Unofficial English Translation

Re Azancot

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

Sydney Azancot, Respondent

2014 IIROC 44

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

Hearing held on September 3, 2014
Decision rendered on September 3, 2014
Decision released on September 29, 2014

Hearing Panel
Robert Monette (Chair), Denis Marc Gagnon and Jean Morin
Appearances
Me Myriam Giroux-Del Zotto, Counsel for IIROC
Me Robert J. Torralbo, Counsel for the Respondent

DECISION ON SETTLEMENT

¶ 1 On June 4, 2014, following their settlement talks, the parties entered into a settlement agreement (the Settlement Agreement); said agreement[1] is appended and is deemed to be an integral part hereof.

¶ 2 The Settlement Agreement includes a statement of the relevant facts, as well as a description of the misconduct and the proposed sanctions. The hearing panel (the Hearing Panel) is satisfied that the content of the agreement observes the formalities prescribed in Rule 14 of IIROC's Rules of Practice and Procedure.

¶ 3 In accordance with Rule 20.36 of the Dealer Member Rules of IIROC, and Rule 15 of the Rules of Practice and Procedure[2], a hearing was held on September 3, 2014 to request approval of the Settlement Agreement.

¶ 4 Following the submissions by counsel during the hearing, and after deliberation, the Hearing Panel accepted the Settlement Agreement, reserving the right to file the reasons for its decision at a later date.

[1] The agreement is filed in the record as Exhibit R-1

[2] Unless otherwise specified, the Hearing Panel is referring to the IIROC Rules of Practice and Procedure.

¶ 5 This decision explains the grounds for accepting the Settlement Agreement.

THE SETTLEMENT AGREEMENT

¶ 6 The Hearing Panel began with a short summary of the essential facts invoked in the Settlement Agreement, followed by a presentation of the terms of settlement.

The facts

¶ 7 In early 1991, the Respondent entered the employ of RBC Securities. On June 1, 2008, he became a registrant of IIROC. After a career spanning more than 26 years, the Respondent retired in June 2014.

¶ 8 The alleged misconduct is described as follows.

¶ 9 The first contravention covers the period from October 2008 to December 2012. During this period, the Respondent engaged in personal financial dealings with a client, in the form of cash loans, without his employer's knowledge.

¶ 10 This client is a close acquaintance of the Respondent, but as of this date, is no longer in a business relationship with the Respondent or with RBC Securities.

¶ 11 The Respondent made loans in the form of approximately 90 personal cheques, totalling $133,000.

¶ 12 Following an internal investigation by RBC Royal Bank, the Respondent was disciplined by his employer for this contravention.

¶ 13 Thus, on January 15, 2013, RBC Securities sent a letter of reprimand to the Respondent, in which it imposes a financial penalty of $10,000, close supervision[3] of his professional activities for a period of six (6) months, along with the obligation to rewrite the exam pertaining to the Conduct and Practices Handbook Course.

¶ 14 The second contravention concerns the annual disclosure forms for 2009, 2010, 2011 and 2012 required by the employer and filled out by the Respondent.

¶ 15 In these annual disclosure forms, the Respondent is required to inform his employer:

a) If he is acting as a trustee for an individual, and,

b) If he has loaned money to a client.

¶ 16 The Respondent replied in the negative to both requests for information. Yet, in actual fact, the Respondent was giving his employer inaccurate information, since:

a) he was acting as trustee for his brother's trust

b) he had loaned money to a client.

¶ 17 The Respondent was similarly sanctioned by his employer for this second contravention.

¶ 18 On May 7, 2013, RBC Securities sent the Respondent a letter of reprimand, imposing a financial penalty of $10,000 and seven (7) months of strict supervision[4] of his business activities.

¶ 19 The Hearing Panel emphasizes that the penalties imposed by the employer are consecutive, not concurrent.

¶ 20 The parties acknowledge that the Respondent committed two contraventions of IIROC Dealer Member Rule 29.1. This rule reads as follows:

> 29.1. Members and each partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative and employee of a

[3] According to the Respondent's testimony at the hearing.

[4] Idem

Member (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board of Directors.

Terms of settlement

¶ 21 The parties agree to the following terms of settlement.

¶ 22 The Respondent shall pay an aggregate fine of $15,000.

¶ 23 The Respondent agrees to pay IIROC costs in the amount of $3,000.

DISCUSSION

¶ 24 The case law is well established regarding the role played by a hearing panel at a settlement hearing.

