

## **Re Voyer**

**IN THE MATTER OF :**

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

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

**and**

**Carol Voyer**

2011 IIROC 76

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

Hearing held on November 3, 2011  
Decision handed down on January 27, 2012  
(22 paragraphs)

**Hearing Panel:**

Alain Arsenault, Esq. (Chairman), Danielle Le May, Esq., Mr. André D. Godbout

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### **DECISION ON SETTLEMENT AGREEMENT**

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¶ 1 On or about December 7, 2006, the Staff of the Investment Dealers Association (IDA) of Canada initiated an investigation, regarding the period ranging from 2004 to 2006, with respect to the Respondent who, at the time, was an unrestricted practice representative registered with PEAK Securities Inc.;

¶ 2 On June 1, 2008, the Respondent became a registrant with IIROC, as a result of the merger of the IDA and IIROC;

¶ 3 On September 13 and 22, 2011, the parties executed a Settlement Agreement (Exhibit P-1) pursuant to Rules 20.35 to 20.40 of the IIROC Dealer Member Rules and Section 15 of the Dealer Member Rules of Practice and Procedure;

¶ 4 In this Agreement, Exhibit P-1, the Respondent admits to the following breaches:

- (a) Between March 2005 and August 2006, he engaged in a conduct which is unbecoming and detrimental to the public interest by, without the knowledge of the firm, entering into financial arrangements with three of his clients as part of the professional relationship developed with them, thereby breaching IDA By-Law 29.1;
- (b) On or about February 23, 2006, he engaged in business conduct that was unbecoming by enabling one of these clients, without the knowledge of the firm, to subscribe for the shares of the corporation known as Plexmar Resources Inc., knowing that such client was not an accredited investor within the meaning of *Regulation 45-106 respecting Prospectus and Registration Exemptions* (R.S.Q., c. V-1.1, r. 0.0.001.1), thereby breaching IDA By-Law 29.1;

- (c) Between June 27 and August 25, 2006, without notifying the firm, he conducted an off-marketplace trade, namely a sales transaction of the shares of the company Plexmar Resources Inc. for the benefit of a client, thereby breaching IDA By-Law 29.1;
- (d) Between the month of July 2004 and the month of September 2006, he failed to meet his professional duties by not disclosing his outside personal professional activities to the firm, thereby breaching IDA By-Law 29.1;

¶ 5 This Settlement Agreement (Exhibit P-1) provides for the following penalties:

- (a) An overall fine of \$40,000;
- (b) A suspension of his approval with IIROC in any capacity whatsoever for a period of two years.

He shall also be required to pay \$5,000 to IIROC for the costs which it incurred;

¶ 6 On November 3, 2011, the parties appeared before our Hearing Panel to seek our approval of the suggested penalties;

¶ 7 Pursuant to IIROC By-Law (sic) 20.36, the Hearing Panel does not enjoy very much latitude in respect of a Settlement Agreement;

¶ 8 Indeed, the Hearing Panel is required to assess if the proposed penalties fall within a reasonable range in light of the settlement proceedings and of the fact that the parties reached an agreement. Depending on its findings, it either accepts the agreement as is or rejects it; it does not have the authority to substitute therefor a penalty which it would deem to be more appropriate;

¶ 9 If the Hearing Panel accepts the Settlement Agreement, it is binding upon the parties; if it rejects it, the parties may negotiate a new agreement. Should the parties fail to negotiate a new agreement, IIROC convenes another Hearing Panel as part of the disciplinary hearing;

¶ 10 The Settlement Agreement (Exhibit P-1) appended to this decision clearly sets out the charges levelled against the Respondent;

¶ 11 Specifically, the Respondent, on several occasions, borrowed monies from, and even lent monies to, clients in order to facilitate transactions with respect to the shares of corporations, without the knowledge of his employer;

¶ 12 In addition, by misrepresenting the income of one of his clients, he enabled the latter to be considered a private investor of a company, even though he was aware that this client had income that amounted to less than \$200,000 and that he would not qualify as an accredited investor within the meaning of the applicable regulations, all of which was done without the knowledge of his employer;

¶ 13 He entered into financial arrangements with clients, without the knowledge of his employer, by providing some of his clients with stock purchase warrants for the securities of a company;

