

Re Beauchamp

IN THE MATTER OF:

**THE RULES OF THE
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

**THE BY-LAWS OF THE
INVESTMENT DEALERS ASSOCIATION OF CANADA**

AND

MARC-ANTOINE BEAUCHAMP

2009 IIROC 9

Investment Industry Regulatory Organization of Canada
Hearing Panel (Quebec District Council)

Heard: December 12, 2008
Decision: February 12, 2009
(21 paras.)

Hearing Panel:

Me Alain Arsenault, Chair
Me Danielle LeMay, Panel Member
Mr. Gilles Archambault, Panel Member

DECISION ON SETTLEMENT AGREEMENT

UNOFFICIAL ENGLISH TRANSLATION

1. On or about February 8, 2007, Staff of the Investment Dealers Association of Canada (IDA) launched an investigation, for the 1998-1999 period, into the conduct of the Respondent, who was employed as a registered representative with Midland Walwyn Capital Inc., which has since become Merrill Lynch Canada Inc.;
2. On June 1, 2008, the Respondent became a registrant of IIROC, owing to the merger of the IDA with IIROC;
3. On December 3 and 4, 2008, the parties signed a Settlement Agreement (Exhibit P-1) in accordance with Rules 20.35 to 20.40 of the IIROC Dealer Member Rules, and Rule 15 of the Rules of Practice and Procedure;
4. In this Agreement, the Respondent admits to the following misconduct:
 - 1- Between July 1998 and August 1999, while he was a Registered Representative with Midland Walwyn Capital Inc. (which became Merrill Lynch Canada Inc. in the same period), a Member firm of the IDA, the Respondent, working as a team with two other registered representatives, namely "A" and "B", engaged in business conduct which was

unbecoming and detrimental to the public interest, failed to observe high standards of ethics and conduct, and failed in his duty to protect the public, contrary to IDA By-law 29.1, by taking receipt of cash amounts on four (4) occasions, for an approximate total of \$195,000.00, from a certain "C", for investment purposes and unbeknownst to the firm, although he knew or should have known that this was contrary to written internal company policy and to the provisions of the Proceeds of Crime (Money Laundering) legislation in force, the requirements of which were clearly set forth in Interpretation Bulletin C-55 published by the IDA on March 4, 1993;

- 2- Between July 1998 and August 1999, while he was a Registered Representative with Midland Walwyn Capital Inc. (which became Merrill Lynch Canada Inc. in the same period), a Member firm of the IDA, the Respondent engaged in business conduct which was unbecoming and detrimental to the public interest, failed to observe high standards of ethics and conduct, and failed in his duty to protect the public, contrary to By-law 29.1 of the Association, when he learned that, unbeknownst to the firm, "C" had remitted cash in a total amount of \$328,000.00 for investment purposes, \$195,000.00 of which had been received by himself, although he knew or should have known that this was contrary to written internal company policy and to the provisions of the Proceeds of Crime (Money Laundering) legislation in force, the requirements of which were clearly set forth in Interpretation Bulletin C-55 published by the IDA on March 4, 1993;
- 3- Between July 1998 and August 1999, while he was a Registered Representative with Midland Walwyn Capital Inc. (which became Merrill Lynch Canada Inc. in the same period), a Member firm of the IDA, the Respondent engaged in business conduct which was unbecoming and detrimental to the public interest and failed to observe high standards of ethics and conduct, contrary to By-law 29.1 of the IDA, by allowing "C" to invest monies remitted in cash, in the amount of \$328,000.00, by means of a third-party account, being a Canadian account in the name of "D", reference no. 158, although he knew that "C" was the actual beneficiary of the account and knew or should have known that such procedure could be construed as a tax evasion scheme;

5. The Settlement Agreement (Exhibit P-1) provides for the following penalties:

- a) An aggregate fine in the amount of \$60,000, apportioned as follows:
 - i) \$20,000 for count 1;
 - ii) \$20,000 for count 2;
 - iii) \$20,000 for count 3;
- b) A one(1)-month suspension of his approval;
- c) A 12-month period of strict supervision, with monthly Supervision Reports to be submitted by the firm;
- d) Reimbursement of the commissions generated on the trading that was done, an amount of \$2,250;
- e) Successful completion of the Conduct and Practices Handbook examination within six (6) months from the effective date of this Settlement Agreement;

