

Re St-Pierre

IN THE MATTER OF:

UNIVERSAL MARKET INTEGRITY RULES

AND

LUC ST-PIERRE

2008 IIROC 11

Market Regulation Services Inc.
Hearing Panel (Quebec District)

Heard: May 7, 2008 at Montreal, QC
Decision: August 18, 2008
(51 paras.)

Hearing Panel:

The Hon. Benjamin J. Greenberg, Q.C., Chair
Me Jean-André Élie
Mr. Yves Julien
("the PANEL")

Appearances:

Me Sébastien Caron, Heenan Blaikie LLP, Counsel for the Plaintiff
Me Sébastien Simard, Bélanger Sauvé LLP, Counsel for the Respondent

UNANIMOUS DECISION ON PENALTY

1. On November 30, 2007, the PANEL found and declared the RESPONDENT liable on all four counts pending against him by virtue of the Universal Market Integrity Rules (the "UMIR") in the Reamended Notice of Hearing of April 25, 2007, namely:
 1. Between February 2, 2005 and March 31, 2005, Luc St-Pierre knowingly facilitated or participated in manipulative or deceptive trading methods with respect to the entry of orders to trade on the TSX Venture Exchange covering the purchase of shares of Halo Resources Ltd. ("Halo"), which created, or which could reasonably have been expected to create, an artificial price for the security, contrary to Rule 2.2 of the UMIR;
 2. Between April 1, 2005 and May 19, 2005, Luc St-Pierre entered orders on the TSX Venture Exchange to purchase Halo shares, when he knew, or ought reasonably to have known, that the entry of these orders would create, or could reasonably be expected to create, an artificial last sale price for the security, contrary to Rule 2.2 of the UMIR;
 3. Between October 21, 2004 and March 31, 2005, Luc St-Pierre knowingly facilitated or participated in manipulative or deceptive trading methods with respect to the entry of orders to trade on the TSX Venture Exchange covering the purchase of shares in *Golden Hope* Mines Ltd.

(“*Golden Hope*”), which created, or which could reasonably have been expected to create, a false or misleading appearance of trading activity in this security, contrary to Rule 2.2 of the UMIR;

4. Between April 1, 2005 and September 30, 2005, St-Pierre entered orders on the TSX Venture Exchange for the purchase of *Golden Hope* shares when he knew, or ought reasonably to have known, that the entry of these orders would create, or could reasonably be expected to create, a false or misleading appearance of trading activity in the security, contrary to Rule 2.2 of the UMIR.

2. Rule 10.5 of the *UMIR* requires that:

“Powers and Remedies

(1) The Market Regulator may, following a hearing and a determination that a Regulated Person, other than a marketplace for which the Market Regulator is or was the regulation services provider, has contravened a Requirement or is liable for the contravention of a Requirement in accordance with Rule 10.3, by an order impose on such person one or more of the following penalties or remedies as the Market Regulator considers appropriate in the circumstances:

(a) a reprimand;

(b) a fine not to exceed the greater of:

(i) \$1,000,000, and

(ii) an amount equal to triple the financial benefit which accrued to the person as a result of committing the contravention;

(c) the restriction of access to the marketplace for such period and upon such terms and conditions, if any, considered appropriate;

(d) the suspension of access to the marketplace for such period and upon such terms and conditions, if any, considered appropriate;

(e) the revocation of access to the marketplace; and

(f) any other remedy determined to be appropriate under the circumstances.”

3. We incorporate by reference in this *UNANIMOUS DECISION ON PENALTY* everything that we wrote in our *UNANIMOUS DECISION ON THE MERITS AS TO THE GUILT OR INNOCENCE OF THE RESPONDENT* dated November 30, 2007.

4. Since then, we have received and studied the written submissions of the counsels for the parties and the authorities on which they are based, dated January 31, 2008, in the case of the PLAINTIFF, and February 29, 2008, in the case of the RESPONDENT.

5. A Penalty Hearing on was held on May 7, 2008, during which, in addition to the verbal arguments of the legal counsels, we also heard testimony from Me Chilwin Cheng, cited by the PLAINTIFF, and from the RESPONDENT himself.

6. Subsequently, the three PANEL MEMBERS studied the transcript of the hearing of May 7, as well as the written submissions and authorities previously presented by the legal counsels, and deliberated on the whole.

7. We agree with the RESPONDENT's legal counsel that, for the purpose of determining penalties, the four counts must be considered as forming only two, because the definitions of the two types of contravention involved in this instance were amended on April 1, 2005, and the alleged misconduct of the RESPONDENT overlapped this date in both cases.

