

Re Belland

IN THE MATTER OF:

THE RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AND

THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

PATRICK LARKIN BELLAND

2010 IIROC 4

Investment Industry Regulatory Organization of Canada, on behalf of
the Investment Dealers Association of Canada

Hearing Panel (Québec District Council)

Hearing: February 3, 2010

Decision: February 9, 2010

(10 pars.)

Hearing Panel:
André Valiquette, Chair
Jean Elie
Élaine C. Phénix

DECISION ON SETTLEMENT AGREEMENT

¶ 1 On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada (IDA) and Market Regulation Services Inc. (MRS). Pursuant to the Administrative and Regulatory Services Agreement between the IDA and IIROC, the IDA has retained IIROC to provide services for the IDA to carry out its regulatory functions with respect to the conduct of IDA registrants occurring before June 1, 2008.

¶ 2 After investigation, the Enforcement Department Staff (Staff) of the Investment Industry Regulatory Organization of Canada (IIROC) filed a complaint against the Respondent alleging the following misconduct in his capacity as a Registered Representative in the employ of Brockhouse & Cooper, then Member of the Investment Dealers Association of Canada (IDA):

On or about March 9, 2005, the Respondent engaged in conduct unbecoming and detrimental to the public interest, contrary to IDA By-law 29.1, when he effected a transaction in securities in his brokerage account based on information received from PC, when he knew, or should have known, that such information constituted or could constitute privileged non-public information and that he could not engage in trading based on such inside information.

¶ 3 The Respondent has admitted his guilt.

¶ 4 The parties have signed a Settlement Agreement, a copy of which is attached to this Decision and is deemed to be an integral part thereof as Exhibit P-1.

¶ 5 By this Settlement Agreement, the Respondent agrees to the following aggregate penalty:

Payment of a fine in the amount of CA \$23,852.73 (conversion of US \$19,748.91 at the exchange rate in effect at the Bank of Canada on March 15, 2005), representing the pecuniary benefit which accrued from the transaction.

¶ 6 The fine imposed on the Respondent shall be payable immediately upon the effective date of the Settlement Agreement.

¶ 7 On February 3, 2010, the counsels for the Respondent and for IIROC appeared before this Hearing Panel and presented their arguments, jointly recommending the acceptance of this Settlement Agreement.

¶ 8 The Hearing Panel has taken into account that:

- a) the Respondent knew, or should have known, that the information received was privileged information;
- b) the Respondent was aware of the prohibited nature of his actions;
- c) the Respondent was enriched by his actions;
- d) the Respondent will disgorge the profit made as a result of the commission of the contravention;
- e) the Respondent has had to repeat the Partners, Directors and Officers Courses dispensed by the Canadian Securities Institute;
- f) the professional activities of the Respondent were completely suspended for a period of two months;
- g) industry members, including the Respondent, must protect the public and demonstrate integrity and transparency at all times.

¶ 9 After deliberation, the Hearing Panel has decided to accept the Settlement Agreement on the following grounds:

- a) the Respondent has no disciplinary history;
- b) the Respondent cooperated in the negotiation of the Settlement Agreement and has admitted his guilt;
- c) the Respondent had previously agreed to submit to penalties relating to the same matter, in an agreement reached on June 27, 2008 with FINRA, a securities self-regulatory organization in the United States, and has complied with the penalties stipulated in that agreement, namely complete suspension of his professional activities for a period of two months and payment of \$50,000;
- d) the Respondent should not be penalized twice for the same misconduct;
- e) the Respondent had previously been the object of internal disciplinary measures by his employer, including the requirement of repeating the Partners', Directors' and Senior Officers' Course dispensed by the Canadian Securities Institute;
- f) disgorgement of the profit made as a result of the commission of the contravention is an adequate and appropriate measure in the particular circumstances of this case, considering as well that the Respondent has acknowledged his guilt on the count as alleged;
- g) the jurisdiction of the Hearing Panel is limited to accepting or rejecting the Settlement Agreement;
- h) the Hearing Panel should not substitute its own discretion for that of the parties, nor indicate the penalty that it would have chosen;

- i) the Hearing Panel must confine itself to verifying whether the result of the negotiation between the parties is reasonable or not, given the circumstances;
- j) 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.
- k) Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement;
- l) the Hearing Panel considers that the penalty to which the Respondent has agreed is reasonable and consistent with the considerations and penalties recommended in the IIROC guidelines with respect to the unauthorized or improper use of inside information.