As well as payment of \$10,000 in investigation costs to IIROC;

6. This Settlement Agreement (Exhibit P-1) is completed by a second agreement regarding the terms of payment of the monetary penalties (Exhibit P-2), also signed on December 3 and 4, 2008.
7. On December 12, 2008, the parties appeared before our Hearing Panel seeking our approval for the suggested penalties;

8. IIROC Member Rule 20.36 limits the powers of the Hearing Panel over a Settlement Agreement;
9. Its authority is limited to either accepting the Settlement Agreement or rejecting it; the Hearing Panel may not substitute a penalty that it deems more appropriate;
10. Upon acceptance by the Hearing Panel, the Settlement Agreement becomes binding upon the parties; if rejected, the parties may negotiate a new settlement agreement. Should the parties fail to negotiate a new settlement agreement, another Hearing Panel shall be constituted for a disciplinary hearing on the same or related charges;
11. The Settlement Agreement (Exhibit P-1) appended to this decision offers a clear account of the events that led to the Respondent's alleged misconduct;
12. More specifically, the Plaintiff, a client of the Respondent, had remitted large amounts of cash to the Respondent, for which receipts were given, which amounts were traded to a tax haven and then returned to the Midland Walwyn Capital Inc. office, to an account opened in the name of a person other than the Plaintiff;
13. Subsequently, the Respondent, in collaboration with another representative of the same brokerage firm, namely Mr. André Niding, managed these monies for the Plaintiff;
14. The Respondent and his associate, Mr. André Niding, received \$328,000 from the Plaintiff, in approximately six (6) instalments, all of which probably came from legitimate business activities;
15. According to the representations made by the parties at the hearing, these facts and actions were contrary to Midland Walwyn Capital Inc. policy in the matter, as well as to the Proceeds of Crime (Money Laundering) legislation enacted by the Government of Canada, because no report was filed with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC);
16. What's more, according to the representations made by the parties at the hearing, Midland Walwyn Capital Inc. was unaware of the allegations against the Respondent, even though the Plaintiff had remitted the amount of \$328,000 to the Respondent and his associate at the firm's offices;
17. The parties jointly detailed the aggravating and mitigating factors to justify their Settlement Agreement;
18. The aggravating factors reported by the parties are:
 - a) the larger role played by the Respondent in the relationship with the Plaintiff;
 - b) having personally taken receipt of approximately \$195,000 in cash;
 - c) the signature on the receipts that were given to the Plaintiff;
 - d) the receipt of cash unbeknownst to the firm;
 - e) participation in setting up a tax evasion scheme;
19. As for the mitigating factors reported by the parties, the following are worth mentioning:
 - a) the absence of any disciplinary record on the Respondent;
 - b) the Respondent's satisfactory cooperation in the investigation;
 - c) the fact that the Respondent did not participate in opening the accounts overseas or, subsequently, in Montréal;
 - d) the Respondent's good reputation;
 - e) the close supervision of the Respondent since 2006;
 - f) the personal problems that the case has caused the Respondent;

20. According to the Hearing Panel, the lack of a disciplinary record on the Respondent and his satisfactory cooperation in IIROC's investigation, notably his admitting to the alleged misconduct, are important points that must be taken into account in evaluating the reasonableness of the penalties that are the subject of the Settlement Agreement presented by the parties;
21. On the other hand, given the aggravating factors of having received the cash and participated in setting up a tax evasion scheme, not to mention the Respondent's more active participation, compared to that of his associate Niding, the Hearing Panel agrees with the terms and conditions of the Settlement Agreement and those of the agreement regarding the terms of payment of the monetary penalties (Exhibit P-2), especially since the agreement provides for a period of supervision to follow the period of suspension.