¶ 14 He negotiated and consummated, privately and without the knowledge of his employer, a sales transaction with respect to the shares of a company;

¶ 15 Still without the knowledge of his employer, he placed himself in a position of conflict of interest by acting as a shareholder and director of a company and conducting professional activities with two of his clients within said company;

¶ 16 Only one of the four (4) clients of the Respondent with whom he perpetrated these breaches filed a complaint against the Respondent;

¶ 17 The parties jointly listed the factors taken into account in reaching their Settlement Agreement, namely:

- One single client filed a complaint against the Respondent and this client initiated legal proceedings before the Superior Court against the Respondent;
- The Respondent has not been a registered representative with IIROC since 2007 and is

currently employed as a group insurance and pension advisor;

- The Respondent acknowledged his liability regarding the complaints levelled against him;
- The Respondent has no record of complaints against him;

¶ 18 According to the Hearing Panel, the lack of prior disciplinary history of the Respondent and his useful cooperation with IIROC's investigation, specifically by admitting his wrongdoing, are significant considerations to be taken into account in the assessment of the reasonableness of the penalties set out in the Settlement Agreement submitted by the parties.

¶ 19 Counsel for IIROC filed before the Hearing Panel a book of regulations and authorities which, among others, highlighted several penalty decisions handed down in files bearing some resemblance to the current matter;

¶ 20 Specifically, the *Igra*<sup>1</sup>, *Gaudet*<sup>2</sup>, *Boissé*<sup>3</sup> and *Beaudoin*<sup>4</sup> decisions imposed fines ranging between \$10,000 and \$35,000, plus payment of costs ranging between \$2,500 and \$10,595 for personal trades conducted with clients or off-marketplace trading;

¶ 21 Consequently, specifically in light of the decisions handed down in similar matters in the past, the Hearing Panel deems the Settlement Agreement to be reasonable in light of all the circumstances.

¶ 22 FOR THESE REASONS, THE HEARING PANEL:

ACCEPTS AND GIVES EFFECT TO the Settlement Agreement appended to this decision as well as to each of the penalties set out therein, as of the date of service upon the Respondent of this decision.

Dated in Montréal, January 27, 2012.

Alain Arsenault, Esq., Chairman

Danielle Le May, Esq., Member

Mr. André D. Godbout, Member

## SETTLEMENT AGREEMENT

### I. Introduction

1. IIROC Enforcement Staff and the Respondent, Carol Voyer, consent to the settlement of this matter by way of this Settlement Agreement (the **Settlement Agreement**).
2. The Enforcement Department of IIROC carried out an investigation (the **Investigation**) into the conduct of Carol Voyer.
3. On June 1, 2008, IIROC consolidated the regulatory and enforcement duties 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 services for the IDA to carry out its regulatory duties.
4. The Respondent agrees to submit to the jurisdiction of IIROC.
5. The Investigation disclosed facts for which the Respondent may be disciplined by a Hearing Panel appointed pursuant to IIROC Transition Rule No. 1, Schedule C.1, Part C (the **Hearing Panel**).

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<sup>1</sup> *Igra (Re)*, [2009] IIROC No. 29.

<sup>2</sup> *Gaudet (Re)*, [2010] IIROC No. 29.

<sup>3</sup> *Bourse de Montréal* and *Boissé*, Montréal, September 26, 2005.

<sup>4</sup> *Bourse de Montréal* and *Beaudoin*, Montréal, July 17, 2007, Complaint No. 00-524-Disc (a), Messrs. Giovanni Giarrusso, Jean-Pierre Gallardo and Sylvain Perreault.