¶ 10 For these reasons: The Hearing Panel accepts the Settlement Agreement, and gives effect to said agreement on the date of this decision.

Signed at Montreal, this 9th day of February 2010.

André Valiquette, Q.C.

Jean Elie

Elaine C. Phenix

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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 Patrick Belland (the Respondent).
2. On June 1, 2008, the Investment Industry Regulatory Organization of Canada (IIROC) consolidated the regulatory and enforcement functions of the IDA and Market Regulation Services Inc. (RS). Pursuant to the *Administrative and Regulatory Services Agreement* between the IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for the IDA to carry out its regulatory functions.
3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to Part C of Schedule C.1 to Transition Rule 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 IIROC Dealer Member Rules 20.35 to 20.40 inclusive and Rule 15 of IIROC's 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 for approval to the Hearing Panel at a hearing (the Settlement Hearing). 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 right to a disciplinary hearing, review or appeal under IIROC Rules or any applicable legislation.
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 be made 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

14. Staff and the Respondent agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based on those specific facts and are final.

The Respondent

15. The Respondent started out in the industry in 1992 as a registered representative (retail) employed with Brockhouse & Cooper (“BC”).
16. On August 16, 2002 he was approved as a director of BC.
17. On November 11, 2005, the IDA authorized him to act as Alternate Designated Person for BC.
18. On July 19, 2007, the IDA approved him as a Trading Officer (Vice-President) of BC.
19. He is still employed with BC and works at its place of business located at 1250 René-Lévesque Blvd. West, in Montréal, Québec.
20. He is currently registered as Trading Officer (Vice-President), Alternate Designated Person, Director and Registered Representative (Retail)

The material facts

Trades based on privileged information

21. On or about March 9, 2005, the Respondent had a telephone conversation with an acquaintance, PC, an employee with the company ASCL.

22. During this telephone conversation, PC mentioned to the Respondent, in the following terms, that he might soon find himself jobless because there was a rumour to the effect that, by Friday, his employer might be bought by IBM:

"Word on the streets, by Friday, we could be bought by IBM ."
23. PC added that the rumour was to the effect that IBM might be buying them at around \$23, but that this might also not be true.
24. He told him that this was a good time for the Respondent to buy, while shares were trading at \$15, because the acquisition would happen at \$23 a share.
25. He added that he had spoken with his contact, who confirmed that he had heard this as well, as had other people, because his company was very bad at protecting its secrets.
26. The Respondent then asked him why the stock had not begun to move yet, at which point PC answered that the information had probably not leaked outside the company yet, but was only known to the employees.
27. That same day, namely on March 9, 2005, the Respondent sent an email to certain people at BC, including the chief compliance officer, requesting only the authorization to purchase an option on ASCL in the United States, and making no mention of the reasons why he wanted to make this purchase.
28. Still on March 9, 2005, about fifteen minutes after his conversation with PC, the Respondent purchased 100 ASCL call options@ \$1.30 on his account.
29. Prior to implementing such transaction, the Respondent did not inform the chief compliance officer at BC of the fact that that he had received material information that was not public knowledge from an employee of the issuer, concerning a potential acquisition.
30. He did not consult the latter for his opinion on the use of the non-public information that he had obtained, as required by the policies in force at BC.
31. He did not do any checking to see whether or not the information received constituted privileged information, and whether he could use the information for the purpose of trading.
32. On March 14, 2005, the Respondent sent a new email to the same persons to whom he had sent his March 9 email message, this time requesting authorization to sell the ASCL options.
33. He then proceeded to sell at a price of \$3.30 the 100 ASCL options acquired on March 9, 2005.
34. The trades made on the Respondent's account on March 9 and 14, 2005 generated a profit of US \$19,748.91.

Internal policy

35. BC had a written policy, notably concerning insider trading, which its representatives were required to attest, with their signature, to having read. This document, entitled "Employee Compliance Statement on Insider Trading and Securities Fraud Enforcement Act of 1998", was signed by the Respondent on September 8, 2004.
36. The document signed by the Respondent explained what constitutes inside information in the following terms:

"Inside information" is material, nonpublic information. [...] Generally speaking, information is "material" if it has "market significance" in that it is likely to influence reasonable investors, including reasonable speculative investors, in determining whether to trade the securities to which the information relates. For example, information is likely to be "material" if it relates to significant changes affecting such matters as [...] proposals or agreement involving a merger, acquisition [...]"

