

# Re Gebert

IN THE MATTER OF:

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

**and**

**Jeffrey Edward Gebert**

2016 IIROC 44

Investment Industry Regulatory Organization of Canada  
Hearing Panel (Ontario District)

Heard: October 27, 2016

Decision: November 14, 2016

**Hearing Panel:**

Patrick T. Galligan, Q.C., Chair, Zahra Bhutani and David W. Kerr

**Appearances:**

Natalija Popovic, Enforcement Counsel

Respondent did not appear in person or by counsel

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## REASONS AND DECISION

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### PRELIMINARY MATTERS

¶ 1 This case came on for hearing on August 19, 2016. We had concerns about whether the Respondent was aware of the proceedings. Accordingly we adjourned the hearing to October 27, 2016 with the request that enforcement counsel arrange to have the Respondent served personally in keeping with the time requirements of Rule 6.4(1).

¶ 2 We have now been provided with the affidavit of Ray Patzkewick, found at Exhibit H of the affidavit of Katie Trotman sworn October 24, 2016. It proves that the Respondent was served personally with the Notice of Hearing and other material on August 22, 2016.

¶ 3 We therefrom concluded that the Respondent was properly served as required by Rule 6.4(1).

¶ 4 The Respondent did not serve a Response as required by Rule 7.1. He did not appear at the hearing either in person or by counsel or an agent.

Rules 7.2 and 13.5 provide as follows:

**7.2 Failure to Serve Response**

(1) If a Respondent served with a Notice of Hearing fails to serve a Response in accordance with Rule 7.1:

(a) the Association may proceed with the hearing of the matter as set out in the Notice of Hearing without further notice to and in the absence of the Respondent; and

(b) the Hearing Panel may, accept as proven the facts and violations alleged by the

Association in the Notice of Hearing, and may impose penalties and costs pursuant to By-laws 20.33, 20.34 and 20.49.

### **13.5 Where Respondent Fails to Attend Disciplinary Hearing**

- (1) Where a Respondent, having been served with a Notice of Hearing, fails to attend a disciplinary hearing, the Hearing Panel may proceed in the absence of the Respondent and may accept as proven the facts and violations alleged by the Association in the Notice of Hearing.

¶ 5 We decided to exercise the power conferred by those Rules. We proceeded with the hearing in the absence of the Respondent and accepted as proven the facts and violations alleged in the Notice of Hearing.

¶ 6 Enforcement counsel called Shermina Karim, an IIROC investigator, to give oral testimony. She also presented, as Exhibit #5, a compendium of documents relevant to the alleged violations. At the conclusion of the evidence she made submissions relating to the proof of the alleged violations.

¶ 7 We then withdrew to consider the evidence, facts accepted pursuant to the Rules and counsel's submissions. After deliberation we returned to the hearing room. We announced that we found that the violations alleged in the Notice of Hearing had been proven to the required standard of proof, and that written reasons for our decision would follow.

¶ 8 Therefore counsel made submissions as to the appropriate penalties to be imposed. We reserved our decision on the penalty issues.

¶ 9 These constitute our reasons for our finding that the alleged violations had been proven, our decision on penalty and our reasons for it.

### **THE VIOLATIONS ALLEGED AGAINST THE RESPONDENT**

¶ 10 In the Notice of Hearing, Staff of IIROC alleges that the Respondent committed the following violations:

**Count 1:** From March 2010 to January 2012 the Respondent engaged in conduct unbecoming or detrimental to the public interest in that he entered into personal financial dealings with his client by obtaining a loan from his client without the knowledge or consent of his Dealer Member firm, contrary to IIROC Dealer Member Rule 29.1.

**Count 2:** From December 2012 to February 2015 the Respondent engaged in conduct unbecoming or detrimental to the public interest in that he obtained and submitted blank and/or pre-signed investment related forms in respect of several of his clients, contrary to his Dealer Member firm's internal policies, and IIROC Dealer Member Rule 29.1.