Applicable principle

¶ 25 In this matter, the rules set forth by the higher courts in matters of joint submission on sentence are most relevant. The reason is that the disciplinary bodies have the same interest as courts with criminal jurisdiction, namely to promote a functional and efficient justice system.[5]

¶ 26 In *Dumont*,[6] the Court of Appeal summarizes the applicable principle well:

[TRANSLATION]

[12] Nevertheless, even if the judge was not bound by the joint submission, she could only set it aside "if it was unreasonable, contrary to the public interest, or likely to bring the administration of justice into disrepute" [5]. As Justice Fish, on the Court of Appeal at the time, explains in *Verdi-Douglas c. R.* [6], these various formulas overlap under the criterion of reasonableness of the joint submission:

> [51] In my view, a reasonable joint submission cannot be said to "bring the administration of justice into disrepute". An unreasonable joint submission, on the other hand, is surely "contrary to the public interest". Accordingly, though it is purposively framed in striking and evocative terms, I do not believe that the Ontario standard departs substantially from the test of reasonableness articulated by other courts, including our own. Their shared conceptual foundation is that the interests of justice are well served by the acceptance of a joint submission on sentence accompanied by a negotiated plea of guilty - provided, of course, that the sentence jointly proposed falls within the acceptable range and the plea is warranted by the facts admitted.

[13] Our courts recognize that a joint submission resulting from a rigorous negotiation between the prosecution and the defense has "a certain persuasiveness" [7] intended to assure the defendant that the joint submission obtained in exchange for his guilty plea will be respected by the judge charged with determining the penalty, provided that it is reasonable. Of course, it is not a formal rule, but rather a judicial policy that is necessary to encourage the negotiation of plea bargains, which play an essential role within the penal institution [8].

[14] …..

[15] It is well established that when faced with a joint submission resulting from a guilty plea, "the appeal process does not consist in ascertaining whether the sentence imposed by the trial judge is reasonable, but rather determining whether the joint recommendation is unreasonable,

[5] Rault v. Law Society of Saskatchewan 2009 SKCA 81 Can LII

[6] Dumont c. R. 2013 QCCA 576

unfit, contrary to the public interest, or would bring the administration of justice into disrepute." [10].

[16] We must therefore begin by determining whether the joint submission is reasonable.

¶ 27 Faced with a settlement agreement, the hearing panel consequently evaluates the reasonableness of that agreement. It avoids substituting its discretion for that of the parties, and exclusively appraises the harshness or leniency of the penalties prescribed in the agreement; such is not its role here.

¶ 28 The Hearing Panel's role is to determine whether the agreement is unreasonable and contrary to the public interest.

Reasonableness of the agreement

¶ 29 In order to evaluate the reasonableness of an agreement, the Hearing Panel performs two analyses; verify that the key factors cited in the disciplinary sanction guidelines (guidelines) have been considered, and examine whether the proposed penalties fall within a range of sanctions previously imposed for similar contraventions.

¶ 30 Initially, counsel for IIROC presented a series of appropriate factors, of which the following were retained by the Hearing Panel.

¶ 31 Regarding aggravating factors, the most notable are:

1. The lengthy period over which the misconduct occurred,
2. The large number of loans that were made,
3. The fact that the client was not informed of the potential conflict of interest,
4. The willful non-disclosure of the controversial situation.

¶ 32 As for the mitigating factors, those are:

5. No complaint was received from the client, who was not a vulnerable individual,
6. No disciplinary history for the Respondent in a career of 26 years,
7. No prejudice to the client, the brother or the employer,
8. The Respondent was disciplined (fines and suspension) by his employer,
9. The Respondent did not profit.

¶ 33 The Hearing Panel is satisfied that the factors retained are adequate in respect of the alleged contraventions and the proposed sanctions.

¶ 34 Next, counsel for IIROC entered into the record several decisions pertaining to infractions of the same nature, along with an explicit comparison table detailing the contraventions that were committed and the penalties that were imposed.

¶ 35 Of this list, the Hearing Panel considers *Re Gaudet* (2010 IIROC 29) and *Re Dean* (2010 IIROC 43) to be the most significant, but agrees that the sanctions prescribed in the Settlement Agreement fall within the range of reasonable sanctions in similar matters.

¶ 36 The Hearing Panel reiterates that the Respondent was reprimanded by his employer in the form of penalties and suspensions, which must be considered.

CONCLUSION

¶ 37 For the reasons stated here and as was decided at the hearing, the Hearing panel considers the Settlement Agreement to be reasonable and accordingly approves it, to have effect on the date this decision is signed.

Montréal, September 29, 2014

Robert Monette, Chair

Denis Marc Gagnon, Panel Member

Jean Morin, Panel Member

SETTLEMENT AGREEMENT

I. BACKGROUND

1. The Enforcement Staff of IIROC and the Respondent, Sydney Azancot, consent and agree to the settlement of these matters by way of this settlement agreement (“the Settlement Agreement”);

2. The Enforcement Department of the Investment Industry Regulatory Organization of Canada ("IIROC") has conducted an investigation ("the Investigation") into the conduct of de Sydney Azancot.

