Unofficial English Translation

Re Gaudreault

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

The By-Laws of the Investment Dealers Association of Canada

and

Jean-Yves Gaudreault

2015 IIROC 12

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

Hearing held on: November 24, 2014
Reasons issued on: March 23, 2015

Hearing Panel
Me Jean Martel Ad. E. (Chair), Marcel Paquette and Élaine C. Phénix
Appearances
For IIROC: Me Martin Hovington, Enforcement Counsel

DECISION ON SETTLEMENT AGREEMENT

¶ 1 On November 24, 2014, a hearing was held before our Hearing Panel to consider a settlement agreement dated November 17, 2014 (Settlement Agreement / Agreement) which was recommended for its acceptance.[1]

¶ 2 This is a second Settlement Agreement entered into between the Respondent Jean-Yves Gaudreault (Respondent) and the Investment Industry Regulatory Organization of Canada (IIROC), in accordance with Dealer Member Rule 20 Corporation Hearing Processes (Rule 20), s. 38 (1).

¶ 3 In this agreement, Respondent admits having contravened IIROC Rules and Guidance, as well as the By-Laws, Regulations and Policies of the Investment Dealers Association of Canada (IDA) (collectively, the "Rules") [2] :

[1] To this end, the Respondent did not appear, but consented and agreed to be subject to the jurisdiction of this Hearing Panel: Settlement Agreement, Part I, par. 4, and Affidavit P-1.

[2] Effective June 1, 2008, the self-regulatory activities previously carried out by the IDA were taken over by IIROC. Transition Rule No. 1 allows IIROC *inter alia* to initiate settlement proceedings on behalf of the IDA in connection with events that occurred prior to this date, when the Respondent in these proceedings was governed by IDA rules. That is the case here for the violations committed by

«Between May 2005 and October 2010, the Respondent failed to use due diligence to ensure that his recommendations to buy, sell and/or hold securities were suitable for his client, contrary to IIROC Dealer Member Rule 1300.1(q) (Regulation 1300.1(q) of the IDA prior to June 1, 2008);

¶ 4 After considering the terms and conditions of the Agreement, allowing complementary evidence to be filed, reading the written comments of the Respondent,[3] taking into account the first settlement agreement, which was rejected (first settlement agreement / first agreement), and the reasons retained for doing so by the previous hearing panel (the previous hearing panel / first hearing panel), hearing the representations of Counsel for IIROC and deliberating, we are of the opinion that the Settlement Agreement before us should be accepted for the reasons outlined below.

I. THE FIRST SETTLEMENT AGREEMENT

¶ 5 The Enforcement Staff of IIROC (Staff) conducted an investigation into certain aspects of the Respondent's conduct between 2005 and 2010, when he was an investment advisor in the employ of an IIROC Dealer Member.

¶ 6 The facts of the investigation led Staff to negotiate and, on March 4, 2014, enter into a first settlement agreement with the Respondent.

¶ 7 In the first agreement, the Respondent admitted committing the same violations of the Rules during the material period, under circumstances that were essentially the same as those reported in the second agreement, with the exception of certain elements that we will come back to later.

¶ 8 The first settlement agreement was submitted to a hearing panel, and the latter rejected it on May 12, 2014 with a decision and reasons.[4]

¶ 9 The previous hearing panel judged that the first settlement agreement did not meet the requisite standards of acceptability. According to it, Respondent had used corrupt practices, had manipulated, abused the vulnerability of, and misled his client for nearly five years. The severity and the lengthy period over which the repeated violations of the Rules were committed, as well as the lack of remorse demonstrated by the Respondent, led that hearing panel to conclude that the proposed penalty was not consistent with the contraventions to which Respondent had admitted.

¶ 10 Before us, IIROC's prosecutor has clearly explained his conviction that the first hearing panel may not have interpreted the facts in evidence correctly, or at least, or at least, may not have given full weight to the representations made to it to explain the common understanding of the facts which the parties had intended to convey in the first agreement. Specifically, this would have been the case in the appreciation of the deceptive aspects of Respondent's conduct.

¶ 11 Before the first hearing panel, IIROC would have effectively acknowledged that there was, in the agreed facts at the time, an element of deception on the Respondent's part, but that it was with regard to the firm that employed him, and not the client concerned.

