

## **Re Phillips**

**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**

**ROBERT MORTIMER PHILLIPS**

2010 IIROC 14

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

Hearing: January 13, 2010 and February 15, 2010  
Decision: March 26, 2010  
(19 pars.)

**Hearing Panel:**

Me Jean-Pierre Lussier, Chair

Ms. Lise Casgrain

Mr. Gilles Archambault

**Appearances:**

Me Diane Bouchard, on behalf of IIROC

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## **DECISION**

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¶ 1 On February 15, 2010, a hearing was held before the Hearing Panel, during which IIROC presented its evidence in order to have the Respondent declared guilty on seven counts, which are reproduced below in their English version:

- i) In January and February 2001, the Respondent, while a Registered Representative of a Member of the Association, made four (4) unauthorized transactions in the account of client A, which resulted in a gross loss of \$39,000, contrary to By-law 29.1 of the Association;
- ii) Between January 2000 and December 2006, the Respondent, while a Registered Representative of a Member of the Association, admitted that he personally covered losses caused by discretionary trades which he effected in the account of client B, contrary to By-law 29.1;
- iii) Between January \*2000 and December 2006, the Respondent, while a Registered Representative of a Member of the Association, effected fifty (50) discretionary trades in the account of client B, without such client account having been approved and accepted as a discretionary account and without the prior written authorization of the client, contrary to Regulation 1300.4 and to By-Law 29.1 of the Association;

\*as amended on 15-2-2010

- iv) Between January 2001 and April 2006, the Respondent, while a Registered Representative of a Member of the Association, effected discretionary trades in the accounts of client C, without the necessary registration or without the prior written authorization of the client, and without the client accounts having been approved and accepted in writing as discretionary accounts, contrary to Regulation 1300.4 and to By-Law 29.1 of the Association;
- v) Between January 2001 and April 2006, the Respondent, while a Registered Representative of a Member of the Association, failed to observe high standards of ethics and conduct and engaged in conduct unbecoming and detrimental to the public interest, contrary to By-law 29.1, by :
  - leading client C to believe that she was still receiving income from a \$100,000 bond, when he knew that the bond had been sold;
  - using the \$100,000 bond to cover certain discretionary trades effected in the client's account, without her knowledge or consent;
  - injecting personal funds into the client account to cover the losses caused by his discretionary trading;
- vi) On or around November 19, 2000, the Respondent, while a Registered Representative of a Member of the Association, falsified the signature of client D, as was admitted during the investigation, on an account guarantee agreement in favour of the account of C, contrary to By-Law 29.1;
- vii) Over the course of 2004, the Respondent, while a Registered Representative of a Member of the Association, failed to observe high standards of ethics and conduct and engaged in conduct unbecoming and detrimental to the public interest, contrary to By-law 29.1, by giving client E his personal guarantee concerning the results of trades in a position, and by reimbursing the client with personal cheques to cover the losses that resulted from the trades.

¶ 2 The hearing was held *ex parte*. On January 13, 2010, the Hearing Panel found that IIROC had taken numerous steps to serve the Notice of Hearing on the Respondent. These steps are evidenced in the two affidavits below:

[TRANSLATIONS]

"I, the undersigned, Sara Goessaert, interim Assistant, Enforcement Division in the Montréal office of the Investment Industry Regulatory Organization of Canada (IIROC), do solemnly state the following:

1. At the request of Me Diane Bouchard, IIROC Enforcement Counsel assigned to this case, I verified that Mr. Phillips' address was indeed 5200 Riviera Street, Apt. 112, Pierrefonds, Québec, H8Z 2Z5, because Mr. Phillips had not shown himself since the draft Notice of Hearing was sent on November 3, 2009 by regular mail;
2. I checked the Canada411 website; the search yielded no results;
3. On or about November 30, 2009, I communicated with a person who was responsible for the building located at 5200 Riviera St. (Place Riviera); the latter informed me that the building had burned to the ground on May 4, 2009; the press clippings are attached to my affidavit;
4. On or about December 7, 2009, I attempted several times to reach Mr. Ciprian Pisau at Immomarketing Inc., the manager of Place Riviera. I finally left him a message in his voice mailbox ; to date, he has not returned my calls ;
5. On December 7, 2009, I gave a copy of the Notice of Hearing to the bailiffs office of

Saulnier Robillard Lortie; the bailiff attempted to effect service on December 8, 2009, as evidenced by the service attempt report enclosed with (sic) my affidavit;

6. At the request of Me Diane Bouchard, I prepared legal notices and took the necessary steps for their publication in The Gazette and La Presse newspapers; they were published on December 18 and 21, 2009 respectively; the legal notices are enclosed (sic) with my affidavit;
7. All of the facts alleged in this affidavit are true."