**Count 3:** In May 2016 the Respondent failed to co-operate with an IIROC investigation by failing to attend a compelled interview, contrary to IIROC Dealer Member Rule 19.5.

### **FACTUAL DETERMINATION**

¶ 11 In making our determination of the facts in this case we have considered the oral testimony, the documentary evidence and the facts accepted in accordance with the Rules. The accepted facts are detailed in paragraphs 1 – 37 of the Notice of Hearing and in Appendix A thereto. For ease of reference we set them out as a Schedule to these reasons. Based upon all of the testimony, documentary material and accepted facts we have decided to summarily set out the facts as we find them.

¶ 12 The Respondent was a Registered Representative with BMO Nesbitt Burns ("BMO") from July 2005 to October 2012. He was a Registered Representative with Manulife Securities Incorporated ("Manulife") from November 2012 to January 2016. JN became a client of the Respondent in October 2006. JN is the grandfather of the Respondent's wife.

¶ 13 In March 2010 the Respondent began to borrow money from his client who, at the time, was 93 years

old. Between March 2010 and January 2012 he continued to borrow money from his client. Ultimately the borrowings amounted to at least \$524,000. A substantial amount of the money loaned was obtained by liquidation of client investments at BMO. The Respondent recommended those liquidations so that his client could fund the loans to him.

¶ 14 The Respondent has repaid some of the money owed to his client. Some payments were made by cheques which were returned N.S.F. At best IIROC has been able to determine, as at December 2015, the Respondent had repaid \$281,000 of the loans leaving an unpaid balance of \$243,000. It is not known whether any further repayment has been made since December 2015.

¶ 15 The Respondent was aware of BMO's policies respecting personal financial dealing with clients. In breach of those policies he failed to report the loans to his employer.

¶ 16 After his move from BMO to Manulife, the Respondent obtained and used several blank or pre-signed client investment forms. Between December 2012 and February 2015 he had and used such forms in relation to the accounts of at least twelve of his clients. There is no evidence of financial harm to his clients as a result of the use of any of the forms.

¶ 17 According to Manulife Policy and Procedures, obtaining or using pre-signed client forms is a "prohibited practice".

¶ 18 On January 18, 2016, the Respondent attended an interview with respect to IIROC's client loan investigation. At that interview the Respondent was represented by legal counsel.

¶ 19 Shortly after the completion of the interview, IIROC learned from Manulife that pre-signed client forms had been found in files maintained by the Respondent. In the exercise of its investigatory powers, under Member Rule 19.5, IIROC, by a series of letters and emails sent to his counsel, asked the Respondent to provide written information to it respecting the pre-signed client forms. The Respondent did not respond to the requests or provide the requested information.

¶ 20 Finally, on April 21, 2016, IIROC wrote to the Respondent's counsel as follows:

On March 9, 2016, the Enforcement Department advised Mr. Gebert of the investigation into pre-signed forms that were discovered in his client files while he was registered with Manulife Securities Inc. Specifically, Staff requested a written response to a series of questions that were provided on March 9.

The Enforcement Staff has decided to compel Mr. Gebert to provide a statement. Staff is prepared to rely on the Investigators Powers as stated in section 19.5 of the By-laws.

Mr. Gebert is required to attend our office located at 121 King Street West, Suite 2000 on **May 4, 2016 at 10am**. Should Mr. Gebert fail to attend for this purpose, the Enforcement Department may consider initiating disciplinary proceedings against him.

¶ 21 The Respondent did not attend for the scheduled interview. He has not provided the written information that he had been asked to provide.

## **LEGAL CONSEQUENCES OF FACTUAL DETERMINATION**

### **Client Loans**

¶ 22 Member Rule 29.1 provides as follows:

**29.1** Dealer Members and each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer 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.

¶ 23 The violation as alleged in Count #1 is established because the Respondent did not disclose his borrowing to BMO. But the case is much more than one of mere non-reporting. Member Rule 29.1(i) requires a Registered Representative to observe high standards of ethics. There is always a conflict of interest between a borrower and lender. A Registered Representative and client are in a relationship in which the Registered Representative has an obligation of trust towards the client. Where a person is in a conflict of interest with a person to whom a duty of trust is owed, that person is acting unethically. It follows that when the Respondent borrowed money from his client he became involved in a conflict of interest with his client. He acted unethically towards his client and was therefore in violation of Member Rule 29.1.

