

Re Gaudet

IN THE MATTER OF:

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

AND

THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

GRANT LOUIS GAUDET

2010 IIROC 29

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

Heard: July 13, 2010 in Vancouver, BC

Decision: July 13, 2010

(12 paras.)

Hearing Panel:

Murray A. Clemens, QC, Richard W. Thomas, and David M. Pearson

Appearance:

Barbara Lohmann for the Investment Industry Regulatory Organization of Canada

Grant Louis Gaudet in person

REASONS FOR DECISION

I. INTRODUCTION

¶ 1 We were constituted as a panel to consider, pursuant to Rule 20.36 to the Investment Industry Regulatory Organization of Canada (IIROC) whether to accept a settlement agreement (the Settlement Agreement) that has been negotiated between IIROC's Enforcement Department and Mr. Gaudet. At the conclusion of the hearing held for this purpose in Vancouver, British Columbia on July 13, 2010, and after considering the submissions and the terms of the Settlement Agreement we accepted it.

¶ 2 These are our reasons for doing so.

II. THE SETTLEMENT AGREEMENT

¶ 3 The Settlement Agreement is annexed to this decision. It contains:

(a) a summary of the underlying facts;

(b) an admission by Mr. Gaudet to the following contravention of IIROC Rules, Guidelines, IDA

By-Laws, Regulations or Policies:

- 1) From March 26, 2002, to March 26, 2008, the Respondent, while employed at Cartier, and subsequently at Dundee, facilitated the participation of clients in off-book transactions, namely term deposits, without the knowledge or consent of either Cartier or Dundee, contrary to Dealer Member Rule 29.1 (then IDA By-law 29.1).
 - 2) On or about March 26, 2002, the Respondent, while employed at Cartier, entered into personal financial dealings with a client, ST, in breach of Standard C of the CPH, contrary to Dealer Member Rule 29.1 (then IDA By-law 29.1).
- (c) Mr. Gaudet's agreement to:
- (a) pay a fine in the amount of \$20,000;
 - (b) a condition of continued approval in any capacity, to successfully complete the Conduct and Practices Handbook course by no later than six months following the effective date of the Settlement Agreement; and
 - (c) pay \$4,000 towards Staff's costs of this proceeding.

¶ 4 We adopt what was said by the Panel in *Re Darcy Alan Higgs*, a February 9, 2010 decision concerning a settlement agreement pursuant to Rule 20-36 of the IIROC Rules as follows:

[4] There are two broad related principles that apply in connection with a decision to accept or reject a settlement;

[5] The first is succinctly stated in the following passage from the decision in *Re Milewski* [[1999] I.D.A.C. No. 17, August 5, 1999 at page 11]:

A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

[6] Secondly, in the recent decision of the Saskatchewan Court of Appeal in *Rault v. Law Society of Saskatchewan* [2009 SKCA 81 (Can Lii)], the court cited with approval and applied to an administrative tribunal the principles applicable to joint submissions on sentencing in criminal cases described by the Alberta Court of Appeal in *R. v. G.W.C.* [2000 ABCA 333 (Can Lii)], namely, that there is an obligation on the tribunal to give serious consideration to a joint submission on sentencing agreed upon by counsel unless the sentence is unfit or unreasonable; or contrary to the public interest; and, it should not be departed from unless there are good or cogent reasons for doing so.

¶ 5 This Panel is of the unanimous view that rejection of the Settlement Agreement would be inconsistent with the foregoing principles.

DISCUSSION

¶ 6 In reaching this decision the Panel was mindful of the following:

THE IIROC DEALERS MEMBER DISCIPLINARY SANCTIONS GUIDELINES

The relevant considerations arising from the specific guidelines in this case include:

- (a) Mr. Gaudet has been working in the securities industry since 1998 and had, until this matter arose, an unblemished record.
- (b) When this matter came to light Mr. Gaudet fully cooperated with the investigators in a forthright and open fashion. He has acknowledged his errors and breaches which, although they span a

period of time and include a number of or repeated acts, when viewed, as we believe appropriate, as a single ongoing transaction, amounts to an isolated incident. While the breaches may be regarded on an overall basis as a single ongoing transaction, it is to be noted that it extended over a lengthy period of time and cannot be considered to be a momentary lapse.

