

## Re Clarke

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**

**Jeremie Steven Clarke**

2011 IIROC 48

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

Heard: July 22, 2011 at Montréal

Decision: August 11, 2011

(24 paras)

**Hearing Panel:**

Claude Bisson (Chair), Yves Julien, François Demers

**Appearances:**

Myriam Giroux-Del Zotto, Enforcement Counsel

Jeremie Steven Clarke, by videoconference from the IIROC offices in Toronto

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## Decision

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¶ 1 This Decision pertains to a Settlement Agreement that was signed and submitted in accordance with Rules 14 and 15 of the Dealer Member Rules of Practice and Procedure.

¶ 2 The Settlement Agreement, signed on May 31 and June 1, 2011, reads as follows:

### SETTLEMENT AGREEMENT

#### I. INTRODUCTION

1. IIROC Enforcement Staff (“Staff”) and Jeremie Clarke (“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. The Respondent consents to be subject to the jurisdiction of IIROC.
4. 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

5. Staff and the Respondent jointly recommend that the Hearing Panel accepts this Settlement Agreement.
6. The Respondent admits to the following contravention of IIROC Rules:
  - (i) During the period from August 2008 to January 2009, while employed as a Registered Representative at Edward Jones, the Respondent forged the signatures of his clients on client account documentation, thereby engaging in conduct unbecoming and contrary to Dealer Member Rule 29.1;
7. Staff and Respondent agree to the following terms of settlement:
  - a) A **fine** in the amount of **\$15,000**;
  - b) A **suspension** of **5 years** from registration in any capacity;
  - c) Before Mr. Clarke can be approved in any capacity, he must **rewrite and pass the examination based on the Conduct and Practices Handbook for Securities Industry Professionals**;
  - d) Upon re-entry to the industry, the Respondent has to be under **strict supervision for a 12-month period with a report to be filed with IIROC Registration**;
8. The Respondent also accepts to pay an amount equal to \$3,000 for costs incurred by IIROC.

### **III. STATEMENT OF FACTS**

#### **(i) Acknowledgement of the Facts**

9. 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**

##### **Overview**

10. Between August 2008 and January 2009, while employed at the Beaconsfield Branch of Edward Jones (EJ), the Respondent forged client signatures twenty-nine (29) times for many clients;

##### **The Respondent**

11. The Respondent became licensed in the securities industry as a Registered Representative in August 2007, when he was employed by EJ;
12. Effective June 1, 2008, the Respondent was regulated by IIROC;
13. The Respondent worked in various EJ branch offices in Montréal, Québec, before transferring to Campbell River, British Columbia, in February 2009:
  - From or about August 2007 to October 2007, he worked at the Notre-Dame-de-Grâce (“NDG”) office;
  - From or about October 2007 to February 2008, he worked at the Dollard-des-Ormeaux (“DDO”) office;
  - From or about February 2008 to February 2009, he worked at the Beaconsfield office;
  - From or about February to June 2009, he worked at the Campbell River, British Columbia office;

14. On or about June 30, 2009, the Respondent was terminated for cause;
15. The Respondent is not currently registered with IIROC in any capacity and has not worked in the securities industry since June 30, 2009;

**The forgeries**

16. The Respondent admitted he forged signatures while working out of the Beaconsfield office;
17. The Respondent also admitted he knew at the time that it was wrong to forge the clients' signatures;
18. The Respondent admitted that at that time his focus was on selling;
19. The Respondent forged signatures on twenty-nine (29) occasions, between August 2008 and January 2009;
20. The forged documents included documents such as account authorization and acknowledgement forms, a stock non-solicitation letter and a mutual fund instruction form;
21. The forgeries were done out of convenience to the Respondent;
22. There was no harm for the clients as a result of the forgeries;

**IV. TERMS OF SETTLEMENT**

23. This settlement has been agreed to in accordance with Dealer Member Rules 20.35 to 20.40 inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
24. The Settlement Agreement is conditional upon its acceptance by the Hearing Panel.
25. The Settlement Agreement will become effective and binding upon the Respondent and Staff on the date of its acceptance by the Hearing Panel.
26. 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.
27. 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.
28. 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.
29. The Settlement Agreement shall be made available to the public once it has been accepted by the Hearing Panel.
30. 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.
31. Unless otherwise provided, the fines and costs imposed on the Respondent shall be payable forthwith on the effective date of the Settlement Agreement.
32. 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 Toronto, Ontario, on the 31<sup>st</sup> day of May 2011.