8. Thus, without these amendments to the definitions of the contraventions, counts 1 and 2 would have formed just one count, running from February 2, 2005 to May 19, 2005, and counts 3 and 4, would have represented another, running from October 21, 2004 to September 30, 2005.
9. We therefore discussed the four counts by grouping them in pairs, while continuing to consider the four time periods covered by the original text.
10. In their written submissions and at the hearing, the legal counsels on both sides made suggestions as to the penalties which, in their view, should be imposed on the RESPONDENT.
11. This is a sound practice and it behooves the PANEL to take their suggestions into consideration, which it did. Nevertheless, the PANEL is not bound by the counsels' suggestions. It must exercise and use its own discretion and its own judgment.
12. Counsel for the PLAINTIFF submitted what he considered to be appropriate penalties:
 - a) Suspension from marketplaces regulated by the PLAINTIFF for three (3) years;
 - b) A fine of \$120,000 to be paid by the RESPONDENT to the PLAINTIFF; and
 - c) Payment by the RESPONDENT of the costs incurred by the PLAINTIFF in this matter.¹
13. For his part, counsel for the RESPONDENT advocated the following penalties:
 - a) On counts 1 and 2, a reprimand and a fine of \$5,000;
 - b) On counts 3 and 4, suspension from marketplaces regulated by the PLAINTIFF for one (1) year; and
 - c) On all counts, successful completion of the Conduct and Practices Handbook examination.
14. Counsel for the PLAINTIFF invoked the following facts as aggravating factors in the matter at hand: the RESPONDENT allegedly ignored a written warning sent to him by the Vice-President, Compliance of the firm that employed him at the time, namely UNION SECURITIES LTD.; he should have recognized the existence of "red flag" warnings; his actions could be characterized as intentional or willfully blind; the misconduct involved deliberate planning.
15. He also stressed the degree of the manipulation carried out by the RESPONDENT, the number ² and size of the orders and transactions involved, as well as the length of time of the manipulation.
16. For his part, counsel for the RESPONDENT invoked as mitigating factors in the matter: the absence of a prior disciplinary record concerning the RESPONDENT, the absence of any bad faith on the latter's part, the fact that he did not obstruct the proceedings, and his candour, his honesty and his cooperative attitude throughout the hearings.
17. Counsel is further of the opinion that, in our Decision of November 30, 2007, we found a difference in his client's level of participation, and his liability, between the *Halo* and *Golden Hope* cases.
18. He believes that, in regard to *Halo*, our finding was that the RESPONDENT was negligent in his identification of potentially manipulative or deceptive conduct on the part of his clients, whereas in regard to *Golden Hope*, the latter blindly participated in his clients' stratagem.
19. With all due respect for his opinion, we found the RESPONDENT liable of serious professional misconduct on all counts, whether they concern *Halo* or *Golden Hope*. The RESPONDENT's actions constituted manipulation with respect to both these securities, with calculated and deliberate acts. The RESPONDENT has acknowledged that he should have been more vigilant.³

¹According to exhibit P-22 filed by the PLAINTIFF at the hearing on penalties, as well as according to the testimony given by Mr. Cheng, the costs prior to the penalty hearing allegedly amounted to \$291,330.95.

² The total here was 183 transactions, 31 involving *Halo* and 152 involving *Golden Hope*.

³ See page 65 of the transcript of the hearing of May 7, 2008, lines 13 and 14.

20. What's more, counsel for the RESPONDENT invokes the criterion that the penalties we will impose on his client should take into account the possibility of rehabilitation of his client and of his right to practice his profession.
21. Certainly, this is not the only criterion that should guide us here. There are also the criteria of protecting investors, strengthening market integrity, preventing any relapse in the RESPONDENT's conduct, making an example and deterring people in his profession who might be tempted to do the same.
22. However, as the chairman of the PANEL has had occasion to write in another context:
- “[...] a fit and proper sentence is the result of a “wise blending ” (le “savant dosage”) of those considerations (deterrence, rehabilitation, and protection of society).
- In imposing the sentence herein, I have considered the objective gravity of the offences, the subjective gravity of those crimes in relation to each of the four accused, their respective ages and backgrounds, the absence or presence of any mitigating or aggravating circumstances, the salutary or exemplary effects of the sentence on each accused specifically and on others generally and, lastly, the possible rehabilitation of each accused”⁴.
23. We have considered here all of these elements and criteria in regard to the RESPONDENT.
24. In these times, notably in the context of the *Norbourg*, *Norshield* and *Conrad Black* scandals, society is enormously concerned with having a securities market characterized by transparency and integrity, that inspires the public's trust.
25. The importance of having a market that is transparent, free of manipulation, and in whose integrity the public believes, was very well expressed by the Alberta Securities Commission, in its decision of March 17, 2004, in the *Podoriesz* case, which states in paragraphs 150, 151, 152 and 153 :
- “150. Daily closing prices of publicly traded securities are quoted in the financial press and widely disseminated. Closing prices can be taken as evidence of market sentiment, and changes in closing prices can give an impression of changed market sentiment. Market participants use such information in making investment decisions.
151. A high closing of a security naturally and predictably increases its closing price. That is, after all, what a high closing is.
152. We have no doubt that the Respondents, as sophisticated and experienced market participants, knew or ought to have known both the importance of closing prices to investors and capital markets, and that their high closings would be reasonably likely to affect ACL Share closing prices.
153. We therefore find that the Respondents knew, or ought reasonably to have known that their high closing purchases of ACL Shares would create or result in an artificial price for ACL Shares. The third and final element of subsection 93(b) is proved.”
26. Mr. St-Pierre has not been employed with UNION SECURITIES since March 2008. In what has become a redirection of his career, he no longer works as a financial consultant or investment advisor, but is currently employed with MY3 Financial Communications, a public relations firm for companies listed on the stock market.
27. His income has dropped significantly in the last few years. He earned \$38,664 in 2005, \$60,672 in 2006,