- (c) The conduct complained of and admitted to did not involve an illegal distribution.
- (d) There were no client losses, nor did Mr. Gaudet receive any profit.
- (e) Mr. Gaudet's client, J.K., had money at risk in this transaction and even though Mr. Gaudet states he would have indemnified J.K. for any loss, it is not clear that the risk was explained to J.K. before he entered into the transaction. There is no evidence that J.K. was in a position to, nor did he provide "informed" consent, nor did Mr. Gaudet explain his conflict of interest in the transaction to J.K.
- (f) IIROC did not contend that the outside activity was in any way unlawful.

¶ 7 The most serious aspect of the admitted conduct is that it relates to and reflects on Mr. Gaudet's professionalism in conducting outside business activities without disclosure to or obtaining the consent from his employer. As stated in the CPH Handbook,

Dealings in securities outside of the normal business of the firm, sometimes referred to as selling away or outside deals may expose clients to unknown risks and expose registrants and firms to civil liability. Such activity done without the knowledge of the firm also prevents effective supervision of the handling of client accounts, which is a requirement placed upon firms by the SROs. Firms may be exposed to liability for the actions of their employees in the effecting [of] such trades, even though the firm is unaware of the activities.

¶ 8 As will be seen from the specific considerations noted above there are many mitigating factors applicable to this general principle in this case.

APPLICATION OF GUIDELINES TO THE SETTLEMENT AGREEMENT

¶ 9 In light of the foregoing relevant guidelines we have reached the conclusion that the terms of the Settlement Agreement are consistent with these considerations, particularly in light of the decision in *Re Milewski*.

¶ 10 As a check against our assessment we have reviewed a number of earlier decisions concerning sanctions in circumstances which, to varying degrees, may be considered relevant to the present case, and have concluded that there is nothing in those decisions which detract from our consideration and application of the guidelines to the Settlement Agreement and our acceptance of it.

¶ 11 In conclusion, we are in agreement that the provisions of the Settlement Agreement relating to sanctions fall "within a reasonable range".

¶ 12 These are the reasons for our decision of July 13, 2010 to accept the Settlement Agreement.

Murray A. Clemens, QC
Richard W. Thomas
David M. Pearson
AS OF JULY 13, 2010.

* * * * **SETTLEMENT AGREEMENT** * * * *

I. INTRODUCTION

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 *Grant Louis Gaudet* (the Respondent).
2. 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 IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions. The Investigation was commenced by Enforcement Department Staff (IIROC Staff) of IIROC on October 21, 2009.
3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (the Hearing Panel).

II. Joint Settlement Recommendation

4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. Staff and the Respondent consent and agree to the settlement of these matters by way of this settlement agreement (the Settlement Agreement) in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
6. The Settlement Agreement is subject to acceptance by the Hearing Panel.
7. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
8. 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.
9. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
10. 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.
11. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
12. 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.
13. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

III. Statement of Facts

(i) Acknowledgment

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

(ii) Factual Background

THE RESPONDENT

15. The Respondent first became licensed in the securities industry as a registered representative (RR) with Great Pacific Management Co. Ltd. in January 1998 (Great Pacific). Great Pacific amalgamated with another firm in October 2001 to become Cartier Partners Securities Inc. (Cartier). The Respondent continued to be employed by Cartier until June 2004 when Cartier amalgamated with Dundee. The

Respondent continued to be employed by Dundee Securities Corporation (Dundee) until he resigned from that firm on January 15, 2009. The Respondent joined Raymond James Ltd. (Raymond James) on January 27, 2009, where he continues to be employed.

16. The Respondent does not have a previous disciplinary history.
17. Dundee filed a ComSet report with IIROC on February 23, 2009, which indicated that the Respondent was the subject of an internal investigation by Dundee as a result of the matters described herein.

