

Re Ducharme

IN THE MATTER OF:

The Dealer Member Rules of the Investment Industry Regulatory
Organization of Canada (IIROC)

and

The By-Laws of the
Investment Dealers Association of Canada (IDA)

and

Jean-Guy Ducharme

2010 IIROC 54

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

Heard: October 20, 2010

Decision: November 19, 2010

(24 paras.)

Hearing Panel

Alain Arsenault, Danielle Le May, Jean André Élie

Appearance

Diane Bouchard, Enforcement Counsel for IIROC

Jean-Guy Ducharme represented himself

DECISION

¶ 1 Upon investigation, Staff of the Investment Industry Regulatory Organization of Canada (IIROC) found that Jean-Guy Ducharme (the Respondent) had committed a number of contraventions described as follows:

Count No. 1 In April 2005, the Respondent engaged in conduct unbecoming and detrimental to the public interest and failed to observe high standards of ethics and conduct, particularly under Standard C of the *Conduct and Practices Handbook* relating to professionalism, contrary to IDA By-law 29.1, when he purchased shares in public company H for his own personal account, over the counter, through representative A, without prior disclosure of the proposed trade to the firm.

Count No. 2 In August 2005, the Respondent engaged in conduct unbecoming and detrimental to the public interest and failed to observe high standards of ethics and conduct, particularly under Standard C of the *Conduct and Practices Handbook* relating to professionalism, contrary to IDA By-law 29.1, when he purchased shares in public company C for his own personal account, directly from D, without prior disclosure of the proposed trade to the firm.

Count No. 3 In the period from December 2004 to January 2006, the Respondent engaged in conduct unbecoming and detrimental to the public interest and failed to observe high standards of ethics and conduct, particularly under Standard A of the *Conduct and Practices Handbook* relating to the Duty of Care (know-your-client rule), when he failed to ensure that investment recommendations made with regard to Clients I and J were in keeping with their investment objectives and risk tolerance, contrary to IDA By-law 29.1 and Regulations 1300.1(a) and 1300.1(p).

Count No. 4 In the period from December 2004 to January 2006, the Respondent engaged in conduct unbecoming and detrimental to the public interest and failed to observe high standards of ethics and conduct, contrary to IDA By-law 29.1, as regards the suitability and relevance of investment recommendations pertaining to shares of C and K, considering that the Respondent and team representatives A and B held such shares in their personal accounts, that the Respondent had in fact purchased shares in C on the recommendation of A, that he was or should have been aware of the privileged ties between A and the insiders of such companies, who were also clients of the team, and that at December 31, 2005, 248 of the team's accounts held outstanding shares of C and 128 accounts held outstanding shares of K.

¶ 2 On August 6 and 11, 2010, the Respondent and IIROC signed a Settlement Agreement, annexed hereto to form an integral part hereof.

¶ 3 Under this Agreement, the Respondent recognizes his culpability in connection with the four contraventions alleged against him and agrees to pay IIROC a \$15,000 fine in settlement thereof.

¶ 4 Following this Agreement, a settlement hearing was scheduled for October 20th 2010 in IIROC's offices in accordance with Rule 15 of Part B of IIROC's *Rules of Practice and Procedure*.

¶ 5 The Respondent was present but was not accompanied by a lawyer while IIROC was represented by Diane Bouchard.

¶ 6 The Respondent and IIROC invited the Hearing Panel to accept the Settlement Agreement entered into between the Respondent and IIROC.

¶ 7 It is important to note that under IIROC Dealer Member Rule 20.36 this Hearing Panel has the power to accept or reject the agreement entered into between the parties, but cannot amend the terms thereof.

¶ 8 To reject the Settlement Agreement between the parties, the Hearing Panel must consider it to be unreasonable after hearing representations from the parties¹.

¶ 9 The factual background of this case is accurately summarized in paragraphs 16 to 53 of the Settlement Agreement between the parties, annexed hereto.

¶ 10 The parties have submitted the particulars of this case which justify the Settlement Agreement entered into between them.