## II. Joint Settlement Recommendation

6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
7. The Respondent admits to the following contraventions of IIROC Rules and Guidelines and of IDA By-Laws, Regulations or Policies:
  - (a) Between March 2005 and August 2006, he engaged in a conduct which is unbecoming and detrimental to the public interest by, without the knowledge of the firm, entering into financial arrangements with three of his clients as part of the professional relationship developed with them, thereby breaching IDA By-Law 29.1;
  - (b) On or about February 23, 2006, he engaged in business conduct that was unbecoming by enabling one of these clients, without the knowledge of the firm, to subscribe for the shares of the corporation known as Plexmar Resources Inc., knowing that such client was not an accredited investor within the meaning of Regulation 45-106 respecting Prospectus and Registration Exemptions (R.S.Q., c. V-1.1, r. 0.0.001.1), thereby breaching IDA By-Law 29.1;
  - (c) Between June 27 and August 25, 2006, without notifying the firm, he conducted an off-marketplace trade, namely a sales transaction of the shares of the company Plexmar Resources Inc. for the benefit of a client, thereby breaching IDA By-Law 29.1;
  - (d) Between the month of July 2004 and the month of September 2006, he failed to meet his professional duties by not disclosing his outside personal professional activities to the firm, thereby breaching IDA By-Law 29.1;
8. Staff and the Respondent agree to the following terms of settlement:
  - (a) An overall fine of \$40,000;
  - (b) A suspension of his approval with IIROC in any capacity whatsoever for a period of two years.
9. The Respondent agrees to pay costs to IIROC in the amount of \$5,000.

## III. Statement of Facts

### (i) Acknowledgement of Facts

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

### (ii) Factual Background

11. IIROC staff carried out an Investigation into the conduct of the Respondent;
12. This Investigation was initiated on or about December 7, 2006 following receipt of a ComSet event report with respect to actions which the Respondent took while he was an unrestricted practice representative at Peak Securities Inc. (**PEAK**);

## SUMMARY OF INAPPROPRIATE CONDUCT BY THE RESPONDENT

13. Between March 2005 and February 2006, the Respondent, on two occasions, borrowed money from one of his clients, "A", a long-time acquaintance and former co-worker, during the existence of the professional relationship which he had developed with him. At this same time, the Respondent, in turn, loaned money to "A" for the purchase of shares of the company known as Plexmar Resources Inc. (**Plexmar**). As well, on or about February 23, 2006, despite being aware of the fact that the income of "A" did not amount to at least \$200,000, the Respondent enabled the latter to participate in the private placement of the Plexmar corporation by misrepresenting the value of the income of the latter. All these activities were conducted without the knowledge of his employer;
14. Between March 2005 and August 2006, the Respondent, without the knowledge of his employer, made financial arrangements with two (2) of his clients by providing them with stock purchase warrants;

15. Between June 27 and August 25, 2006, the Respondent privately negotiated a trade for the sale of shares of the Plexmar corporation, for the benefit of a client, "B", without disclosing this transaction to his employer;
16. Finally, during the period between the month of July 2004 and the month of September 2006, the Respondent did not notify his employer of the fact that he was a shareholder and director of the "H" Corporation and placed himself in a position of conflict of interest by conducting personal professional activities with two of these clients, namely "A" and "D";

#### **PARTICULARS AS TO THE RESPONDENT**

17. On or about March 6, 2001, the Respondent became registered as an unrestricted practice representative in the employ of a securities broker recognized by the Investment Dealers Association (IDA) of Canada.
18. Since November 14, 2001 or thereabouts, the Respondent has been in the employ of Peak, a member firm of the IDA, as a duly registered representative;
19. On or about September 8, 2006, the Respondent was fired by Peak for having conducted inappropriate personal trades in a professional setting;
20. On or about September 18, 2006, the Respondent was hired by Industrial Alliance Securities Inc. (IASI) as a securities representative;
21. On or about August 14, 2007, the Respondent, of his own volition, left IASI after civil proceedings were brought against him 8 months beforehand;
22. On June 1, 2008, the Respondent became an IIROC-regulated person;
23. The Respondent is currently self-employed as a group insurance and pension advisor, a financial security advisor and a financial planner;
24. Since the month of January 2008, the Respondent is no longer a registrant with IIROC but remains subject to its jurisdiction;