FOR THESE REASONS, THE HEARING PANEL:

ACCEPTS AND GIVES EFFECT to the Settlement Agreement appended to this decision, as well as to each of the penalties mentioned therein, from the date of service of this decision on the Respondent.

Montréal, this February 12, 2009.

Me Alain Arsenault, Chair
Me Danielle Le May, Panel Member
Mr. Gilles Archambault, Panel Member

* * * * *

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Enforcement Department Staff ("Staff") of the Investment Industry Regulatory Organization of Canada ("IIROC") has conducted an investigation (the Investigation) into the conduct of Marc-Antoine Beauchamp (the Respondent).
2. The Investigation was commenced by Enforcement Department Staff of the Investment Dealers Association of Canada (IDA) prior to May 30, 2008. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada 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;
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. The Respondent consents to be subject to the jurisdiction of IIROC;
5. Staff and the Respondent consent and agree to the settlement of these matters by way of this settlement agreement ("the Settlement Agreement") in accordance with By-laws 20.35 to 20.40 inclusive, and Rule 15 of the Association Rules of Practice and Procedure;

6. The Settlement Agreement is subject to acceptance by the Hearing Panel;
7. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel;
8. 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;
9. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her right, under IIROC Rules and any applicable legislation, to a disciplinary hearing, review or appeal;
10. 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;
11. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel;
12. 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;
13. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement

III. STATEMENT OF FACTS

(i) Acknowledgment

14. 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

15. Staff of the IDA conducted an investigation into the conduct of the Respondent during the period of 1998-1999, when the Respondent was employed as a registered representative with Midland Walwyn Capital Inc., which became Merrill Lynch Canada Inc. in the same period (the firm), regarding a complaint filed with the IDA on November 17, 2006;
16. The plaintiff, "C", alleged having lost over \$200,000 as a result of investments that he made via client account "E", which was opened with the firm;
17. Staff of the IDA launched its investigation on or about February 8, 2007;
18. On June 1, 2008, the Respondent became a registrant of IIROC;
19. The Respondent's employment profile is the following:

From	To	Firm
February 2005	the present	Richardson Financial Partners Ltd.

December 2001	January 2005	CIBC World Markets Inc.
August 1998	December 2001	Merrill Lynch Canada Inc.
April 1998	August 1998	Midland Walwyn Capital Inc.
August 1990	April 1998	RBC Dominion Securities Ltd.
June 1987	August 1990	Brault, Guy, O'Brien

20. At the material time, the Respondent was teamed with "B", also a registered representative of the firm;
21. The Respondent's interview with the IDA investigator revealed certain facts stated below;
22. The Respondent, was put in touch with the plaintiff, who wanted to open an overseas account for investment purposes;
23. The Respondent acted in cooperation with "A", also a registered representative of the same firm, to set up the overseas structure through "D";
24. "A" was the person within the firm with the expertise in opening accounts with client "D";
25. The Respondent, notably, introduced the plaintiff to "A" and put them in touch with each other for the investment purposes in question;
26. According to the Respondent's statement during his interview with the IDA investigator, "A" opened Canadian account "E", reference number 158, in the name of "D" for investments to be made by the plaintiff;
27. At all material times, the Respondent and "B" were the designated representatives on the statements of Canadian account "E" linked to the plaintiff;
28. In fact, the Respondent acted as the plaintiff's representative, and as the point of contact with the plaintiff concerning orders connected with the trades made in Canadian account "E";
29. At all material times, the Respondent and his associate "B" knew that the plaintiff was the actual beneficiary of Canadian account "E";
30. More specifically, over the course of 1998 and 1999, the plaintiff remitted cash to the Respondent and to "A", in exchange for receipts, for investment purposes;
31. The following amounts were thus remitted directly to the Respondent, in exchange for receipts, on the following dates:
 - a) receipt signed by Respondent and dated July 30, 1998, for the sum of \$23,750;
 - b) receipt signed by Respondent and dated September 2, 1998, for the sum of \$23,750;
 - c) receipt signed by Respondent and dated June 29, 1999 for the sum of \$100,000;
 - d) receipt signed by Respondent and dated August 13, 1999 for the sum of \$47,500;
32. The Respondent thus received a total of \$195,000 in cash;
33. For his part, "A" signed two receipts evidencing the receipt of cash from the plaintiff, to the knowledge of the Respondent, for a total of \$233,000;
34. Of this \$233,000, "A" and the Respondent respectively signed two receipts bearing the same date of June 29, 1999 and for an amount of \$100,000;
35. In light of all of the facts revealed by the Investigation, the IDA investigator concluded that it was the same \$100,000 amount;