OFF BOOK TRANSACTIONS

18. JK was the Respondent's client. A New Account Application Form for JK dated January 15, 2002, records the following information:
 - Instructor at Columbia Bible College;
 - Date of Birth: November 27, 1972;
 - Annual Income from all sources (including spouse): \$29,200;
 - Investment Objectives 100% long term;
 - Risk Tolerance 100% medium;
 - Net Worth: \$5,000 liquid assets and \$5,000 fixed assets; and
 - Investment Knowledge: Limited.
19. In or about March 2002, JK inherited \$20,000. JK met with the Respondent in the Cartier office to discuss investing his inheritance. JK felt that the prevailing bank interest rates were too low. He asked the Respondent if there were any other options. At the time the Respondent was aware that another client, ST, required cash in order to purchase real estate. The Respondent advised JK that he could "hook them up". In order to facilitate this, the \$20,000 was invested in two "term deposits". These term deposits were not recorded on the books and records of Cartier.
20. The Respondent issued two term deposit receipts (TDRs) to JK and his wife, CB, another client of the Respondent. Each TDR was issued by Mic-Jen Enterprises Ltd. (Mic-Jen), a private company of which the Respondent is the president and a 25% shareholder. The other shareholders are the Respondent's daughters. The Respondent signed the TDRs as an officer on behalf of Mic-Jen.
21. The first TDR was for \$10,000, was dated March 26, 2002, with a maturity date of March 26, 2007. The interest rate was 6% per annum (TDR #1). The second TDR was for \$10,000, dated March 26, 2002, with a maturity date of March 26, 2004. The interest rate was 6% per annum (TDR #2).
22. On March 26, 2002, the \$20,000 from JK was deposited into Mic-Jen's credit union business account. The deposit slip references JK and CB.
23. In early April 2002, the Respondent gave ST \$25,000 from his personal funds.
24. On April 15, 2002, a cheque for \$25,000 was issued from Mic-Jen's credit union business account to the Respondent to replace the funds provided personally by the Respondent to ST.
25. When TDR #2 matured on March 26, 2004, no new TDR was issued. Rather, TDR #2 continued on the same terms until November 3, 2005, when TDR #2 was paid out to CB (by this time JK and CB had separated and JK wanted this money paid to CB). Mic-Jen issued a cheque dated November 3, 2005, to CB in the amount of \$12,163.29.
26. TDR #1 matured on March 26, 2007. JK reinvested the proceeds, \$13,000, in another TDR issued by Mic-Jen for a one year term at 5%. When this renewed TDR matured on March 26, 2008, JK again wanted to reinvest the proceeds, \$13,650 into another TDR issued by Mic-Jen for a further one year term at 5%. Neither of the renewals was recorded on the books and records of Dundee.

27. The Respondent resigned from Dundee in good standing on January 15, 2009, and on January 27, 2009, he joined Raymond James.
28. Upon the resignation of the Respondent from Dundee, JK's account was assigned to another registrant. JK sent the following e-mail dated February 5, 2009, to the new registrant's assistant (the E-mail):
- Hi Mariann,
- I also have a GIC that matures soon that I've been dealing with Grant Gaudet about. It's with "Mic-Jen" enterprises [sic].
- Is that Grant's personal company or will I deal with a new Dundee Securities Advisor regarding that GIC as well as my Dundee-related portfolio?
- Please advise.
- Thank you,
- [JK]
29. It was the E-mail that caused Dundee to investigate this matter.
30. The second renewal of TDR #1 was paid out in full to JK on February 16, 2009, shortly before the maturity date of March 26, 2009. JK advised Staff that:
- I received a letter from Dundee stating that Grant Gaudet is no longer affiliated with the Dundee family of companies.
- [DB] was appointed instead.
- I called Grant on his cell phone...he said he was leaving on a vacation with his family but could talk to me about it when he's back.
- I called [DB] at Dundee...and in talking with him about this situation and the state of my investments I got worried that Grant was doing something illegal and wasn't being honest with me about my money. I called Grant again and said "Send me my money now...I don't want to wait until it matures." He said "okay".
- He sent me a bank draft for 14253.97 which was the pro-rated amount as of Feb. 16, 2009 (which was less than what it would have been if I had let it mature fully to the one year term deposit March date).
- He included with the bank draft a letter (hand written on Fairmont Hotel stationery) that asked me to "Please forward the original documents to 34982 Everett Drive, Abbotsford, BC, V257R9 [sic]"
- The original documents he was referring to were the hand written term deposit slips from each of the GIC's [sic] that I took out with him since 2002. I chose not to forward those documents to him, but instead faxed them to [DB] at Dundee because he requested that I do so.
31. Dundee confirmed that the Respondent did not obtain permission from Dundee to offer "Term Deposit Receipts" or other GIC type investments to his clients.
32. Since the Respondent had resigned from Dundee in good standing prior to the completion of its investigation, Dundee was not in a position to issue a letter of Reprimand or any other action in respect of the Respondent. JK confirmed to Dundee in writing that he has been repaid in full and was seeking no further compensation.
33. ST confirmed in a note dated February 15, 2010, "To Whom it May Concern", that he had in fact

