Unofficial English Translation

Re Couture

IN THE MATTER OF:

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

AND

ÉRIC COUTURE

2009 IIROC 45

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

Hearing: September 16, 2009
Decision: October 20, 2009
(24 pars.)

Hearing Panel:
Ms. Lise Casgrain
Mr. Jean André Élie
Me Claude Bisson, Chair

Appearances:
Me Sébastien Dyotte, for IIROC
Me Yves Robillard (Bélanger Sauvé), for Éric Couture

DECISION ON SETTLEMENT AGREEMENT

¶ 1 Pursuant to Rules 20.35 to 20.40 of the IIROC Dealer Member Rules and Rule 15 of the Rules of Practice and Procedure, the parties submit to the Hearing Panel the Settlement Agreement which they signed in accordance with Rule 14 of the Rules of Practice and Procedure.

¶ 2 In paragraph 71 of the Agreement, the original of which was filed as exhibit **P-1** , we read :

> [TRANSLATION]
>
> 71. The Respondent admits to the following contraventions of IIROC Rules and Guidance, and IDA By-Laws, Regulations or Policies;
>
> **Securities other than mutual fund securities held off-book**
>
> **Count 1**
>
> In November, 2005, while in the employ of former Member firm iForum Securities Inc., the Respondent had under his responsibility the accounts of approximately 35 clients of B2B Trust, a federally chartered trust company,

where said clients held promissory notes from MRACS Management Ltd. and Real Vest Investments Ltd., namely securities other than mutual fund securities, with an approximate book value of 1.5 million dollars, 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.

Failure to disclose a conflict of interest

Count 2

Between December 2004 and October 2005, while employed with former Member firm iForum Securities Inc., the Respondent failed to inform his clients of the existence of a conflict of interest between iForum Securities Inc. and Mount Real Corporation before they purchased or renewed various promissory notes from MRACS Management Ltd. and Real Vest Investments Ltd., thereby engaging in business conduct unbecoming and contrary to By-law 29.1.

¶ 3 Paragraphs 72, 73 and 74 of the Agreement (P-1) read:

[TRANSLATION]

72. For all counts, 1 and 2, described in paragraph 71, the Respondent agrees to the following aggregate penalties:

    i. A fine in the amount of $35,000.00;

    ii. The requirement that he repeat and pass the *Conduct and Practices Handbook Course*, administered by the Canadian Securities Institute, within six months from the effective date of the Settlement Agreement, as a condition for the maintenance of his approval as a Registered Representative;

    iii. A period of *strict supervision* for twelve (12) months and the requirement that strict supervision reports (Schedule A) be submitted monthly to the IIROC Registration Department, as conditions for the maintenance of his approval as a Registered Representative;

73. Unless ordered otherwise, the fine imposed on the Respondent is payable immediately on the effective date of the Settlement Agreement.

74. Unless otherwise stated, suspensions, bars, expulsions, restrictions and other conditions or terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

¶ 4 On September 16, 2009, the Settlement Agreement (P-1) was submitted to the Hearing Panel for a settlement hearing at which the parties made their representations, the only relevant facts being those contained in the Settlement Agreement, as prescribed by Rule 15.3(1) of the Rules of Practice and Procedure.

¶ 5 The matter was reserved for deliberation on September 16, the parties having been warned at the time that the decision would not be rendered for several weeks, as some of the members of the Hearing Panel would be out of the country.

¶ 6 IIROC Dealer Member Rule 20.36 defines the powers of a Hearing Panel upon conclusion of a settlement hearing: either accept the settlement agreement or reject it. In the face of the contraventions admitted by the respondent, considering their severity, the circumstances and the applicable criteria, it is not up to the

Hearing Panel to substitute itself for the terms of the Agreement; it has only to assess whether the proposed penalties are just and reasonable.

¶ 7 With respect to the facts, paragraph 14 of the Settlement Agreement (P-1) reads:

> [TRANSLATION]
>
> 14. Staff and the Respondent agree with the facts set out in this Section and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

¶ 8 The Respondent's career path is described as follows in paragraphs 15, 16 and 17 of the Settlement Agreement (P-1):

> [TRANSLATION]
>
> 15. The following table summarizes the Respondent's registration history:

Period	Registration	Firm
November 1993 to February 1995	registered representative (mutual funds)	Les Services Investors ltée
March 1995 to June 1995	registered representative (mutual funds)	Midland Walwyn Capital Inc.
June 1995 to December 1997	registered representative with unrestricted practice	Midland Walwyn Capital Inc.
December 1997 to March 2001	registered representative (mutual funds)	Gestion de fonds Norshield ltée
March 2001 to November 2005	registered representative with unrestricted practice	Norshield Securities Inc.. / iForum Securities Inc.
December 2005 to date	registered representative with unrestricted practice	Laurentian Bank Securities Inc.

