearances

Me Francis Larin, Enforcement Counsel for IIROC

Mr. Nicolas D'Astous, Investigator, IIROC

Mr. Jacques Turenne, Respondent, present and not represented by counsel

DECISION ON PENALTY

I. Decision pursuant to disciplinary hearing

¶ 1 Our hearing panel (the Hearing Panel) was seized of a complaint from IIROC concerning the Respondent, in regard to two counts contained in a notice of hearing dated January 8, 2015. 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 investigation of the matter at hand, contrary to IIROC Dealer Member Rule 29.1.

¶ 2 The disciplinary hearing was held on May 14, 2015. The Respondent was not represented by counsel.

¶ 3 In its unanimous decision dated July 2, 2015 (*Re Turenne*, 2015 IIROC 23, July 2, 2015), the Hearing Panel, considering the Respondent's admission of guilt on Count 1, on the one hand, and on the other, the preponderance of the evidence respecting Count 2 presented by IIROC at the hearing on May 14, 2015, found that the Respondent did contravene Dealer Member Rule 29.1 as alleged in the aforesaid Counts 1 and 2.

II. Penalty Hearing

¶ 4 The penalty hearing took place on October 7, 2015. Counsel for IIROC began with a review of i) the regulatory provisions in the matter of sanctions, ii) the principles for determining appropriate sanctions as stated in the case law, and iii) IIROC's revised guidelines and policies regarding sanctions in force since February 2015. In particular, IIROC highlighted the decision in *Suppal (Re Suppal, 2014 IIROC 45)* in which the hearing panel explains in detailed fashion the factors that must be considered when determining penalties.

¶ 5 Counsel for IIROC then made the following recommendation for sanctions against the Respondent:

- a) A fine in the amount of \$25,000;
- b) Prohibition of approval in any capacity for a period of 5 years; and
- c) Costs in the amount of \$10,000.

Considering that an earlier decision on a settlement agreement involving the Respondent already includes 12 months of strict supervision following reapproval, Counsel for IIROC is of the opinion that this penalty still holds and need not be repeated. (*Re Turenne, 2013 IIROC 43*).

¶ 6 Counsel for IIROC then summarized the various jurisprudential precedents contained in its book of rules and authorities that most resemble the matter before us, while underlining the differences. Among others, in *Michaels (Re Michaels, 2007 I. A. C. D. No. 8)*, the respondent had conducted transactions with clients without notifying his employer and had not responded honestly to questions asked by the Association; the monetary penalty totaled \$45,000. In *Toh (Re Toh, 2011 IIROC 51)*, the respondent in this matter had signed a settlement agreement for a just one offence that involved borrowing money from a client and had no disciplinary history; the penalty was a \$20,000 fine and a two-year prohibition on approval.

¶ 7 Counsel for IIROC reminded the Hearing Panel i) that the misconduct with which the Respondent is charged is of a serious nature, ii) that the latter was not unaware of the important restrictions on financial dealings with clients, including the obligation of obtaining the employer's consent, iii) that the Respondent had responded falsely on at least two occasions to questions from IIROC regarding money borrowed from clients and iv) that he had failed to correct these false answers when he had the opportunity to do so. He also mentioned that the suggested sanctions are reasonable given the Respondent's behaviour and may serve as a general deterrent to similar behaviours in the future.

¶ 8 The Respondent replied that IIROC's recommendation of a monetary sanction was too high. As for the prohibition period, he mentioned that he would not be applying for reapproval. The Respondent reiterated, as he did at the disciplinary hearing, that as far as he was concerned, he had no disciplinary history and his only failing was that he had misinterpreted the investigator's questions when he failed to disclose that he had borrowed from a client before. The Respondent also mentioned that he was job hunting.

III. Penalties

¶ 9 After deliberation, the Hearing Panel ordered the following:

- a) that the Respondent pay a fine of \$20,000;
- b) that the Respondent be subject to a prohibition from approval for a period of two years; and
- c) that the Respondent pay costs in the amount of \$10,000.

IV. Reasons

¶ 10 As provided in IIROC Dealer Member Rule 20.33, the Hearing Panel has discretionary power to impose sanctions following a disciplinary decision concerning a representative's misconduct in regard to IIROC Rules.

¶ 11 To assist a hearing panel when determining an appropriate penalty, IIROC has formulated guidelines which are reviewed from time to time to take into account the evolution of the marketplaces and past decisions. As is mentioned, "...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)."

(IIROC's Dealer Member Disciplinary Sanction Guidelines, Part I 1.)

¶ 12 The principal factors that were retained by the Hearing Panel in the matter before us, other than the authorities and decisions cited by Counsel for IIROC, are as follows:

- a) The Respondent's business conduct is not consistent with the duty of a representative to observe high standards of ethics and conduct at all times. Such misconduct may undermine the trust not only of the clients, but also of the marketplace and the general public who expect a representative not to be influenced by his own personal interests;
- b) The Hearing Panel observed no remorse in the Respondent, notwithstanding his guilty plea on Count 1. In fact, the latter continues to claim that his personal circumstances should serve as a mitigating factor in respect of Count 1 and that Count 2 was a comprehension error. However, the duty of a representative to observe high standards of professionalism is the cornerstone of his role and of the smooth operation of the markets. Therefore the Hearing Panel cannot conclude that it is a mitigating factor;
- c) The Hearing Panel has no choice but to find that the Respondent had previously borrowed money from another client without the authorization of his employer, for which conduct he was disciplined by a Hearing Panel pursuant to a decision on settlement agreement (*Re Turenne* 2013 IIROC 43); and
- d) The Hearing Panel does not entirely accept the suggestion of Counsel for IIROC regarding the amount of the financial penalty (namely \$25,000) nor the length of the prohibition against reapproval of the Respondent (namely 5 years), judging that the sum of \$20,000 constitutes a reasonable amount in the circumstances and that a period of two years represents a substantial deterrent. However the suggestion of costs in the amount of \$10,000 was accepted.

Signed at Montréal, Province of Québec, this October 28, 2015.

Claire Richer, Chair

Jean Élie

Denis Marc Gagnon

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