¶ 12 IIROC's position on this point was presented to us as follows, in the pleadings of IIROC's legal counsel at the hearing:

[TRANSLATION]

"In my humble opinion, some of the facts were misunderstood, notably with respect to the elements of deception. When the settlement agreement mentioned elements of deception, the

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the Respondent prior to June 1, 2008. In this case, according to Schedule C.1 to Transition Rule No. 1, *Hearing Committees and Hearing Panels Rule* (subsection 1.9(2)), IDA rules in force at the relevant time shall apply, to the extent they are consistent with IIROC practices and procedures at the time the enforcement proceedings are commenced.

[3] These comments are contained in the letter P-2, which we allowed to be entered into evidence at the hearing.

[4] The reasons for this decision remain confidential, but have been filed in the record of this hearing pursuant to Rule 20.38 (3).

[first] Hearing Panel perceived it as elements of deception between the representative and his client, whereas this is not at all apparent from the settlement agreement and no such representations were made at the hearing.

The elements of deception mentioned at the hearing concerned elements between Mr. Gaudreault and his firm, when he states erroneous information on the client forms in order to allow his client access to speculative securities. In order to purchase such securities, the client forms had to show a risk factor that was one hundred percent (100%) high. And this was not a true portrait of Mr. [EA]'s profile, and that's what we said presented elements of deception. This is not what the Hearing Panel understood and it is reflected in its decision."[5]

¶ 13 Essentially, it was these "misunderstandings", and Staff of IIROC's questionings concerning the evaluation of the adequacy of the agreed penalties in the first settlement agreement, given the precedents that were invoked in support thereof, that led IIROC to appeal to the Bureau de décision et de révision (BDR / Bureau), pursuant to section 322 of the Securities Act, (RLRQ, c. V-1.1) to review the first hearing panel's decision.

¶ 14 Once the application was initiated, IIROC filed a preliminary motion with the BDR to have the review hearing held in camera and that, among other documents and information, its review application, the first settlement agreement and the decision to reject that agreement issued by the first hearing panel, be sealed until final judgment by the BDR.

¶ 15 On October 2, 2014, the BDR rejected this motion,[6] estimating that in the circumstances, the general principle stated in paragraph 59 of the Rules of Procedure of the Bureau de Décision et de Révision, (CQLR, c. A-33.2, r. 1) – the hearings of the tribunal are public – must prevail, and that there was no reason to deviate from it because the BDR was sitting in review of a decision resulting from a settlement proceeding that must obligatorily be confidential pursuant to IIROC's Rules.

¶ 16 In its pleadings before the Bureau, IIROC identified two obstacles that an obligation to proceed publicly in review was likely to cause. On the one hand, it argued that this eventuality could imperil the confidentiality of the settlement agreement process and, on the other hand, that it could damage the reputation of the Respondent by disseminating a prejudicial decision that would deprive him of the procedural fairness that IIROC's disciplinary mechanism strives to assure in such a matter.[7]

¶ 17 Its position on the motion having been denied by the BDR, IIROC decided to enter into a second settlement agreement rather than carry on with its review proceedings.

¶ 18 It is this second agreement that we are now being invited to consider, pursuant to Rule 20.35 to 20.38 and Rules 14 and 15 of the *Rules of practice and procedure*.

II. THE EXERCISE OF JURISDICTION RELATIVE TO A SECOND SETTLEMENT AGREEMENT

¶ 19 The proceedings initiated prior to this hearing, the previously cited decisions of the first hearing panel and the BDR, and the general context in which this matter has been presented to us are far from usual.

¶ 20 This is why it is appropriate, before moving on to the analysis of the second settlement agreement now before us, to firmly establish the principles that must guide the exercise of our jurisdiction relative to this matter.

¶ 21 Rule 20 (specifically 20.37 and 20.40) states that "a decision of the Hearing Panel accepting [or rejecting] a Settlement Agreement is a final decision for which no further review or appeal is provided in the Rules." *A contrario*, a decision rejecting a settlement agreement may be subject to a review proceedings by

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[5] Stenographer's Notes, pp. 22-23

[6] *Organisme canadien de réglementation du commerce des valeurs mobilières (OCRCVM) c. Gaudreault* [2014] QCBDR 143.

[7] Ibid, par. 20.

virtue of the *Securities Act.*

¶ 22 Following a settlement hearing, the first settlement agreement was rejected by the previous hearing panel. IIROC applied to the BDR to review this decision and then, for the reasons suggested above, changed its mind and preferred to enter into a second settlement agreement.

¶ 23 When this second agreement was reached and our Hearing Panel was seized of it, IIROC waived its right to file for review, by the Bureau, of the decision rejecting the first agreement. On the merits of the previous matter, this decision therefore has the force of res judicata, and is binding on the parties.