"I, the undersigned, Stephan Jacob, Manager, Investigations, Enforcement Division of the Investment Industry Regulatory Organization of Canada ("IIROC"), do solemnly state the following:

1. At the request of Me Diane Bouchard, IIROC Enforcement Counsel assigned to this case, I attempted to contact Mr. Phillips in order to obtain his home address after the fire;
2. On December 4, 7, 16, 21 and 23, 2009 and January 5, 2010, I attempted to reach Mr. Phillips on his cell phone at 514 887-8225; the subscriber could not be reached;
3. On December 4, 2009, I called the telephone number of Ms. Catherine de Ruyscher, Mr. Phillips' ex-wife, at 514 694-3467; the person who answered claimed not to know a Robert Phillips. The person had recently been assigned this phone number;
4. I tracked down two numbers for C. de Ruyscher on the Canada411 website. The first, 514 752-1703 (5200 Place Riviera), was not in service on December 4, 2009 and January 5, 2010. The second, 450 934-3992 (5200 boul. Le Carrefour, Laval), did not answer on December 4, 7 and 23, 2009 and on January 5, 2010;
5. On December 4, 2009 and January 5, 2010, I called the phone number of Mrs. Frances Phillips, Mr. Phillips' stepmother, at 1 416 661-2701; the phone number was not in service;
6. On December 4, 2009, I tracked down an F. Phillips on the Canada411 website. I called the number listed, namely 1 416 663-8354, and left a message on the answering machine; to date, my call has not been returned;
7. I therefore attempted to reach Mr. Phillips at all of the numbers that I was able to track down during the investigation, as well as those given me by the latter;
8. All of the facts alleged in this affidavit are true."

¶ 3 At the hearing on January 13, 2010, the Hearing Panel ruled service by way of the newspapers to be sufficient, but did not deem it appropriate to accept as proven the facts and contraventions alleged in the Notice of Hearing, as stated in Rule 7.2 of the Association Rules of Practice. This rule stipulates that, if the Respondent served with a Notice of Hearing fails to serve a Response, the hearing may be held in the Respondent's absence and the Hearing Panel may accept as proven the facts and violations alleged in the Notice of Hearing. Considering the problems connected with serving the Notice of Hearing, as appears from reading the affidavits cited above, the Hearing Panel chose to proceed *ex parte*, but required that IIROC provide proof of the facts and contraventions alleged in the Notice of Hearing. It therefore postponed the hearing on the merits until February 15.

¶ 4 This February 15, 2010, after requesting the amendment of count iii), to add the mention of the year (2000) after the word "January" (amendment which the Hearing Panel accepted because it in no way altered the substance of the allegation and was consistent with the details provided in the Notice of Hearing), IIROC called just one witness to testify, namely **Stephan Jacob**, Manager, Investigations.

¶ 5 The latter was present at two meetings during which the Respondent was questioned by Investigator Daniel Faribault. The exchanges at these meetings on November 28, 2007 and May 14, 2008 were taken down

in stenographic notes by an official stenographer. The Respondent had also been sworn in.

¶ 6 In his testimony, the Manager, Investigations drew the Hearing Panel's attention to different passages in the stenographic notes, in which the Respondent acknowledged the merits of the facts underpinning each of the seven allegations. Mr. Jacob also commented on the ample documentary evidence of the trades in question, the opening of the client accounts concerned, and the transactions between the Respondent and said clients, including the personal guarantee signed by client D in favour of client C, regarding which the Respondent has admitted having forged the signature of D.

¶ 7 After deliberation, the Hearing Panel found the Respondent guilty on each of the seven counts. It noted the existence of admissions regarding all of the facts which were the source of the seven counts, and then invited IIROC to make its representations regarding penalties.