#### **CLIENT "A"**

25. The Respondent and "A" became acquainted during 1998;
26. At that time, the Respondent and "A" were both insurance brokers. "A" is the Respondent's manager;
27. In 2001, when the Respondent became an unrestricted practice representative, he became affiliated with Peak where « A » transferred his business;
28. At that time, "A" opened two (2) accounts with Peak in respect of which the Respondent was designated as the unrestricted practice representative:
  - (i) a Canadian self-directed RRSP account;
  - (ii) a Canadian margin account;
29. On or about January 23, 2006, "A" subscribed for 100,000 shares of the Pleximar corporation, for an amount of \$6,000;
30. The subscription of shares in the Pleximar corporation on January 23, 2006 was a private placement operating under a prospectus and registration exemption;
31. The Respondent was required to ensure that his client "A" was an accredited investor within the meaning of Regulation 45-106 respecting Prospectus and Registration Exemptions (R.S.Q., c. V-1.1, r. 0.0.001.1);
32. The share subscription form dated January 23, 2006 was executed by "A" and specifically states that the latter is an accredited investor since he falls into the following class:
  - (i) an individual whose net income before taxes exceeded \$200,000 in each of the 2 most recent

calendar years or whose net income before taxes combined with that of a spouse exceeded \$300,000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year;

33. However, at the time of the subscription of shares on January 23, 2006, the Respondent knew the following:
- (ii) that “A” was not an accredited investor since his net income before taxes was less than \$200,000, in each of the two (2) most recent calendar years;
  - (iii) that he did not satisfy any other criterion set out in Regulation 45-106 respecting Prospectus and Registration Exemptions (R.S.Q., c. V-1.1, r. 0.0.001.1);
  - (iv) that “A”’s income tax return alleged in Plexmar’s share subscription form was false;
34. In addition, at no time during January 23, 2006, did the Respondent require his client “A” to supply him with evidence of his income prior to proceeding with the subscription of shares of the Plexmar corporation;
35. Thereafter, without the knowledge of Peak, the Respondent and “A” entered into several financial arrangements:
- (i) On or about February 10, 2006, without the knowledge of Peak, the Respondent loaned his client “A” the sum of \$1,020 in order to make up the difference in price between the purchase of 83,000 shares and 100,000 shares of the Plexmar corporation, so as to enable the latter to acquire 100,000 shares:
    - On June 15, 2007 and on June 5, 2008, the Respondent admitted under oath that he had made up the difference to help “A” out;
  - (ii) On or about February 7, 2006, without the knowledge of Peak, the Respondent borrowed from his client “A” the sum of \$15,000 in order to acquire 250,000 shares of the Plexmar corporation;
    - On August 25, 2006, the Respondent sent a written letter to Peak in which he admitted having borrowed the money from his client “A” in order to subscribe for shares of the Plexmar corporation;
36. Finally, on or about August 21, 2006, “A” forwarded a written complaint to Peak. In this complaint, he alleged the following facts:
- (i) On January 23, 2006, the Respondent knew that “A” did not qualify for participation in the subscription of shares of the Plexmar corporation since his income was less than \$200,000;
  - (ii) In order to enable him to participate in the subscription on January 23, 2006, the Respondent suggested that “A” have the shares issued in his name on behalf of “A”;
  - (iii) The Respondent borrowed money from him in order to acquire shares of the Plexmar corporation and still owes him money;

#### **CLIENTS “E” AND “F”**

37. On or about July 18, 2002, “E” opened an account with Peak and the Respondent was designated as the unrestricted practice representative for such account;
38. Thereafter, on or about October 28, 2002, “F” opened an account with Peak and the Respondent was designated as the unrestricted practice representative for such account;
39. On June 15, 2007 and June 5, 2008, the Respondent admitted under oath that he had entered into financial arrangements with his clients, “E” and “F”, by way of a donation of 30,000 and 20,000 share subscription warrants of the Plexmar corporation, respectively;

40. At the time when the Respondent donated the share subscription warrants to his clients "E" and "F", such warrants had no value;
41. The financial arrangements made with the clients "E" and "F" were entered into without the knowledge of Peak;
42. On August 18, 2006, "E" exercised his right to acquire the shares of the Plexmar corporation on the basis of his 30,000 subscription warrants, for an aggregate amount of \$3,600;
43. On August 24, 2006, "E" sold all the shares acquired in the Plexmar corporation and registered a gross profit of \$18,370;
44. On August 29, 2006, "F" also exercised his right to acquire shares in the Plexmar corporation on the basis of his 20,000 share subscription warrants, for an aggregate amount of \$2,400;
45. On September 5, 2006, "F" proceeded to sell all of the shares acquired in the Plexmar corporation and registered a gross profit of \$21,200;

