

**Re Bouchard**

**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**

**MARIO BOUCHARD**

2010 IIROC 13

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

Hearing: March 2 and 15, 2010

Decision: March 30, 2010

(30 pars.)

**Hearing Panel:**

André Valiquette

Jean A. Elie

Lise Casgrain

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**DECISION ON SETTLEMENT AGREEMENT**

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¶ 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 Mario Bouchard (“**the Respondent**”);

¶ 2 An initial 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 Following this initial investigation, the parties had signed a settlement agreement which was heard and rejected by a hearing panel in July 2009;

¶ 4 On or around September 8, 2009, the Respondent was dismissed for cause by his employer National Bank Financial Inc. (hereinafter NBF);

¶ 5 On September 14, 2009, IIROC Staff launched a second investigation following receipt of a ComSet event report regarding a complaint lodged against the Respondent by two of his former clients, "H" and "I", while the Respondent was still employed with NBF;

¶ 6 Both investigations disclosed matters for which the Respondent may be disciplined by a Hearing Panel appointed pursuant to Part C of Schedule C.1 to Transition Rule No. 1 of IIROC (the Hearing Panel);

¶ 7 A second Settlement Agreement was signed by the parties on December 29, 2009; a copy of this agreement has been filed as Exhibit P-3;

### **Contraventions**

¶ 8 Under the terms of this Settlement Agreement, the Respondent has admitted to the following violations:

- 1) On or about July 6, 2004, the Respondent failed in his duty to protect the public in supervising the transactions effected in the account of client "A" by a representative under his supervision, with regard to deposits of share certificates, notably by an insider who was also a client of the Respondent, thereby failing in his obligation to ensure that these transactions were within the bounds of good business practice, whereas he knew or should have known that the transactions could be an indicator of an activity or behaviour that was suspicious or contrary to the public interest, contrary to Regulation 1300, Policy No. 2 and By-Law 29 of the Association;
- 2) From July 2004 to October 2004, the Respondent failed in his duty to protect the public in supervising the transactions effected in the account of client "A" by a representative under his supervision, with regard to the routine execution of sell orders following deposits of share certificates, notably by an insider who was also a client of the Respondent, and to requests for the issuance of cheques to third parties, thereby failing in his obligation to ensure that these transactions were within the bounds of good business practice, whereas he knew or should have known that the transactions could be an indicator of an activity or behaviour that was suspicious or contrary to the public interest, contrary to Regulation 1300, Policy No. 2 and By-Law 29 of the Association;
- 3) From July 2004 to October 2004, the Respondent failed to track and keep a proper record of his daily supervision reviews and of his inquiries and their follow-up, with regard to the transactions executed in the account of client "A", contrary to Policy No. 2 and By-law 29 of the Association.
- 4) On or about September 29, 2006, the Respondent engaged in business conduct unbecoming or detrimental to the public interest, in that he failed to respect Standard C of the Conduct and Practices Handbook, which relates to professionalism, when he covered the losses of client "I" with his own funds, without the knowledge of the firm, contrary to By-law 29.1 of the Association.

### **Terms of Settlement**

¶ 9 On December 29, 2009, the Respondent agreed to the following terms of settlement:

- a) aggregate penalty of \$30,000;
- b) prohibition of approval from IIROC, in any capacity, for a period of six (6) months from the effective date of the Settlement Agreement;
- c) as a prior condition to re-approval, the obligation of passing the Conduct and Practices Handbook examination;
- d) a permanent prohibition on approval as branch manager, assistant or co-branch manager, or in any other supervisory capacity.

¶ 10 On March 4, 2010 for the Respondent, and on March 5, 2010 for IIROC, the parties signed an addendum to the Settlement Agreement in which the Respondent agreed to the additional term of settlement below:

- e) the requirement of a continuous period of close supervision for twelve (12) months from the effective date of the Settlement Agreement as a condition of re-approval in any capacity, with the

production of supervision reports signed by the branch manager and countersigned by the chief compliance officer, to be submitted monthly to the Manager of the IIROC Registration Department, Montréal.

