

Re Arvanitakis

IN THE MATTER OF:

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

and

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

Nicole Arvanitakis

2012 IIROC 30

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

Heard: February 29, 2012

Decision: May 7, 2012

Hearing Panel:

Me Jean Martel, Ad. E. (Chair), Mr. Jean Élie, Ms. Danielle Le May

Appearance:

Me Myriam Giroux-Del Zotto, Counsel for IIROC

Me Lavinia Inbar, Counsel for the Respondent

Decision on Settlement Agreement

¶ 1 This settlement hearing is governed by IIROC Dealer Member Rules 20.35 to 20.40, *Settlement Hearings*.

¶ 2 From January 16, 2009 to April 2010, the Respondent pretended fraudulently that she was duly qualified to be registered and to act as a Registered Representative of a securities dealer that is a member of the Investment Industry Regulatory Organization of Canada (“**IIROC**” or “**Organization**”). She was employed by HSBC Securities (Canada) Inc. (“**HSBC**”) from August 2008 to April 2009, and thereafter by CIBC World Markets Inc. (“**CIBC**”) up to March 2010. At such times, HSBC and CIBC were, and they continue to be as of the date hereof, IIROC Dealer Members.

¶ 3 After investigating the Respondent’s conduct, the Staff of IIROC has concluded that for more than 20 months, the Respondent had violated the provisions of IIROC Dealer Member Rule 29.1, *Business Conduct* (the “**Rules**”) and as a result, that she had to be disciplined before a hearing panel appointed pursuant to IIROC *Transitional Rule No. 1, Schedule C.1, Part C*.

Settlement Agreement

¶ 4 On the basis of a statement of facts admitted by both parties and consequently, of an acknowledgment by the Respondent that she had committed certain violations of the Rules, the Staff of IIROC negotiated and entered into a settlement agreement dated December 12, 2011 (the “**Settlement Agreement**” or the “**Agreement**”) with the Respondent, pursuant to IIROC Dealer Member Rule 20, *Corporation Hearing*

Processes (more specifically Rule 20.35) and Rule 14 of IIROC's Dealer Member *Rules of Practice and Procedure*.

¶ 5 In the Settlement Agreement, the Respondent acknowledges in the following terms the fact that she has violated the Rules:

“Between January 16, 2009 and April 2010, the Respondent intentionally led IIROC and two IIROC Dealer Members to believe, notably by means of a forgery, that she met the specific education criteria to carry on the occupation of Registered Representative, knowing that this was false, contrary to IIROC Dealer Member Rule 29.1.”¹

¶ 6 Subject to the acceptance of the Settlement Agreement by a hearing panel pursuant to Rule 14 of IIROC's Dealer Member *Rules of Practice and Procedure*, the parties have agreed² that the Respondent is liable for the following penalties:

- (i) a fine of \$10,000; and
- (ii) a permanent ban.

¶ 7 The Respondent also accepted in the Agreement to pay costs relating to this file in an amount of \$5,000.

Essential Facts Admitted

¶ 8 For more than 20 months the Respondent passed herself off as a qualified Registered Representative and was even registered in such capacity with two IIROC Dealer Members, namely HSBC and CIBC.

¶ 9 On or about August 4, 2008, the Respondent was hired by HSBC. Thereafter and more specifically, on or about April 23, 2009, the Respondent resigned from her duties with HSBC to go work for CIBC.

¶ 10 To be hired as a Registered Representative with an unrestricted practice by HSBC, and afterwards by CIBC, the Respondent forged a document attesting that she had successfully completed all of the required courses to carry on this occupation, including the Canadian Securities Course (the “CSC”), whereas she had not passed this course.

¶ 11 The Respondent submitted the forged document as an authentic document to HSBC and to CIBC, who in turn sent it to IIROC.

¶ 12 On or about April 18, 2010, IIROC did some checking with CSI Global Education Inc. to obtain confirmation that the Respondent had completed all of the courses required by IIROC as a condition to act as a Registered Representative. It was at that time that IIROC discovered that the Respondent had not completed the CSC.

¶ 13 The Respondent was therefore dismissed by CIBC, her employer at the time, for failing to meet the firm's hiring criteria.

¶ 14 Since her dismissal, the Respondent has not obtained the Registered Representative status, nor has she attempted to act in such a capacity for an IIROC member firm.

The Proceedings

¶ 15 At a hearing held on February 29, 2012, the text of the Settlement Agreement attached hereto was recommended for acceptance to this Hearing Panel, in accordance with IIROC Dealer Member Rule 20.36 (1)(a).

¶ 16 After consideration of the terms and conditions of the Agreement and taking into account the representations by counsel of both parties, we stated our intention to accept the Agreement on the effective date of this decision, for the reasons outlined below.