¶ 24 Moreover, the obligation of trust to one's client is fundamental to the public interest and to the reputation of the investment industry. When the Respondent, unethically, borrowed money from his client his conduct was both unbecoming and detrimental to the public interest.

¶ 25 The proper functioning of the investment industry and the public interest in the protection of investors demand that all Registered Representatives have trustworthy relationships with their clients. That is the reason for Member Rule 29.1.

¶ 26 Hearing panels have consistently held that borrowing from a client without the knowledge, consent or authorization of the Registered Representative's Dealer Member constitutes conduct unbecoming and contrary to Rule 29.1. See *Darrigo (Re)*, 2014 IIROC 48 at paragraph 36 and the decisions referred to therein.

¶ 27 We are satisfied, to the appropriate degree of proof, that the Respondent, by borrowing from his client, violated Rule 29.1. We hold that the violation alleged in Count #1 of the Notice of Hearing has been proven.

#### **Blank or Pre-Signed Forms**

¶ 28 As noted earlier Manulife's Policies and Procedures prohibit the use of pre-signed forms. It does so because their use has been recognized as high risk in trading activities. It follows that in obtaining pre-signed forms a Registered Representative falls below the high standard of conduct which Rule 29.1 requires of a Registered Representative. In addition the Hearing Panel in *Watts (re)*, [2008] I.D.A.D. No. 4, at paragraph 10, held that such conduct is detrimental to the public interest.

¶ 29 We are satisfied, to the appropriate degree of proof, that the Respondent, by having and using pre-signed forms, violated Rule 29.1. We hold, therefore, that the violation alleged in Count #2 of the Notice of Hearing has been proven.

#### **Failure to Cooperate with the IIROC Investigation**

¶ 30 Member Rule 19.5 provides, in part, as follows:

##### **Investigatory Powers**

**19.5.** For the purpose of any examination or investigation pursuant to this Rule 19, a Dealer Member, registered representative, investment representative, sales manager, branch manager, assistant or co-branch manager, partner, director, officer, investor or employee of a Dealer Member or any other person approved or seeking approval or under the jurisdiction of the Corporation pursuant to the Rules, may be required by the Corporation:

- (a) To submit a report in writing with regard to any matter involved in any such investigation;
- (b) To produce for inspection and provide copies of any books, records, accounts and documents, that are in the possession or control of the Dealer Member or the person, that the Corporation determines may be relevant to a matter under examination or investigation and such information, books, records and documents shall be provided in such manner and form, including electronically, as may be required by the

Corporation; and

(c) To attend and give information respecting any such matters;

And the person shall be obliged to submit such report, to permit such inspection, provide such copies and to attend, accordingly. ...

¶ 31 In our Factual determination we found that the Respondent did not provide the written information which he was asked to provide nor did he attend the required interview. Accordingly it is clear that he has violated the obligation imposed upon him by Rule 19.5. We hold, therefore, that the violation alleged in Count #3 of the Notice of Hearing has been proven.

### **PENALTY**

¶ 32 The three violations which have been proven against the Respondent are serious ones. Borrowing from a client is unethical conduct which can debase the investment industry's reputation for financial probity. A hearing panel, in *Watts (Re)*, *supra*, has found that the use of pre-signed forms is detrimental to the public interest. Failure to cooperate with an IIROC investigation strikes at the heart of a self-governing industry's ability to police itself.

¶ 33 It is our duty to consider circumstances of mitigation as well as circumstances of aggravation in our efforts to arrive at an appropriate penalty. In mitigation we note that the Respondent does not have a disciplinary history. We also note that there were no client losses as a result of his use of pre-signed forms. He did attend an interview in relation to the client loans. His lack of cooperation was not total. Beyond that we see nothing which could mitigate the seriousness of the three violations.

