

## **Re Roy**

**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**

**Richard Roy**

2011 IIROC 9  
Record No. 0526/Jun/07

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

Heard: January 13, 2011 at Montreal  
Decision: February 1, 2011  
(16 paras)

**Hearing Panel:**

Claire Richer, Chair, Danielle Le May and Jean Morin, Panel Members

**Appearances:**

Miriam Giroux-Del Zotto, IIROC Enforcement Counsel  
Richard Roy, Respondent, on his own behalf

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## **Decision**

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¶ 1 In November 2010, IIROC and the Respondent signed a Settlement Agreement regarding facts in respect of which a Hearing Panel, appointed under Part C of Schedule C.1 to IIROC Transition Rule No. 1, could impose disciplinary sanctions on the Respondent.

¶ 2 The contraventions alleged by IIROC, and admitted to by the Respondent in the Settlement Agreement, attached to this Decision to form an integral part hereof, are that the Respondent:

- (a) failed to use due diligence to ensure that he learned all the essential facts relative to his clients, contrary to IIROC Dealer Member Rule 1300.1(a) and 1300.1(b); and
- (b) accepted and followed instructions from an unauthorized third party, contrary to IIROC Dealer Member Rule 200.1(i)(3).

¶ 3 A settlement hearing was held on January 13, 2011, at which this Hearing Panel (“the Panel”) heard joint representations from IIROC and the Respondent regarding the Settlement Agreement.

¶ 4 At the hearing, the Panel was apprised of additional facts which were disclosed consensually, being (i) that the Respondent had brought with him a bank draft in the amount of \$10,000 made payable forthwith to IIROC in the event that the Settlement Agreement was accepted; (ii) that a detailed payment schedule had been drawn up for the payment of the balance; and (iii) that some Complainants had been compensated by the Respondent’s employer.

¶ 5 At the close of the hearing, after the Panel’s deliberations, in which it took into consideration the terms and conditions of the Settlement Agreement, the representations of the parties and the documentation and case-law submitted by Enforcement Counsel, the Panel advised the parties that it accepted the Settlement Agreement.

¶ 6 The Panel’s reasons are set out below.

¶ 7 IIROC Rules 20.35 to 20.40 clearly state that a settlement hearing panel can only accept or reject a settlement agreement.

¶ 8 The role of a hearing panel at a settlement hearing is not to determine which penalty it would have imposed at a disciplinary hearing on the same facts, but rather to assess whether the penalties agreed on between the parties are reasonable in the circumstances.

¶ 9 This principle has been recognized on a number of occasions by case-law, as attested by the numerous decisions submitted by Enforcement Counsel at the hearing. We reproduce the following extract from *Re Milewski*, 1999 I.D.A.C.D. No.17:

“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....”.

¶ 10 The Panel also consulted, although it did not confine itself to, the IIROC Disciplinary Sanction Guidelines for assistance in assessing the penalties set forth in the Settlement Agreement.

¶ 11 Enforcement Counsel stressed that, in the circumstances, the “suspension/prohibition” component of the penalty better reflected the gravity of the Respondent’s violations than the “monetary” component and in fact confirmed the deterrence aspect sought by the settlement agreement process.

¶ 12 The contraventions alleged against the Respondent are indeed serious, considering, among other things, his many years of experience in the industry (30 years) and the fact that he held the position of vice-president. The Respondent clearly admitted that he had breached certain basic rules that applied to him, including the “know-your-client” rule.

¶ 13 However, the Respondent did not derive any gain from his actions, excluding commissions, and he cooperated with the IIROC investigation. Furthermore, the Respondent had never been investigated before the investigation into the facts of this matter.

¶ 14 Although the monetary sanction under the Settlement Agreement seems relatively low, the Panel accepted the Settlement Agreement because it considers that the penalties set forth thereunder are within a reasonable range and meet the objectives of general deterrence and protection of the public which any penalty should provide.

¶ 15 The Panel also took into account the immediate payment of 50% of the fine by the Respondent and the proposed schedule for the payment of the balance.

¶ 16 For these reasons, the Panel accepted the Settlement Agreement.