RESPONDENT: JEREMIE CLARKE

WITNESS:

**ACCEPTED** by Staff at Montréal, Québec, on the 1st day of June 2011.

MYRIAM G. DEL ZOTTO, Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada, Québec Office

WITNESS: LINDA VACHET, Enforcement Assistant of the Investment Regulatory Organization of Canada, Québec Office

- ¶ 3 The Respondent, who chose not to be represented by counsel, agreed beforehand that the hearing would be conducted in French and, at the hearing, agreed to the decision being written in the same language.
- ¶ 4 The acts committed by the Respondent, which he admits to in the Settlement Agreement, are all offences under Dealer Member Rule 29.1, entitled BUSINESS CONDUCT.
- ¶ 5 This provision prescribes that all players in the investment industry shall, in the transaction of their business, “observe high standards of ethics and conduct” and “shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest”.
- ¶ 6 As set forth in sections 6, 10 and 19 of the Settlement Agreement, the Respondent, while acting as a registered representative at the Beaconsfield, Québec office of a brokerage firm, forged the signatures of many of his clients on twenty-nine (29) occasions from August 2008 to January 2009.
- ¶ 7 As set forth in section 20 of the Settlement Agreement, the documents involved were documents such as “account authorization and acknowledgement forms, a stock non-solicitation letter” and “a mutual fund instruction form”.
- ¶ 8 What is at stake as a result of the offence committed by the Respondent is the integrity of the investment industry process and the protection of the public, who are entitled to rely on the unimpeachable conduct of all players in the securities industry.
- ¶ 9 The forgery of the clients’ signatures flies in the face of the values expressed in the foregoing paragraph and must be rebuked in the strongest possible terms.
- ¶ 10 As regards registered representatives, Dealer Member Rule 20.34(2) prescribes the various penalties that may be imposed on the offender.
- ¶ 11 Section 7 of the Settlement Agreement agrees to the imposition of a fine, a suspension from registration and the terms and conditions of a possible re-entry: examination and supervision.
- ¶ 12 As has often been written, the role of a Hearing Panel required to adjudicate on a Settlement Agreement is limited to acceptance or rejection of the Agreement (Dealer Member Rule 20.36). What the Panel must ask itself is not whether it would have imposed the same penalties as those agreed upon, but whether the Agreement before it is reasonable in the circumstances and given the applicable criteria.
- ¶ 13 This is the context in which the DEALER MEMBER DISCIPLINARY SANCTION GUIDELINES, issued by IIROC in March 2009, can be interpreted.
- ¶ 14 In the Section entitled INTRODUCTION of these GUIDELINES, we read on page 3 that these are “... a set of General Principles and Guidelines that may be taken into account when determining the appropriate sanction to be imposed as part of a Settlement Agreement or at the end of a disciplinary proceeding ...” .
- ¶ 15 Beginning on page 15 of the document referred to in section 13 above, there is a Section entitled GUIDELINES which provides comments on the “recommended” fines for various types of offences.
- ¶ 16 The second paragraph of the PREAMBLE on page 15 reads as follows:

*“However, nothing in these guidelines shall fetter the discretion of a Hearing Panel to impose a lesser or greater penalty in specific circumstances.”*

¶ 17 On page 17 of the document referred to in section 13 above, a minimum fine of \$25,000 is recommended.

¶ 18 It should be stated that the sanction imposed on the Respondent involves a five-year suspension from registration in any capacity in the securities industry.

¶ 19 However, the Respondent has not worked in the securities industry for over two years (since June 30, 2009). He is now 28 years old. An additional prohibition of five years in the circumstances is a stiff penalty.

¶ 20 We find only one prohibition in the jurisprudence submitted to us that is stricter than this.

¶ 21 In the case before us, the five-year prohibition is, for the Respondent, a more appropriate sanction than would be the stiffer penalty.

¶ 22 We cite the following in the way of extenuating circumstances:

- (a) other than being the subject of the Respondent’s reprehensible acts, the clients incurred no harm;
- (b) apart from saving time in communicating with the clients concerned, (section 21 of the Agreement), the Respondent did not benefit from his reprehensible acts;
- (c) the Respondent had no prior disciplinary file; and
- (d) it was confirmed at the hearing that the Respondent consented to cooperate with the investigation.

¶ 23 The Hearing Panel is therefore of the opinion that the sanctions agreed upon are reasonable.

¶ 24 **FOR THESE REASONS**, the Hearing Panel hereby **APPROVES** the Settlement Agreement set forth in section 2 above.

Montreal, August 11, 2011

Yves Julien

François Demers

Claude Bisson, Chair

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