

Re Sarkissian

IN THE MATTER OF:

THE DEALER MEMBER RULES OF THE
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AND

SARKIS SARKISSIAN

2009 IIROC 42

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

Heard: March 17, 18, 19 and 20, April 28 and 29, May 1, 2 and 14,
June 2, 3, 4, 18, 19 and 20, and March 20, 2009

Decision: September 16, 2009
(118 paras.)

Hearing Panel:

Me Claire Richer, Ms. Danielle Le May, Ms. Elaine C. Phenix

Appearances:

Me Caroline Champagne (replaced by Me Sylvie Poirier for arguments), Legal counsels for IIROC
Me John Bracaglia and Me Eya Hamouda, Legal counsels for Sarkis Sarkissian

DECISION

PREAMBLE

Definitions

Alliance - Industrial Alliance Securities Inc.

BDRVM - Bureau de décision et de révision en valeurs mobilières

Chemin du Golf - Chemin du Golf ltée

Comset - Database used by IIROC-regulated firms to report anything to do with customer complaints and internal investigations respecting a registered representative, including civil and criminal proceedings.

CL - President of Inter-Franchise

LIRA - Locked-in retirement account

iForum - iForum Securities Inc., The Respondent's Employer at the material time

Inter-Franchise - Inter-Franchise inc.

JL - CL's sister, President of Coopérative de services CDP, majority shareholder of Inter-Franchise, Holds approximately 12% of the shares in Multimedia

Lucky 1 - Lucky 1 Enterprises Inc., a public corporation

LVFH - LasVegasFromHome.com Entertainment Inc., a public corporation

Multimedia - MD Multimedia Inc., a public corporation

Pulse - Pulse International Inc., company belonging to a long-standing client of the Respondent

RB - Former CN employee and client of the Respondent

Pensioners (the) - MD, JR, RT, AL, GM, FG and JNT, former CN employees

Five Pensioners (the) - MD, JR, RT, AL and GM, former CN employees

Four Pensioners (the) - MD, RT, JR and AL, former CN employees.

SL (Me) – Attorney, Mandatary of the Pensioners, Representative of Multimedia and Lucky 1, corporations in which the Pensioners invested

Introduction

- ¶ 1 In the summer of 2005, IIROC launched an investigation in respect of the Respondent, following
- i) receipt of a ComSet event report, which revealed that a judgment ordering the Respondent to pay damages had been rendered against him on May 10, 2005, and that the Pensioners, clients of the Respondent, had filed a complaint against him; and
 - ii) the discovery, notably by IIROC Sales Compliance, that the Respondent was i) trading in securities for which he was not approved in his registration category, and ii) executing transactions off book, rather than through iForum's carrying broker.

¶ 2 The Respondent was a registered representative (mutual funds) at iForum from June 1, 2001 to December 1, 2005, and a registered representative in the same capacity at Alliance from December 9, 2005 to August 8, 2006. His IIROC registration began when he entered the employ of iForum and ended when his employment with Alliance was terminated.

Particulars

¶ 3 At the close of its investigation, IIROC published, on August 2, 2007, a Notice of Hearing listing forty-four (44) counts against the Respondent. For the sake of brevity, we have grouped these counts as follows¹:

Counts 1 to 5	Failure to learn and remain informed of the essential facts relative to his clients
Counts 6 to 13 and 23 to 39	Transactions not permitted under the terms of the approval granted by IIROC to the Respondent as a registered representative (mutual funds)
Counts 14 to 17	Failure to use due diligence when accepting instructions given by a mandatary
Counts 18 to 22 and 40	Participation in a stratagem
Counts 41 and 42	Off-book transactions not recorded in the books of iForum
Counts 43 and 44	Failure to provide the information required by IIROC

¹ Please refer to the Appendix for the full text of the charges in the matter, as published by IIROC

To facilitate the reading and comprehension of this decision, the following IIROC rules, namely By-law 18.7, By-law 18.3 and 18.11 (which have since become By-laws 40.3 (1) and 40.5 (1) and sections A.1(a) and B.1(a) of Policy 8), By-law 29.1, and Regulation 1300.1a) are reproduced below.

By-law 18.7

Provided that it is not contrary to either the provisions of the appropriate securities or insurance legislation or any policy made pursuant thereto, the Association may grant approval of a person as a registered representative (mutual funds) or an investment representative (mutual funds) if, at the date of such application, the person

- a) is employed by a Member solely for the purpose of soliciting orders for mutual fund securities or mutual fund securities and contracts of life insurance;
- b) is registered under any applicable securities or insurance legislation of each jurisdiction in which he or she deals with the public to sell mutual fund securities or mutual fund securities and contracts of life insurance, as the case may be; and
- c) has satisfied the applicable proficiency requirements outlined in Part I of Policy No. 6;

provided that, in the course of employment with a Member firm, such person shall not accept orders for the purchase or sale of any securities other than mutual fund securities or contracts of life insurance and provided, further, that the Member establishes and maintains procedures approved by the Association to ensure compliance by such person with the By-laws, Regulations, Rulings and Policies.

By-laws 18.3 and 18.11 (which have since become By-laws 40.3 (1) and 40.5 (1) and sections A.1(a) and B.1(a) of Policy 8)

By-law 18

18.3 – - Application for:

- (a) Approval, or transfer of, a registered representative or investment representative shall be made to the Association in such form as the Board of Directors may from time to time prescribe;

18.11 – A registered representative or investment representative and the Member in respect of which he or she is approved shall report in writing to the Association

- (a) Within ten days of the event any change in the information submitted on or with the form of application for approval including, without limitation, any required information with respect to criminal or bankruptcy proceedings pertaining to the registered representative or investment representative;

By-law 40

40.3 – Approvals and Notifications

- (1) Each Member making an application for approval of an individual in any capacity required under any By-law, Regulation or Policy of the Association shall make such application to the Association through the NRD on Form 33-109F4.

40.5 – Report of Changes pursuant to Policy 8

- (1) Each Member making a report of a change regarding an Approved Person required pursuant to section I.B.1(a) of Policy 8 of the Association shall make the report through the NRD on Form 33-109F4 in the time required pursuant to NRD Multilateral Instrument 33-109.

Policy 8

I – Reporting Requirements

A – Reporting Requirements To Member

1 – Each registrant shall report to the Member, within two business days, whenever:

- (a) there is any change to the information contained in his or her Uniform Application for Registration/Approval (or any form replacing the Uniform Application for Registration/Approval);

B. – REPORTING REQUIREMENTS TO DESIGNATED SRO

1 – Each Member shall report to its designated SRO, in such detail and frequency as prescribed by the SRO:

- (a) Whenever there is any change to the information contained in the Uniform Application for Registration/Approval or Form 33-109F4 under By-law 40 or any registrant;

By-law 29.1

29.1. Members and each partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative and employee of a Member (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board of Directors.

For the purposes of disciplinary proceedings pursuant to the By-laws, each Member shall be responsible for all acts and omissions of each partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative and employee of a Member; and each of the foregoing individuals shall comply with all By-laws, Regulations and Policies required to be complied with by the Member.

Regulation 1300.1 (a)

Each Member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted.

Preliminary Remarks

Jurisdiction

¶ 4 Because of the importance of this matter and the many days of the hearing, we had asked the parties to submit their arguments in writing before we heard the verbal arguments.