¶ 8 Before outlining the penalties accepted by the Hearing Panel, it is appropriate, for the reader's benefit, to further explain the circumstances surrounding the contraventions. These all appear in the Notice of Hearing and we have reproduced them below, as they appear in the Notice of Hearing:

#### **« B. THE INTERNAL INVESTIGATION BY CIBC**

6. On or around October 5, 2006, Montreal's enforcement received a ComSet memo from CIBC regarding the conduct of the Respondent;

7. The Respondent was the object of an internal investigation by CIBC;

8. Said internal investigation began on September 28, 2006, after the Respondent confessed to his branch manager that he was filing for bankruptcy and he had committed several breaches of conduct with six (6) of his clients which are his family members and some of his closest friends;

9. These breaches of conduct included: several unauthorized trades over the years in clients' accounts; one forgery of signature; misinformation towards one client by making her believe that she had invested a certain amount of money in a bond while such bond did not exist; several deposits of personal cheques into some of the accounts in the intention to hide the fact that some losses resulting from his unauthorized trading had occurred over the years;

10. Upon the findings of their internal investigation, CIBC indemnified several clients resulting from the breaches of conduct of the representative for substantial amounts;

11. Most of the Respondent ex-clients had not filed a formal complaint against him;

#### **C. IDA INVESTIGATION AND FINDINGS**

12. The enforcement division of the IDA initiated an investigation on December 11, 2006 which revealed the following facts and breaches of conduct;

##### **CLIENT « A »**

13. « A » was a friend of the Respondent and was one of his clients for the last 20 years or more;

14. Four (4) unauthorized trades were performed in the account of « A » bearing number 31008276;

15. Said transactions resulted in a loss and, over the years, interests over that loss kept adding up;

16. The transactions involved were options on IBM in USD, and were made in January and February 2001;

17. The debit balance on « A » statement of January 2001 for an amount of \$39,129.05 in Canadian dollars was a direct result of these trades;

18. The client was not aware of the trades;
19. When questioned about the debit balance by « A », the Respondent claimed that it was a computer problem that would eventually clear up;

**CLIENT « B »**

20. « B » is the representative's step-mother;
21. The Respondent managed her accounts on a discretionary basis, as admitted by him during the investigation;
22. The Respondent concluded with the client a verbal agreement regarding the transactions that were made but no written document was ever produced;
23. CIBC did not have a knowledge of this agreement;
24. Therefore, the Respondent made discretionary trades in the accounts even though none of these accounts was specified by CIBC as being either a « compte carte blanche » or a discretionary account;
25. According to the monthly statements gathered by the investigator, the discretionary transactions were as follows:

- for the account bearing number 553-99282, thirty-two (32) discretionary transactions were made during the time period beginning in September 2001 until December 2006 : 2 in October 2001, 3 in May 2002, 1 in June 2002, 2 in September 2002, 1 in December 2002, 1 in January 2004, 1 in August 2004, 2 in September 2004, 4 in November 2004, 2 in February 2005, 4 in December 2005, 2 in February 2006, 2 in April 2006 and 5 in June 2006;
- and for the account bearing number 500-05655 (becoming account 500-098396), eighteen (18) discretionary transactions were made during the time period beginning in January 2000 to March 2003: 2 in February 2000, 4 in March 2000, 3 in June 2000, 2 in July 2000, 1 in August 2000, 1 in September 2000, 2 in October 2000, 1 in November 2000 and 2 in April 2001;

26. The Respondent admitted during the investigation the discretionary trading in the accounts of « B »;

**CLIENT « C »**

27. « C » was the Respondent's sister-in law;
28. She has been a client of the Respondent for the last 20 years;
29. The Respondent managed her accounts over that time period on a discretionary basis according to a verbal agreement passed between them, as admitted by the Respondent during the investigation;
30. No power of attorney or any other documents were ever signed by the client;
31. « C » accounts were neither « compte carte blanche » accounts nor discretionary accounts;
32. CIBC did not have knowledge of this agreement;
33. According to the Respondent, his client « C » thought she continued to hold a \$100,000 bond paying regular interest;
34. The Respondent admitted during the investigation using the \$100,000 bond to cover some discretionary transactions he had made in the accounts of « C »;

35. The Respondent also admitted during the investigation to have made money orders, bank drafts and personal cheque deposits in « C » accounts in order to make her believe that she was still receiving income from the \$100,000 bond;

36. The Respondent admitted that some personal cheques, bank drafts or money orders were deposited in « C » accounts in order to cover his discretionary trading and the losses resulting from them for the time period going from March 2001 to November 2005;

**CLIENT « D »**

37. « D » is « C »'s husband;