¶ 34 Borrowing from his wife's aged grandfather is particularly troubling. The Respondent's client was at an age where he could have had increased vulnerability and was in a situation where he could have been susceptible to implicit or express family pressure. The Respondent put his client in a position where his financial security, instead of being largely based upon long-time investments, is now based upon the credit of a person who has treated him unethically.

¶ 35 Failure to cooperate is particularly troubling for an organization, like IIROC, which does not have statutory power to compel the furnishing of information or the production of documents. When a member of an organization refuses to cooperate with its investigations he or she defies the organization which enables him or her to earn a living.

¶ 36 It is well settled law that sanctions provided for in a securities regulatory context should be preventative, protective and prospective. They should strive to protect members of the investing public and the investment industry from future harm. If appropriate, the penalties should be used to remove from the industry those persons whose past conduct has been so abusive that it raises reasonable concern that, in the future, they would cause harm to members of the public or to the industry. See *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132.

¶ 37 We have concluded that it is unnecessary for us to decide whether any one of the three violations, standing alone, would have called for a lengthy suspension of the Respondent's approval. We are convinced, however, that the cumulative effect of the three of them mandates the removal of the Respondent from the industry.

¶ 38 In addition to a permanent ban this case calls for the imposition of a substantial fine. Ms. Popovic has made very helpful suggestions about how we could arrive at an appropriate amount of the fine. We adopt her suggestions.

¶ 39 Count #1 – The amount of the fine should roughly approximate the amount that was owed by the Respondent to his client in December 2015. That was estimated to be \$243,000. However payments may have been made since. It is advisable to err on the conservative side. We fix this element of the fine at \$200,000.

Count #2 – At page 19, item #23, of *Eley (Re)*, 2014 IIROC 52, are found a group of decisions which

indicate a range of fines for somewhat similar violations of between \$25,000 and \$35,000. We fix this element of the fine at \$25,000.

Count #3 – Several decisions of hearing panels indicate that a reasonable level of fine would be \$50,000. See *Dettelbach (Re)*, 2011 IIROC 6 at paragraph 66. We fix this element of the fine at \$50,000.

¶ 40 IIROC is entitled to costs of \$20,000.

### **DISPOSITION**

¶ 41 For the reasons set out above we make the following order:

1. The violations alleged against the Respondent in Counts 1, 2 and 3 of Notice of Hearing have been proven.
2. That the Respondent be permanently banned from approval to act in any registered capacity with any IIROC Member.
3. The Respondent shall pay to IIROC a total fine of \$275,000 for the contraventions of Member Rules 19.5 and 29.1.
4. The Respondent shall pay to IIROC \$20,000 on account of its costs.

Dated in Toronto this 14<sup>th</sup> day of November 2016.

Patrick T. Galligan

Chair

Zahra Bhutani

Industry Representative

David W. Kerr

Industry Representative

### **SCHEDULE TO REASONS AND DECISION**

#### **PARTICULARS**

##### **A. Overview**

1. The Respondent borrowed in excess of \$524,000 from his 93 year old client and recommended that his client liquidate certain investments held with the Respondent in order to facilitate the loan. The Respondent did so without the knowledge or consent of his Dealer Member firm.
2. In the case of at least 12 clients, the Respondent obtained blank and/or pre-signed investment related forms. In some cases he subsequently submitted the forms to his Dealer Member firm which were then utilized for their intended purpose. The use of blank and/or pre-signed forms was contrary to his Dealer Member firm's internal policies.
3. On May 4, 2016 the Respondent failed to attend a compelled interview with IIROC.

##### **B. Registration History**

4. The Respondent was a Registered Representative ("RR") with BMO Nesbitt Burns Inc. ("BMO") from July 2005 to October 2012; and with Manulife Securities Incorporated ("Manulife") from November 2012 to January 2016. He is currently not registered with an IIROC regulated firm.

##### **C. Client JT**

5. The Respondent's client JT, who is his wife's grandfather, was originally a client of the Respondent's

wife (“MB”) while at a non IIROC investment firm (“MB Firm”) from about December 1997.