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:

6. Between October 2008 and December 2012, the Respondent engaged in personal financial dealings with a client, by lending him money, without the knowledge of his employer, RBC Dominion Securities Inc., contrary to IIROC Dealer Member Rule 29.1;

7. Between 2009 and 2012, the Respondent, through his own negligence, misled his employer, RBC Dominion Securities, by responding in the negative to questions asked on the annual disclosure forms that the latter asked him to fill out, contrary to IIROC Dealer Member Rule 29.1.

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

   a) An aggregate fine in the amount of $15,000;

9. The Respondent agrees to pay IIROC costs in the amount of $3,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

10. 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.

(i) Factual Background

SUMMARY OF THE RESPONDENT'S ALLEGED MISCONDUCT

11. Between October 2008 and December 2012, the Respondent made approximately ninety (90) cash loans to his client, Mr. A, for a total amount of approximately $133,000, without obtaining the prior consent of his employer, RBC Dominion Securities Inc. (RBC Securities);

12. Between 2009 and 2012, the Respondent, through his own negligence, misled RBC Securities by responding in the negative to questions asked on RBC’s annual disclosure forms regarding the existence of personal financial dealings with a client and the fact of acting as a trustee for someone.

RESPONDENT’S PROFESSIONAL EXPERIENCE

13. From 1988 to 1991, the Respondent was employed with Placements La Laurentienne as a representative

with unrestricted practice;

14. On January 29, 1991, Respondent entered the employ of RBC Securities, as a representative with unrestricted practice;

15. On June 1, 2008, Respondent became a registrant of IIROC;

16. Since June 1, 2013, Respondent has been doing business as a representative with unrestricted practice with a team of two other representatives with unrestricted practice. The Respondent and the other team members are contractually associated with each other.

UNDISCLOSED PERSONAL DEALINGS

17. Some time in 2001, the Respondent met Mr. A at his sports club. The Respondent and Mr. A are both members of this sports club and they developed a friendship from then on;

18. Subsequently, on October 31, 2005, Mr. A opened a cash brokerage account at RBC Securities. The Respondent was assigned to this account as representative with unrestricted practice;

19. On December 21, 2006, Mr. A's investments in the cash account were transferred to his margin account. The Respondent was assigned to this account as representative with unrestricted practice;

20. Subsequently, on February 18, 2008, the Respondent (*sic*) opened an RRSP account. The Respondent was also assigned to this account as representative with unrestricted practice.

21. Mr. A's level of knowledge of investing is characterized as extensive on his account application forms;

22. Around October 2008, the value of the investments in Mr. A's margin account was at its limit and therefore subject to a margin call from RBC Securities;

23. Between October 14, 2008 and January 26, 2009, the Respondent loaned a total of $21,900 to Mr. A, personally handing him twelve (12) personal cheques;

24. Between November 14, 2008 and January 31, 2009, Mr. A deposited $7,800 in his margin account to offset his deficit margin position;

25. Between November 14, 2008 and January 31, 2009, the Respondent omitted questioning Mr. A to find out whether the $7,800, which the latter had deposited in his margin account, came from the money that he had loaned him during that same period;

26. On November 27, 2012, the internal investigations department of Royal Bank of Canada (RBC Royal Bank) audited the banking activities occurring in the personal account of Mr. A, who was a client both of RBC Royal Bank and RBC Securities;

27. At the outcome of this audit, the internal investigations department of RBC Royal Bank noted the presence of nearly ninety (90) cheques made out to "cash" which came from the Respondent's personal bank account and which were cashed in the personal bank account held by Mr. A;

28. On December 4 and 6, 2012, the internal investigations department of RBC Royal Bank, accompanied by the Respondent's superiors at RBC Securities, met respectively with Mr. A and the Respondent to obtain additional information relative to these ninety (90) cheques made out to "cash";

29. The meetings on December 4 and 6, 2012 enabled the internal investigations department of RBC Royal Bank and RBC Securities, to learn the following facts:

    (i) The Respondent and Mr. A are longtime friends

    (ii) In addition to being a friend, the Respondent is the representative with unrestricted practice assigned to Mr. A's brokerage accounts;

    (iii) The ninety (90) cheques deposited in Mr. A's bank account constitute cash loans that the Respondent made to him during the period when he was experiencing financial difficulties;

(iv) The Respondent wished to aid Mr. A financially;

(v) The Respondent agreed to sign ninety (90) cheques made out to "cash" to help his friend so that the latter could honour his current personal obligations (mortgages and parental obligations);

(vi) The Respondent did not question Mr. A to understand the reason for his request to make the cheques out to "cash";

(vii) The cash loans were made between 2008 and 2012;

(viii) The terms of this cash loan were not set out in a contract;

(ix) The cash loans made by the Respondent were "interest free".

