

Re: Lamothe

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

ÉLAINE LAMOTHE

2009 IIROC 33

Investment Industry Regulatory Organization of Canada
for and in the name of
Investment Dealers Association of Canada
Hearing Panel (Québec District Council)

Hearing: June 16, 2009
Decision: July 15, 2009
(37 pars.)

Hearing Panel:

Me Alain Arsenault, Chair of the Hearing Panel
Mr. Gilles Archambault, Member of the Hearing Panel
Mr. Yves Julien, Member of the Hearing Panel

DECISION ON SETTLEMENT AGREEMENT

¶ 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 Éline Lamothe (the Respondent). The Respondent has not been employed in the securities industry since November 30, 2005. During the period contemplated by the investigation, she was a representative at Lévesque Beaubien Inc., and then at National Bank Financial Inc.;

¶ 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 On May 13 and 14, 2009, the parties signed a Settlement Agreement in accordance with rules 20.35 to 20.40 of the IROC Dealer Member Rules, and rules 14 and 15 of the Rules of Practice and Procedure;

¶ 4 In this May 2009 agreement, the Respondent admits to the following misconduct:

- 1) Between May 2000 and January 2005, the Respondent, at the time acting as a Registered Representative of National Bank Financial Inc., failed in her gatekeeper role and failed to use due diligence to learn and remain informed of the essential facts relative to her client "A" and to every order or account accepted, contrary to IDA Regulation 1300 and By-Law 29.1;
- 2) Between May 2004 and June 2005, the Respondent, at the time acting as a Registered Representative of National Bank Financial Inc., failed in her gatekeeper role, and failed to use due diligence to ensure that the acceptance of orders for the account of client "A" was within the bounds of good business practice when she agreed to execute trades at the request of client "A", when she knew or should have known that the trades could be an indicator of an activity or behaviour that was suspicious or contrary to the public interest, contrary to IDA Regulation 1300 and By-Law 29.1.

¶ 5 The Settlement Agreement provides for the following penalties:

- a) A fine in the amount of \$10,000 for count 1;
- b) A fine in the amount of \$10,000 for count 2;
- c) Prohibition of approval from IROC, in any capacity, for a period of one (1) year from the effective date of the Settlement Agreement;
- d) Upon expiration of this period, in the event of an application for approval, strict supervision shall be exercised by the firm for a period of six (6) months, with monthly Supervision Reports to be submitted to IROC in accordance with the terms prescribed by the organization;
- e) As a prior condition to re-approval, the Respondent must pass the Conduct and Practices Handbook examination.

In addition to paying IROC costs in the amount of \$3,500.00;

¶ 6 On June 16, 2009, the parties appeared before our Hearing Panel seeking our approval for the suggested penalties;

¶ 7 IROC Dealer Member Rule 20.36 limits the powers of the Hearing Panel over a Settlement Agreement;

¶ 8 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

¶ 9 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;

¶ 10 The Settlement Agreement appended to this decision details the facts admitted by the parties and the misconduct alleged against the Respondent, which we have summarized below;

¶ 11 In May 2000, the Respondent opened a Canadian account for a client, "A", stating that she had obtained a photocopy of the client's driver's permit and that he was referred by a personal contact, without ever having met said client nor verified latter's identification documents;

¶ 12 In December 2004, when a non-resident account was opened for the same client, the Respondent signed a false declaration in which she affirms having met client "A" in the year 2000;

¶ 13 During the five-month period between July and November 2004, a number of share certificates in company “C”, owned by insiders of this company, including its president, “D”, were deposited by the Respondent, in the account of her client “A”;

¶ 14 The Respondent has admitted that she had not done any checking contemporaneous to the deposit of the share certificates, notably as regards the following points:

- a) What connection did shareholders “E” and “F” have with Company “C”? Were they insiders? ;
- b) If so, did these people make the appropriate disclosures to the competent regulatory authorities;
- c) On what grounds were these certificates deposited in the account of a third party, namely “A”;
- d) Where did the certificates come from, and when and how were they acquired;
- e) Where were the envelopes she received containing the certificates mailed from;
- f) What ties did these third parties have with “A”?