This addendum is filed as Exhibit P-3.2, and forms an integral part of the Agreement filed as Exhibit P-3;

¶ 11 The Respondent also agrees to pay part of IIROC's costs in connection with this Settlement Agreement, in the amount of \$3500;

¶ 12 The monetary penalties and costs imposed upon the Respondent shall become due and payable immediately upon the effective date of this Settlement Agreement; they shall be payable in accordance with the terms of payment mutually agreed to by the parties;

¶ 13 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.

### **Hearings**

¶ 14 A first hearing was held on March 2, 2010;

¶ 15 IIROC was represented by legal counsel at the hearing, but the Respondent was absent "due to illness in the family." He had sent an e-mail to Staff of IIROC beforehand, giving his assent to the terms of the Settlement Agreement; a copy of this e-mail has been filed as Exhibit P-3.1;

¶ 16 Before the hearing on March 2, 2010 came to a close, at the request of Staff of IIROC, it was decided to continue the hearing on March 15, 2010;

¶ 17 At the second hearing on March 15, 2010, the Respondent was also present by conference call;

### **Joint Settlement Recommendation by Staff and the Respondent**

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

¶ 19 Staff and the Respondent consent and agree to the settlement of these matters by way of this settlement agreement ("the Settlement Agreement") in accordance with By-laws 20.35 to 20.40 inclusive, and Rule 15 of the Dealer Members' Rules of Practice and Procedure;

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

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

### **Acknowledgment**

¶ 22 The parties acknowledge the facts in the matter as outlined in paragraphs 17 to 42 of the Settlement Agreement, Exhibit P-3;

¶ 23 IIROC's legal counsel cited numerous cases from the appended list of authorities, among them the Mills and Youden decisions;

¶ 24 As set out in *Re Derivative Services Inc.*, [2000] I.D.A.C.D. No.26, a Hearing Panel's main concerns in determining an appropriate penalty are: protection of the investing public; protection of IIROC's membership; protection of the integrity of IIROC's process; protection of the integrity of the securities markets, and prevention of a repetition of conduct of the type under consideration;

¶ 25 Disciplinary penalties are a deterrent and their primary purpose is prevention rather than punishment;

¶ 26 The Hearing Panel has considered the following aggravating factors :

f) this is not the Respondent's first offence;

g) his position as branch manager during the suspicious transactions, even though he ceased his

managerial role in November 2004, and his lack of supervision in this capacity;

- h) his failure to protect the client during the suspicious transactions;
- i) the reprehensibility of the actions knowingly taken by the Respondent, as a registered representative and former branch manager;
- j) the payment by the Respondent of an indemnity to a client without the knowledge of the registered member;
- k) his long experience in the industry;

¶ 27 The Hearing Panel also took note of the following mitigating factors:

- l) the Respondent did not benefit financially from the impugned transactions;
- m) the Respondent cooperated in the negotiation of the Settlement Agreement and has admitted his guilt;
- n) the Respondent was the object of internal penalties by his employer, namely the payment of \$40,000 for the first three violations, plus an aggregate penalty of \$30,000, and costs in the amount of \$3500 payable to IIROC;
- o) his dismissal, and a prohibition of approval from IIROC for a period of six (6) months;
- p) a twelve (12)-month period of close supervision in the event of his re-approval;
- q) the requirement that he re-write and pass the Conduct and Practices Handbook exam;
- r) a permanent ban from approval as a branch manager, assistant or co-branch manager, or in any other supervisory capacity;

¶ 28 The Hearing Panel should not substitute its own discretion for that of the parties, nor indicate the penalty that it would have chosen, but must confine itself to verifying whether the result of the negotiation between the parties is reasonable or not, given the circumstances;

¶ 29 The Hearing Panel considers, in the circumstances, that the penalty to which the Respondent has agreed is reasonable and consistent with the considerations and penalties recommended in the IIROC guidelines.

¶ 30 For these reasons:

The Hearing Panel accepts the Settlement Agreement, and gives effect to said agreement on the date of this decision.

Signed at Montréal, this 30th day of March 2010.

André Valiquette

Jean A. Elie

Lise Casgrain

\* \* \* \* \* **JURISPRUDENCE** \* \* \* \* \*

- John Donnelly (Re) (Violations of Association Regulation 1300.2 and Policy No. 2 – now IIROC Rule 1300.2 and Rule 2500.