> 16. Therefore, the Respondent was registered in the employ of two IDA/IIROC-regulated firms in the securities industry since March 2001;
>
> 17. At the material time, the Respondent was in the employ of former IDA Member firm iForum Securities Inc. ("iForum");

¶ 9 The first count alleges that the Respondent contravened By-law 29.1, which concerns the business conduct of various persons, among them the registered representative, which position was held by the Respondent.

¶ 10 The latter admits to having engaged in "business conduct unbecoming".

¶ 11 Moreover, it was not his responsibility to ensure that the off-both transactions referenced in Count 1 were recorded in the books.

¶ 12 The facts recited in the Settlement Agreement (P-1) do not indicate that the Respondent was obligated to check whether the securities had been recorded in the books. Nevertheless, it is a good practice to ensure that this was the case.

¶ 13 If business conduct unbecoming there was, it lies in the fact that the Respondent was responsible for the promissory notes held by clients he represented, and that these promissory notes should have been recorded in the books of his employer, which was not the case. This constitutes regulatory misconduct on his part, even though he did not have a front-line responsibility in this respect.

¶ 14 The situation that led to Count 2 is of greater concern. The moment they purchased the promissory notes or renewed them, the Respondent's clients should have been informed of the conflict of interest between iForum

Securities Inc. and Mount Real Corporation.

¶ 15 As the Settlement Agreement (P-1) shows, the corporations involved were very closely knit and there was a great deal of inter-shareholdership between them, and therefore complex corporate structures.

¶ 16 Some of the Respondent's clients, to whom the latter did not give the opportunity to make an informed decision with regard to their investments, suffered monetary losses, but these losses were not the result of the undisclosed conflict of interest, this non-disclosure being the fault of the Respondent.

¶ 17 Indeed, the Respondent had the obligations recited in paragraphs 65, 66, 67, and 70 of the Settlement Agreement (P-1):

> [TRANSLATION]
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> 65. However, the Respondent should have known that the President and Chief Operating Officer of MRC, Joseph Pettinicchio, was also the President of iForum Financial Network Inc., the majority shareholder of iForum Securities since October 2002, thus placing him in an obvious conflict of interest situation;
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> 66. The Respondent also should have known that MRC had held a 29% interest in Real Vest until 2004;
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> 67. Furthermore, the Respondent should have known that MRC had been the principal shareholder of MRACS until September 30, 2002;
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> 70. Although the Respondent must have known of the existence of this conflict of interest situation, he did not disclose it to his clients whom he advised to purchase or renew promissory notes of Real Vest and MRACS from February 2004 to November 2005;

¶ 18 The Respondent failed in his duty of diligence and caution. As a registered representative with unrestricted practice, he was obligated to know the securities he was offering to his clients, as well as the relationships between the issuing corporations and the broker. He was required to inform his clients of this. Not having done so, his conduct was negligent and reprehensible, but not fraudulent.

¶ 19 Such misconduct has a certain effect on the integrity of the profession and on the investors' perception with respect to trusting the process and the role of the financial representative.

¶ 20 On the other hand, the matter also reveals mitigating circumstances, such as the lack of malicious intent, fraudulent conduct, or premeditation, the absence of a prior disciplinary history, the acknowledgment of responsibility, as well as cooperation with the investigation.

¶ 21 Usually, costs are charged to the Respondent. That is not the case here and, at the hearing, at our request, we were given this explanation: according to the representations made by counsel on September 16, from which we benefited in the transcript of the stenographer's notes (page 84), the present complaint was brought as a result of an extensive investigation of other entities and the matter before us did not require particular research.

¶ 22 Moreover, we have examined the jurisprudence submitted by the parties, as well as the guidelines which, while not imperative, may offer guidance.

¶ 23 We are of the opinion that the various elements of the penalty described in paragraph 3 of this decision constitute a just and reasonable penalty.

¶ 24 **FOR THESE REASONS, OUR HEARING PANEL:**

In application of paragraph 1(a) of By-law 20.36,

ACCEPTS the Settlement Agreement whose conclusions are reproduced in paragraph 3 of this decision.

Montréal, this 20th day of October 2009

Lise Casgrain

Jean André Élie

Claude Bisson, Chair