¶ 15 Yet the Respondent knew that, at the very least, “D”, the president, was an insider of Company “C”;

¶ 16 What’s more, she knew that “D” was a client of “B”, the manager of her branch, who had given her share certificates made out to “D”, for deposit into the account of her client “A”;

¶ 17 The Respondent did not question her manager about the reasons for depositing an insider's shares into a third-party account, nor did she inform the firm's compliance officers of what was going on;

¶ 18 The branch manager did not inform the Respondent of his reasons for acting in this manner, either;

¶ 19 The Investigation by IIROC disclosed that, on October 22, 2004, “A” was involved in a private distribution of shares in company “C”;

¶ 20 The Respondent did not actively check whether client “A” had really completed a private investment in “C”, and on what date, and what the connection was between this private investment and the deposit of insiders' share certificates in July and November 2004;

¶ 21 Shortly after the share certificates from company “C” were deposited in the account of client “A”, the Respondent accepted successive sell orders from client “A”, without any questions; she was simply the executant;

¶ 22 The Respondent did not ask any questions either when, following the sale of said shares, several cheques were made out, not to the order of her client “A”, but to the order of third parties, at the express request of client “A”;

¶ 23 Several letters of authorization to issue cheques to third parties were signed by “A”, and dated May 10, 2004; these letters were therefore not contemporaneous to the sell transactions, which should have made the Respondent wonder;

¶ 24 The Respondent did not question her client “A” about the reasons for his systematic requests for the issuance of cheques to third parties;

¶ 25 Yet, the Respondent knew or should have known that the transactions made in the account of client “A” could be an indicator of an activity or behaviour that was suspicious or contrary to the public interest;

¶ 26 IIROC's investigation disclosed that the cheques drawn on the account of “A” were deposited and cashed through a foreign exchange office or through third parties, which allowed “A” to obtain cash;

¶ 27 The cheques were endorsed as many as twice or three times;

¶ 28 Between July 2004 and June 2005, client “A” would thus have sold approximately \$986,575.00 in shares;

¶ 29 The Respondent ignored several warning signs, including:

- a) Third parties, clients or not, depositing share certificates from “C” in the account of client “A”;
- b) Many of the third parties are insiders at “C”;
- c) Consecutively to the deposits, client “A” is engaging in massive sales of stock in “C”;
- d) Client “A” requests that cheques be made out to unrelated third parties;
- e) Client “A” opens a non-resident account in December 2004;
- f) Beginning in January 2005, trading was conducted through the non-resident account of client “A”;

¶ 30 Disciplinary proceedings have also been commenced against “B”, the branch manager, relative to the events invoked in the Settlement Agreement appended hereto;

¶ 31 On June 16, 2009, the parties, duly represented by counsel, jointly detailed the aggravating and mitigating factors, to justify their Settlement Agreement before this Hearing Panel;

¶ 32 The principal aggravating factors admitted by the parties are as follows:

- a) The Respondent made false statements to her employer;
- b) The Respondent facilitated trades that were tantamount to the sale of shares by insiders, without reporting them to the appropriate authorities;
- c) The Respondent knowingly turned a blind eye;
- d) The Respondent failed in her gatekeeper role by encouraging a special agreement that would benefit a single client to the detriment of the rest;

¶ 33 The principal mitigating factors admitted by the parties are as follows:

- a) The Respondent had no disciplinary record;
- b) The Respondent cooperated fully in the investigation and has admitted her misconduct;
- c) The Respondent has limited financial means;

¶ 34 According to the Hearing Panel, the Respondent’s lack of a disciplinary record, the fact that she had approximately six (6) years experience in the industry when the events under investigation occurred, her admission of the facts in the matter and the fact that her superior himself participated in some of the trades in connection with count 2, are important points that must be taken into account in evaluating the reasonableness of the penalties that are jointly proposed by the parties;

¶ 35 With respect to the aggravating factors, this Hearing Panel principally retains the following points: her participation in trading that is tantamount to the sale of shares by insiders, without reporting it to the appropriate authorities; and her failure to protect the public in this matter;

¶ 36 The Hearing Panel considers the suggestion made by the parties, duly represented by counsel, to be reasonable principally given the fact that the Respondent no longer works in the industry, the total fines suggested, namely, \$20,000.00 and prohibition of approval for a period of one year.

¶ 37 **FOR THESE REASONS, THE HEARING PANEL:**

ACCEPTS AND GIVES EFFECT to the Settlement Agreement appended to this decision;

IMPOSES the following penalties on the Respondent:

- a) a fine of \$10,000.00, payable to IIROC, on count # 1;
- b) a fine of \$10,000.00, payable to IIROC, on count # 2;
- c) prohibition of approval by IIROC, in any capacity, for a period of one (1) year from the date of this decision;
- d) at the end of this period, in the event of an application for approval, strict supervision shall be exercised by the firm for a period of six (6) months, with supervision reports to be submitted to IIROC on a monthly basis and in accordance with the terms and conditions prescribed by the organization;
- e) as a prior condition to re-approval, the Respondent must have passed the examination relative to the Conduct and Practices Handbook;
- f) payment to IIROC of \$3,500.00 in costs.