6. In 2005 MB Firm ceased operations and the firm’s book of business was sold to BMO. Starting in July 2005 the Respondent was employed with BMO as an RR and he serviced several of the clients transferred to BMO from MB Firm.
7. In October 2006 the Respondent formally opened two joint accounts for JT and JT’s wife.
8. In November 2010, the Respondent collapsed the original two joint accounts and opened two individual accounts for JT who had by that point in time become widowed.
9. The client information for the individual accounts indicated that that JT was born in 1917 and had:
  - income of \$40,000
  - liquid assets of \$650,000
  - fixed assets of \$500,000
  - a net worth of \$1.15M
  - limited/average investment knowledge; and
  - an investment objective of “savings.”
10. The client information for the individual accounts did not record a risk tolerance level for JT.

#### **D. Undisclosed Loan from Client**

11. In March 2010 the Respondent obtained a loan of approximately \$102,000 from JT, who was at that time approximately 93 years of age, at an annual interest rate of 4%.
12. JT agreed to the arrangement as it was his understanding that the loan was for the purposes of funding the education of the Respondent and MB’s child. JT was not aware at that time that the funds would also be used to pay down the Respondent and MB’s joint high interest mortgage.
13. Over the course of March 2010 to January 2012 the Respondent continued to borrow additional amounts from JT and ultimately borrowed in excess of \$524,000 from his client. Approximately \$353,000 of the total amount borrowed was funded as result of the Respondent’s recommendations to JT to liquidate investments in his BMO accounts.
14. JT wrote a series of cheques in order to advance portions of the loan. Cheques totaling approximately \$257,000 were made payable to the Respondent personally. These cheques were deposited into the Respondent’s bank account.
15. The terms of the loan were not set out in writing; however the Respondent provided JT with a repayment schedule to track the amount loaned and the repayments to be made.
16. The repayment scheduled reflected regular repayments of principal and interest of 4%, which varied between approximately \$2,800 and \$5,600 per month. Starting in April 2010 the Respondent commenced making payments to JT from a joint bank account held in the names of Gebert and MB.
17. The amounts liquidated from JT’s BMO accounts, the cheques payable to and cashed by the Respondent, and the amounts recorded as borrowed on the repayment schedule are summarized in Appendix A to this Notice of Hearing.
18. As of January 2012 the Respondent had repaid JT approximately \$98,000. However he then defaulted on several subsequent payments. As JT had liquidated his BMO investments in order to fund the loan, he was relying on the Respondent’s repayments to fund his living expenses.
19. The Respondent’s defaults ultimately resulted in JT depleting his savings, and forcing him to rent out his house and move in with his daughter, who is MB’s mother.

20. Subsequently, the Respondent resumed repayments and as at December 2015 in accordance with the repayment schedule, had repaid JT an additional \$83,000 for a total of \$281,000.
21. The Respondent did not disclose the fact that he had borrowed from his client JT to other family members; however in June 2013 MB's mother inadvertently came across an NSF cheque made payable to the Respondent which ultimately led to a complaint to IIROC.
22. The Respondent did not disclose to BMO that he had borrowed funds from his client JT.

**E. Obtaining & Submitting Blank and/or Pre-Signed Client Forms**

23. From December 2012 to February 2015 while at Manulife the Respondent obtained several blank and/or pre-signed investment-related forms in respect of at least 12 of his clients as detailed below.

<b>Client</b>	<b>Number / Type of Form</b>	<b>Date of Form(s)</b>
DD & VM	Subsequent Account Application	December 7, 2012
EM	2 Transfer Authorizations	February 16, 2013
EA	Corporate and Non-Individual Identity Disclosure	April 20, 2013
CT	New Account Application	November 8, 2013
	Transfer Authorization	November 8, 2013
GT	New Account Application	November 8, 2013
	Transfer Authorization	November 8, 2013
AP	2 Pre-Authorized Credit	November 24, 2013
	2 Transfer Authorizations	November 24, 2013
GC	Premier Investment Program Application	March 25, 2014
	Transfer Authorization	March 25, 2014
AB	Add/Change Banking Information	November 20, 2014
JK	Pre-Authorized Credit	February 20, 2015
J	RESP Transfer	February 20, 2015
PK	Systemic Withdrawal Plan	Undated