One of the elements of the Respondent's argument concerned the Hearing Panel's loss of jurisdiction following the judgment rendered in *Taub v. The Investment Dealers Association of Canada*². This judgment was handed down a few days prior to the deadline we had set (July 31, 2008) for submission of the written arguments. Additional time was granted to allow IIROC to respond, and a hearing on jurisdiction was held on October 17, 2008.

The Hearing Panel rendered its decision on this point on November 3, 2008, in which it ruled that it had full jurisdiction.

The Respondent appealed this decision to the BDRVM on November 3, 2008; the hearing was

² *Taub v. Investment Dealers Association of Canada*, 2008 CanLII 3507 (ON S.C.D.C.), since overturned by the Ontario Court of Appeal

held on February 11, 2009 before the BDRVM. The Respondent's request for review of the Hearing Panel's jurisdiction was reserved for deliberation, but the BDRVM dismissed the motion to suspend the decision of November 3, 2008 from the bench, and ordered the disciplinary hearing to continue. Accordingly, the parties' arguments were heard by the Hearing Panel on March 20, 2009.

Drafting of the decision

¶ 5 This decision has been drafted to address separately each of the groups of violations mentioned in paragraph 3, while taking into account the fact that the violations form a whole that are often interconnected.

Credibility of the Respondent

¶ 6 Before discussing the Respondent's guilt on the various counts, the Hearing Panel analyzed the Respondent's testimony, during both the examination in chief and the cross examination, to determine the degree of credibility to assign to this testimony. The testimony continued for several days (3½). After analysis and deliberation, the Hearing Panel has serious doubts regarding many aspects of this testimony. Among others,

- i) the Respondent says he is a victim of his employer iForum and of CL; however, he appears to be unscrupulous and blind to his responsibilities as a registered representative;
- ii) the Respondent is involved in every aspect of the transactions described; he corresponded with, spoke to, and exchanged e-mails and other documents with all of the parties involved; he dealt with them at every stage; he says that he did not know what went on, yet he knows details that would only be known by someone who was involved;
- iii) the Respondent contradicted himself during his testimony, and/or had moments of forgetfulness or memory loss that are difficult to understand.

Given these findings, the Hearing Panel can but conclude that the Respondent lacks credibility and it must therefore rely on the evidence submitted by IIROC to decide whether the burden of proof that it must discharge, in other words, the preponderance of evidence, has been met.

COUNTS 1 to 5 – Failing to learn and remain informed of the essential facts relative to his clients

¶ 7 IIROC has charged that the Respondent, between September 2002 and July 2003, while a registered representative (mutual funds) in the employ of iForum, failed to use due diligence to learn and remain informed of the essential facts relative to certain of his clients, namely the Five Pensioners, in that, as the representative, he signed their new client account forms without obtaining from them their relevant personal and financial information, and without making sure that the recorded facts were true and accurate; thereby contravening Regulation 1300.1(a)

The evidence

¶ 8 The Five Pensioners opened registered accounts with iForum, more specifically LIRAs, between September 2002 and July 2003, in order to transfer their pension funds; the new client application forms were all signed by the Respondent.

¶ 9 The new client application forms of the Five Pensioners indicated, among other things, that their investment objectives were "100% long term", their risk tolerance was "100% high risk" and their investment knowledge was good, whereas this information was false and had never been provided by them, their knowledge of investments was very limited, and a LIRA account, by its very nature, cannot carry a high degree of risk.

¶ 10 Between November 2002 and February 2004, nearly 80% of the Five Pensioners' pension funds, which had been transferred to iForum, were invested in small caps with two public companies they did not know. The Five Pensioners received monthly statements on which the Respondent's code was printed. The Respondent was aware of the trades that were made in the accounts of the Five Pensioners since, as the registered representative listed on their statements, he also received a copy of these monthly statements.

¶ 11 On the one hand, the Five Pensioners did not know the Respondent and had never met him; on the other hand, the Respondent admitted that at no time had he ever spoken to or met these pensioners; he further stated that they were not his clients, but iForum's.

¶ 12 When they transferred their pension funds to iForum, the Five Pensioners had decided to join an "investment club" recommended and managed by a certain CL, to shore up their savings in view of their recent retirement.

IIROC's argument

¶ 13 The Respondent totally ignored the *know your client* rule, as well as his obligations and commitments respecting the standards of conduct, caution and diligence that govern him as a registered representative and IIROC registrant; among them, that of giving absolute priority to his client's interests.

Indeed, if the Respondent had followed the *know your client* rule, he would have seen that his clients had a very poor knowledge of investing and would never have allowed them to invest their pension funds -which, by the way, were the only savings that these pensioners had at the end of their working lives- in such risky investments.

¶ 14 The Respondent's assertion that the Five Pensioners were not his clients but those of iForum does not hold true; indeed, an experienced representative like the Respondent, who was in the industry for 25 years, could not be ignorant of one of the industry's most fundamental principles.

The Respondent's argument

¶ 15 The Five Pensioners were not clients of the Respondent, for he had only signed their new client application forms to accommodate his employer, once the latter had assured him that it was only a formality and told him that he should not contact the Five Pensioners, as the Respondent had previously explained to the investigators, during the investigation.

¶ 16 IIROC never confirmed these explanations, thus neglecting its obligation of diligence in the conduct of the investigation.

Analysis

¶ 17 The Respondent began his career in the securities industry in 1979 after studying business administration and accounting. To get his license in mutual funds, he took courses and wrote the required examinations.

¶ 18 Over the course of his career, the Respondent held a variety of positions involving supervisory responsibilities and requiring a knowledge of the regulatory environment.

¶ 19 As a registered representative (mutual funds) approved by IIROC, the Respondent had undertaken, by virtue of the contract that bound him to this self-regulatory organization, to comply with the standards of conduct that governed his approval.

¶ 20 We wish to underscore two of the requirements of these standards of conduct:

Standard A – Duty of Care

The Duty of Care encompasses a large number of commitments, including that of giving absolute priority to the interests of the client, which is only possible if one knows one's client well. Which is why this rule is incontrovertible. Other than this commitment, the three most important components of the duty of care are as follows:

- i. Know your client : this rule governs every activity in the industry,
- ii. Which is why all registrants must make diligent and business-like efforts to learn and record the essential financial and personal circumstances, and the investment objectives of each client,
- iii. To ensure the relevance of investment recommendations, the registrant must make sure that the client's information is complete and provides an accurate portrait of the client's current situation.³

Part II – Chapter 1 - Account Opening Procedures

The Know Your Client (...) rule is the cornerstone of all client relationships

This rule requires every registrant to use due diligence to:

- i. learn the essential facts relative to every client and to every order or account accepted,
- ii. to ensure that the acceptance of any order for any account is within the bounds of good business practice,
- iii. to ascertain that the recommendations made regarding an account are suitable for the client and in accordance with his investment objectives.⁴

¶ 21 In the decision by the Pacific District Council in the matter of Kianosh Rahmani⁵, the members of the Hearing Panel find that:

"As a professional in the investment industry, he (the respondent) cannot hide behind the claim that his employer completed the form and that he merely signed it. He has a direct responsibility to the Association to ensure that the disclosure forms he signs are accurate and complete. It is entirely unacceptable for him to abrogate this responsibility by claiming that he signed a document prepared for him."