Montréal, this 15th day of July, 2009

Me Alain Arsenault, Chair of the Hearing Panel

Mr. Gilles Archambault, Member of the Hearing Panel

Mr. Yves Julien, Member of the Hearing Panel

* * * * *

SETTLEMENT AGREEMENT

I. BACKGROUND

The Enforcement Department Staff (Staff) of the Investment Industry Regulatory Organization of Canada (IIROC) has conducted an investigation (the Investigation) into the conduct of Éline Lamothe (the Respondent);

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;

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 IIROC Transition Rule No. 1 (the Hearing Panel);

II. JOINT SETTLEMENT RECOMMENDATION

The Respondent consents to be subject to the jurisdiction of IIROC;

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 Rule 20.35 to 20.40 inclusive, and Rule 15 of the Rules of Practice and Procedure;

The Settlement Agreement is subject to acceptance by the Hearing Panel;

The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel;

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;

If the Hearing Panel accepts the Settlement Agreement, the Respondent waives her right, under IIROC rules and any applicable legislation, to a disciplinary hearing, review or appeal;

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;

The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel;

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;

Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement;

III. STATEMENT OF FACTS

(i) Acknowledgment

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

The Respondent presents the following chronology of her registrations, from May 13, 1998 to date:

FROM	TO	FIRM	REGISTRATION CATEGORY
May 13, 1998	July 7, 2004	Lévesque Beaubien Inc.	Representative with unrestricted practice
July 7, 2004	November 30, 2005	National Bank Financial Inc.	Registered Representative Options (Retail)

Failure of Identification

The Respondent opened the Canadian account for client "A" on May 23, 2000;

In the "Identity Verification" section of the New Account Form, the chosen method of identification was the driver's permit;

The form also indicates that the Respondent did not know the client and that it was a referral from a personal contact;

The IIROC investigator was unable to obtain a copy of the driver's permit;

In December 2004, the Respondent opened a non-resident account for said client "A";

The New Account Form for the non-resident account was signed by the Respondent on December 2, 2004, and by the then branch manager "B", on December 20;

Section 12 of this form includes the mention, "Non-resident transfer";

Section 4, at the end, states that the client did not meet the advisor, and that the client has known the advisor since May 2000;

In parallel, on December 20, 2004, the Respondent signed an information form, the non-resident account opening form required by the firm, in which she states that she has known client "A" for four and a half (4 ½) years and that she met the client four and a half (4 ½) years ago;

As a result of this contradictory information, the firm's compliance department questioned the Respondent, who stated in an e-mail message dated January 20, 2005 that she had indeed met client "A" in 2000;

The firm launched an internal investigation in 2005, following a report of unusual trading activity in regard to the cashing of a cheque made out to client "A";

In the course of this investigation, the Respondent notably stated that she had never met client "A" when the account was first opened in 2000;

In her interview with IIROC Staff on November 9, 2006, the Respondent admitted that she had not met client "A" in 2000, that she had not verified the proof of identity, and that she had lied to her firm in 2004 when the non-resident account was opened for client "A";

Failure of gatekeeper role

Deposits of share certificates by third-party insiders in the account of "A"

Between July and November 2004, the Respondent deposited several share certificates from company "C" in the account of client "A";

Most of the holders of these share certificates were insiders of "C", including its president "D";

In her interview with the IIROC investigator on January 29, 2008, the Respondent admitted that she had not done any checking contemporaneously to the deposit of the certificates, notably as regards the following factors:

- what connection did shareholders "E" and "F" have with the company; were they insiders? ;
- if yes, had these people submitted the appropriate reports to the competent securities regulators;

- on what grounds were the certificates deposited in the account of a third party, namely “A”;
- what was the provenance of the certificates, when and how were they acquired;
- where were the envelopes she received containing the certificates mailed from;
- what was the connection between these third parties and “A”;

The Respondent knew that “D” was a company insider;

“D” was a client of “B”, the then manager of the Respondent's branch;

“B” turned over the share certificates made out to “D” to the Respondent, for deposit in the account of client “A”;

The Respondent did not question her manager about the reasons for depositing shares held by an insider in the account of a third party, nor did she inform the firm's compliance department of what was going on;

The Respondent simply did as she was asked;

The first third-party share certificates were deposited in the account of client “A” in July 2004, and the second deposits were made in November 2004;

