

# Unofficial English Translation

## Re St-Amant

IN THE MATTER OF:

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

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

**and**

**Natalie St-Amant**

2011 IIROC 67

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

Hearing held on December 5, 2011  
Decision rendered on December 20, 2011  
(58 paragraphs)

**Hearing Panel:**

M<sup>e</sup> Jean-Pierre Lussier (Attorney and Hearing Panel Chair, Mr. Gilles Archambault, Mr. Marcel Paquette

**Appearances:**

Me Sébastien Tisserand for IIROC

Me Julie-Martine Loranger for the Respondent

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## DECISION

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¶ 1 On May 18, 2011, our Hearing Panel found the Respondent guilty of five of the seven counts with which IIROC had charged her. Three of these counts (counts 1, 4 and 7) are of the same nature and the other two are of a different nature, as our May 18 decision has shown.

¶ 2 The parties each presented evidence before making their representations on the penalty. Staff of IIROC filed a sworn statement by an Enforcement Assistant who calculated the costs related to the investigation, both concerning the Respondent and for Jean-Luc Beaudoin, the Branch Manager who was also charged with violations. In short, the compilation added up to a total of more than \$113,000, most of which pertained to the fees of the investigators and legal counsel in this matter.

¶ 3 Counsel for the Respondent called two witnesses: the Respondent herself and Diane Lamothe who, both today and during the relevant period, was Compliance Manager, Complaints and Litigation at DS (Desjardins Securities), the firm where the Respondent works.

¶ 4 Ms. Lamothe was the person who, on behalf of the firm, conducted the investigation relative to certain

actions of the members of the team on which the Respondent worked, i.e. the Béland, St-Amant and Ducharme team. At the end of the DS investigation, Alain Béland was dismissed and the Respondent was compelled by the firm to pay a \$15,000 fine, placed under strict supervision for one year and obliged to rewrite the exam after retaking the Conduct and Practices Handbook Course. On September 8, 2006, the DS investigation report was sent to IIROC (at that time the IDA). In fact, the Respondent ceased to be subject to strict supervision (the obligation to have every trade authorized beforehand) and was placed under close supervision (the duty of the Branch Manager to review and report on all of the Respondent's trades during the month). This close supervision was what was recommended by IIROC at the time. Even today, five years later, the Respondent is still under close supervision and Ms. Lamothe reports that the Respondent's work since then has given no cause for any complaint or investigation.

¶ 5 Regarding the Respondent's testimony, she again maintained that she had never had any dishonest intent. She pointed out that the shares she acquired as private placements were all acquired at the market price.

¶ 6 Her clientele, she added, consists mainly of retirees, who are very worried given all the stock market turmoil and are constantly phoning her for financial advice. The Respondent said that if she is suspended, not only will she suffer, but so will her clients. If the Panel accepted IIROC's suggestion to suspend her for six months, she will certainly have to reconsider her career.

¶ 7 Moreover, she went on, the media coverage of her problems has caused her referral sources, mainly *caisse populaire* advisors, to dry up. She has also lost some clients whose portfolios were showing a good return, which she cannot explain except by the bad publicity she has received.

¶ 8 A single parent since the death of her spouse in 2005, she cited the period of personal difficulties that she underwent at the time as the explanation for the bad decisions that led to this prosecution.

¶ 9 In their pleadings, counsel for IIROC and the Respondent provided our Panel with abundant jurisprudence to support their respective arguments. In short, Counsel for IIROC, citing the Disciplinary Sanction Guidelines regarding the three categories of contraventions, called for an aggregate fine of \$40,000, maintenance of the close supervision, repeating the Conduct and Practices Handbook Course and suspension of approval as a representative for a period six months. Counsel also called for costs to be limited to \$25,000.

¶ 10 Counsel for the Respondent maintains that the penalties being called for are clearly exaggerated with regard to his client, who did not act with dishonest intent and whose conduct has been irreproachable during the five years that have elapsed since the violations. She maintained that the mastermind of the team of representatives was Alain Béland and she made reference to the penalties imposed on Béland and Ducharme to emphasize that the permanent ban imposed on Béland did not mean much because he had left the industry. As for Ducharme, who was on the team longer than the Respondent, he received a \$15,000 fine and was not required to pay any investigation costs.

¶ 11 Before outlining the principal considerations that have informed our decision, it is appropriate to recall briefly the nature of the offences and the Respondent's role regarding them.

¶ 12 Counts 1, 4 and 7 concern private placements made by the Respondent without informing the Branch Manager and, of necessity, without obtaining his prior authorization. The shares acquired by the Respondent were paid for by cheque, payable in one case to a company insider, also a client of the team, and in the other two cases, to her teammate Béland.

