

Re Moran

In the matter of:

The By-Laws of the Investment Dealers Association of Canada

and

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

and

Stephen Moran

2012 IIROC 64

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

Hearing: November 1, 2012

Decision: November 9, 2012

Hearing Panel

Me Claude Bisson, Mr. Normand Durette, Mr. Yves Julien

Appearances

Me Martin Hovington, Enforcement Counsel

In the absence of Mr. Stephen Moran

DECISION ON SETTLEMENT AGREEMENT

¶ 1 This decision concerns a Settlement Agreement signed and submitted pursuant to Rule 14 and Rule 15 of the Rules of Practice and Procedure;

¶ 2 The Settlement Agreement signed on September 15 and 24, 2012 is appended hereto in its original to form part of this decision as though herein cited at length;

¶ 3 The complaint brought against Mr. Moran is as follows:

"On or around February 25, 2008, Respondent participated in a personal financial transaction with the client, borrowing a sum of \$10,000 from this client without disclosing the financial transaction to his employer, thereby engaging in conduct unbecoming or detrimental to the public interest, contrary to By-law 29.1 of the IDA (now IIROC Dealer Member Rule 29.1).

¶ 4 The settlement agreed to by the parties includes the following penalties:

a) a fine of \$20,000, including an amount of \$10,000 corresponding to the profit made;

b) a 12-month period of strict supervision following Respondent's reapproval;

c) successful completion of the Conduct and Practices Handbook examination;

¶ 5 Respondent further agrees to pay IIROC costs in the amount of \$2500;

¶ 6 Respondent was approved as a representative (retail) with unrestricted practice from September 1987 to May 2009. He was employed with National Bank Financial (NBS) from September 1987 to October 2001, and with Desjardins Securities (DS) from October 2001 to May 2009;

¶ 7 However, due to his state of health, Respondent was forced to discontinue his activities as a representative in June 2008 and, since 2009, is no longer approved to practice the profession;

¶ 8 Mr. A, a client of the Respondent since about 1990, was retired at the material times. His knowledge of investing was excellent;

¶ 9 The underlying facts of the matter are simple and led to an investigation by IIROC following a complaint received from Mr. A on May 4, 2011;

¶ 10 On or around February 22, 2008, client A loaned the Respondent the sum of \$10,000;

¶ 11 In the context of this loan, Respondent signed an acknowledgment of debt in favour of client A by which he undertook to repay the sum of \$10,000 on or before June 1, 2008 with annual rate of interest of 8%;

¶ 12 On or around February 25, 2008, a cheque in the amount of \$10,000 signed by client A and made out to Respondent was deposited to Respondent's account;

¶ 13 Respondent never disclosed this loan to his employer DS;

¶ 14 Respondent never reimbursed client A for this amount; in 2010, the latter filed a civil suit against Respondent and his employer at the time;

¶ 15 IIROC Dealer Member Rule 29 concerns business conduct, of the representative among others, and prescribes how the various parties must conduct themselves;

¶ 16 Paragraph 1 of this Rule stipulates that high standards of ethics and conduct must be observed and prohibits any business conduct or practice which is unbecoming;

¶ 17 In principle, personal business dealings between a representative and his client should be avoided as these can create situations in which the representative is likely to put his own interest ahead of his client's. There may be exceptions, for example in the case of family ties, however the Dealer Member employing the representative must in all cases be informed and give its approval;

¶ 18 Such situations can generate conflicts of interest. Ignorance of such situations will prevent the employer from intervening to manage such conflicts and protect the client, which is detrimental to the public interest;

¶ 19 The Hearing Panel must now ensure that the elements of the agreement are within the bounds of the acceptable;

¶ 20 In this quest, the Guidelines developed by IIROC present parameters which, while neither mandatory nor rigid, nevertheless offer guidance;

¶ 21 It should be noted that Respondent chose not to attend the hearing of November 1, 2012; in this regard, he had received on September 27, 2012 a notice to appear from the Hearing Panel Coordinator, as well as a letter of reminder from Me Hovington on October 17, 2012;

¶ 22 Rule 15.3 of the Rules of Practice and Procedure provides for when the Respondent is absent and authorizes the disclosure of additional relevant facts;

¶ 23 Thus, at the request of the Hearing Panel, clarification was obtained regarding the wording of paragraph a) in clause 8 of the Agreement, as cited in paragraph 4 above; we learned that the entire fine of \$20,000 shall go to IIROC;

¶ 24 Getting back to the guidelines invoked in paragraph 20 above, the Hearing Panel applies them in light of the facts, while considering, on the one hand, the aggravating factor which is the failure to reimburse the loan and, on the other hand, the mitigating factors, which are the absence of any disciplinary record and Respondent's cooperation in the investigation;

¶ 25 In conclusion, the various elements of the penalty agreed between the parties fall within the bounds of what is reasonable and are consistent with the case-law in analogous matters.