On November 11, 2004, other insiders of “C” deposited share certificates through the Respondent, in the account of third-party “A”;

The share certificates were endorsed and were accompanied by a letter from the insider-shareholder, requesting their deposit in the account of “A”;

The Respondent questioned “A” only superficially, and contented herself with evasive answers concerning the alleged connections between the deposits and his participation in a private investment in “C”;

The Respondent did not actively check whether client “A” had really made a private investment in “C”, the date on which this investment was allegedly made, and what the connection was between this private investment and the deposit of insiders' share certificates in July and November 2004;

The IIROC investigation disclosed that “A” had in fact made a private investment on October 22, 2004;

It was not until April 13, 2005 that client “A” deposited the share certificates issued in his name and in connection with the private investment;

Successive sell orders, and cheques issued to third parties on account “A”

A short while after the share certificates in company “C” were deposited, the Respondent accepted successive sell orders from client “A” without any questions; she was merely the executant;

The Respondent did not wonder, following the sale of said shares, why a number of cheques were made out to third parties at the express request of client “A”;

The Respondent accepted several letters of authorization from client “A” for the issue of cheques to third parties dated May 10, 2004;

Yet, the deposits of the share certificates, and the successive sales of shares only began in July 2004; The letters of authorization for the issuance of cheques to third parties were therefore not contemporaneous to the sell transactions, which should have triggered questions from the Respondent;

The Respondent did not question her client “A” about the reasons for his systematic requests for the issuance of cheques to third parties; yet the Respondent knew or should have known that the transactions effected in the account of client “A” could be an indicator of an activity or behaviour that was suspicious or contrary to the public interest;

The IIROC investigation disclosed that the cheques drawn on the account of “A” were deposited and cashed either through a currency exchange office, or through third parties, giving “A” access to cash;

The cheques were sometimes endorsed two and three times;

In the course of the IIROC investigation, some of the shareholders who deposited their shares in the account of “A” mentioned that there were signed agreements with “A”, and that by virtue of these agreements, “A” could not sell their shares;

Between July 2004 and June 2005, client “A” allegedly sold approximately \$986,575 worth of shares;

The Respondent ignored a number of warning signs, including:

- third parties, clients or not, depositing share certificates from company “C” in the account of client “A”;
- Many of the third parties are insiders at “C”;
- Consecutively to the deposits, client “A” is engaging in massive sales of stock in “C”;
- Client “A” is requesting that cheques be made out to unrelated third parties;
- Client “A” opens a non-resident account in December 2004;
- Beginning in January 2005, trading is conducted through the non-resident account of client “A”;

Disciplinary proceedings have also been commenced against “B”, relative to the events invoked in this settlement agreement;

IV. CONTRAVENTIONS

The Respondent admits to the following contraventions:

Between May 2000 and January 2005, the Respondent, at the time acting as a Registered Representative of National Bank Financial Inc., failed in her gatekeeper role and failed to use due diligence to learn and remain informed of the essential facts relative to her client “A” and to every order or account accepted, contrary to IDA Regulation 1300 and By-Law 29.1;

Between May 2004 and June 2005, the Respondent, at the time acting as a Registered Representative of National Bank Financial Inc., failed in her gatekeeper role, and failed to use due diligence to ensure that the acceptance of orders for the account of client “A” was within the bounds of good business practice when she agreed to execute trades at the request of client “A”, whereas she knew or should have known that the trades could be an indicator of an activity or behaviour that was suspicious or contrary to the public interest, contrary to Association Regulation 1300 and By-Law 29.1.

V. TERMS OF SETTLEMENT

The Respondent agrees to the following terms of settlement:

fine of \$10,000 on count 1;

fine of \$10,000 on count 2;

prohibition of approval from IIROC, in any capacity, for a period of one (1) year from the effective date of the Settlement Agreement;

upon expiration of this period, in the event of an application for approval, strict supervision shall be exercised by the firm for a period of six (6) months, with monthly Supervision Reports to be submitted to IIROC in accordance with the terms prescribed by the organization;

as a prior condition to re-approval, the Respondent must have passed the Conduct and Practices Handbook examination.

The Respondent agrees to pay IIROC costs in connection with this Settlement Agreement, in the amount of \$3500;

The fines and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

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 Rouyn-Noranda (Québec), this 13th day of May 2009.

« Witness »

Witness

« Elaine Lamothe »

Élaine Lamothe

Respondent

AGREED TO by Staff of IIROC, at Montréal (Québec), this 14th day of May, 2009.

« Linda Vachet »

Witness

« Diane Bouchard »

Diane Bouchard

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

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