¶ 22 What emerges from the evidence, namely the testimony of the IIROC investigator and the documents deposited as exhibits⁶, is that the Respondent, as representative of the Five Pensioners, failed in his obligation to satisfy himself, notwithstanding the circumstances invoked by him in his defense, that the information contained in the account opening forms was accurate and that the Five Pensioners' investments were consistent with the sound management of their pension funds.

¶ 23 The Hearing Panel does not uphold the Respondent's arguments to the effect that the Five Pensioners were not his clients.

¶ 24 In addition, the Hearing Panel is of the opinion, contrary to the Respondent's claim, that it was not up to the investigator to validate the circumstances surrounding the signature of the account opening documentation with reference to the obligations of the Respondent. "It is the responsibility of the representative to fulfill his role of gatekeeper and make sure that the documents he receives all make sense."⁷ The Hearing Panel considers that, at this level, the investigation was adequately conducted by the investigators.

¶ 25 For these reasons, the Hearing Panel is of the opinion that the Five Pensioners were clients of the Respondent and that Counts 1 to 5 are well founded; consequently, the Hearing Panel finds the Respondent guilty on these counts.

COUNTS 6 to 13 and 23 to 39 – Transactions not permitted under the terms of the approval granted to the Respondent as a registered representative (mutual funds)

³ IIROC, Conduct and Practices Handbook, page 8.

⁴ IIROC, Conduct and Practices Handbook, pages 109 and 110

⁵ Rahmani Re, 2004 IDCA No 48, bulletin no 3326, September 3, 2004

⁶ See exhibits P-208, P-209, P-216, P-235, P-236, P-239, P-283, P-285, P-313, P-314, P-320, P-328, P-330 and P-334

⁷ Testimony of Paul Rondeau, Stenographer's Transcription of May 14, 2008, page 78.

¶ 26 IIROC has charged the Respondent with having effected, in the Pensioners' accounts and in the account of RB, between April 2003 and November 2004 and according to instructions given by his clients to a mandatary, trades in securities requiring approval as an investment advisor with unrestricted practice, whereas he was only approved as a registered representative (mutual funds), thereby engaging in business conduct unbecoming or detrimental to the public interest, and contrary to Association By-law 29.1.

The evidence

¶ 27 These trades involved the securities of companies, namely Lucky 1, LVFH and Multimedia, and were therefore shares and debentures in publicly-traded corporations, and not mutual funds, as the IIROC investigator testified, and as the Hearing Panel observed in the documents filed at the Hearing.

¶ 28 At all material times, the Respondent was approved with IIROC as a registered representative (mutual funds), which approval did not authorize him to trade in shares or debentures of the three companies mentioned in paragraph 27.

¶ 29 The evidence also shows that it was the Respondent who executed the trades. At the very start of his testimony⁸, the investigator related that the representative's code, which he identified as being that of the Respondent, appears on numerous documents, including exhibit P-391, and that the Respondent's approval did not authorize him to trade in securities, as he had done⁹.

IIROC's argument

¶ 30 The Respondent was the representative of both the Pensioners and RB and did not have the necessary approval to effect the trades with which he is charged in their accounts.

¶ 31 Even though the Respondent did not have the access code to the ISM computer system¹⁰, since he was not a representative with unrestricted practice, he was responsible for the trades in the accounts of his clients, namely the Pensioners and RB, which appear on the firm's books under his name or his code.

¶ 32 Furthermore, as their statements of account show, the Pensioners were charged commissions and brokerage fees on their accounts for which the Respondent was the representative.

The Respondent's argument

¶ 33 The Respondent did not consider the Pensioners and RB to be his clients, but rather the clients of his employer, iForum.

¶ 34 The Respondent did not effect the trades with which he is charged, for he did not have access to the iForum computer system to input buy and sell orders.

Analysis

¶ 35 The evidence clearly shows that the Lucky 1, LVFH and Multimedia securities were not mutual fund securities.

¶ 36 The Hearing Panel is satisfied with the evidence submitted by IIROC, to the effect that the Respondent is responsible, as representative, for the trading in Lucky 1, LVFH and Multimedia securities effected in the accounts of the Pensioners and RB.

¶ 37 For these reasons, the Hearing Panel is of the opinion that Counts 6 to 13 and 23 to 39 are well founded, and finds the Respondent guilty on these counts.

COUNTS 14 to 17 - Failure to use due diligence when accepting instructions given by a mandatary

¶ 38 IIROC has charged the Respondent with acting in accordance with the powers of attorney given by each of the Four Pensioners to Me SL, an attorney known to the Respondent, whereas the latter knew or should have

⁸ Testimony of Paul Rondeau, Stenographer's Transcription of March 17, 2008, page 185, lines 15 to 20, page 193, lines 17 to 25, and page 194 to 196, line 8

⁹ Testimony of Paul Rondeau, Stenographer's Transcription of March 17, 2008, page 181, lines 13 to 25

¹⁰ Computer system used at iForum to input buy and sell orders

known that the Four Pensioners did not know Me SL and did not understand the tenor of such a document, thereby engaging in business conduct unbecoming or detrimental to the public interest, and contrary to Association By-law 29.1.

The evidence

¶ 39 The Respondent had known Me SL since 2001.

¶ 40 The Four Pensioners did not know Me SL; they signed several blank documents, including powers of attorney, and were mailed copies thereof by Me SL; they received no explanation regarding the signing of these powers of attorney.

¶ 41 The signed powers of attorney were forwarded to the Respondent by Me SL.

¶ 42 The account opening forms filed as evidence made no mention of the existence of a mandatary and were never updated to this effect.

IIROC's argument

¶ 43 Not only did the Respondent fail to fulfill his first duty as representative of the Four Pensioners, he made no effort to verify whether these Four Pensioners knew their mandatary or understood the tenor and implications of the power of attorney they had signed.

The Respondent's argument

¶ 44 The Four Pensioners were not his clients and the Respondent only served as the go-between to accommodate his employer.

¶ 45 The Four Pensioners understood the tenor of the power of attorney and that is why they signed it.

¶ 46 Even if the Four Pensioners had been his clients, the Respondent would have been under no obligation to verify the validity of the power of attorney.

Analysis

¶ 47 As mentioned above, the *know your client* rule applies to all IIROC registrants, both when opening an account, as well as during its subsequent management; it is the cornerstone of every client relationship. It is also the cornerstone of the entire securities industry, in Canada and elsewhere in the world, both for securities of companies as well as mutual fund units. Therefore, the Respondent, who has been in the securities industry for twenty-five (25) years, cannot claim that he did not know the rule.

¶ 48 The corollary to this rule is that a representative must make sure that the information on his client is up to date, which the Respondent apparently failed to do.

¶ 49 If the Respondent had met his obligations as a registered representative and had conducted himself appropriately, he would certainly have discovered, as was revealed at the hearing, that the Four Pensioners did not know Me SL and had received no explanation relative to signing the power of attorney.

¶ 50 As ruled previously, the Hearing Panel rejects the Respondent's argument that the Pensioners were not his clients.

¶ 51 The Hearing Panel is of the opinion that the Respondent voluntarily turned a blind eye where the Four Pensioners were concerned, even though he claims that the latter were not his clients, for he received or saw the documents that they had signed, including the powers of attorney.