¶ 26 **FOR THESE REASONS**, the Hearing Panel accepts the Settlement Agreement as appended and gives effect to it from this date.

Montréal, November 9, 2012

Claude Bisson, Chair

Normand Durette

Yves Julien

SETTLEMENT AGREEMENT

I. BACKGROUND

1. Enforcement Staff of the Investment Industry Regulatory Organization of Canada (Staff) and Stephen Moran (the Respondent) consent and agree to the settlement of these matters by way of this 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 the Respondent;
3. On June 1, 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 the IDA and IIROC, which came into force June 1, 2008, the IDA has retained IIROC to provide the necessary services for the IDA to carry out its regulatory functions;
4. The Respondent consents and agrees to be subject to IIROC's jurisdiction;
5. 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

6. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement;
7. The Respondent admits to the following contravention of the IIROC Rules and Guidelines:
 - i) On or around February 25, 2008, Respondent took part in a personal financial transaction with the client, borrowing a sum of \$10,000 from this client without disclosing this financial transaction to his employer, thereby engaging in conduct unbecoming or detrimental to the public interest, contrary to By-law 29.1 of the IDA (now IIROC Dealer Member Rule 29.1);
8. Staff and the Respondent have accepted the following terms of settlement:
 - a) a fine of \$20,000, including an amount of \$10,000 corresponding to the profit made;
 - b) a 12-month period of strict supervision following Respondent's reapproval;
 - c) successful completion of the Conduct and Practices Handbook examination;

9. The Respondent agrees to pay IIROC costs in the amount of 2,500 \$.

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.

(ii) Factual Background

SUMMARY

11. In the context of a professional relationship with his client A, Respondent borrowed a sum of \$10,000 from his client without disclosing this loan to his employer.
12. Respondent was approved as a representative (retail) with unrestricted practice from September 1987 to May 2009. He was employed with National Bank Financial (NBS) from September 1987 to October 2001, and with Desjardins Securities (DS) from October 2001 to May 2009;
13. In actual fact, Respondent ceased his activities as a representative in June 2008, having left his job due to health reasons at that time;
14. At all material times, Respondent was in the employ of DS;
15. On June 1, 2008, Respondent became a registrant of IIROC.

CLIENT A

16. Client A was born in 1949;
17. He has an income of approximately \$50,000 per year with cash assets ranging between \$250,000 and \$500,000 and \$150,000 in fixed assets. His investment knowledge is excellent;
18. Client A has done business with the Respondent since approximately 1990;
19. At all material times, client A was retired;

THE COMPLAINT

20. On or around May 4, 2011, Staff of IIROC received an official copy of a letter of complaint to DS, in which client A detailed multiple grievances against Respondent and DS, notably a loan in the amount of \$10,000 that he allegedly made to the Respondent, which amount had still not been repaid as of the date of the complaint;
21. The complaint was sent to the Investigations Department on July 18, 2011;

CONTRAVENTION: PERSONAL TRANSACTION WITH A CLIENT WITHOUT THE EMPLOYER'S KNOWLEDGE

22. On or around February 22, 2008, client A loaned the Respondent the sum of \$10,000;
23. In the context of this loan, Respondent signed an acknowledgment of debt in favour of client A in which he undertook to repay the sum of \$10,000 on or before June 1, 2008, with an annual rate of interest of 8%;
24. On or around February 25, 2008, a cheque in the amount of \$10,000 signed by client A and made out to Respondent was deposited to Respondent's account;
25. Respondent never disclosed this loan to his employer DS;
26. Respondent never reimbursed client A for this amount;

IV. TERMS OF SETTLEMENT

27. In accordance with Dealer Member Rule 20.35 to 20.40 inclusively, and Rule 15 of the Dealer Member Rules of Practice and Procedure;

28. The Settlement Agreement is subject to acceptance by the Hearing Panel;
29. The Settlement Agreement shall become effective and binding upon the Respondent and Staff from the date of its acceptance by the Hearing Panel;
30. 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;
31. 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;
32. 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;
33. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel;
34. 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;
35. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent shall be payable immediately on the effective date of the Settlement Agreement;
36. Unless otherwise stated, suspensions, prohibitions, expulsions, restrictions and other conditions or terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at Valleyfield, Québec, this 15th day of September 2012.

« Witness »	« Stephen Moran »
WITNESS	STEPHEN MORAN
	RESPONDENT

AGREED TO by Staff at Montréal, Québec, this 24th day of September 2012.

« Witness »	« Martin Hovington »
WITNESS	MARTIN HOVINGTON
	Enforcement Counsel, for Staff of IIROC

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