¶ 13 Count 3 concerns a client of the team, a consultant for various companies. This client ordered trades that gave the appearance of market manipulation. Although this client was served mainly by her teammate Béland, the Respondent executed this client's orders on a few occasions.

¶ 14 Finally, Count 5 concerns the compensation of clients who suffered losses that accrued due to the fact that teammate Ducharme did not obey their orders to sell. Although the Respondent was not a member of the team at the time, she participated in their compensation. She issued a personal cheque to a savings bank where these clients had an account so that the money would be deposited in their accounts.

## 1) Factors to consider according to the Guidelines

¶ 15 From the outset, our Panel examined the key considerations in the determination of the penalties, which considerations are found in the Dealer Members' Disciplinary Sanction Guidelines. Here are our conclusions regarding each.

### a) Harm to Clients, the Employer or the Securities Market

¶ 16 In this instance there is no indication that one or more clients suffered any harm, barring the fact that the trades that gave the appearance of market manipulation, in which one of the Respondent's clients did engage, were certainly likely to harm the reputation of the securities market.

### b) Blameworthiness

¶ 17 The Guidelines mention the need to draw distinctions between unintentional or negligent conduct and fraudulent conduct. Distinctions should also be drawn between isolated incidents and repeated or systemic contraventions.

¶ 18 In this instance, the Respondent's conduct did not seem intentional to us. Rather, we detected negligence, except where the compensation of clients who complained of losses attributable to teammate Ducharme's failure to comply with their sell orders, is concerned. The Respondent very certainly knew what she was doing and her cheque made to the order of the savings bank instead of the clients themselves constitutes a prima facie manoeuvre to avoid discovery of this compensation.

¶ 19 In her defence, however, it should be emphasized that the compensation arose from harm that the clients had suffered before the Respondent even became a member of the team serving them. Our Panel cannot explain the Respondent's conduct on this occasion. She was the only person who, with her own money, reimbursed the losses incurred by the clients. Of course, teammate Béland eventually reimbursed the Respondent for her share, but we get the impression that she was more or less used, and even abused, by her teammate Béland in this matter.

### c) Degree of Participation

¶ 20 This factor is especially important in the present matter. As we have just written, she certainly was not responsible for the prejudice suffered by the clients, who were compensated for their losses. Undoubtedly her actions were motivated by an unexplained, if not inexplicable trust in her teammate Béland. This not only applies to the compensation of the clients, but to the private placements, and to her blindness to the orders given by the client, as he engaged in what appeared to be market manipulation.

### d) Extent to which the Respondent was Enriched by the Misconduct

¶ 21 The Respondent did not derive any financial benefit from the misconduct. Moreover, she was penalized by a \$15,000 fine imposed by her firm.

### e) Prior Disciplinary Record

¶ 22 She has none.

### f) Acceptance of Responsibilities, Acknowledgment of Misconduct and Remorse

¶ 23 On this point, IIROC invoked the fact that the Respondent had only admitted her errors at the hearing. However, the evidence shows that, from the time of her examination by Investigator Rondeau, she acknowledged having committed several errors in judgment. She did so for both the compensation of clients who had suffered losses, as well as for the market manipulation transactions by another client. Regarding the private placements, the Respondent did not know that she had to be authorized before making them. She should have known this, as she should have known that doing so by means of a cheque to an insider or to her teammate Béland, for shares in companies in which many of her clients had invested, was likely to raise legitimate questioning regarding conflicts of interest.

g) Credit for Cooperation

¶ 24 The Respondent seems to have answered honestly and transparently when questioned by the investigator. The fact of not pleading guilty to every count on the notice of hearing cannot be interpreted as a lack of cooperation, especially when she was acquitted on one or more of them.

¶ 25 It must be kept in mind that a representative brought up on disciplinary matters always has the right to a full and complete defence. The exercise of this right is not a failure to cooperate. Although an acknowledgment of guilt and dispensation from a hearing on the merits can be considered mitigating circumstances, care must be taken not to consider the mere fact of defending oneself an aggravating circumstance, especially since a hearing on the merits is sometimes only held due to the impossibility of arriving at a settlement agreement that is acceptable to both parties.

h) Voluntary Rehabilitative Efforts

¶ 26 This factor is irrelevant except to the extent that (we will come back to this) the Respondent has carried on her work with her clients without reproach for the past five years.

i) Reliance on the Expertise of Others

¶ 27 This factor is not relevant to the case at hand.

j) Planning and Organization

¶ 28 The Guidelines rightly mention that deliberate acts are much more serious than rash action or a temporary lapse of judgment. Attempting to conceal one's misconduct or to engage in it despite prior warnings are aggravating factors.