¶ 52 For these reasons, the Hearing Panel is of the opinion that Counts 14 to 17 are well founded and finds the Respondent guilty on said counts.

COUNTS 18 to 22 and 40 – Participation in a stratagem

¶ 53 IIROC has charged the Respondent with having participated, between November 2002 and February 2003, in a stratagem by which his clients, MD, FG, RT, JR and JNT, acquired shares in Lucky 1, in return for

substitution in their locked-in retirement accounts of a large portion of their pension funds, totalling \$1,489,190.90, to benefit CL, an individual with whom the Respondent had done business and whose holding company, namely Inter-Franchise, was a client of the Respondent and a shareholder of Lucky 1, all without the knowledge and the understanding of the Pensioners and to their detriment, thereby engaging in conduct unbecoming or prejudicial to the public interest, contrary to By-law 29.1.

¶ 54 IIROC has also charged the Respondent with having participated, around February 2004, in a stratagem by which 1,950,000 shares in Multimedia were purchased by his clients MD, JR, RT, JNT, AL and GM, to benefit other clients of the Respondent with whom the latter had done business, all without the knowledge and the understanding of the aforesaid clients MD, JR, RT, JNT, AL and GM and to their detriment, thereby engaging in conduct unbecoming or prejudicial to the public interest, contrary to Association By-law 29.1.

The evidence

The Pensioners

¶ 55 During 2001 and 2002, the Pensioners were introduced to CL at information meetings which the latter led to promote investment clubs that enable their members to invest as a group in small Canadian corporations with a high potential for return as well as certain tax advantages on the gains that are realized.

¶ 56 Based on the assurances given by CL, that 1) this investment would bring a return in the order of 35% to 40% over a period of three (3) years; that 2) he, CL, used qualified professionals; and that 3) their pension funds would be maintained with a recognized financial institution as the trustee, the Pensioners decided to invest, in "Le Club des présidents", an overall sum of approximately \$2.9 million, namely their entire pension fund which they had accumulated over the course of their employment with CN.

¶ 57 The Pensioners had little or no investment knowledge.

¶ 58 Between September 2002 and December 2004, the Pensioners opened LIRA accounts with iForum, to which they transferred their pension funds.

¶ 59 The Respondent was the registered representative for the Pensioners' accounts.

¶ 60 The Pensioners did not know the Respondent, never met him, nor did they ever talk to him about their investment objectives, their risk tolerance, or the investments they had made.

¶ 61 Between September 2002 and the end of December 2004, the Pensioners had collectively invested approximately \$2.7 million from their pension funds, based on the "Club des présidents" business model. The promoter of the "Club des présidents" was Inter-Franchise, a corporation headed by CL, whose business partners were, among others, Lucky 1, Multimedia, LVFH and Pulse, whose principals were business contacts of the Respondent.

¶ 62 In June 2005, the Pensioners realized that not only was their investment in "Club des présidents" not yielding the anticipated revenues, but that the initial market value of their pension funds had decreased by nearly 80%, to approximately \$550,000.

¶ 63 That is when they sent iForum and the Respondent a formal notice demanding reimbursement of their loss, among other things.

The stratagem

¶ 64 CL was a businessman who set up business models to incite investors to become members or sponsors of an investment club, such as "Club des presidents", whose objective, he said, was to invest in companies with strong potential for a return, in addition to offering tax advantages for investors.

¶ 65 In the matter before us, without going into all the details regarding the numerous transactions - said transactions having been described in detail by the IIROC investigator and confirmed by the numerous documents filed at the hearing¹¹ - the evidence has shown that these transactions, summarized below in table

¹¹ See exhibits P-216, P-243, P256, P-285, P-305, P-320, P-334, P-391 and P-713

form, were executed following the transfer of the Pensioners' pension funds to LIRA accounts at iForum, for which the Respondent was the registered representative.

\$ invested	Transactions	Beneficiaries
\$1,489,190	<ul style="list-style-type: none"> Acquisition by the Pensioners of 1,600,000 shares in Lucky 1, at an average price of \$.93 per share, which shares had recently been acquired by Inter-Franchise at a price of \$.10 per share, by virtue of a call option granted it by Pulse 	Inter-Franchise, of which CL was the president
\$350,000	<ul style="list-style-type: none"> Acquisition by the Pensioners, by way of a private sale, <ol style="list-style-type: none"> of 1 million shares in Multimedia for a total price of \$50,000, and of \$300,000 in convertible debentures in Multimedia 	Multimedia and Inter-Franchise Following the private sale, Multimedia (beneficiary of the services) allegedly signed a contract for services (marketing) with Inter-Franchise (provider of the services) by virtue of which Inter-Franchise received \$100,000, plus 1,000,000 shares in Multimedia
\$450,000	<ul style="list-style-type: none"> Acquisition by the Pensioners, by way of a private sale, of 550,000 shares in Lucky 1, at a price of \$.82 per share. 	Lucky 1, 18% of whose outstanding shares were held by Inter-Franchise in May 2003
\$387,000	<ul style="list-style-type: none"> Acquisition by the Pensioners, on the secondary market, of 1,950,000 shares in Multimedia at an average price of about \$.20 per share 	The sellers, Inter-Franchise and BR, who was CL's right arm, for 1,565,000 of the shares and the following sellers: friends and clients of the Respondent, and the Respondent himself, for the remainder of the 385,000 shares Inter-Franchise and BR had acquired their shares previously at prices ranging from \$.05-\$.07 per share, and the other sellers had acquired theirs at prices substantially below \$.20 per share

¶ 66 The evidence also revealed that the total market value of the Pensioners' portfolios had, by the end of June 2005, melted away like snow on a sunny day, and now represented only around 20% of the initial pension fund amount transferred to iForum in 2002 and 2003.

Participation of the Respondent

¶ 67 The Respondent had known CL since 2000. He had participated with the latter

- i) in the MlXpertS inc. matter, as the representative of one of CL's investor groups, known as Club de placement GPS enr., and
- ii) in the matter of Produits Forestiers Aventure inc., a company owned by Mr. Alain Brunet which had invested in another club, namely the "Club des présidents GPS", which matter was the object of legal action against CL and the Respondent and for which they were jointly ordered to pay \$400,000.

¶ 68 Inter-Franchise, of which CL was the president, was a client of the Respondent.

¶ 69 The Respondent introduced CL to the senior management at iForum in regard to setting up Inter-Franchise's business plan concerning the "Club des présidents".

¶ 70 The Respondent recommended the Pensioners to iForum at the request of a colleague from 1998, who was an employee of iForum Financial Services, iForum's sister company, even though he knew that the Pensioners were part of one of CL's "Club des présidents" investment clubs.

¶ 71 It was the Respondent who, as president of a numbered company in Québec, negotiated the Lucky 1 call option that was granted to Inter-Franchise by Pulse; the numbered company, of which the Respondent was the sole officer, had been formed by the Respondent as a wholly-owned subsidiary of Pulse, and Pulse had appointed it its Mandatary for purposes of awarding the option to Inter-Franchise.

¶ 72 The Respondent knew Me SL before the Pensioners became his clients at iForum; indeed, Me SL represented the corporations in which the Pensioners later invested. What's more, it was the Respondent who received and executed the instructions from Me SL regarding the amounts payable by virtue of the powers of attorney.