February 1, 2011

Claire Richer, Chair

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

1. IIROC Enforcement Staff (“Staff”) and Richard Roy (“the Respondent”) consent to the settlement of the matter by way of this Settlement Agreement.
2. The Enforcement Department of IIROC has conducted an investigation (“the Investigation”) into the conduct of the Respondent.
3. 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, effective June 1, 2008, the IDA retained IIROC to provide the necessary services for the IDA to carry out its regulatory functions.
4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. The Investigation discloses 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. Staff and the Respondent jointly recommend that the Hearing Panel accepts this Settlement Agreement.
7. The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:

From January 2005 to June 2007, while a Registered Representative and a Vice-President with Industrial Alliance Securities Inc. (“IAS”), an IIROC member firm, the Respondent:

- (a) failed to use due diligence to ensure that he learned all the essential facts relative to his clients, contrary to IIROC Dealer Member Rule 1300.1(a) and 1300.1(b); and
  - (b) accepted and followed instructions from an unauthorized third party, contrary to IIROC Dealer Member Rule 200.1(i)(3).
8. Staff and the Respondent agree to the following terms of settlement:
    - (a) a global fine of \$20,000;
    - (b) a suspension of approval in any capacity for a period of 5 years;
    - (c) in the event of his return to the securities industry after the suspension period set forth herein, a permanent prohibition to act in any management or supervisory capacity; and
    - (d) in the event of his return to the securities industry, close supervision for a period of 6 months.
  9. The Respondent also accepts to pay an amount equal to \$2,500 for costs incurred by IIROC.

### III. STATEMENT OF FACTS

#### (i) Acknowledgement of the Facts

10. Staff and the Respondent agree on the facts set out in this section and acknowledge that the terms and conditions of this Settlement Agreement are based on the exact same facts.

#### (ii) Factual Context

## **SUMMARY OF RESPONDENT'S OBJECTIONABLE CONDUCT**

11. For two (2) years, the Respondent, who was a Vice-President of IAS and a representative with 30 years of experience at the time:
  - (i) executed orders from a third party, knowing that such third party was not authorized to give such orders;
  - (ii) effected one hundred and eighty-seven (187) trades without knowing his clients; and
  - (iii) participated in this scheme set up by the unauthorized third party, although the scheme was likely to mislead his clients as to the identity of the representative in charge of the management of their accounts.

## **COMMISSION-SHARING AGREEMENT**

12. On or about August 31, 2002, IAS entered into a commission-sharing agreement ("Sharing Agreement") in respect of referred clients with A, of which B was designated as a majority shareholder and sole director.
13. The Respondent and B met when the Respondent was in the employ of Corporation C in the period between April 1996 and August 2002.
14. The Sharing Agreement provided that, in all cases where A referred a client to IAS, the commission for each transaction would be shared on the following basis:
  - A would receive 75% of the amount of the commission charged by IAS, minus the expenses related to the transaction.

## **UNAUTHORIZED THIRD PARTY B**

15. The Attestation of Right to Practice issued to B by the *Autorité des marchés financiers* ("the AMF") under number 116 109 ("Attestation") is the attestation for a mutual fund representative for the period from January 2005 to June 2007.
16. The Attestation contains the following restriction: may not offer commodity pools from June 1, 2004 to May 31, 2005 and from June 15, 2006 to December 31, 2007.
17. The Attestation indicates that the holder has never been registered as a securities dealer with a restricted practice or as a securities adviser with an unrestricted practice under the *Securities Act (R.S.Q., V-1.1.)*.
18. B has never been in the employ of an IDA or IIROC member firm as a duly registered representative.

## **MODUS OPERANDI**

19. B referred approximately fifty-four (54) clients to the Respondent.
20. Of those, six (6) ("the Complainants") filed a written complaint with IAS.
21. Based on the services provided by the Respondent, all the clients that were referred to the Respondent by B were, and should have been treated as, clients of IAS, notwithstanding that they were referred clients, but they were not so treated, as a result of the Respondent's improper conduct.
22. The Respondent never met the Complainants upon the opening of their accounts or at any other time.
23. B is the one who determined the investment objectives with the Complainants, notwithstanding that they were clients of the Respondent.