¹ *Settlement Agreement*, par. 7, p. 2.

² *Ibid*, par. 8.

The Analysis

¶ 17 IIROC Dealer Member Rules 20.35 to 20.40 (*Settlement Hearings*) provide that in the context of a settlement hearing, the Panel may only accept or reject the Settlement Agreement that is submitted for its consideration.

¶ 18 To help us take a position in the Respondent's case, counsel for both parties referred us, among others, to the principles laid out in *Re Milewski* [1999] I.D.A.C. No. 17, *Rault v. Law Society of Saskatchewan* [2009] SKCA 81 and *Re Graydon Elliot Capital Corporation* [2007] I.D.A.C. No. 43, as more recently applied in *Re Rao* [2011] IIROC No. 12.

¶ 19 The *Milewski* case established that when a Hearing Panel examines a settlement agreement, it should tend not to alter a penalty that may be considered to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. Consequently, a settlement should not be rejected unless the Panel views the penalty as clearly falling outside a reasonable range of appropriateness.³

¶ 20 In *Rault*, it was determined that there is an obligation on a tribunal to give serious consideration to a joint submission on sentencing agreed upon by counsel, unless the sentence is unfit or unreasonable or contrary to the public interest. A joint submission should not be departed from unless there are good or cogent reasons for doing so.⁴ We have found that no such reasons exist in this case.

¶ 21 Finally, *Graydon Elliot Capital Corporation* has established that in considering a settlement agreement, a hearing panel should not simply substitute its own discretion to that of the Staff negotiating the settlement. The panel must recognize the importance of the settlement process, and it should not interfere lightly with the contractual instrument that constitutes the Agreement. Furthermore, this case acknowledged that the settlement process is one of negotiation and compromise, and that the penalty mutually agreed to be imposed may be somewhat different from the one imposed in the context of a contested hearing where similar findings are made and the hearing panel is called upon to determine the appropriate penalty.⁵

¶ 22 Applying these principles to the case at bar we come to the conclusion that in the circumstances, the penalties set forth in the Settlement Agreement comply in all material respects with the aforesaid criteria of fairness and reasonable appropriateness, which allow us to accept it.

¶ 23 To conclude in this manner, we have considered the IIROC *Dealer Member Disciplinary Sanction Guidelines* (March 2009 version) and retained some of the key considerations stated in *Re Nyren*, I.D.A.C., October 31, 2001, *Re Brennan*, I.D.A.C., May 2004, *Re Rahmani*, I.D.A.C., August 9, 2004 and *Re Lohrsch* [2010] IIROC No. 31 in connection with circumstances similar to the ones of the case before us.

¶ 24 We also based ourselves on the following relevant factors.

Mitigating Factors

¶ 25 The Hearing Panel took into consideration the fact that the Respondent was not the object of any client complaints and that there were no client losses due to her misrepresentation as to credentials.

¶ 26 We noted that, when confronted, the Respondent admitted the forgery and cooperated with Staff of IIROC throughout the investigation, an attitude for which the Respondent deserves to be given credit.

¶ 27 The Hearing Panel has also considered that the Respondent had no disciplinary history other than the present matter, but we gave a somewhat lighter weight to this mitigating factor because of the duration of the misconduct of the Respondent, which started even before she began acting as a Registered Representative and lasted up until the moment when her fraud was discovered by IIROC investigators and that she was dismissed as a result.

Aggravating Factors

³ *Re Milewski* [1999] I.D.A.C. No. 17, p.11.

⁴ *Rault v. Law Society of Saskatchewan* [2009] SKCA 81, par. 13.

⁵ *Re Graydon Elliot Capital Corporation* [2007] IDAC No. 43, at par. 9.

¶ 28 Notwithstanding such mitigating factors, the fact remains that resorting to forgery is a very serious offense as its use demonstrates a lack of honesty, especially on the part of someone who aspires to be recognized, through registration, as a fit and proper professional of the Canadian securities industry.

¶ 29 The IIROC *Dealer Member Disciplinary Sanction Guidelines* for misrepresentation as to credentials state that:

“The filing with the Corporation of information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade, in that it is fundamental tenet of securities regulation in Canada that registrants be educated to an established standard, and otherwise proficient to serve and protect investors. When a registrant has misrepresented his or her credentials to the Corporation, this amounts to conduct unbecoming, contrary to Dealer Member Rule 29.1, and disciplinary sanctions should be imposed.

Any intentional misrepresentation on an application for registration or transfer should be treated severely, and a substantial fine, suspension or permanent ban from approval in any capacity should be considered.”⁶

¶ 30 The sanctions recommended by the Guidelines are a minimum fine of \$5,000 and a suspension until credentials are proven or, where there is an intentional or reckless attempt to mislead IIROC, a permanent ban from approval in any capacity.