¶ 73 The Respondent received instructions from CL to register the Lucky 1 share certificates in the name of the Pensioners and, as the representative of the issuer, he forwarded these instructions to the transfer agent.

¶ 74 Most of the information, emails, powers of attorney, letters of indemnity, share certificates and other documents relating to the trades effected by the Pensioners in their accounts at iForum were received or forwarded by the Respondent. The Respondent was the intermediary with the various parties involved, including JL, CL's sister, who was a key player in the trades.

¶ 75 The Respondent was the representative of both the buyers (namely the Pensioners) and the sellers (principally Inter-Franchise and BR, who was CL's right arm) in the secondary market trades involving Multimedia securities.

IIROC's argument

¶ 76 The Respondent had known CL since 2000 (whereas he initially testified to the contrary) with whom he had been involved in two matters prior to the Pensioners' case, among them the Produits Forestiers Aventure matter mentioned in paragraph 67 ii), for which both were jointly ordered to pay \$400,000 in damages and interest.

¶ 77 The Respondent participated in achieving the aims of CL's stratagem, namely to withdraw the Pensioners' pension fund money from their accounts with iForum in order to invest it in Inter-Franchise or for the benefit of CL and his associates.

¶ 78 The Respondent had information about CL that any registered representative whose conduct was in compliance with By-law 29.1 of the IIROC rules would have mentioned to anyone intending to venture into investing in a company connected with CL.

¶ 79 The Respondent's testimony during the hearing is surprising and implausible, to say the least; consequently, it should be set aside as not credible.

¶ 80 In the Lucky 1 share purchase transaction mentioned in paragraphs 6 to 10 of the Notice of Hearing, it was the Respondent who found the investor, Pulse, whose sole shareholder is one of his long-standing clients; and it was the Respondent who was the Mandatary in realizing the trade at an advantageous price for the investor and for his other client, Inter-Franchise.

¶ 81 Finally, the Respondent did not in any way respect the regulations that applied to him as an IIROC registrant, namely "to observe high standards of ethics and conduct in the transaction of their business."

The Respondent's argument

¶ 82 The Pensioners knowingly invested their pension funds in CL's "Club des présidents" and fully understood the documents they signed, which were often blank, including the powers of attorney in favour of Me SL.

¶ 83 The Pensioners' principal motive for investing in CL's "Club des présidents" was to withdraw the money

from their pension funds before the deadlines imposed by the tax legislation.

¶ 84 A stratagem implies an attempt to swindle someone for the benefit of another person, inasmuch as the victim is unaware of the swindle. However, the Pensioners did not have “clean hands”, so therefore, there was no stratagem.

¶ 85 Even if a stratagem existed, the Respondent did not knowingly participate in it. The Respondent only became aware of the plan involving the Pensioners after their decision to invest in the “Club des présidents”.

¶ 86 The Respondent never considered the Pensioners his clients, and never spoke to them or made recommendations to them.

Analysis

¶ 87 The Hearing Panel read with interest the decision of the Hearing Committee, dated August 9, 2005, in the Shanahan¹² matter, which decision was upheld on appeal, and which is excerpted below:

"The degree of proof required in disciplinary proceedings involving a registrant is such that before a tribunal reaches a conclusion of fact, the tribunal must be reasonably satisfied that the fact occurred; and whether the tribunal is so satisfied depends on the totality of the circumstances including the nature and consequences of the facts to be proved, the seriousness of an allegation made, and the gravity of the consequences that will flow from a particular finding."

"Participation" has been defined as evidence needed to establish, to respond or to engage in some affirmative conduct to aid in the success of the venture."

¶ 88 The Hearing Panel is of the opinion that IIROC presented strong and not merely circumstantial evidence regarding the existence of a stratagem, and that the Respondent, while not the author of said stratagem, participated in it, even before the Pensioners became his clients.

¶ 89 The Hearing Panel is also of the opinion that the Respondent's testimony is not credible regarding his role as a go-between in this matter.

If the Pensioners were not really his clients as he claims, why would he have been involved throughout the process? Why did he recruit Pulse and act as mandatary in executing the trades in Lucky 1? Was he paid commissions? Why was he aware of so many details that he could not have known unless he participated in the stratagem? Why would he have been the contact person for all of the parties except the Pensioners? The Respondent had been burned in his prior business dealings with CL, in the matter of Alain Brunet and Produits Forestiers Aventure inc., so why continue to deal with him unless it was to enable CL to make money and acquit himself of his portion of the \$400,000 payment which the Respondent and he had jointly been ordered to pay?

¶ 90 The Hearing Panel already ruled earlier in this decision that the Respondent was, for all legal purposes, the registered representative of the Pensioners and that, in this capacity, he completely failed in his obligations by virtue of By-law 29.1 of the IIROC rules.

¶ 91 What's more, the Hearing Panel dismisses the Respondent's argument that the Pensioners did not have "clean hands"; they may have been naïve and displayed a certain amount of greed and lack of judgment, but the Hearing Panel believes that they really were victims of persons who were unscrupulous in achieving their ends; furthermore, it is not their behaviour that is in question, but that of the Respondent.

¶ 92 For these reasons, the Hearing Panel is of the opinion that Counts 18 to 22 and 40 are well-founded and find the Respondent guilty in their regard.

COUNTS 41 and 42 – Off-Book Transactions

¹² Shanahan matter, 2006 I.D.A.C.D. No 5, Bulletin No 3504, January 23, 2006

- ¶ 93 IIROC has charged the Respondent, while a registered representative (mutual funds), with having,
- i) on the one hand, facilitated the sale of shares in Chemin du Golf to friends, and
 - ii) on the other hand, had under his responsibility the accounts of thirty-eight (38) clients

which, in both cases, were or included securities other than mutual fund securities, without said securities being recorded in the books of iForum, contrary to Association By-law 29.1.

The evidence

¶ 94 The shares in Chemin du Golf that were the object of private investments, as well as many of the securities held in the 38 accounts under the Respondent's responsibility, were not mutual fund securities.

¶ 95 The 38 client accounts represented a total amount of \$1,962,509¹³. The securities were held in accounts opened with B2B Trust, which was not iForum's carrying broker, meaning that they were off-book at iForum.

¶ 96 The Respondent was directly and actively involved in the trading.

IIROC's argument

¶ 97 The large number of clients and transactions involved is not an "accident" as the Respondent asserts.

¶ 98 The Respondent did not have the necessary approval to make these kinds of trades.

¶ 99 Even if the Respondent had been a representative with unrestricted practice, he could not have been responsible for accounts that were opened elsewhere than with iForum's carrying broker, unless they only involved mutual funds, which is not the case.

The Respondent's argument

¶ 100 The Respondent followed his employer's policies with respect to the accounts with B2B Trust; if anyone was at fault it was the employer.

¶ 101 In the case of the private investments, the persons contacted were family friends.

Analysis

¶ 102 The rules are clear as to what a registered representative (mutual funds) may and may not do by virtue of his approval¹⁴.

¶ 103 The Respondent has admitted having facilitated investments in Chemin du Golf by referring his friends, explaining to them what the investment consisted of, and filling out the required documentation.

¶ 104 The Hearing Panel dismisses the Respondent's arguments.

¶ 105 The Respondent had to know and comply with the IIROC rules; here again, the Hearing Panel deems the Respondent to have acted in a careless manner that is tantamount to wilfully turning a blind eye. - -

¶ 106 For these reasons, the Hearing Panel is of the opinion that Counts 41 and 42 are well-founded, and finds the Respondent guilty in their regard.