¶ 11 First, counsel for IIROC presented the extenuating circumstances in favour of the Respondent and, secondly, the aggravating circumstances.

¶ 12 The extenuating circumstances are:

- the Respondent cooperated fully with the IIROC investigation;
- the public was not systematically misled nor was there fraud;
- the Respondent admitted his responsibility in the four contraventions alleged against him;
- the Respondent was candid with IIROC and offered his full cooperation;
- the absence of any market manipulation;

¹ Re Union Securities Ltd. and John P. Thompson, IDA Bulletin No. 3531, April 18, 2006; Re Milewski (1999) I.D.A.C.D. No. 17, July 28, 1999; Re Clark (1999) I.D.A.C.D. No. 40, November 29, 1999.

- the absence of illegal investments;
- the absence of falsified documents or forged signatures; and
- this is an isolated event, due in part to the Respondent's inexperience.

¶ 13 The aggravating circumstances are:

- the Respondent was a representative with an unrestricted practice;
- the Respondent relied too heavily on the other members of his team who, admittedly, were much more experienced than he; and
- the Respondent did not disclose to his firm, Desjardins Securities, his purchase of certain securities at issue.

¶ 14 The Respondent has acknowledged the aggravating and extenuating circumstances referred to by counsel for the Petitioner, but points to other aspects which, in his opinion, are in his favour.

¶ 15 Furthermore, as the Respondent left the securities industry over three years ago, he will be required, should he wish to return to the industry, to repeat the basic training course referred to in Rule 2900.

¶ 16 Therefore, it would be pointless for this Hearing Panel to impose penalties of this nature.

¶ 17 Counsel for the Petitioner has provided the Hearing Panel with several decisions imposing penalties, including *Gaudet (Re)*², *Comeau*³ and *Jenset (Re)*⁴, in which the contraventions alleged against the respondents are comparable to those brought against the Respondent Ducharme in this case.

¶ 18 In *Gaudet (Re)*, the IIROC Hearing Panel accepted an agreement providing for the following penalties:

- a \$20,000 fine;
- as a condition of his continued approval in any capacity, the respondent was required to successfully complete the *Conduct and Practices Handbook* course within six months; and
- costs in the amount of \$4,000.

¶ 19 In *Comeau*, the IIROC Hearing Panel accepted an agreement providing for the following penalties:

- a fine in the amount of \$15,000, an amount equal to three times the profit made by the Respondent by reason of the contravention;
- close supervision for a period of 12 months; and
- costs in the amount of \$2,000.

¶ 20 In *Jenset (Re)*, the IIROC Hearing Panel accepted an agreement providing for the following penalties:

- a \$10,000 fine;
- close supervision for a period of 12 months;
- successful completion of the *Conduct and Practices Handbook* examination within 12 months from the effective date of the Settlement Agreement; and
- costs in the amount of \$600.

¶ 21 In determining the penalties, the Hearing Panel must be guided by the following objectives:

- protecting the investing public.
- protecting the integrity of IIROC's regulatory processes;

² [2010] IIROC No. 29.

³ [2009] IIROC No 37.

⁴ [2009] IIROC No 24.

- protecting the integrity of the securities markets; and
- deterring similar misconduct.

¶ 22 Therefore, this Hearing Panel must review the terms of the Settlement Agreement entered into between the parties in the light of the above objectives and ensure that the Agreement fulfils each of these objectives.

¶ 23 Having reviewed the Settlement Agreement and deliberated thereon, the Hearing Panel has agreed to accept as reasonable the settlement proposed by the parties, for the following reasons:

- the Respondent played a minor role in the various transactions and did not exhibit any premeditation;
- there was no misappropriation of funds nor enrichment on the part of the Respondent;
- the public was not misled and the Respondent did not use falsified documents or forged signatures;
- the Respondent has not been a representative with an unrestricted practice for many years;
- the Respondent cooperated fully with the IIROC investigation; and
- this is a fairly unique case.

¶ 24 **FOR THESE REASONS**, the Hearing Panel:

hereby **ACCEPTS AND GIVES EFFECT** to the Settlement Agreement of August 6 and 11, 2010 with respect to the Respondent Jean-Guy Ducharme.