⁴ *R. v Maruska*, Superior Court, docket no. : 500-27-007523-808, ruling handed down February 17, 1981.

and just \$17,899 in 2007.⁵

28. He was divorced in 2002; he has two daughters, aged 14 and 17, who live with their mother, and for whom he pays \$470 in child support each month.
29. He has approximately \$75,000 in debt and his financial position can be described as "precarious". He has stated that he has a negative balance sheet, i.e., more debts than assets.
30. His ability to pay either a fine or the costs in this case is therefore limited. An excessive fine and/or excessive costs could push him into bankruptcy. We have considered his financial capacity and, therefore, his ability to pay the fine and costs that will be imposed on him.⁶
31. We also considered certain precedents in the securities industry, in disciplinary matters that fall within the jurisdiction of the PLAINTIFF and the Investment Dealers Association of Canada ("the IDA")⁷.
32. The precedents we considered are the cases of: RS v Michael Bond and Sesto DeLuca; RS v Simon Gregorian; the IDA v Stephen Brock Toban; the IDA v Robert Faiello; the IDA v Sean Shanahan; RS v Ian Macdonald et al.; RS v W. Scott Leckie.
33. The *Gregorian*, *Faiello*, *Macdonald* and *Leckie* cases concern settlement agreements between plaintiff and respondent, which were ratified by a Hearing Panel of either RS or the IDA.
34. Counsel for the RESPONDENT in the present matter has argued that a consensual decision or ex parte decision does not constitute a precedent. In support of this statement, he invoked the Québec Professions Tribunal decision in *Notaires c. Beaulieu*⁸ [TRA *Notaries v Beaulieu*, which is cited in an article on the *Québec Professional Code* written by Me Patrick de Niverville, an expert in professional discipline matters, published in: *Développements récents en déontologie, droit professionnel et disciplinaire* [TRA] *Recent developments in professional ethics, and professional and disciplinary law*], and entitled "*La sentence en matière disciplinaire : une revue approfondie de la jurisprudence*" [TRA] *Sentencing in disciplinary matters: An in-depth review of the jurisprudence*].
35. With all due respect for Me de Niverville and the Professions Tribunal, we believe that it is inaccurate to say that a decision that ratifies a settlement agreement between parties does not constitute a precedent, even though such a decision may not carry as much weight as when a decision is handed down following a full adversarial debate.
36. To begin with, even if the jurisprudence under the aegis of the Québec Professional Code affords a certain relevance to disputes relating to the *UMIR* or the jurisdiction of the IDA, it is not binding on the Hearing Panel, which is us.
37. Secondly, when a quasi-judicial tribunal issues a decision ratifying a settlement agreement between the parties in a disciplinary case, it is not simply carrying out an administrative formality, or obligingly granting its imprimatur, it is exercising a discretionary power and issuing its own ruling in an independent judgment.
38. Consequently, we have assigned a weight to the decisions in the cases enumerated in paragraph 32 above.
39. It is appropriate to emphasize here the distinction between a suspension imposed by the IDA and a suspension imposed by virtue of the *UMIR*.

⁵ See exhibit I-5, being the three Notices of Assessment issued by Revenue Canada for those three years.

⁶ See policy document: "GENERAL PRINCIPLES FOR SANCTION GUIDELINES FOR RS DISCIPLINARY PROCEEDINGS", PART 1 – GENERAL PRINCIPLES, section 10, which states : *Ability to Pay: When raised by an individual or firm respondent, RS Staff/Hearing Panels may consider ability to pay in connection with the imposition, reduction, or waiver of a fine or in exceptional circumstances, costs.*

⁷ On June 1, 2008, the PLAINTIFF and the IDA merged, forming a new Canadian organization named the Investment Industry Regulatory Organization of Canada ("*IIROC*").