36. The plaintiff therefore had "A" and the Respondent issue him receipts for a total amount of \$328,000 in cash;
37. This money was received in cash without the knowledge of the firm, and contrary to the firm's policy in the matter and to the regulations in force at the time;
38. Neither the Respondent, nor "B" reported to the firm that cash amounts had thus been received for investment purposes;
39. The plaintiff opened an overseas account with "D";
40. Some of the cash received by the Respondent was deposited in the plaintiff's overseas account;
41. Moreover, a Canadian account "E", reference number 158, was opened with the firm in the name of client "D";
42. This Canadian account was under the joint code for representatives Respondent/"B";
43. The funds deposited overseas were redirected to the Canadian account "E";
44. The IDA's investigation brought to light the following sequence of fund transfers:
 - a) on or about July 22, 1998, the plaintiff remitted a sum of \$133,000 in cash to "A";
 - b) on or about July 29, 1998, an amount of \$133,000 was received in the plaintiff's overseas account;
 - c) the same day, an amount of \$131,500 was transferred to the Canadian account "E" held with the firm;
 - d) on July 29, 1998, an amount of \$131,500 was credited to this Canadian account;
 - e) on or about July 30, 1998, the plaintiff remitted an amount of \$23,750 in cash to the Respondent;
 - f) on the same date, an amount of \$23,750 was credited to Canadian account "E" held with the firm, which amount came from the Canadian account "F" with the firm;
 - g) on or about September 2, 1998, the plaintiff remitted an amount of \$23,750 in cash to the Respondent;
 - h) on or about September 4, 1998, an amount of \$23,750 was credited to Canadian account "E" with the firm, which amount also came from the Canadian account "F" with the firm;
 - i) on or about June 29, 1999, the plaintiff remitted an amount of \$100,000 in cash to "A" and to the Respondent;
 - j) on or about July 13, 1999, with effect on July 9, 1999, an amount of \$100,000 was received in the plaintiff's overseas account with "D";
 - k) on or about July 14, 1999, an amount of \$100,000 was debited from this overseas account and transferred to client account "E" with the firm;
 - l) on or about July 14, 1999, an amount of \$100,000 was credited to Canadian account "E" with the firm;
 - m) on or about August 13, 1999, the plaintiff remitted an amount of \$47,500 in cash to the Respondent;
 - n) on or about August 26, 1999, with effect on August 19, 1999, an amount of \$47,025 was received in the plaintiff's overseas account with "D";
 - o) on or about August 26, 1999, an equivalent amount was transferred to Canadian account "E" with the firm;
 - p) on or about August 26, 1999, an amount of \$47,025 was credited to Canadian account "E" with the firm;
45. The Respondent executed the investment trades in the Canadian account "E".

46. The Respondent was in contact with the plaintiff regarding the trades executed in Canadian account "E";
47. Commissions for an approximate amount in the order of \$9,000 were generated from the trades thus executed in Canadian account "E";
48. The Respondent and "B" shared their portion (50%) of these commissions, on a 50-50 basis, relative to the trades executed in Canadian account "E";
49. On April 15, 2008, Staff of the IDA filed a report with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC);
50. A settlement agreement has also been reached between "B" and the Staff of IIROC concerning the events related in this agreement;