Montréal, this 19th day of November 2010

Alain Arsenault, Chair
Danielle Le May, Member
Jean André Élie, Member

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 Jean-Guy Ducharme (the Respondent).
2. The Investigation was commenced by Enforcement Department Staff (IDA Staff) of the Investment Dealers Association of Canada (IDA) before 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 IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.
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 shall be presented for approval to the Hearing Panel at a hearing (the Settlement Hearing). 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 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 settlement set forth in this Settlement Agreement are based upon such specific facts.

(ii) Factual Background

15. IDA Staff conducted an investigation into the Respondent's conduct.
16. This investigation was commenced on or about March 25, 2008 following the receipt of a ComSet report because of actions taken while the Respondent was a representative with an unrestricted practice with Desjardins Securities Inc. (Desjardins).

THE RESPONDENT

17. In December 2004, A teamed up with the Respondent.
18. From June 2005, B, a third representative, joined the team.
19. At all relevant times, A was the team leader of the team in question.
20. In June 2005, commissions were shared among the three representatives as follows:
 - A: 36%
 - B: 36%.
 - Respondent: 28%.
21. On January 13, 2006, the Respondent resigned and left Desjardins.
22. The Respondent has in excess of 19 years of career experience in the securities industry, and he occupied various positions until August 2007.

THE FACTS

Taking part in a trade without prior disclosure of the proposed transaction (C) to the firm

23. D, E and F were insiders of C at the relevant time and maintained accounts with the team.

24. On August 15, 2005, the Respondent acquired 13,000 shares in C directly from D by means of a cheque in the amount of \$4,000, which shares were deposited in the Respondent's account with the firm on November 28, 2005.
25. The Respondent failed to inform G, the branch manager, before completing the transaction.

Over-the-counter private placements without prior disclosure of the proposed transaction (H) to the firm

26. On or about November 17, 2004, A subscribed for 100,000 shares in H as part of a private placement.
27. On or about April 20, 2005, A received these 100,000 shares of H in his account.
28. According to A, he took part in this private placement in the shares of H but 50,000 shares were in fact acquired for the Respondent.
29. On a form entitled "Aliénation à titre gratuit" (Gratuitous Disposition) signed on April 25, 2004 (the document was in fact signed in 2005), in which A is identified as the assignor and the Respondent as the assignee, A makes the following statement:
"I the undersigned Assignor do hereby assign the securities referred to above to the Assignee and hereby declare under oath that in consideration of this assignment I have not received nor do I or shall I receive any consideration from the Assignee in any form whatsoever. (...)". [TRANSLATION]
30. When being interviewed by the IIROC investigator, the Respondent admitted that he acquired the shares in H for valuable consideration and stated that he had issued a cheque for \$6,000 to A.
31. The Respondent paid for the 50,000 shares in two instalments, by cheque for \$3,000 dated February 16, 2005 and by a second cheque for \$4,857.50 dated June 20, 2005.
32. The shares were deposited in the Respondent's account on May 12, 2005.
33. The Respondent did not inform the branch manager of this over-the-counter investment.

Unsuitability of investments in the accounts of Clients I and Client J

34. In his complaint to the firm, Client J alleged that the representatives, acting as an advisory team, failed to respect his objectives when recommending the purchase of securities, such as those of C and K.
35. The New client Account Form dated May 11, 2004 is signed by A in his capacity as advisor.
36. The risk factors were evaluated as 20% low, 50% moderate and 30% speculative.
37. The IIROC investigator conducted an analysis of the investments which demonstrates that between August 2004 and November 2006, the speculative portion of the investment portfolio largely exceeded 30%.
38. The examinations of A, B and the Respondent conducted by the IIROC investigator revealed that this client is known to A, that A opened the account, that he referred the file to the Respondent and that the Respondent made the investment recommendations.
39. The Respondent and B acknowledged in the interview with the IIROC investigator that the recommendations made were not consistent with the client sheet and did not respect the client's investment objectives.
40. A stated in the interview with the IIROC investigator that he was not the one managing this client's account.
41. In April 2005, Clients I purchased shares in K on the Respondent's recommendation.
42. As the stock did not produce the desired results, the clients contacted the Respondent several times to liquidate the shares at \$1.25; the Respondent persuaded them to wait.
43. Clients I met with the Respondent, A and B, in December 2005.