borrowed a sum of money from the Respondent and while he could not specifically recall, he believed the interest rate to be 5 or 6%. These monies were fully repaid in the fall of 2009.

34. The Respondent stated in his interview with Staff that he would have been personally responsible to repay TDR #1 and TRD #2, if for some reason ST could not or would not repay the TDRs.
35. In a written statement to Staff, the Respondent admitted that he had made a mistake with respect to the TDR transactions and took full responsibility for his error in handling this matter.
36. Neither the Respondent nor Mic-Jen received any financial benefit as a result of the \$20,000 invested by JK in the TDRs.

PERSONAL FINANCIAL DEALINGS – ST

37. Standard C – Professionalism, as outlined in the *Conduct and Practices Handbook* (CPH) Course states the following:

Personal Financial Dealings with Clients: Registrants should avoid personal financial dealings with clients, including the lending of money to or the borrowing of money from them, paying clients' losses out of personal funds, and sharing a financial interest in an account with a client. Any personal, financial or business dealings with any clients must be conducted in such a way as to avoid any real or apparent conflict of interest and be disclosed to the firm, in order that the firm may monitor the situation.

38. As noted in Paragraph 19 of this Settlement Agreement, ST was the Respondent's client.
39. As noted in Paragraph 23 of this Settlement Agreement, the Respondent loaned ST \$25,000 from his personal funds. Mic-Jen reimbursed the \$25,000 to the Respondent. Of the \$25,000 that Mic-Jen reimbursed to the Respondent, \$20,000 came from JK as described above.
40. The Respondent confirmed to Staff that the \$5,000 difference was money that he personally lent to ST.
41. The Respondent did not disclose to either Cartier or Dundee that he had loaned \$5,000 to ST.

IV. Contraventions

42. The Respondent admits to the following contraventions of IIROC Rules, Guidance, IDA By-Laws, Regulations, or Policies:
 - 1) From March 26, 2002, to March 26, 2008, the Respondent, while employed at Cartier, and subsequently at Dundee, facilitated the participation of clients in off-book transactions, namely term deposits, without the knowledge or consent of either Cartier or Dundee, contrary to Dealer Member Rule 29.1 (then IDA By-law 29.1).
 - 2) On or about March 26, 2002, the Respondent, while employed at Cartier, entered into personal financial dealings with a client, ST, in breach of Standard C of the CPH, contrary to Dealer Member Rule 29.1 (then IDA By-law 29.1).

V. Terms of Settlement

43. The Respondent agrees to the following terms of settlement:
 - a) The Respondent shall pay a fine in the amount of \$20,000;
 - b) As a condition of continued approval in any capacity, the Respondent shall be required to successfully complete the Conduct and Practices Handbook course by no later than six months following the effective date of this Settlement Agreement; and
 - c) The Respondent shall pay \$4,000 towards Staff's costs of this proceeding.
44. The Respondent agrees to pay the amounts referred to in Paragraph 43 within 30 days from the effective date of this Settlement Agreement.

AGREED TO by the Respondent at the Abbotsford in the Province of British Columbia, this 11th day of May , 2010.

“Witness signature”

Witness

“Respondent’s signature”

Respondent

AGREED TO by Staff at the City of Vancouver in the Province of British Columbia, this 25th day of May, 2010.

“Witness signature”

Witness

“Barbara Lohmann”

Barbara Lohmann

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

ACCEPTED at the City of Vancouver in the Province of British Columbia, this 13th day of July , 2010 , by the following Hearing Panel:

Per: “Murray A. Clemens”

Panel Chair

Per: “Richard Thomas”

Panel Member

Per: “David Pearson”

Panel Member

Copyright © 2010 Investment Industry Regulatory Organization of Canada. All Rights Reserved.