¶ 24 Our Hearing Panel is not sitting in review of the decision rendered by the first hearing panel. The principles of jurisprudence that govern the exercise of such jurisdiction over a discipline decision by IIROC consequently do not apply.

¶ 25 Under the terms of Rule 20.38 (3), the reasons for the decision of the previous hearing panel are part of the record of our hearing, thus forcing us to start the process over from scratch, but also to examine the reasons for the rejection of the first agreement in our evaluation of the facts in evidence and the adequacy of the penalties agreed to in the second agreement.

¶ 26 The reasons for rejecting the first agreement are relevant to our assessment of the acceptability of the agreement before us, just as a settlement agreement accepted with one co-respondent would be in the assessment of the penalty to be imposed on another co-respondent following a contested hearing (Re Cartaway Resources Corporation [2004] SCC 26, par. 68).

¶ 27 But we are not bound by these reasons as long as we are exercising our jurisdiction regarding a settlement agreement that is new, compared to the one that was rejected.

¶ 28 Talking about a subsequent agreement, Rule 20.38 (1) references a settlement agreement that is *other* than the rejected agreement, (*another Settlement Agreement*).

¶ 29 Therefore, this other agreement must perforce be different from the previous one and even, sufficiently different to give another hearing panel the jurisdiction to be seized of it.

¶ 30 Indeed, IIROC could scarcely reintroduce for acceptance by a hearing panel a settlement agreement that is the same, or substantially the same, as one that was previously rejected by another hearing panel. If that were the case, its motion would invite the second hearing panel to either exercise a jurisdiction of review that it does not have, or to intervene in the determination of another hearing panel that has acquired the authority of res judicata. In either case, such request for acceptance would be inadmissible.

¶ 31 Moreover, an interpretation of the Rules that would leave an opening for such an eventuality would be contrary to their scheme, which notably aims to enforce, within IIROC, a disciplinary process that prevents contradictory disciplinary decisions and arbitration by the selection of hearing panels.

¶ 32 The distinctive newness of a subsequent settlement agreement may result from one or more factors that have the effect of differentiating its terms from those of the previous settlement agreement that was rejected, among them filing new facts into evidence (either in the agreement itself or in complementary evidence filed by consent at the subsequent settlement hearing), changes to the presentation of facts contained in the first agreement, or adjustments to the sanctions and penalties that were initially agreed to.

¶ 33 This differentiation between the terms of the rejected agreement and those of the subsequent agreement will need to be substantial, given the circumstances of the matter.

¶ 34 This criterion of materiality was applied in Re Michael Robert De Long,[8] where a hearing panel approved a second settlement agreement by basing itself specifically on the facts that it found notably different

[8] See *www.iiroc.ca/Documents/2005/B5071F75-2EE6-4444-8A81-CBE93670F003_en.pdf*, March 22, 2005, and *http://www.iiroc.ca/Documents/2005/091BBC4D-A052-477C-8097-906D97103628_en.pdf* , September 20, 2005.

and on a substantial increase in the penalties that had been agreed to in a prior agreement that was rejected.

¶ 35 In Métivier c. Association canadienne des courtiers en valeurs mobilières (ACCOVAM),[9] the BDR similarly established that the introduction of new evidence may justify its taking in review a decision of the IDA, provided that the evidence is substantial.

¶ 36 This is precisely what the subsequent settlement agreement before us is doing, introducing into its very terms (or in connection with these at the hearing) new evidence by admissions that aims to react with and lead to a different conclusion than the previous decision to reject.

¶ 37 We conclude consequently that a subsequent settlement agreement that does not distinguish itself in some notable way from the previously rejected settlement agreement, or that would propose changes that do not definitively justify its re-examination by another hearing panel, could not be considered another agreement in the sense of Rule 20.38 (1).

¶ 38 Now let us apply these principles to the case before us.

III. STATEMENT OF FACTS

1.1 The client

¶ 39 From May 1995 to March 2011, Respondent was approved as a registered investment advisor and authorized to act in this capacity for a Dealer Member of IIROC, and formerly of the IDA. During this period, he was in turn employed with the firms of Lévesque, Beaubien Geoffrion, Scotia Capital Inc. and, from May 2005 to March 2011, Canaccord Genuity Corp. (Canaccord);

¶ 40 Respondent became acquainted with EA at a sports club where they were both members.