44. At the time it was agreed to wait until April 2006 before taking a decision on the stock.
45. The shares were finally liquidated at a loss equal to \$47,786.
46. The delay increased the loss to the clients.
47. Note that the Respondent left Desjardins at the beginning of January 2006 and did not have a hand in the liquidation of the shares.

Suitability and relevance of the recommendation regarding securities in C and K

48. At December 31, 2005, two hundred and forty-eight (248) of the accounts of the team, comprised of A, B and the Respondent, held outstanding shares of C and one hundred and twenty-eight (128) accounts held outstanding shares of K.
49. The stock of C and K were not being monitored by the firm's in-house analysts and the team's recommendations regarding these securities were not based on verifiable and relevant information.
50. These shares were often purchased through A, who had privileged ties with insiders of these companies.
51. Such insiders were also clients of the team comprised of A, B and the Respondent.
52. The Respondent held shares of C in his personal account, which shares were purchased directly from an insider through A or on the recommendation of A or directly from A.
53. These purchases, particularly those made by the team representatives, were made without prior disclosure of the proposed transactions to the firm, either over the counter as part of private placements or without the aggregate transactions being disclosed to the firm or entered on the registers.

IV. Contraventions

54. The Respondent acknowledged the following contraventions to IIROC Dealer Member Rules and Guidelines and to IDA By-laws, Regulations or Policies:
 1. In April 2005, the Respondent engaged in conduct unbecoming and detrimental to the public interest and failed to observe high standards of ethics and conduct, particularly under Standard C of the *Conduct and Practices Handbook* relating to professionalism, contrary to IDA By-law 29.1, when he purchased shares in public company H for his own personal account, over the counter through representative A, without prior disclosure of the proposed trade to the firm.
 2. In August 2005, the Respondent engaged in conduct unbecoming and detrimental to the public interest and failed to observe high standards of ethics and conduct, particularly under Standard C of the *Conduct and Practices Handbook* relating to professionalism, contrary to IDA By-law 29.1, when he purchased shares in public company C for his own personal account, directly from D, without prior disclosure of the proposed trade to the firm.
 3. In the period from December 2004 to January 2006, the Respondent engaged in conduct unbecoming and detrimental to the public interest and failed to observe high standards of ethics and conduct, particularly under Standard A of the *Conduct and Practices Handbook* relating to the Duty of Care (know-your-client rule), when he failed to ensure that investment recommendations made with regard to Clients I and J were in keeping with their investment objectives and risk tolerance, contrary to IDA By-law 29.1 and Regulations 1300.1(a) and 1300.1(p).
 4. In the period from December 2004 to January 2006, the Respondent engaged in conduct unbecoming and detrimental to the public interest and failed to observe high standards of ethics and conduct, contrary to IDA By-law 29.1, as regards the suitability and relevance of the investment recommendations pertaining to shares of C and K, considering that the Respondent and team representatives A and B held such shares in their personal accounts, that the Respondent had in fact purchased shares in C on the recommendation of A, that he was or should have been aware of the privileged ties between A and the insiders of such companies, who were also clients of the team,

and that at December 31, 2005, 248 of the team's accounts held outstanding shares of C and 128 accounts held outstanding shares of K.

V. Terms of Settlement

55. The Respondent hereby agrees to the following terms:

(a) a \$15,000 fine in the aggregate for all counts.

56. The Respondent shall not be required to pay the costs to IIROC.

57. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

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

AGREED TO by the Respondent at Montreal, Quebec this 6th day of August 2010.

Witness

Jean-Guy Ducharme
Respondent

AGREED TO by Staff at Montreal, Quebec on this 11th day of August 2010.

Witness

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

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