IV. CONTRAVENTIONS

51. The Respondent admits to the following contraventions of IIROC Rules and Guidance, and IDA By-Laws, Regulations or Policies:
 1. **Between July 1998 and August 1999, while a registered representative with Midland Walwyn Capital Inc. (which became Merrill Lynch Canada Inc. during this period), an IDA Member firm, the Respondent, acting in concert with two other representatives of the same firm, herein referred to as "A" and "B", engaged in conduct unbecoming or detrimental to the public interest, failed to observe high standards of ethics and conduct, and failed in his duty to protect the public (gatekeeper duty), contrary to IDA By-law 29.1, by accepting sums of money in cash on four (4) occasions, for a total amount of approximately \$195,000, from an individual herein referred to as "C", for investment purposes and without the knowledge of his firm, when he knew or should have known that this plan was contrary to the firm's internal written policy on such matters and to current legislation and regulations respecting the proceeds of crime (money laundering), the procedures for application of which were clearly stated in Compliance Interpretation Bulletin C-55 dated March 4, 1993 published by the IDA;**
 2. **Between July 1998 and August 1999, while a registered representative with Midland Walwyn Capital Inc. (which became Merrill Lynch Canada Inc. during this period), an IDA Member firm, the Respondent engaged in conduct unbecoming or detrimental to the public interest, failed to observe high standards of ethics and conduct, and failed in his duty to protect the public (gatekeeper duty), contrary to IDA By-law 29.1, when he learned that "C" had remitted sums of money in cash for a total amount of \$328,000 for investment purposes and without the firm's knowledge, \$195,000 of which he received himself, when he knew or should have known that this plan was contrary to the firm's internal written policy on such matters and to current legislation and regulations respecting the proceeds of crime (money laundering), the procedures for application of which were clearly stated in Compliance Interpretation Bulletin C-55 dated March 4, 1993 published by the IDA;**
 3. **Between July 1998 and September 1999, while a registered representative with Midland Walwyn Capital Inc. (which became Merrill Lynch Canada Inc. during this period), an IDA Member firm, the Respondent engaged in conduct unbecoming or detrimental to the public interest and failed to observe high standards of ethics and conduct, contrary to IDA By-law 29.1, when he allowed "C" to invest sums of money remitted in cash, in the amount of \$328,000, via the account of a third party, namely a Canadian account, reference number 158, opened in the name of "D" when he knew that the actual beneficiary of this account was "C", and he knew or should have known that this plan could, notably, be construed as a tax evasion scheme.**

V. TERMS OF SETTLEMENT

52. The Respondent agrees to the following terms of settlement:
- a) An aggregate fine in the amount of \$60,000, apportioned as follows:
 - i) \$20,000 for count 1;
 - ii) \$20,000 for count 2;
 - iii) \$20,000 for count 3;
 - b) A one(1)-month suspension of his approval;
 - c) A 12-month period of strict supervision, with monthly Supervision Reports to be submitted by the firm;
 - d) Reimbursement of the commissions generated on the trading that was done, an amount of \$2,250;
 - e) Successful completion of the Conduct and Practices Handbook examination within six (6) months from the effective date of this Settlement Agreement;
53. The Respondent agrees to pay IIROC costs in the amount of \$10,000;
54. By mutual agreement of the parties, appended as Schedule 1 hereto, any monetary penalties and costs imposed upon the Respondent are due and payable in full within thirty (30) days from the effective date of this Settlement Agreement;
55. Unless otherwise stated, suspensions, bars, 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 THE CITY OF MONTRÉAL, IN THE PROVINCE OF QUÉBEC, THIS 3RD DAY OF DECEMBER, 2008.

« Temoin »
Witness

« Marc-Antoine Beauchamp »
Marc-Antoine Beauchamp
Respondent

AGREED TO BY STAFF, AT THE CITY OF MONTRÉAL, IN THE PROVINCE OF QUÉBEC, THIS 4TH DAY OF DECEMBER 2008.

« Linda Vachet »
Witness

« Diane Bouchard »
Diane Bouchard
Enforcement Counsel

ACCEPTED BY THE HEARING PANEL AT THE CITY OF MONTRÉAL, IN THE PROVINCE OF QUÉBEC, THIS 12TH DAY OF FEBRUARY 2009.

« Alain Arsenault »
Panel Chair

« Danielle Le May »
Panel Member

« Gilles Archambault »
Panel Member

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