¶ 41 When the professional relationship between the Respondent and EA began, the latter was a graphic design instructor who had principally worked freelance throughout his 14-year career. He was 36 years old and had an annual income of approximately $60,000 and a net worth of approximately $60,000.

¶ 42 Before opening an account at Canaccord, EA's experience with investing was limited to mutual funds. He had never before purchased or held shares or had a discount brokerage account;

¶ 43 His knowledge of investing and the stock markets was at best fair and at worst poor.

1.2. Opening of cash account – January/March 2005

¶ 44 The Respondent's misconduct occurred between May 2005 and October 2010.

¶ 45 The client's first meeting with the Respondent to discuss his offer of services more formally took place at the Respondent's offices on or around January 24, 2005, while the latter was still employed at Scotia Capital Inc.

¶ 46 EA mentioned at the time that he wanted to build an investment portfolio that would be similar to the one he maintained on the recommendation of his advisor at the time. This portfolio was comprised exclusively of mutual fund shares with investment strategies of the "balanced" and "growth" types.

¶ 47 The Respondent presented his investment philosophy to EA, which was focused on securities of small-cap companies.

¶ 48 Respondent filled out a New Client Account Form (NCAF) form for EA, stating that the latter had investment objectives that were 100% speculative, a high risk tolerance, fair investment knowledge, but vast knowledge of IPOs. However, these mentions were contrary to the client's real investment profile.

¶ 49 When he signed the NCAF, EA mentioned to the Respondent that he did not agree with the investment objectives and risk tolerance attributed to him on the form, and that he had no intention of risking his capital.

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[9] *Métivier c. Association canadienne des courtiers en valeurs mobilières (ACCOVAM)* [2005] QCBDRVM 6, pp. 15 and 16.

¶ 50 Respondent emphasized to EA that if he wanted to take advantage of the strategies advocated by the Respondent, these mentions had to appear on the "administrative paperwork" so that his employer firm would allow him to invest on EA's behalf in the classes of securities that Respondent was tracking and recommending to almost all of his other clients.

¶ 51 Based on these representations, EA agreed to sign the NCAF and opened a cash account (the cash account).[10]

¶ 52 At the same time, EA signed document P-3, a letter dated January 24, 2005 and addressed to the Canaccord Compliance Department, in which he notably made the following statements:

> [TRANSLATION]
>
> *"I understand that, due to the highly speculative nature of the securities of many companies considered as presenting a high risk, transactions of this nature may appear inappropriate in light of the information provided on my account information form. Furthermore, I recognize that I may lose all of the money that I invest in these securities.*
>
> *While I have been informed of the risks inherent in this class of investments, I would like to stick with these investments/objectives and I confirm that I am making these investments at my own risk."*
>
> (our emphasis)

1.3. Opening of RRSP account and update of client file – June 2005

¶ 53 Respondent officially began working at Canaccord in May 2005. He met with EA again in June 2005 in order to update the latter's client file and have him open an RRSP brokerage account (RRSP account);

¶ 54 On this occasion, EA reiterated his discomfort regarding the investment objectives and risk tolerance mentioned on the NCAF for the cash account.

¶ 55 The Respondent consequently agreed to update this information about the client. The investment objectives stated on the client file for the RRSP account were accordingly set at 80% moderate growth and 20% speculative, with a risk tolerance of 80% medium risk and 20% high risk;

¶ 56 However, the investment objectives and risk tolerance attested to on the NCAF for the cash account, though incompatible with the true investor profile that EA had chosen for himself and which was on file with the dealer for the RRSP account, remained unchanged.

¶ 57 In June 2005, EA transferred his investments to Canaccord.

¶ 58 On June 6, 2005, he signed, once again regarding the cash account, a second letter P-4 to the same effect as letter P-3 (hereinafter, we refer jointly to exhibits P-3 and P-4 as **letters of acknowledgment**).

1.4. Unsuitability of recommendations

¶ 59 The investment portfolio that EA transferred to Canaccord was comprised of balanced mutual fund shares, in a proportion of 28%, and 72% growth fund shares. These investments represented the totality of EA's liquid assets.

¶ 60 Respondent soon recommended to EA that he alter this composition and purchase shares in Odesia Group inc. (Odesia) and Power Tech Corp. (Power Tech).

¶ 61 Respondent represented to EA that, in actuality, the risk associated with the Odesia and Power Tech shares was less because he knew the top executives of these two companies personally, that he had a privileged relationship with them that gave him access to first-hand information ahead of other investment advisors, and

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[10] However, the client's NCAF was not signed by the Respondent in his capacity as EA's investment advisor, since he was not yet employed at Canaccord. The form was signed later, on March 7, 2005, by a representative of Canaccord's Montréal office.

that he was also very knowledgeable about their activities. This, he said, gave him a form of control over the investments in these securities.