Decision of January 25, 2010, on Settlement Agreement.

- Donald Philip Stevenson (Re) (Violation of Association Regulation 1300.2 and Policy No. 2, and of Association By-law 29.1).

Decision of November 19, 2008, on Settlement Agreement.

- Simon Schillaci (Re) (Violations of Regulation 1300.2 and Policy No. 2).  
Decision of February 5, 2007
- Robert Roy Morrison (Re) (Violation of Policy No. 2 and Regulation 1300.1(c))  
Decision of April 22, 2003
- Frank Youden (Re) (Violation of Policy No. 2 and of Regulation 1300.1(c) and 1300.2).  
Decision at October 30, 2007, rendered pursuant to a disciplinary hearing.
- Richard Mills (Re) (Violation of Association Regulation 1300.2 and Policy No. 2).  
Decision of April 2003
- Roger Racine (Re) (Violation of By-Law 29.27 and Policy No. 2).  
Decision of July 7, 2006.
- Peter Bacsalmasi (Re) (Violation of Regulations 1300.2, 1300.1(b) and 1300.1(c), and Policy 2).  
Decision of January 29, 2004, rendered pursuant to a settlement agreement.
- Éline Lamothe (Re)  
Decision of July 15, 2009
- Marc-Antoine Beauchamp (Re)  
Decision of February 12, 2009.
- André Niding (Re)  
Decision of February 12, 2009.
- André Bergeron (Re)  
Decision of October 27, 2008
- Karl Mansour (Re)  
Decision of January 11, 2008
- Martin Brunetta (Re)  
Decision of June 12, 2007
- Jean-Louis Trudeau (Re)  
Decision of December 12, 2006
- David Michael Michaels (Re)  
Decision of March 2007
- Robert Faiello (Re)  
Decision of January 16, 2007

\* \* \* \* \* **SETTLEMENT AGREEMENT** \* \* \* \* \*

**I. BACKGROUND**

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 Mario Bouchard (the Respondent).

2. An initial 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 or around September 8, 2009, the Respondent was dismissed for cause by his employer National Bank Financial Inc. (hereinafter NBF).
4. On September 14, 2009, Staff of IIROC commenced a second investigation following receipt of a ComSet event report indicating that a complaint had been lodged against the Respondent by two of his former clients, "H" and "I", while the Respondent was still employed with NBF.
5. Both investigations 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**

6. The Respondent consents to be subject to the jurisdiction of IIROC;
7. 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 Dealer Member Rule 20.35 to 20.40 inclusive, and Rule 15 of the IIROC Rules of Practice and Procedure;
8. The Settlement Agreement is subject to acceptance by the Hearing Panel;
9. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel;
10. 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;
11. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his right, under IIROC rules and any applicable legislation, to a disciplinary hearing, review or appeal;
12. 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;
13. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel;
14. 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;
15. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement;

## **III. STATEMENT OF FACTS**

### **(i) Acknowledgment**

16. 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;
17. On June 1, 2008, the Respondent became a registrant of IIROC;
18. The Respondent presents the following chronology of his registrations, from February 7, 1985 to date:

FROM	TO	FIRM	REGISTRATION CATEGORY
February 7, 1985	April 25, 1998	Lévesque Beaubien Inc.	Representative with unrestricted practice
May 2, 1998	September 8, 2009	Lévesque Beaubien Inc.	Registered Representative, Options (Retail)
January 6, 2000	November 1, 2004	National Bank Financial Inc.	Branch manager and Registered Representative, Options (Retail)