24. In the case of six of the 12 clients, the Respondent submitted the blank and/or pre-signed forms to Manulife which were then utilized for their intended purpose.
25. In January 2016 the Respondent's employment with Manulife was terminated and the blank and/or pre-signed forms were found among his client documents.
26. The use of blank and/or pre-signed forms was not permitted by Manulife and was contrary to the firm's internal policies.

**F. Respondent's Failure to Co-operate with IIROC**

27. The Respondent originally attended an IIROC interview on January 18, 2016 in relation to the investigation of the complaint filed by JT and was represented by legal counsel ("Counsel").
28. In February 2016 Staff became aware of new information in relation to the blank and/or pre signed investment related forms as described above.

29. By letter dated March 8, 2016 sent to Counsel, Staff requested a written statement in response to a series of questions regarding this new information.
30. By email dated April 8, 2016, and as the Respondent had not provided a response to the request for a written statement, Staff advised Counsel that an extension of time would be granted to April 12, 2016.
31. The email of April 8, 2016 also advised that in the absence of a written statement by the extension deadline the Respondent would be compelled to attend a further interview.
32. No response was received by the April 12, 2016 extension deadline.
33. By letter dated April 22, 2016 Staff wrote to Counsel compelling the Respondent to attend an IIROC interview on May 4, 2016.
34. The letter advised that should the Respondent fail to attend that he may ultimately be charged with failing to co-operate pursuant to IIROC Dealer Member Rule 19.5.
35. By email dated May 2, 2016, Counsel advised Staff the he did not anticipate that the Respondent would attend the May 4, 2016 interview.
36. By email dated May 3, 2016, Counsel confirmed that he had sent the Respondent copies of all correspondence received from IIROC.
37. On May 4, 2016 the Respondent failed to co-operate with the IIROC investigation by failing to attend the compelled interview.

Appendix A to Notice of Hearing for Jeffrey Edward Gebert

<b>Date</b>	<b>\$ Amount Liquidated from JT Investment Accounts</b>	<b>\$ Amount in Cheques cashed by Gebert</b>	<b>Transaction Details</b>	<b>\$ Amounts Indicated as Borrowed per Gebert Repayment Schedule</b>
<b>2010</b>				
March 29	100,000		EFT from JT Investment Account to JT bank account	102,000
May 17			Cheque written to Gebert from JT bank account for \$50,000	
May 28	50,000		Withdrawal from JT Investment Account, deposited to JT bank account	
May 31		50,000	Cheque cashed from JT bank account deposited to Gebert's bank account	
June				50,443
July 29	50,000		EFT from JT Investment Account to JT bank account	
August 1			Cheque written to Gebert from JT	

<b>Date</b>	<b>\$ Amount Liquidated from JT Investment Accounts</b>	<b>\$ Amount in Cheques cashed by Gebert</b>	<b>Transaction Details</b>	<b>\$ Amounts Indicated as Borrowed per Gebert Repayment Schedule</b>
			bank account for \$50,000	
August 3		50,000	Cheque cashed from JT bank account deposited to Gebert's bank account	
August				51,723
<b>2011</b>				
January				157,113
March 26			Cheque written to Gebert from JT bank account for \$2000	
March 28		2,000	Cheque cashed from JT bank account	
July 26			Cheque written to Gebert from JT bank account for \$5000	
July 27		5,000	Cheque cashed from JT bank account	
July				10,000
<b>2012</b>				
January 5	153,850		Withdrawal from JT Investment Account, deposited to JT bank account	
January 6			Cheque written to Gebert from JT bank account for \$150,000	
January 6		150,000	Cheque cashed from JT bank account	
January				153,267
<b>Total</b>	<b>353,850</b>	<b>257,000</b>		<b>524,546</b>