COUNTS 43 AND 44 - Failure to provide the information required

¶ 107 IIROC has charged the Respondent with neglecting to submit or to update, since his registration in 2001, as the applicable regulations require, the information regarding officer and director positions he held (By-law 40 - sections 40.3 (1) and 40.5 (1) of the IIROC Rulebook), along with information regarding any civil suits and sentences pending against him (Policy 8, sections A.1 (a) and B .1 (a)).

The evidence

¶ 108 IIROC filed the Respondent's registration form as evidence on June 27, 2001. It was signed by the latter

¹³ See exhibit P-719

¹⁴ IIROC Dealer Member Rule 7.18

and his employer, iForum; this form made no reference to the Respondent's activities in the following companies:

- i) minority shareholder in an import-export company incorporated in Québec, on June 8, 1998¹⁵;
- ii) president, director and sole shareholder of a personal portfolio company constituted in Québec in December 2003¹⁶; and
- iii) administrator of an insurance brokerage effective January 1998¹⁷.

¶ 109 IIROC also filed as evidence a Québec Superior Court¹⁸ judgment confirming that a civil suit had been instituted against the Respondent in September 2001, and that the Respondent had been jointly ordered, in March 2005, to pay \$400,000 in damages.¹⁹

¶ 110 The manager of the IIROC Registration Department has testified that, according to the Respondent's record with IIROC during the material period, the Respondent did not report his business activities, or the civil suit and judgment against him, as required.

IIROC's argument

¶ 111 By virtue of the provisions cited in Count 43, the Respondent was obligated to disclose, on his registration form signed June 27, 2001, any positions he held other than at iForum, which he did not do.

¶ 112 The Respondent was obligated to update the information on his registration form, notably by informing his employer at the time, of the civil suit and, subsequently, of the judgment rendered against him. Yet the form, deposited by the Respondent's employer at the time, contains no such disclosure, contrary to the rules cited under Count 44.

The Respondent's argument.

¶ 113 The Respondent argues that he was not obligated to disclose the missing information to IIROC, because he had done so to other organizations, such as the Autorité des marchés financiers and the Bureau des services financiers.

Analysis

¶ 114 In its argument, IIROC refers the Hearing Panel to certain judgments that relate to these two counts. The Hearing Panel has examined these judgments and retains, in particular, the following excerpts from the Rahmani matter²⁰.

- *"The investment industry is founded upon trust and responsibility. Trust between client and registered representative, trust between the registered representative and his or her employer, and trust between the registered representative and the Association. To ensure that these trust relationships exist, the registered representative, his or her employer, and the Association, all must assume specific responsibilities. For the registered representative, one of those specific responsibilities is complete and timely disclosure to the Association of all matters which might affect the registered representative's ability to operate within the industry. Without such disclosure, the Association is not able to carry out its responsibility of regulating the industry.*

- *"In any event, the Respondent has the personal responsibility for ensuring that his disclosure forms such as the Renewal Forms and the Second Application Forms are accurate. As a professional in the investment industry, he cannot hide behind the claim that his employer completed the form and that he merely signed it. He has a direct responsibility to the Association to ensure that the disclosure forms he signs are accurate and complete. (...) It is*

¹⁵ See exhibit P-698

¹⁶ See exhibit P-699

¹⁷ See exhibit P-701

¹⁸ See S.C. No 500-05-067689-016

¹⁹ See exhibit P-137

²⁰ Rahmani : 2004 I.D.A.C.D. no 48, bulletin no 3326, September 3, 2004

his responsibility to ensure that what he signs and what is filed with the Association is accurate and complete."

¶ 115 The required disclosure was not made, and the rules in this regard are clear. The Hearing Panel rejects the Respondent's argument.

¶ 116 For these reasons, the Hearing Panel is of the opinion that Counts 43 and 44 are well-founded, and finds the Respondent guilty in their regard.

DECISION

¶ 117 **CONSEQUENTLY**, the undersigned declare the Respondent guilty of Counts 1 to 44.

¶ 118 The parties shall be summoned to a penalty hearing, on a date to be determined by the National Hearing Coordinator, in order to hear their representations regarding penalties.

Me Claire Richer, Chair of the Hearing Panel

Ms. Danielle Le May, Member of the Hearing Panel

Élaine C. Phénix, Member of the Hearing Panel

* * * * *

APPENDIX

Full Text of the Charges in the Matter

I. - FAILING TO LEARN AND REMAIN INFORMED OF THE ESSENTIAL FACTS RELATIVE TO HIS CLIENTS

1. Toward September 2002, while a registered representative (mutual funds) in the employ of former IDA Member firm iForum Securities Inc., the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to his client MD, in that he opened an account for this client and signed his new client account form without obtaining from the client the relevant personal and financial information that concerned him, and without making sure that the recorded facts were true and accurate, thereby contravening Association Regulation 1300.1 (a).
2. Toward December 2002, while a registered representative (mutual funds) in the employ of former IDA Member firm iForum Securities Inc., the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to his client JR, in that he opened an account for this client and signed his new client account form without obtaining from the client the relevant personal and financial information that concerned him, and without making sure that the recorded facts were true and accurate, thereby contravening Association Regulation 1300.1 (a).
3. Toward December 2002, while a registered representative (mutual funds) in the employ of former IDA Member firm iForum Securities Inc., the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to his client RT, in that he opened an account for this client and signed his new client account form without obtaining from the client the relevant personal and financial information that concerned him, and without making sure that the recorded facts were true and accurate, thereby contravening Association Regulation 1300.1 (a).
4. Toward February 2003, while a registered representative (mutual funds) in the employ of former IDA Member firm iForum Securities Inc., the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to his client AL, in that he opened an account for this client and signed his new client account form without obtaining from the client the relevant personal and financial

information that concerned him, and without making sure that the recorded facts were true and accurate, thereby contravening Association Regulation 1300.1 (a).

5. Toward July 2003, while a registered representative (mutual funds) in the employ of former IDA Member firm iForum Securities Inc., the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to his client GM, in that he opened an account for this client and signed his new client account form without obtaining from the client the relevant personal and financial information that concerned him, and without making sure that the recorded facts were true and accurate, thereby contravening Association Regulation 1300.1 (a).

II. - INVESTMENTS IN LUCKY 1 ENTERPRISES INC. AND LASVEGASFROMHOME.COM ENTERTAINMENT INC.

- Transactions not permitted under the terms of the approval granted by the Association to the Respondent as a registered representative (mutual funds)

- Lucky 1 Enterprises Inc.