November 1, 2004	September 8, 2009	National Bank Financial Inc.	Registered Representative, Options (Retail)
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19. From November 1, 2004 and until his dismissal on September 8, 2009, the Respondent was employed as a Registered Representative Options (Retail) with National Bank Financial Inc. (NBF);
20. For part of 2004, the Respondent was the branch manager of representative "B";
21. The Respondent ceased his managerial role on November 1, 2004 and "C" took over his duties;
22. The Respondent was the subject of an internal investigation by NBF in October 2005, relative to deposits of share certificates from his client "D";
23. The Respondent has moreover been the subject of an internal disciplinary action;
24. The Respondent failed to ensure adequate supervision of representative "B" in regard to activities connected with the account of client "A";
25. The activities in question occurred between July 6, 2004 and October 28, 2004, and concerned deposits of share certificates of "E", owned by "D" and company "F" (company owned by "G"), and sell transactions involving shares of "E" in the account of client "A";
26. Only "D" was an insider of "E";
27. "D" was also a client of the Respondent;
28. On July 6, 2004, several share certificates of "E", made out to "D", were deposited in the account of client "A", who was a client of "B", a registered representative under the supervision of the Respondent;
29. Also on July 6, 2004, company "F" deposited a share certificate of "E" in the account of client "A" ;
30. At the time of the deposit of the share certificates on July 6, 2004, "G" and company "F" were not clients of the firm and were not insiders of "E";
31. From July 15, 2004 until October 28, 2004, massive sales of stock in "E" were made and several cheques, eight (8) in total, were issued to third parties between July 21 and November 12, 2004, at the request of client "A";
32. In the matter of these events, the Respondent failed to exercise adequate supervision over the activities in the account of client "A", and to adequately track and keep a record of his supervision, and failed in his duty to protect the public, whereas there were several indicators that the trading in this account was not within the bounds of good business practice, or could be an indication of suspicious activity or activity contrary to the public interest:
  - the share certificates owned by an insider of "E" were deposited in the account of a third party;
  - this insider was also a client of the Respondent;
  - neither the Respondent, nor the representative he was supervising, was aware of the underlying or economic substance of these share deposits to the account of a third party;
  - shortly after the certificates were deposited, successive sell orders involving stock in "E" were executed in the account of client "A", without any questions being asked;
  - neither the Respondent, nor the representative he was supervising, knew client "A", or the reasons for this burst of sell orders involving shares in "E";
  - following the deposit of said shares, a number of cheques were made out to third parties at the express request of client "A", without the Respondent or the representative he was supervising questioning this manner of proceeding;
  - the letters of authorization for the issuance of cheques to third parties were dated May 10, 2004, whereas the deposits of the share certificates and the successive sales only began in July 2004, without any questions being asked by either the Respondent, or the representative he was supervising;
  - the letters of authorization for the issuance of cheques to third parties were therefore not

contemporaneous to the sell transactions;

- client "A" routinely requested the issuance of cheques to third parties for reasons that were unknown to either the Respondent or to the representative he was supervising;
  - the Respondent was the cosigner on most of the cheques issued to third parties;
33. The Respondent left no record of his supervision or tracking of the activities in the account of client "A", whether in terms of the deposit of the share certificates in question or of the successive sell transactions;
  34. The Respondent left no record of his supervision or tracking of the cheques drawn on the account of "A" and made out to third parties;
  35. The Respondent did not verify the existence of written authorizations from client "A" contemporaneous to the requests for the issuance of cheques to third parties;
  36. The Respondent did not question representative "B" about the reasons for the successive sales of shares, about whether he really knew client "A", about the reasons for the deposits of certificates from third parties in this client's account, or about the reasons for the numerous cheques made out to third parties;
  37. IIROC's initial investigation moreover disclosed that the cheques drawn on the account of client "A" were deposited and cashed through a foreign exchange office or through third parties, to enable "A" to obtain cash;
  38. The cheques were sometimes endorsed two and three times;
  39. Between July 2004 and June 2005, client "A" allegedly sold approximately \$986,575 worth of shares. It should be noted that the Respondent was the manager from July to November 2004;
  40. In the course of IIROC's initial 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;
  41. Pursuant to the second investigation commenced by IIROC in 2009, the Respondent admitted having, unbeknownst to his firm, made a financial arrangement with his client "I" to compensate the latter for the losses incurred as a result of the investment in Radisson stock;
  42. Staff of IIROC has obtained a copy of personal cheque no. 172 signed by the Respondent, in the amount of \$6800, dated September 29, 2006, and made to the order of "I";