37. This document further specified that the purchase or sale of securities based on such information, notably for the account of an employee, constitutes a fraudulent use of privileged information.

38. This written policy contained the following directive, in bold type:

"Given the potentially severe consequences of any misjudgments, any employee uncertain as to whether any information possessed is "inside" information should contact the Compliance Officer, [nom], for advice rather than relying on his/her own judgment or interpretation."

Explanations provided to his employer

39. On or about April 5, 2005, Regulation Services Inc. (RSI), then a Canadian market regulation organization, sent a letter to the Chief Compliance Officer at BC, asking for details on the trading in ASCL stock effected on March 9, 2005..

40. On or about April 6, 2005, the Chief Compliance Officer responded to the letter received from RSI, indicating that an internal investigation had been opened relative to the events surrounding this transaction.

41. That same day, when questioned by his employer regarding the above-described events, the Respondent sent a memo to certain people at BC, including the chief compliance officer, explaining his motives for purchasing the ASCL stock options.

42. In his memo, he states that:

- PC was a friend of his, who worked as a sales representative at ASCL, in that company's Toronto office;
- In the months leading up to the transaction, PC had grown increasingly concerned over the possibility of his company being the target of a take-over;
- PC had allegedly been hearing rumours to this effect for many months;
- PC had allegedly expressed such rumours more than once in the course of his career, but none of them had been true;
- A similar conversation allegedly occurred between them, approximately a week before he effected the transaction;
- He allegedly decided to purchase the stock options of his own accord.
- He allegedly spoke with the Chief Compliance Officer before making the purchase.

43. The Respondent knew, or should have known, that the information received from PC constituted or could constitute privileged information and that engaging in trading based on such inside information could constitute an offence.

IV. CONTRAVENTION

44. The Respondent admits to the following misconduct in his capacity as a registered representative in the employ of Brockhouse & Cooper, at the time a Member firm of the IDA:

Count 1

On or about March 9, 2005, the Respondent engaged in conduct unbecoming and detrimental to the public interest, contrary to IDA By-law 29.1, when he effected a transaction in securities in his brokerage account based on information received from PC, when he knew, or should have known, that such information constituted or could constitute privileged non-public information and that he could not engage in trading based on such inside information.

V. CONDITION OF SETTLEMENT

45. Staff was of the opinion that the misconduct at issue is serious and justifies a higher penalty, including suspension of approval, in addition to payment of a substantial fine.
46. However, in determining the appropriate penalties in this matter, IIROC Staff took into account the fact that the Respondent had already agreed to submit to penalties relating to the same matter, in an agreement reached on June 27, 2008 with FINRA, a securities self-regulatory organization in the United States, and has complied with the penalties stipulated in that agreement, namely complete suspension of his professional activities for a period of two months and payment of \$50,000;
47. Consequently, to avoid penalizing the Respondent twice for the same misconduct, Staff has deemed it inappropriate to apply for a suspension order, which it would otherwise have requested for a similar offence.
48. Staff also took into account the fact that the Respondent had been subject to internal disciplinary measures by his employer, a requirement of which was repeating the Partners', Directors' and Senior Officers' Course dispensed by the Canadian Securities Institute. If this had not been the case, Staff would also have requested that this requirement be imposed as a penalty.
49. Staff has therefore determined that disgorgement of the profit made as a result of the commission of the offence, would be a sufficient and reasonable measure in the particular circumstances of this case, also considering that the Respondent has acknowledged his guilt in the matter.
50. The Respondent agrees to the following aggregate penalty:
- Payment of a fine in the amount of CA \$23,852.73 (*conversion of US \$19,748.91 at the exchange rate in effect at the Bank of Canada on March 15, 2005*), representing the pecuniary benefit which accrued from the transaction.
51. Unless otherwise ordered, the monetary penalty imposed upon the Respondent is payable immediately upon the effective date of the Settlement Agreement.
52. Unless otherwise indicated, all suspensions, prohibitions, expulsions or other terms and conditions of this Settlement Agreement shall commence upon the effective date of this Settlement Agreement.

AGREED TO by the Respondent at Montréal, in the Province of Québec, this 4th day of December, 2009.

WITNESS

PATRICK BELLAND
Respondent

AGREED TO by Staff at Montréal, Province of Québec, on this 7th day of December 2009.

WITNESS

DIANE BOUCHARD
Enforcement Counsel
on behalf of Staff of the Investment Industry
Regulatory Organization of Canada

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