¶ 31 The Respondent presented the forged document with the intention of misleading HSBC, CIBC and IIROC about her academic education, in order to meet the hiring requirements and obtain employment as a Registered Representative. She caused the forged document to be submitted to HSBC, CIBC and IIROC with the intent that such IIROC Dealer Members and IIROC itself act upon that document as a genuine document.

¶ 32 The Respondent was able to succeed in her misrepresentation as to her academic education and remained registered, and this for a period of approximately 20 months, until it came to IIROC Staff’s attention. It is clear that for all that time, the Respondent knew she had wilfully misrepresented the facts, pretending falsely that she had successfully completed all of the required courses to carry on the occupation of a Registered Representative, including the CSC.

¶ 33 If IIROC had not discovered the forgery, the misrepresentation could have continued for an indefinite period and the Respondent could have never attempted to correct her misrepresentation, as was the case in *Lohrisch*.

¶ 34 There is no doubt that the Respondent knew that failing to meet the specific education criteria would lead to immediate withdrawal of her approval by the Organization, as well as to the loss of employment as a Registered Representative.

¶ 35 Obtaining the status of a Registered Representative is not a right, but a privilege. This privilege is notably earned by acquiring the appropriate qualifications, and it is clear that in this case the Respondent took very lightly her obligation to meet these prerequisites. She deliberately misled her former employers and IIROC in this connection and gave them a false belief that she was duly qualified to represent her firm and to deal with its customers. Thereafter, she found comfort in voluntary blindness and hoped that her fraud would not come to be discovered. This conduct was the exact opposite of the full, true and plain disclosure relationship that she was expected to maintain with IIROC as a representative of any of its Member firms.⁷

¶ 36 This sort of deception, involving the deliberate falsification of a document and the provision of such document to the regulatory body charged with the responsibility of protecting the interest of the public, requires

⁶ *IIROC Dealer Member Disciplinary Sanction Guidelines*, March 2009, Section 5.2, p.44.

⁷ *Re Lohrisch* [2010] IIROC No. 31, at par. 27.

careful attention to general deterrence aspects. We therefore deem appropriate the severe penalties for which the terms of the Settlement Agreement provide.

¶ 37 In our view, the decisive factor to consider here is that the Respondent's misrepresentation as to her credentials was intentional, and that she made no attempts whatsoever to amend and do the right thing by straightening out her qualifications record (as was seen in *Lohrisch*, where the contemplated penalties included a permanent ban). That is why we conclude that imposing a permanent ban is reasonable in the circumstances.

¶ 38 The fine and the fees – in the amount of \$10,000 and \$5,000, respectively - do not unreasonably depart from the precedents and in particular, the decisions in *Brennan* and *Nyren* that were pleaded before us.

¶ 39 For all these reasons, we think it is appropriate to grant the parties' joint recommendation and accept the Settlement Agreement before us.

Conclusion

¶ 40 **FOR THESE REASONS, THE HEARING PANEL:**

ACCEPTS the Settlement Agreement dated December 12, 2011, the text of which is appended hereto, including the following terms and conditions relating to the penalties:

- 1) a permanent ban from approval in any capacity imposed on the Respondent;
- 2) a fine of \$10,000 imposed on the Respondent; and
- 3) the payment of an amount of \$5,000 imposed on the Respondent on account of the costs incurred by IIROC.

Montreal, May 7, 2012.

Jean Martel, Chair

Jean Élie, Member

Danielle Le May, Member

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada (IIROC) Enforcement Staff (Staff) and Nicole Arvanitakis (the Respondent), consent and agree to the settlement of this matter by way of this settlement agreement (the Settlement Agreement);
2. Staff has conducted an investigation (the Investigation) into the conduct of the Respondent;
3. On June 1st, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada (IDA) and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between IDA and IIROC, effective June 1st, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions;
4. The Respondent consents to be subject to the jurisdiction of IIROC;
5. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel (the Hearing Panel) appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C.

II. JOINT SETTLEMENT RECOMMENDATION

6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement;
7. The Respondent admits to the following contravention of IIROC Rules and Guidelines:

1. Between January 16, 2009 and April 2010, the Respondent intentionally led IIROC and two IIROC Dealer Members to believe, notably by means of a forgery, that she met the specific education criteria to carry on the occupation of Registered Representative, knowing that this was false, contrary to IIROC Dealer Member Rule 29.1.
8. Staff and the Respondent agrees to the following terms of settlement:
 - a) A fine of \$10,000; and
 - b) A permanent ban.
9. The Respondent agrees to pay costs to IIROC in the sum of \$5,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

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

(ii) Factual Background

Summary of alleged misconduct

11. For more than 20 months, the Respondent passed herself off as a qualified Registered Representative (RR) and was even registered in this capacity with two (2) IIROC Dealer Members;
12. To get herself hired as a RR with Unrestricted Practice, the Respondent forged a document attesting that she had successfully completed all of the required courses to carry on this occupation, including the *Canadian Securities Course (CSC)*, whereas she had not passed this course;
13. The respondent submitted the forged document as an authentic document, notably with the intention of misleading IIROC.