38. On one document posing as an account guarantee from « D »'s account in favour of « C »'s account, the Respondent admitted during the investigation that he forged the signature of « D »;

39. Said forgery was performed because « C »'s account was under margin and it appears that the Respondent did not have the funds in order to bring it up to margin;

40. As stated in his interview of May 14, 2008, the Respondent admitted that the forged document would probably be the document dated November 19, 2000;

**CLIENT « E »**

41. « E » has been a client of the Respondent for at least 5 to 7 years;

42. In 2004, some options were made following the suggestion of the Respondent;

43. The Respondent gave a personal guarantee regarding the result of these transactions and signed a letter to this effect on February 20, 2004;

44. The transactions resulted in losses;

45. During the investigation, the Respondent admitted that he reimbursed the client by personal cheques to cover these losses;

46. The Respondent gave partial compensation to « E » via personal cheques.”

¶ 9 The clients mentioned in the complaint against the Respondent were all friends or relatives, or members of his family. His misconduct caused them substantial financial losses, which were however, according to the evidence, covered by the firm that employed the Respondent. In all, the release forms evidence approximately \$350,000.

¶ 10 The Hearing Panel recognizes that the Respondent has no disciplinary history and that he, himself, did not benefit financially from the transactions concerned. He cooperated with the investigation and is no longer employed in the industry. On the other hand, his misconduct comprises several aggravating factors. Aside from the severity of the financial losses, we are not dealing with isolated transactions, but with large numbers of discretionary trades effected over many years. What's more, the most aggravating circumstances concern what might be qualified as breaches of trust and quasi-criminal offenses.

¶ 11 Indeed, the clients were friends and family who put all of their trust in the Respondent. Client C, his sister-in-law, was the holder of a \$100,000 bond. The Respondent used this bond to cover certain discretionary trades. He hid this fact from his sister-in-law and continued to pay her money, leading her to believe that it was interest from her bond. In addition to the violations of By-law 29 implicit in this, it was gross misrepresentation, an unspeakable breach of his client's trust.

¶ 12 Similarly, to his friend and client "A", who worried about losses appearing on his monthly statement, he asserted that it was a computer error, rather than admitting that the losses were the result of an unauthorized trade effected by himself.

¶ 13 Finally, falsifying the signature of his sister-in-law's husband on an account guarantee agreement is an extremely serious offence. Forging a signature can result in criminal proceedings and it is clearly a contravention that demands a severe penalty.

¶ 14 IIROC's Disciplinary Sanction Guidelines, revised in March 2009, outline some general principles and recommendations in the matter of penalties. While not bound by these guidelines, the Hearing Panel considers them a useful tool in determining the penalties to impose on the Respondent and has drawn inspiration from them.

¶ 15 We consider it appropriate to emphasize the deterrent effect of penalties on persons active in the securities industry. We have also taken into consideration the losses suffered by the clients, and the fact that the Respondent's conduct involved manipulative, fraudulent or deceptive conduct, towards both the clients and the firm that employed him. His offences were intentional and planned.

¶ 16 For all of these reasons, in addition to fines, we consider it appropriate to order a permanent prohibition on approval of the Respondent in any capacity with an IIROC-regulated firm. As to the amount of the fines, we consider the quantum to be less important in light of the revocation of approval. Indeed, were it not for the revocation of approval, it is likely that the amount of the penalties would have been greater than the total \$100,000 that we have decided to impose. We have also chosen to order costs, which we are limiting to \$25,000.

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

¶ 17 ***ORDERS*** the following penalties on the Respondent:

- on count i) \$15,000
- on count ii) \$10,000
- on count iii) \$15,000
- on count iv) \$10,000
- on count v) \$15,000
- on count vi) \$25,000
- on count vii) \$10,000

¶ 18 ***ORDERS*** a permanent prohibition on approval in any capacity with an IIROC-regulated firm, as an additional penalty on counts v) and vi).

¶ 19 ***ORDERS*** costs, to be limited, however, to an amount of \$25,000.

March 26, 2010

Lise Casgrain, Hearing Panel Member

Gilles Archambault, Hearing Panel Member

Me Jean-Pierre Lussier, Attorney and Hearing Panel Chair

For IIROC: Me Diane Bouchard

Hearing Dates: January 13, 2010; February 15, 2010.

Date of Deliberation: February 15, 2010

Date of Decision: March 26, 2010