#### **CLIENT "B"**

46. On or about April 22, 2003, "B" opened a margin account bearing number 30002631 with Peak and the Respondent was designated as the unrestricted practice representative for such account;
47. "C", who was a director, the President and majority shareholder of "B" corporation, was a good friend of the Respondent;
48. On June 16, 2006, the Respondent deposited a certificate for 250,000 shares of the Plexmar corporation issued to his name into the margin account bearing number 30003668 which he held in his own name with Peak;
49. Thereafter, on or about June 27, 2006, the Respondent requested the registration in his name of a certificate for 40,000 shares of the Plexmar corporation. The transaction took place in account number 30003668;
50. On July 13, 2006, a certificate for 40,000 shares of the Plexmar corporation was issued in the name of "B";
51. On August 25, 2006, "B", a client of the Respondent, deposited a certificate for 40,000 shares of the Plexmar corporation into his margin account bearing number 30002631;
52. On June 15, 2007 and June 5, 2008, the Respondent admitted under oath that he had promised the 40,00 shares of the Plexmar corporation to his client "B";
53. This sale had been promised orally to "B";
54. The sales transaction with "B" involving the 40,000 shares of the Plexmar corporation was entered into privately with the Respondent without the transaction being conducted on an exchange;
55. After having received the 40,000 shares of the Plexmar corporation, the certificate with respect to these 40,000 shares was issued in the name of "B", through the transfer agent, and deposited into the account belonging to "B" and bearing number 30002631;
56. The Respondent received from his client "B" a cheque in the amount of \$2,400 as consideration for the 40,000 shares of the Plexmar Corporation;
57. The \$2,400 cheque was made out to the personal name of the Respondent and Peak was never notified of this trade;
58. For the period between June 27 and July 13, 2006, the value of the Plexmar securities ranged between \$0.350 and \$0.520 per share;
59. The 40,000 shares of the Plexmar corporation which the Respondent sold to "B" were sold at \$0.06 per

share;

60. On June 5, 2008, the Respondent admitted under oath that the 40,000 shares of the Plexmar corporation originated from his certificate for 250,000 shares;
61. The 250,000 shares of the Plexmar corporation had been acquired by the Respondent for the sum of \$15,000;

#### **COMPANY "H"**

62. "H" is a corporation that was incorporated on July 16, 2004, the economic activity of which is focussed on mining;
63. The share certificate of "H" corporation bearing number A-3 certifies that the Respondent holds 60,100 Class A shares as of August 1, 2004;
64. The share certificate of "H" corporation bearing number A-9 certifies that the Respondent holds 245,655 Class A shares as of July 31, 2005;
65. The minutes of a regular meeting held by the Board of Directors of "H" corporation on September 9, 2004 disclose that the Respondent acted in the capacity of Secretary-Treasurer of this corporation;
66. On November 24, 2005, the Respondent, in his capacity as Vice-President of "H", signed the proxy form in order to authorize "G", who was then the Secretary of "H", to conduct all banking transactions on behalf of "H" corporation;
67. On June 15, 2007, the Respondent admitted under oath the following facts:
  - (i) He never informed Peak of his personal professional activities with "H";
  - (ii) Two of his clients, namely "A" and "B", also invested as shareholders in "H" corporation;
  - (iii) Clients "A" and "D" invested in "H" corporation after he mentioned this corporation to them;
68. A decision handed down by the Superior Court of Québec by the Honourable Robert Legris on September 10, 2010 reveals that the investment of "A" in "H" corporation amounted to \$300,000 whereas that of client "B" amounted to \$600,000;
69. On June 5, 2008, the Respondent admitted under oath that all of the persons who financed the activities of "H" Corporation lost the money they had invested in this corporation.

#### **IV. Terms of Settlement**

70. This settlement is agreed upon 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.
71. The Settlement Agreement is subject to acceptance by the Hearing Panel.
72. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
73. The Settlement Agreement will be submitted 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.
74. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his rights under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
75. 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.
76. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