¶ 29 In the Respondent's case, our Panel cannot conclude – quite the contrary – that the Respondent sought to conceal her private placements, because she included them in her pro account, an account scrutinized attentively by the Branch Manager. Similarly, in the case of the market manipulation in which a client of the team appears to have engaged, the Respondent showed herself to be more naive than dishonest, in our opinion. On the other hand, regarding the compensation of the clients, she willingly engaged in a scheme to prevent the compensation from being discovered. For all intents and purposes, this is the offence for which she bears the greatest responsibility, in our opinion.

k) Multiple Incidents of Misconduct Over an Extended Period of Time

¶ 30 Even though the evidence reveals three private placements in contravention of the standards applicable in the industry, especially because of the beneficiary of the cheques issued for these share purchases, we consider that the Respondent's misconduct does not demonstrate the existence of a pattern. As we have already mentioned, she certainly did not seek to conceal her private placements. She showed a blameworthy lack of discernment on three occasions, but in view of the absence of dishonest intent, her actions cannot be qualified as planned or organized within the meaning of the Guidelines.

l) Vulnerability of Victim

¶ 31 This factor is not relevant to the case at hand.

m) Failure to Cooperate with the Investigation

¶ 32 We reiterate in this regard what we stated previously regarding the Respondent's cooperation with IIROC's investigation.

n) Significant Economic Loss to the Client and/or Member Firm

¶ 33 There is no financial loss to clients of the Respondent or the Dealer Member.

**2) Additional factors considered in these proceedings**

¶ 34 To these factors found in the Guidelines, our Hearing Panel wishes to add some further considerations

that have guided us in our decision. We wish to discuss four other factors: the elapsed time, the penalty by the firm, the penalty imposed on the other members of the Respondent's team, and the costs of the case.

The elapsed time

¶ 35 Our Panel was extremely sensitive to this aspect of the case. The Respondent's misconduct dates back to 2005 and 2006. In September 2006, IIROC received the firm's complete report concerning the private placements and the compensation paid to clients. The firm turned over all of the documents required by IIROC no later than January 2007.

¶ 36 Our Panel does not intend to pass judgment on the circumstances explaining the long delays before the Notice of Hearing of May 19, 2010, but the delay of three-and-a-half years to complete an investigation which, in view of the report and the documents transmitted by the firm, was not that complicated, is a circumstance to be taken into account in the penalty imposed on the Respondent. She knew since the summer of 2006 that IIROC was investigating the conduct for which she had just been sanctioned by her firm.

¶ 37 Waiting for the result of an investigation by a regulatory body very certainly generates stress that is hard to bear for a practicing representative. Comparisons are always a little clumsy, but one cannot fail to think of the criminal courts, which give double credit for the time an accused inmate spends in prison awaiting sentencing, precisely due to the stress caused by the uncertainty regarding the fate that awaits him.

¶ 38 In the case of the Respondent, more than five years elapsed before a penalty was imposed on her, and we consider it unfair not to consider the time elapsed in imposing a penalty. This Sword of Damocles that has hung over her head for so long is part of her penalty and it would be unjust not to take it into account.

b) The penalty by the firm

¶ 39 Nor can our Panel ignore the penalty imposed by the firm in 2006. The Respondent, in addition to a \$15,000 fine, was subjected to strict supervision for one year (converted shortly thereafter into close supervision, which is still in force today) and the obligation to repeat the Conduct and Practices Handbook course and exam.

¶ 40 We indicated above that the Respondent was not unjustly enriched by the misconduct. Granted, she acquired shares by private placement, but at the market price. She followed the orders of a client who, even if she was not consciously aware of it at the time, was probably manipulating the market price. This client's trades did not earn her any commission, because the client held a fee-based account. Finally, she compensated clients who suffered financial prejudice. In short, not only did her offences bring her nothing, but they caused her financial losses, if only the cost of the compensation paid to the clients and the fine imposed by her firm.

c) The penalty imposed on the other members of her team

¶ 41 It is true that penalties agreed upon in a settlement and those imposed after a hearing on the merits cannot be placed on an equal footing. However, it cannot be ignored that Béland, the team leader, was not fined and only had to pay \$15,000 in costs. His permanent ban had few consequences for him, since he left the industry.

¶ 42 As for Ducharme who, we will recall, was the team member who failed to carry out the sell orders of the clients who were ultimately compensated by the Respondent, he was only fined \$15,000, without being required to pay any costs. It is true that he was not charged with paying this compensation to the client and thus the penalty imposed on him did not concern this contravention, but it is also true and undeniable that the compensated clients suffered harm as a result of Ducharme's omissions.

¶ 43 If the penalties imposed on the Respondent were disproportionate in relation to those of her two teammates and failed to take into account the responsibility that each bore in the matter, an injustice would be committed in this regard.