#### **IV. CONTRAVENTIONS**

43. The Respondent admits to the following contraventions:
  - 1) On or about July 6, 2004, the Respondent failed in his duty to protect the public in supervising the transactions effected in the account of client "A" by a representative under his supervision, with regard to deposits of share certificates, notably by an insider who was also a client of the Respondent, thereby failing to ensure that these transactions were within the bounds of good business practice, although he knew or should have known that the transactions could be an indicator of an activity or behaviour that was suspicious or contrary to the public interest, contrary to Regulation 1300, Policy No. 2 and By-Law 29 of the Association;
  - 2) From July 2004 to October 2004, the Respondent failed in his duty to protect the public in supervising the transactions effected in the account of client "A" by a representative under his supervision, with regard to the routine execution of sell orders following deposits of share certificates, notably by an insider who was also a client of the Respondent, and to requests for the issuance of cheques to third parties, thereby failing to ensure that these transactions were within the bounds of good business practice, although he knew or should have known that the transactions could be an indicator of an activity or behaviour that was suspicious or contrary to the public interest, contrary to Regulation 1300, Policy No. 2 and By-Law 29 of the Association;
  - 3) From July 2004 to October 2004, the Respondent failed to track and keep a proper record of his daily supervision reviews and of his inquiries and their follow-up, with regard to the transactions executed in the account of client "A", as required by Policy No. 2 and By-law 29 of the Association.

- 4) On or about September 29, 2006, the Respondent engaged in business conduct unbecoming or detrimental to the public interest, in that he failed to respect Standard C of the Conduct and Practices Handbook, which relates to professionalism, when he covered the losses of client "I" with his own funds, without the knowledge of the firm, contrary to By-law 29.1 of the Association.

## V. TERMS OF SETTLEMENT

44. The Respondent agrees to the following terms of settlement:

- a) aggregate penalty of \$30,000;
- b) prohibition of approval from IIROC, in any capacity, for a period of six (6) months from the effective date of the Settlement Agreement;
- c) as a prior condition to re-approval, the requirement of passing the Conduct and Practices Handbook examination;
- d) a permanent ban from approval as a branch manager, assistant or co-branch manager, or in any other supervisory capacity;

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

46. While the fines and costs imposed upon the Respondent become due and payable immediately upon the effective date of the Settlement Agreement, they shall be payable in accordance with the terms of payment mutually agreed to by the parties;

47. 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 29th Day of December, 2009.

« Witness »

WITNESS

« Mario Bouchard »

**MARIO BOUCHARD**

Respondent

AGREED TO by Staff, at the City of Montréal, in the Province of Québec, this 29th Day of December, 2009.

« Witness »

WITNESS

« Diane Bouchard »

**DIANE BOUCHARD**

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

### **\* \* \* \* \* ADDENDUM TO THE SETTLEMENT AGREEMENT \* \* \* \* \***

#### **DATED DECEMBER 29, 2009 (IIROC Dealer Member Rule 20.35(3))**

1. This addendum, reached between the Investment Industry Regulatory Organization of Canada ("IIROC") and Mario Bouchard, is complementary to the Settlement Agreement signed on December 29, 2009 (the Agreement), and is deemed to be an integral part thereof. The Agreement was presented to a Hearing Panel of IIROC for approval, at a hearing commenced on March 2, 2010 and which will continue this March 15.
2. Pursuant to this addendum, which is attached to the Agreement and forms an integral part thereof, the Respondent agrees to the following additional term of settlement:
  - e) the requirement of a continuous period of close supervision for twelve (12) months from the effective date of the Settlement Agreement as a condition for re-approval in any capacity, with the production of

supervision reports signed by the branch manager and countersigned by the chief compliance officer, to be submitted monthly to the Manager of the IIROC Registration Department, Montréal.

3. As stated in the Agreement, suspensions, bars, expulsions, restrictions and other conditions or terms imposed on approval or Membership shall commence on the effective date of the Agreement.

AGREED TO by the Respondent at Rouyn-Noranda (Québec), this 4th Day of March 2010.

« Witness »

**WITNESS**

« Mario Bouchard »

**MARIO BOUCHARD**

Respondent

AGREED TO by Staff, at the City of Montréal, in the Province of Québec, this 5th Day of March 2010.

« Witness »

**WITNESS**

« Diane Bouchard »

**DIANE BOUCHARD**

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

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