30. The ninety (90) cheques that the Respondent signed over to Mr. A as personal loans represent a total amount of approximately $133,000;

31. By agreeing to lend money to Mr. A while there was a professional relationship between them, the Respondent placed himself in a potential conflict of interest;

32. At no time did the Respondent inform his client, Mr. A, of the fact that these personal loans placed him in a conflict of interest, even though Mr. A's level of investment knowledge would have enabled him to appreciate the potential conflict and provide informed consent;

33. At no time did the Respondent inform RBC Securities of the existence of these loans, thus depriving it of the ability to adequately supervise Respondent's activities;

34. RBC Royal Bank's internal investigation did not reveal any illegal activities at the root of Mr. A's need for cash;

35. According to the Respondent, Mr. A has to date reimbursed him the amount of $65,000;

36. Mr. A is repaying the Respondent according to his financial capacity. There has therefore been a series of cash loans followed by reimbursement without any repayment terms having been defined;

37. According to the Respondent, when Mr. A reimburses him part of the total amount of money he has loaned him, he always does so in cash;

38. However, the Respondent never questions Mr. A relative to the provenance of the cash funds that he receives;

39. RBC Royal Bank's internal investigation did not reveal any illegal activity at the root of the cash amounts used by Mr. A to reimburse the Respondent;

40. As of this date, Mr. A is no longer a client of either the Respondent or RBC Securities;

41. On January 15, 2013, RBC Securities sent the Respondent a letter of reprimand reminding him of the importance of complying with the regulatory obligations imposed on representatives with unrestricted practice. This reprimand was accompanied by a financial penalty of $10,000, supervision of his professional activities for six (6) months, and the obligation to retake the exam pertaining to the Conduct and Practices Handbook Course.

42. On January 28, 2014, Respondent admitted to IIROC that he had loaned $133,000 to Mr. A without obtaining the prior approval of RBC Securities before making each loan;

43. To date, Respondent has fulfilled all of the conditions imposed by RBC Securities in the letter of reprimand of January 15, 2013.

ERRONEOUS DECLARATIONS

44. In 2009, 2010, 2011 and 2012, at the request of RBC Securities, the Respondent filled out and signed an annual disclosure form which asked the following questions:

[TRANSLATION]

(i) Have you previously or are you currently acting as a liquidator (executor, outside Québec), trustee or mandatary for someone, or do you hold the trading authorization for an individual account, including family members? If yes, please provide details below; you may also attach a document containing all the relevant information to this questionnaire.

(ii) Have you loaned or borrowed money or securities to/from a client?

45. By signing the annual disclosure forms for 2009, 2010, 2011 and 2012, the Respondent was misleading RBC Securities, in that he was providing inaccurate information and thus preventing it from supervising these activities;

46. On January 28, 2014, the Respondent admitted to IIROC that he misled RBC Securities regarding the existence of these activities when he filled out the annual disclosure forms;

47. The explanations given by the Respondent for the fact that he misled RBC Securities are as follows:

(i) He agreed to act as trustee for his brother's trust, at the latter's request, in order to be of service to him. He does not perform any activity for the trust and does not benefit in any way as the trustee. As of this date, the Respondent is no longer trustee of his brother's trust;

(ii) In his mind, the cash loans made to Mr. A were made as a friend rather than as a client.

48. On May 7, 2013, RBC Securities sent the Respondent a letter of reprimand reminding him of the importance of respecting the regulatory obligations imposed on representatives with unrestricted practice. This reprimand was accompanied by a financial penalty in the amount of $10,000 and supervision of his professional activities for seven (7) months;

49. As of this date, the Respondent has fulfilled all of the obligations imposed on him by RBC Securities in the letter of reprimand of May 7, 2013.

IV. TERMS OF SETTLEMENT

50. 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.

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

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

53. 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.

54. 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.

55. 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.

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

57. 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.

58. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

AGREED TO by the Respondent at Laval, Québec, this May 29, 2014.

«Denis Piché»	«Sydney Azancot»
WITNESS	**SYDNEY AZANCOT**
	RESPONDENT

AGREED TO by Staff, at Montréal, Québec, this June 4, 2014.

«Linda Vachet»	«Myriam Giroux-Del Zotto»
WITNESS	**MYRIAM GIROUX-DEL ZOTTO**
	Enforcement Counsel
	for Staff of IIROC