24. The Respondent was content simply to add his signature to the new account forms and ascertain that the formalities relative to these forms were complied with, i.e., that the completed forms did not contain any missing information or mistakes.
25. The Respondent never took reasonable measures to ensure that the information found on the new account forms did in fact reflect the financial and personal situation of each of the Complainants.
26. The Respondent never saw the originals of copies of identity documents conveyed with the forms completed by B upon the opening of the Complainants' accounts.
27. B is the one who obtained the Complainants' consent to effect the purchase and sale of securities.
28. B then faxed the information to the Respondent in the form of instructions, and the Respondent was content to carry out the instructions without communicating with the clients.
29. The Respondent received numerous instructions from B to effect trades in the Complainants' accounts.
30. The instructions faxed to the Respondent confirming the purchases or sales of securities were kept in a file belonging to the Respondent, unbeknownst to IAS.
31. IAS became aware of the existence of the documents recording the instructions faxed to the Respondent only in the course of the internal investigation, i.e., after the receipt of complaints filed by the Complainants.
32. The Respondent was only an intermediary whose purpose was to finalize the trades directed by B, although he was designated by IAS as the only representative with an unrestricted practice authorized to do so.
33. The Respondent effected the trades in the Complainants' accounts not only by following B's instructions, but by failing to inform the Complainants that B was not a duly registered representative.
34. Yet the Respondent had always been aware that B was an unauthorized third party.
35. Although the Respondent knew that B was not a registrant, he agreed to participate in the scheme set up by B for the management of the Complainants' accounts.
36. Deliberately participating in this way, and letting B act as a representative with an unrestricted practice, knowing that he was not, resulted in the Complainants being misled as to the real identity of their representative.
37. There was never any agreement on the part of the Complainants expressly authorizing the Respondent to effect the sale or purchase of securities in accordance with the instructions of an unauthorized third party.
38. The Complainants' accounts were not designated or authorized in writing as discretionary or managed accounts.
39. The Respondent did not make any reasonable effort to comply with the rules of conduct inherent in the practice of his profession, knowing that his workload did not allow him to comply with such rules.

#### **CLIENT COMPLAINTS**

40. On or about June 5, 2007, D sent a letter complaining about the Respondent to IAS, in which letter he indicated that at no time had the Respondent contacted him with respect to the management of his account and that he had always transacted with B. D further alleged that he had sustained substantial financial losses as a result of the mismanagement of his account.
41. On or about June 5, 2007, E and F sent IAS a letter of complaint similar to the one sent by D.

42. On or about November 9, 2007, G, H and I sent a letter complaining about the Respondent to IAS, in which letter they indicated that they had sustained substantial financial losses as a result of the mismanagement of their accounts.

#### **FINANCIAL CONSEQUENCES OF RESPONDENT'S CONDUCT FOR THE COMPLAINANTS**

43. Because of professional misconduct, the Respondent caused his clients monetary losses in the aggregate amount of \$149,968.83.

#### **RESPONDENT'S PROFESSIONAL SITUATION**

44. On June 15, 2007, the Respondent was suspended by IAS.
45. On August 28, 2007, the Respondent resigned his position with IAS.
46. The Respondent is no longer a registrant and no longer works in the securities industry.

#### **IV. TERMS OF SETTLEMENT**

47. This settlement has been agreed to in accordance with Dealer Member Rules 20.35 to 20.40 inclusive and with Rule 15 of the Dealer Member Rules of Practice and Procedure.
48. The Settlement Agreement is conditional upon its acceptance by the Hearing Panel.
49. The Settlement Agreement will become effective and binding upon the Respondent and Staff on the date of its acceptance by the Hearing Panel.
50. The Settlement Agreement will be submitted for approval to the Hearing Panel at a hearing ("the Settlement Hearing"). At the end of the Settlement Hearing, the Hearing Panel may accept or reject the Settlement Agreement.
51. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives any right he may have under IIROC rules and any other applicable law to a disciplinary hearing or a review or appeal of the decision.
52. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement, or Staff may require that a disciplinary hearing be held on the facts disclosed in the investigation.
53. The Settlement Agreement shall be made available to the public once it has been accepted by the Hearing Panel.
54. Staff and the Respondent agree that, if the Hearing Panel accepts the Settlement Agreement, then neither Staff nor the Respondent shall personally make, nor shall anyone make on their behalf, any public statement that is incompatible with the Settlement Agreement.
55. Unless otherwise provided, the fines and costs imposed on the Respondent shall be payable forthwith on the effective date of the Settlement Agreement.
56. Unless otherwise provided, any suspension, prohibition, expulsion, restriction or other term or condition of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

ACCEPTED by the Respondent at Montreal, Quebec, on the 5<sup>th</sup> day of November 2010.

**"WITNESS"**

**"RICHARD ROY"**

**WITNESS:**

**RESPONDENT: RICHARD ROY**

**ACCEPTED** by Staff at Montreal, Quebec, on the 10<sup>th</sup> day of November 2010.

**“ÉMILIE NNE ROBICHAUD”**

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**WITNESS: ÉMILIE NNE ROBICHAUD**

Enforcement Assistant of the  
Investment Industry Regulatory  
Organization of Canada, Quebec  
Office

**“MYRIAM DEL ZOTTO”**

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**MYRIAM G. DEL ZOTTO**

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

**ACCEPTED** at Montreal, Quebec, on this 13<sup>th</sup> day of January 2011 by the following Hearing Panel:

**“Claire Richer”**

Chair of the Hearing Panel

**“Jean Morin”**

Panel Member

**“Danielle Le May”**

Panel Member

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