¶ 44 She is the only member of the team to have continued working in the industry, and she has done so for

five years under close supervision, irreproachably. This factor must be taken into account.

d) Costs

¶ 45 When costs are ordered against an offender, it is logical to calculate, in estimating these costs, the time devoted by the investigators and legal counsel to preparing and conducting an investigation on the merits. However, it follows that the amounts computed are always considerable. In the present case, we are talking about an amount of more than \$113,000.

¶ 46 That said, we believe we must take care that an eventual judgment for costs does not become so onerous that it practically deprives an offender of the right to a full and complete defence. If an eventual guilty judgment involves exorbitant costs, a representative who believes he is not guilty, in whole or in part, of the charges brought against him, might be tempted to admit responsibility for the sole purpose of being exempted from the payment of very high costs.

¶ 47 In our opinion, this is why the jurisprudence contains many examples in which the judgments for costs take little or no account of the costs calculated on the basis of the hourly rates granted to the investigators and legal counsel. Most of the time, the Hearing Panels limit these costs to an amount they consider reasonable, given a wide range of circumstances, particularly when the respondents are not found guilty of all the counts with which they are charged.

¶ 48 This is what we are going to do in this case. We will also consider that the investigation concerned not only the Respondent's actions, but also those of the two other members of her team. We thus will bear in mind that Béland was condemned to only \$15,000 in costs and that Ducharme was not ordered to pay any costs.

e) Jurisprudence

¶ 49 The parties each provided us with abundant case-law, for which we thank them. Reading this case-law shows us that, while the Hearing Panels are in agreement regarding examining the key considerations in matters of penalty, they treat the penalties recommended in the Guidelines merely as a guide. The case-law also convinces us that every case involves special circumstances that sometimes allow Hearing Panels to rely on the suggestions of the Guidelines, but sometimes to deviate from them considerably.

¶ 50 As an example only, let us examine two cases related to client compensation. In *Hung Fai Raymond Kwok*<sup>1</sup>, for compensating clients without the firm's consent, the penalty was a \$15,000 fine, plus \$3,000 in costs and a six-month suspension (the respondent was no longer in the industry at the time of the penalty), as well as the obligation to write the Conduct and Practices Handbook exam and submit to 12 months of close supervision. On the other hand, in *Toban*<sup>2</sup>, for a similar offence, the Hearing Panel ordered the respondent to pay a fine of \$15,000 and rewrite the Conduct and Practices exam, without imposing a suspension.

¶ 51 Everything is a matter of circumstances. And while this case reveals one or two aggravating circumstances, it leaves room for many mitigating factors, including the penalties already imposed on the Respondent by her firm and the time elapsed since the misconduct.

### 3. Conclusions

¶ 52 For all the above considerations and after mature reflection, we have decided to impose an aggregate penalty for all of the counts.

¶ 53 We have decided to impose a \$20,000 fine on the Respondent, given that she has already paid a \$15,000 fine to her firm.

¶ 54 We have also decided that it was unnecessary to require her to rewrite the Conduct and Practices Handbook exam, because this requirement was already imposed on her by her firm after the internal investigation and she complied with it.

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<sup>1</sup> Re Hung Fai Raymond Kwok, September 21, 2010, no. 10-0253, reported in 2010 IIROC no. 38;

<sup>2</sup> Re Toban 2005 IDACD no. 28;

¶ 55 We have decided to maintain the requirement of close supervision for one additional year. This supervision will end one year to the day after the date of this decision.

¶ 56 We long hesitated regarding a suspension of her right to practice. The term asked by IIROC seems exaggerated to us in view of all the factors examined above. However, the Respondent's request that no suspension be imposed also seems to us irreconcilable with the objective of deterrence and exemplariness that must be associated with penalties for this combination of ethical contraventions. Given that the Respondent's conduct seems to have been irreproachable for the past five years, and given that a long suspension risks causing her to lose a nonetheless faithful clientele and obliging her to reconsider her career, we have decided that a one-month suspension would be fair, in view of all the circumstances.

¶ 57 With regard to costs, we limit these to an amount of \$15,000. This limit seems reasonable to us in view of the penalties imposed on Ducharme and Béland in this regard, and the fact that the Respondent was acquitted of certain counts.

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

¶ 58 ***IMPOSES*** the following penalties on the Respondent, for all of the counts upheld against her:

1. A \$20,000 fine;
2. close supervision, which shall end one year after the date of this decision;
3. suspension of approval with IIROC in any capacity for a period of one month from the date of this decision;
4. payment of \$15,000 in costs.

December 20, 2011

Gilles Archambault, Hearing Panel Member

Marcel Paquette, Hearing Panel Member

M<sup>c</sup> Jean-Pierre Lussier, Attorney and Hearing Panel Chair

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