¶ 62 He also indicated to EA, that these companies were active in sectors that completed each other "very well", that it was practically impossible for them to experience difficulties at the same time, and that the position in one company would cover the risk related to the position taken in the other ("hedge").

¶ 63 It is at this point that Respondent's misconduct first began: failing to use due diligence in recommending to EA that the latter buy and hold in his portfolio securities that were speculative and high risk, without regard for his investor profile and his risk tolerance, which was known to the Respondent, even though the client had been informed of the high risk when he signed the letters of acknowledgment.

¶ 64 From June 2005 to May 2009, Respondent purchased for EA's account: 135,000 Odesia shares, a net value of $44,567.49, and 157,000 Power Tech shares, a net value of $68,633.53. In September 2010, these securities accounted for about 83% of the total value of EA's portfolio with this investment dealer.

¶ 65 In October 2010, the value of EA's portfolio had fallen dramatically. His losses stood at nearly 70% of the initial value of his investment in Odesia securities, and more than 96% of the initial value of his investment in Power Tech securities. EA's portfolio had therefore suffered an overall net loss of $115,640.43, representing an 85% drop in value.

¶ 66 During the material period, Respondent also recommended and executed for EA numerous short-term speculative trades that were unsuited to his investor profile.

¶ 67 Informed of the Respondent's dealings and the losses incurred by EA, Canaccord agreed to indemnify the latter for his losses to a maximum of $50,000. The client consequently bore a net loss of over $65,000 as a result of his relationship with the Respondent.

¶ 68 Between 2005 and 2010, the trades effected by Respondent in EA's accounts grossed $20,048.34 in commissions, for a net commission of $8,019.34 paid to the Respondent.

IV. CHANGES IN CIRCUMSTANCES ATTRIBUTABLE TO THE SECOND AGREEMENT

¶ 69 The statement of admitted facts in the second settlement agreement is essentially the same as was found in the first, except for the following aspects:

(i) Staff specifies that the client made the acquaintance of the Respondent in a sports club and expressed an interest in meeting with the latter (par. 22);

(ii) in June 2005, when his RRSP account was opened, EA mentioned that he thought the investment objectives and risk tolerance attributed to him were too high for his cash account at Canaccord, which led the Respondent to lower these thresholds for the RRSP account, but not for the cash account; the first agreement specified that the client thought that these thresholds had been lowered on both of his accounts, whereas the second settlement agreement no longer refers to any such misunderstanding by the client (par. 38);

(iii) the agreement specifies that the Respondent represented to the client that the risk associated with certain shares that he was recommending for investment was lower, due to the fact that the Respondent maintained a personal connection with some of the executives of the companies issuing these shares (par. 46);

(iv) just as the first agreement did, the Settlement Agreement before us admits that the Respondent failed to use due diligence when he recommended the purchase as well as the long-term holding of these securities to the client; however the agreement adds that the letters of acknowledgment did indeed inform the client that the securities presented a high risk for his portfolio and that he could lose all of his invested capital (par. 50).

¶ 70 These agreed changes in the Settlement Agreement are completed by the letters of acknowledgment P-3 and P-4[11] and by the letter P-2, which Respondent sent to Staff of IIROC and to our Hearing Panel in response to the opinions expressed by the first hearing panel regarding his apparent lack of remorse.

¶ 71 In P-2 notably, a letter in which the Respondent describes his state of mind in a manner which, according to Staff, faithfully reflects his spoken testimony in the matter: [TRANSLATION] "No one on earth can be sorrier than I am […] There will be no greater punishment than to realize my current situation. Alone in life, in debt and with no assets, unable to provide for my children, without a career and filled with regret."

¶ 72 The admitted facts that are now before us, complemented by the additional evidence filed by consent, take into account the reasons why the first hearing panel rejected the previous settlement agreement. They were justified in doing so, given that we are in a context of examining a subsequent settlement agreement that was renegotiated in reaction to a decision to reject.

¶ 73 These new facts show that, even before investing in the Odesia and Power Tech securities, client EA was not unaware that the investment strategy that Respondent was inviting him and other clients to endorse was a risky one, and that he could lose all of the capital that he might invest in small-cap securities.