The Respondent

14. On or about August 4, 2008, the Respondent was hired by HSBC Securities (Canada) Inc. (HSBC);
15. On or about February 6, 2009, the Respondent was approved as a RR by IIROC;
16. On or about April 23, 2009, the Respondent quit HSBC to go work for CIBC World Markets Inc. (CIBC);
17. On or about March 16, 2010, CIBC applied to IIROC to reactivate the Respondent's registration and approval as a RR;
18. On or about March 26, 2010, the Respondent was dismissed by CIBC because she did not meet CIBC's hiring criteria, since she had not passed the *CSC*;

Forgery and misrepresenting

19. On or about January 16, 2009, HSBC forwarded a registration application to IIROC so that the Respondent might be registered as a RR with HSBC;
20. On or about January 26, 2009, IIROC informed HSBC of its intention of verifying the information regarding the Respondent's academic status with the Canadian Securities Institute (CSI), and of the impossibility of doing so due to the existence of a confidentiality clause signed by the Respondent. IIROC, therefore, asked HSBC to take the necessary steps with the Respondent to have the confidentiality clause revoked;
21. On or about January 30, 2009, HSBC forwarded IIROC a document that originated from the CSI, establishing that the Respondent had passed the following courses: the *CSC*, the *Conduct and Practices Handbook Course (CPHC)* and the *Investment Funds in Canada Course (IFC)*;

22. On February 6, 2009, IIROC issued the Decision no. 2009-OCRC-0230 by which it confirmed the Respondent's approval as a RR with HSBC;
23. On February 6, 2009, IIROC sent HSBC a reminder notice for the following elements:
 - (i) *HSBC's obligation to supply proof that the Respondent passed all of the required courses in order to act as a RR, by no later than June 6, 2011;*
 - (ii) *HSBC's obligation to supervise the Respondent for six (6) months following the latter's registration approval date.*
24. On or about April 23, 2009, the Respondent resigned her duties at HSBC;
25. The Respondent began the process of getting hired as a RR by CIBC;
26. On or about March 16, 2010, CIBC submitted a registration application to IIROC to have the Respondent approved as a RR with CIBC;
27. On or about March 29, 2010, IIROC issued the Decision no. 2010-OCRC-0178 by which it was confirmed that the Respondent was approved as a RR with CIBC;
28. On or about April 18, 2010, IIROC did some checking with the CSI to make sure that the Respondent had completed all of the required courses to act as a RR. It was at this point that IIROC learned that the Respondent had not completed the *CSC*;
29. The Respondent falsely allowed HSBC, CIBC and IIROC to believe that she had passed all of the required courses to act as a RR;
30. The Respondent forged a document attesting that she had passed the *CSC*, whereas she had not completed the course;
31. The Respondent presented this forgery to HSBC and to CIBC, who in turn sent it to IIROC, with the intention of misleading them about her academic education, in order to meet the hiring requirements and obtain employment as a RR;
32. The Respondent knew that failing to meet the specific education criteria would lead to the immediate withdrawal of her approval, as well as to the loss of her employment as a RR;
33. At no time did the Respondent attempt to correct the false information regarding her academic education.

IV. TERMS OF SETTLEMENT

34. 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;
35. The Settlement Agreement is subject to acceptance by the Hearing Panel;
36. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel;
37. 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;
38. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives her right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal;
39. 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;
40. The Settlement Agreement will become available to the public upon its acceptance by the Hearing

Panel;

41. 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;
42. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement;
43. 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 the City of Montreal in the Province of Ontario, this 12 day of decembre, 2011.

“Witness signature”

“Nicole Arvanitakis”

Witness

Nicole Arvanitakis

Respondent

AGREED TO by Staff at the City of Montréal in the Province of Québec, this 3rd day of January, 2012.

“Witness signature”

“Myriam Giroux-Del Zotto”

Witness

Myriam Giroux-Del Zotto

Enforcement Counsel on behalf of Staff of IIROC

ACCEPTED at the City of Montréal in the Province of Québec, this 7th day of May, 2012, by the following Hearing Panel:

Per: “Jean Martel”

Panel Chair

Per: “Danielle Le May”

Panel Member

Per: “Jean Elie”

Panel Member