

Re Turcotte

IN THE MATTER OF:

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

and

Nelson Turcotte

2017 IIROC 33

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

Hearing held on June 9, 2017, at Montréal, Québec
Oral decision rendered on June 9, 2017
Written decision rendered on June 12, 2017

Hearing Panel:

Me Guy Lemoine, Chair, Mr. Jean Jeannot and Mr. Denis Marc Gagnon

Appearances:

Me Fanie Dubuc (Enforcement Counsel), for IIROC and
Respondent absent

DECISION ON THE MERITS

¶ 1 On June 9, 2017, a hearing panel of the Investment Industry Regulatory Organization of Canada (IIROC) was convened for the purpose of holding a prehearing conference.

¶ 2 The prehearing conference was convened following the publication of a Notice of Hearing and a Statement of Allegations in the matter of The Rules of the Investment Industry Regulatory Organization of Canada and Nelson Turcotte (Respondent).

¶ 3 The allegation set out against the Respondent in the Statement of Allegations reads as follows:

On or around November 12, 2014, Mr. Turcotte forged a client's signature (forged endorsement) on an account document, and thereby engaged in business conduct or practice unbecoming or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1. »

¶ 4 At the opening of the hearing, the Hearing Panel observed the absence of either the Respondent or the latter's legal counsel. This absence continued until the hearing ended.

¶ 5 Counsel for IIROC introduced into evidence as a bundle, a document (Exhibit P-2) containing the exhibits that were served on the Respondent on March 13, 2017. Among them, notably, are the Notice of Hearing, the Statement of Allegations against the Respondent and a copy of Rule 8400 of the IIROC Rules of Practice and Procedure (the Rules).

¶ 6 The Notice of Hearing and the Statement of Allegations are appended hereto.

¶ 7 In accordance with the provisions of Rule 8415 (1):

Re Turcotte 2017 IIROC 33

“A respondent must serve and file a response within 30 days from the date of service of a notice of hearing.”

¶ 8 Even though the Respondent was required to respond within 30 days from the date of service of the notice of hearing, he did not respond within the regulatory timeframe.

¶ 9 The Initial Appearance set for May 8, 2017 was postponed until June 9, 2017, because a negotiation process was underway between the parties.

¶ 10 A period of discussion was commenced between the parties, but a settlement could not be reached.

¶ 11 Counsel for IIROC introduced into evidence a copy of an email that the Respondent sent her on May 11, 2017 (Exhibit P-4). In this document, the Respondent states the following:

[translation] *“Dear Me Dubuc*

I will not be attending.

Thanks!

Have a good day,”

¶ 12 Counsel for IIROC also introduced into evidence a copy of an email that Respondent sent her on June 8, 2017 (Exhibit P-1). It contains a request from the Respondent’s attorney to the following effect:

“Further to my email of May 16, 2017, could you please confirm to me whether you will be attending the hearing on June 9 at 9:30 a.m....”

And the Respondent’s reply:

“No, I will be unable to attend.

Thanks!”.

¶ 13 Counsel for IIROC then introduced into evidence a copy of an earlier email that the Respondent’s legal counsel had sent her on February 7, 2017 (Exhibit P-3). In it we read the following:

“Further to our phone conversation yesterday afternoon, I had an opportunity to talk with Mr. Turcotte concerning the follow-up on this matter as envisaged by IIROC. My client reconfirmed the elements that we discussed, to wit:

- *He has sold his client list to a colleague.*
- *He does not intend to return to the securities industry.*
- *He has not renewed his license.*
- *He is now semiretired*
- *During the investigation, he willingly admitted to the alleged misconduct, as well as the fact that the client was informed and in agreement with this action.*

Consequently, he does not intend to pursue the matter any further, or invest any more time and money.

By the same token, Mr. Turcotte has informed me that my mandate with regard to IIROC is terminated as of today....”

¶ 14 Rule 8415 (4) provides:

“If a respondent who has been served with a notice of hearing does not serve and file a response in accordance with subsection 8415(1), Enforcement Staff may proceed with the hearing of the matter on its merits on the date of the initial appearance set out in the notice of hearing, without further notice to and in the absence of the respondent, and the hearing panel may accept as proven the facts and contraventions alleged in the statement of allegations and may impose sanctions and costs pursuant to section 8209 or 8210, as applicable.”

¶ 15 For its part, Rule 8423 (12) provides:

« If a respondent who has been served with a notice of hearing does not attend the hearing on the merits, the hearing panel

(i) may proceed with the hearing in the respondent's absence and may accept as proven the facts and contraventions alleged in the notice of hearing and statement of allegations, and

(ii) if it finds that the respondent committed the alleged contraventions, may hear submissions on sanctions from Enforcement Staff immediately, without a further hearing on sanctions and costs, and may impose sanctions and costs pursuant to sections 8209 or 8210, as it considers appropriate.

¶ 16 In consequence of the facts and rules stated above, Counsel for IIROC asked the Hearing Panel to accept as proven the facts and violations alleged by Staff of IIROC.

¶ 17 The Hearing Panel members withdrew to deliberate on the matter before them.

¶ 18 Before rendering their decision, the Hearing Panel observed again that the Respondent was absent.

CONCLUSION

¶ 19 Whereas the proceedings and notices were duly served upon the Respondent.

¶ 20 Whereas the Respondent did not respond to the service of the Notice of Hearing within the regulatory time frame, even though he was informed that in the absence of a response on his part, the Hearing Panel could accept as proven the facts and violations alleged in the Statement of Allegations and order sanctions and costs pursuant to sections 8209 or 8210 of the Rules.

¶ 21 Whereas, as evidenced in the statement by his attorney at the time, which states that the Respondent, “during the investigation, willingly admitted to the misconduct and to the fact that the client was informed and in agreement with this action”.

¶ 22 Whereas the repeated indications by the Respondent that he would not be attending the hearing.

¶ 23 The Hearing Panel, at the hearing, accepted as proven the facts and violations alleged in the Statement of Allegations.

¶ 24 Consequently, the Hearing Panel renders the following decision:

The Hearing Panel:

Finds the Respondent guilty of having, on or around November 12, 2014, forged a client's signature (forged endorsement) on an account document, and thereby engaged in business conduct or practice unbecoming or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1;

Sets the date of the penalty hearing on June 27, 2017 at 9:30 a.m.; and

Asks IIROC to send notification of this decision to the Respondent, along with notification of the date on which the Hearing Panel will hear the representations regarding penalties.

SIGNED AT MONTRÉAL, this 12th day of June, 2017.

Guy Lemoine

Jean Jeannot

Denis Marc Gagnon

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