⁸ D.D.E. 99 D - 79

40. A suspension imposed by the IDA prohibits the person in question from acting as a financial consultant or investment advisor for its duration.
41. A suspension by virtue of the *UMIR* only affects access to marketplaces regulated by the PLAINTIFF, principally order entries: a person affected by a suspension in accordance with the *UMIR* cannot enter orders, but is not prevented from continuing to act as a financial and/or consultant during the suspension.
42. Thus, a suspension by virtue of the *UMIR* has a lot less weight than one under the IDA.
43. We have therefore weighed and gauged all of the criteria that apply in the matter, including RESPONDENT's ability to pay a fine and/or costs, and have incorporated the notion of “wise blending” (“savant dosage”) which we discuss in paragraph 22 above.
44. We decided to increase the length of the suspension that we would impose on the RESPONDENT, by attaching a condition of "heightened supervision"⁹ for the duration and, as counsel for the RESPONDENT himself suggested, we are going to impose on him the successful completion of the *Conduct and Practices Handbook* examination as a prerequisite to returning to work at a brokerage firm, as applicable.
45. We consider that the concepts of subjecting a respondent to "heightened supervision" and to the obligation of successful completion of an examination are very much in keeping with the wording of *UMIR* Rule 10.5.1 f), being “any other remedy determined to be appropriate under the circumstances.”
46. We also consider the concept of heightened supervision to be one of the "conditions" referred to in *UMIR* Rule 10.5.1 d), as being "considered appropriate" as one of the terms and conditions of suspension.
47. We also find the following in the document entitled “*General Principles for Sanction Guidelines for RS Disciplinary Proceedings*“, Part 2 – USE OF SANCTIONS, sections 5 c. and 5 d. :

“Other Remedies

5. Other remedies are particularly useful in formulating sanctions tailored to conduct. Remedies may include, but are not limited to:

- a. ...
- b. ...
- c. requiring a respondent to implement heightened supervision [“supervision accrue”] of one or more individuals or departments in an organization;
- d. requiring requalification by the writing of an exam;
- e. ...”.

48. The text of paragraph 47 (c) above obviously refers to a situation where "the Respondent" would be a

⁹ Although the document to which we refer in paragraph 47 below contains a notion of “heightened supervision” [“supervision accrue”], we aspire to the scope of the term “heightened supervision” [“supervision renforcée”] described in the IDA’s “*Disciplinary Sanction Guidelines*”, section 4.4 (ii), which states:

4.4 Other Remedies:

To address the misconduct effectively in any given case, a Hearing Panel may design specific remedial sanctions other than a fine, disgorgement or suspension. For example, a Hearing Panel may impose sanctions that:

- (i) (...)
- (ii) require a Member firm to implement heightened supervision (« supervision renforcée ») of certain individuals or branches /departments in the firm;
- (iii) (...)
- (iv) (...)

This list is illustrative, not exhaustive, and is included to provide examples of the types of sanctions that may design to address specific misconduct.

brokerage firm and/or an executive of a brokerage firm, which is not St-Pierre's case. We included the quote to show that the concept of "heightened supervision" is well known in the industry. The condition of heightened supervision that we will impose will apply to any brokerage firm that might hire St-Pierre after the date of this decision.

49. In counterpoint to the severity of the penalties enumerated in paragraph 44 above, the fine and costs ordered against the RESPONDENT will be relatively minor.

50. FINAL CLAUSE:

This UNANIMOUS DECISION ON PENALTIES will be signed by the HEARING PANEL members in multiple copies. Each of these signed copies shall be equally valid and authentic and shall avail for all legal purposes.

51. DISPOSITION:

FOR ALL THESE REASONS, THE HEARING PANEL :

- A. IMPOSES ON THE RESPONDENT a SUSPENSION of access to marketplaces regulated by the PLAINTIFF for a period of FIVE (5) YEARS, beginning November 30, 2007 ;
- B. IMPOSES ON THE RESPONDENT the obligation of successful completion of the "Conduct and Practices Handbook" examination before he can take another job with a brokerage firm;
- C. REQUIRES THAT, if RESPONDENT takes another job with a brokerage firm, he be subject to "HEIGHTENED SUPERVISION" by his employer for the duration of the suspension imposed in paragraph A. above;
- D. ORDERS RESPONDENT to pay Market Regulation Services Inc. a FINE OF THIRTY THOUSAND DOLLARS (\$30,000); and
- E. ORDERS RESPONDENT to pay Market Regulation Services Inc. the sum of SEVENTY THOUSAND DOLLARS (\$70,000) in partial satisfaction of the costs and expenses incurred by the latter in the course of this case.

SIGNED AT MONTRÉAL by the MEMBERS OF THE HEARING PANEL

This 18th day of August, 2008

The Honourable Benjamin J. Greenberg, Q.C., Chair

Me Jean-André Élie, Panel Member

Mr. Yves Julien, Panel Member

Me SÉBASTIEN CARON
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