6. Toward November 2002, while employed with former Member firm iForum Securities Inc., following instructions given by his client MD to a mandatary, the Respondent effected trades in the accounts of said client, for a value of \$377,894.40 and concerning 400,000 shares in Lucky 1 Enterprises Inc., a security other than a mutual fund security, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby contravening Association Bylaw 18.7 and By-law 29.1.
7. Toward December 2002, while employed with former Member firm iForum Securities Inc., following instructions given by his client FG to a mandatary, the Respondent effected trades in the accounts of said client, for a value of \$372,072 and concerning 400,000 shares in Lucky 1 Enterprises Inc., a security other than a mutual fund security, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby contravening Association By-law 18.7 and By-law 29.1.
8. Toward February 2003, while employed with former Member firm iForum Securities Inc., following instructions given by his client JR to a mandatary, the Respondent effected trades in the accounts of said client, for a value of \$313,530 and concerning 350,000 shares in Lucky 1 Enterprises Inc., a security other than a mutual fund security, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby contravening Association By-law 18.7 and By-law 29.1.
9. Toward December 2002, while employed with former Member firm iForum Securities Inc., following instructions given by his client RT to a mandatary, the Respondent effected trades in the accounts of said client, for a value of \$325,563 and concerning 350,000 shares in Lucky 1 Enterprises Inc., a security other than a mutual fund security, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby contravening Association By-law 18.7 and By-law 29.1.
10. Toward February 2003, while employed with former Member firm iForum Securities Inc., following instructions given by his client JNT to a mandatary, the Respondent effected trades in the accounts of said client, for a value of \$100,131.50 and concerning 100,000 shares in Lucky 1 Enterprises Inc., a security other than a mutual fund security, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby contravening Association Bylaw 18.7 and By-law 29.1.
11. In December 2003, while employed with former Member firm iForum Securities Inc., the Respondent effected trades in the account of his client AL, for a total value of \$150,000 and concerning 250,000 shares in Lucky 1 Enterprises Inc., a security other than a mutual fund security, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby contravening Association Bylaw 18.7 and By-law 29.1.

permit him to effect such transactions, thereby contravening Association Bylaw 18.7 and By-law 29.1.

12. In August 2003, while employed with former Member firm iForum Securities Inc., the Respondent effected trades in the account of his client GM, for total value of \$300,000 and concerning 300,000 shares in Lucky 1 Enterprises Inc., a security other than a mutual fund security, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby contravening Association Bylaw 18.7 and By-law 29.1.

- LasVegasFromHome.com Entertainment inc.

13. Around May 2002, while employed with former Member firm iForum Securities Inc., the Respondent accepted orders from his client RB to purchase a total of 300,000 debentures in LasVegasFromHome.com Entertainment inc., for a total of \$300,000, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), prohibited him from accepting such orders, thereby contravening Association By-law 18.7 and By-law 29.1.

- Failure to use due diligence when accepting instructions given by a mandatary

14. Toward November 2002, while employed with former Member firm iForum Securities Inc., as a registered representative (mutual funds), the Respondent agreed to act in accordance with the power of attorney given by his client MD to Me SL, an attorney with whom the Respondent was acquainted, when he knew or should have known that said client had signed said power of attorney without knowing his mandatary and without understanding the tenor and the implications of said power of attorney, thereby engaging in business conduct unbecoming or detrimental to the public interest, and contrary to Association By-law 29.1.
15. Toward December 2002, while employed with former Member firm iForum Securities Inc., where he was a registered representative (mutual funds), the Respondent agreed to act in accordance with the power of attorney given by his client RT to Me SL, an attorney with whom the Respondent was acquainted, when he knew or should have known that said client had signed said power of attorney without knowing his mandatary and without understanding the tenor and the implications of said power of attorney, thereby engaging in business conduct unbecoming or detrimental to the public interest, and contrary to Association Bylaw 29.1.
16. Toward February 2003, while employed with former Member firm iForum Securities Inc., where he was a registered representative (mutual funds), the Respondent agreed to act in accordance with the power of attorney given by his client JR to Me SL, an attorney with whom the Respondent was acquainted, when he knew or should have known that said client had signed said power of attorney without knowing his mandatary and without understanding the tenor and the 5 implications of said power of attorney, thereby engaging in business conduct unbecoming or detrimental to the public interest, and contrary to Association Bylaw 29.1.
17. Toward December 2003, while employed with former Member firm iForum Securities Inc., where he was a registered representative (mutual funds), the Respondent agreed to act in accordance with the power of attorney given by his client AL to Me SL, an attorney with whom the Respondent was acquainted, when he knew or should have known that said client had signed said power of attorney without knowing his mandatary and without understanding the tenor and the implications of said power of attorney, thereby engaging in business conduct unbecoming or detrimental to the public interest, and contrary to Association Bylaw 29.1.

- Participation in a stratagem

18. Toward November 2002, while employed with former Member firm iForum Securities Inc., where he was a registered representative (mutual funds), the Respondent engaged in conduct unbecoming or detrimental to the public interest, contrary to Association By-law 29.1, by participating in a stratagem by which his client MD acquired shares in Lucky 1 Enterprises Inc., in return for substitution in his locked-in retirement

account of a large portion of his pension totalling \$377,894.40, to benefit an individual with whom the Respondent had done business and whose holding company was a client of the Respondent and a shareholder of Lucky 1 Enterprises Inc., all without the knowledge and the understanding of the client MD and to his detriment.

19. Toward December 2002, while employed with former Member firm iForum Securities Inc., where he was a registered representative (mutual funds), the Respondent engaged in conduct unbecoming or detrimental to the public interest, contrary to Association By-law 29.1, by participating in a stratagem by which his client FG acquired shares in Lucky 1 Enterprises Inc., in return for substitution in his locked-in retirement account of a large portion of his pension totalling \$372,072, to benefit an individual with whom the Respondent had done business and whose holding company was a client of the Respondent and a shareholder of Lucky 1 Enterprises Inc., all without the knowledge and the understanding of the client FG and to his detriment.
20. Toward December 2002, while employed with former Member firm iForum Securities Inc., where he was a registered representative (mutual funds), the Respondent engaged in conduct unbecoming or detrimental to the public interest, contrary to Association By-law 29.1, by participating in a stratagem by which his client RT acquired shares in Lucky 1 Enterprises Inc., in return for substitution in his locked-in retirement account of a large portion of his pension totalling \$325,563, to benefit an individual with whom the Respondent had done business and whose holding company was a client of the Respondent and a shareholder of Lucky 1 Enterprises Inc., all without the knowledge and the understanding of the client RT and to his detriment. 6
21. Toward February 2003, while employed with former Member firm iForum Securities Inc., where he was a registered representative (mutual funds), the Respondent engaged in conduct unbecoming or detrimental to the public interest, contrary to Association By-law 29.1, by participating in a stratagem by which his client JR acquired shares in Lucky 1 Enterprises Inc., in return for substitution in his locked-in retirement account of a large portion of his pension totalling \$313,530, to benefit an individual with whom the Respondent had done business and whose holding company was a client of the Respondent and a shareholder of Lucky 1 Enterprises Inc., all without the knowledge and the understanding of the client JR and to his detriment.
22. Toward February 2003, while employed with former Member firm iForum Securities Inc., where he was a registered representative (mutual funds), the Respondent engaged in conduct unbecoming or detrimental to the public interest, contrary to Association By-law 29.1, by participating in a stratagem by which his client JNT acquired shares in Lucky 1 Enterprises Inc., in return for substitution in his locked-in retirement account of a large portion of his pension totalling \$100,131.50, to benefit an individual with whom the Respondent had done business and whose holding company was a client of the Respondent and a shareholder of Lucky 1 Enterprises Inc., all without the knowledge and the understanding of the client JNT and to his detriment.

III. - INVESTMENTS IN MD MULTIMEDIA INC.

- Transactions not permitted under the terms of the approval granted by the Association to the Respondent as a registered representative (mutual funds)

- Private investments

23. Around April and May 2003, while employed with former Member firm iForum Securities Inc., following instructions given by his client FG to a mandatary, the Respondent effected trades in said client's account for a value of \$50,000 in respect of 1,000,000 shares in MD Multimedia Inc., a security other than a mutual fund security, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby contravening Association By-law 18.7 and By-law 29.1.
24. Around April and May 2003, while employed with former Member firm iForum Securities Inc., following

instructions given by his client RB to a mandatary, the Respondent effected trades in said client's account for a value of \$50,000 in respect of 1,000,000 shares in MD Multimedia Inc., a security other than a mutual fund security, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby contravening Association By-law 18.7 and By-law 29.1. 7

25. Around April and May 2003, while employed with former Member firm iForum Securities Inc., following instructions given by his client JR to a mandatary, the Respondent effected trades in said client's account for a value of \$150,000 in respect of 150,000 debentures in MD Multimedia Inc., a security other than a mutual fund security, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby contravening Association By-law 18.7 and By-law 29.1.
26. Around April and May 2003, while employed with former Member firm iForum Securities Inc., following instructions given by his client RT to a mandatary, the Respondent effected trades in said client's account for a value of \$150,000 in respect of 150,000 debentures in MD Multimedia Inc., a security other than a mutual fund security, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby contravening Association By-law 18.7 and By-law 29.1.

- Trading on the secondary market

27. In February 2004, while employed with former Member firm iForum Securities Inc., the Respondent entered orders from his client MD to purchase a total of 70,000 shares in MD Multimedia Inc., for a value of \$14,000, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby violating Association By-law 29.1.
28. In February 2004, while employed with former Member firm iForum Securities Inc., the Respondent entered orders from his client FG to purchase a total of 492,000 shares in MD Multimedia Inc., for a value of \$100,145, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby violating Association By-law 29.1.
29. In February 2004, while employed with former Member firm iForum Securities Inc., the Respondent entered orders from his client GM to purchase a total of 850,000 shares in MD Multimedia Inc., for a value of \$170,550, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby violating Association By-law 29.1.
30. In February 2004, while employed with former Member firm iForum Securities Inc., the Respondent entered orders from his client JR to purchase a total of 100,000 shares in MD Multimedia Inc., for a value of \$20,135, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby violating Association By-law 29.1.
31. In February 2004, while employed with former Member firm iForum Securities Inc., the Respondent entered orders from his client RT to purchase a total of 223,000 shares in MD Multimedia Inc., for a value of \$40,070, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby violating Association By-law 29.1.
32. In February 2004, while employed with former Member firm iForum Securities Inc., the Respondent entered orders from his client JNT to purchase a total of 215,000 shares in MD Multimedia Inc., for a value of \$44,135, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby violating Association

By-law 29.1.

33. From August 2003 to February 2004, while employed with former Member firm iForum Securities Inc., the Respondent entered orders from his client Inter- Franchise inc. to purchase a total of 718,000 shares in MD Multimedia Inc., for a value of \$50,260, and to sell a total of 680,000 shares in MD Multimedia Inc., for a value of \$138,500, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby violating Association By-law 29.1.
34. In February 2004, while employed with former Member firm iForum Securities Inc., the Respondent entered orders from his client BR to sell a total of 1,843,900 shares in MD Multimedia Inc., for a value of \$331,475, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby violating Association By-law 29.1.
35. In February 2004, while employed with former Member firm iForum Securities Inc., the Respondent entered orders from his client JV to purchase 25,000 shares in MD Multimedia Inc., for a value of \$2,880, and to sell 25,000 shares in MD Multimedia Inc., for a value of \$4,750, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby violating Association By-law 29.1.
36. Between February and May 2004, while employed with former Member firm iForum Securities Inc., the Respondent entered orders from his client JPM to purchase a total of 40,000 shares in MD Multimedia Inc., for a value of \$4,800, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby violating Association By-law 29.1.
37. Between February and May 2004, while employed with former Member firm iForum Securities Inc., the Respondent entered orders from his client MA to purchase a total of 45,000 shares in MD Multimedia Inc., for a value of \$5,900, and to sell 29,500 shares in MD Multimedia Inc., for a value of \$5,605, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby violating Association By-law 29.1.
38. In February 2004, while employed with former Member firm iForum Securities Inc., the Respondent entered orders from his client JS to sell 500 shares in MD Multimedia Inc., for a value of \$95, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby violating Association By-law 29.1.
39. In November 2004, while employed with former Member firm iForum Securities Inc., the Respondent entered orders from his client VB to purchase 30,000 shares in MD Multimedia Inc., for a value of \$2,400, whereas the approval granted by the Association to the Respondent, as a registered representative (mutual funds), did not permit him to effect such transactions, thereby violating Association By-law 29.1.

- Participation in a stratagem

40. Around February 2004, while employed with former Member firm iForum Securities Inc. as a registered representative (mutual funds), the Respondent engaged in conduct unbecoming or detrimental to the public interest, contrary to Association By-law 29.1, by participating in a stratagem by which 1,950,000 shares in MD Multimedia Inc. were purchased by his six (6) clients MD, JR, RT, JNT, GM and AL in order to benefit other clients of the Respondent with whom the latter had done business, all without the knowledge and the understanding of the aforesaid six (6) clients and to their detriment.

IV. - OFF-BOOK TRANSACTIONS

41. In 2003 and 2004, while a registered representative (mutual funds) in the employ of former Member firm iForum Securities Inc., the Respondent engaged in business conduct unbecoming or detrimental to the public interest, by facilitating the sale of shares in Immobilière Chemin du Golf ltée, which shares were

not a mutual fund security and were not recorded in the books of iForum Securities Inc., thereby contravening Association By-law 29.1.

42. On November 3, 2005, while a registered representative (mutual funds) in the employ of former Member firm iForum Securities Inc., and limited to trading mutual fund securities, the Respondent had under his responsibility the accounts of thirtyeight (38) clients of B2B Trust, a federally chartered trust company, where said clients held approximately twenty (20) different securities other than mutual fund securities, with an approximate book value of \$1,962,509, without said securities being recorded in the books of iForum Securities Inc., thereby engaging in business conduct unbecoming and contrary to Association By-law 29.1.

V. - FAILURE TO PROVIDE THE INFORMATION REQUIRED BY THE ASSOCIATION

43. From the time of his approval in 2001 as a registered representative (mutual funds), and until his resignation in 2006, the Respondent failed to provide and to update the information required by the Association on the Uniform Application for Registration/Approval, concerning officer and director positions he held at Placements Davcom inc., Les courtiers d'assurances Epycom inc. and 9064-6753 Québec inc., contrary to Association By-laws 18.3 and 18.11, which have since become By-laws 40.3 (1) and 40.5 (1) and sections A.1(a) and B.1(a) of Policy 8.
44. While a registered representative (mutual funds) in the employ of former Member firm iForum Securities Inc., the Respondent failed to report to the Association in 2001 that he was the object of a civil suit, in which he was condemned to pay \$400,000 in damages in 2005, whereas this information is required by the Association, thereby contravening Association By-laws 18.3 and 18.11, which have since become By-laws 40.3 (1) and 40.5 (1) and sections A.1(a) and B.1(a) of Policy 8.

Copyright © 2009 Investment Industry Regulatory Organization of Canada. All Rights Reserved.