¶ 74 It is no longer admitted in the record that the client did not know, or that he was mistakenly led to believe that the investment objectives and risk tolerance attributed to him for his cash account had been lowered to the same thresholds as his RRSP account. He might have been concerned by these thresholds, but what we are told now, is that he did not object to maintaining them for his cash account, even though they were lowered for his RRSP account.

¶ 75 On two occasions, EA signed letters of acknowledgment regarding his cash account. These letters informed him, in clear and simple terms, that he could lose everything, a reality that is easy to understand even for a person whose knowledge of investing and the stock markets was limited.

¶ 76 These letters did not relieve the Respondent of the obligation of making suitable investment recommendations to EA, but they did largely help dispel the impression that the first agreement might have given, to the effect that the Respondent took advantage of a vulnerable client and brazenly misled him for a lengthy period of nearly five years.

¶ 77 EA and the Respondent would go cycling together. Respondent seemed convinced that his philosophy of investing in small-cap securities was right. The client believed that doing business with the Respondent would help increase his earnings. To gain access to Respondent's services, the client was willing to make written statements on his NCAF that presented him as a more sophisticated investor than he actually was. He knew this, but he chose to make the "paperwork" match the investment advice that was riskier but offered the higher return he was looking for.

¶ 78 For the small-cap securities investments that were made in his cash account, client was informed that he could lose everything; he knew, but he persisted, and that is where the Respondent failed in his duty as an investment professional by recommending high-risk investments to EA that he should not have. He should have reasoned with the client or refused to act for him.

¶ 79 For the RRSP account, it was different. The client no doubt wanted to practice a more conservative investment strategy in order to generate income and earnings for his retirement. This is what the account's NCAF reflected, and that is what makes Respondent's conduct all the more reprehensible. It is probably also the reason that Canaccord agreed to partially indemnify EA.

¶ 80 Moreover, Respondent's confession in his letter P-2 dispels most of the doubts that may have existed regarding his remorse for acting as he did with EA. In it, he expresses his conviction that he had "made a mess" of his whole life, and his remorse and regret over the harm that he may have caused EA by violating the Rules. Clearly, Staff believes him on this point and has stipulated accordingly in the agreement. What's more, there is

[11] See *supra*, par. 52 and 58.

no other factual or legal consideration arising from the settlement record that would cast any further doubt on the sincerity of these statements.

¶ 81 The violation of the Rules to which the Respondent admitted in the first agreement remains the same. Respondent essentially admits that between May 2005 and October 2010, he failed to use due diligence to ensure that his recommendations to buy, sell and/or hold securities were suitable for his client, EA.[12]

¶ 82 As for sanctions, the second settlement agreement proposes imposing the following penalty on the Respondent:

(i) A fine in the amount of $12,500;

(ii) Disgorgement of $3,000 representing the fees collected pursuant to the transactions tainted by the Respondent's dealings;

(iii) A four(4)-month suspension of approval in any capacity;

(iv) Strict supervision for a period of 12 months upon reapproval; and

(v) Successful completion of the Conduct and Practices Handbook Course as a condition for re-approval.[13]

¶ 83 That is to say that the Settlement Agreement increases to $12,500 the initially agreed fine of $10,000, while the imposed suspension of approval in any capacity is increased from 3 to 4 months.

¶ 84 Respondent has moreover kept his agreement to pay costs in the matter, in the amount of $2500.

V. DIFFERENTIATION OF THE TWO AGREEMENTS

¶ 85 The above-mentioned additions and changes to the background facts and the agreed sanctions tend to confirm the analysis that Staff of IIROC had always made, but which was not translated in the first agreement, nor proven sufficiently to convince the first hearing panel to approve it.

¶ 86 They introduce, on sufficiently important points, admissions and stipulations that are notably different and which, in regard to the circumstances presented to us, allow the conclusion that the settlement agreement is "another agreement" compared to the one that was rejected by the first hearing panel.

¶ 87 Consequently, we conclude that in the present matter, our Hearing Panel may validly exercise its jurisdiction in regard to the second Settlement Agreement.

VI. ANALYSIS

¶ 88 Rule 20.36(1) states that upon conclusion of a settlement hearing, the hearing panel may only accept or reject the settlement agreement submitted for its consideration.

¶ 89 As set out in Re BMO Nesbitt Burns [2012] IIROC 21, our Hearing Panel should accept the Settlement Agreement if, after consideration of the agreed-upon facts, it can conclude that the disciplinary measures that it proposes appear to fall within "a reasonable range of appropriateness" given the misconduct in question.

¶ 90 We therefore considered the IIROC Dealer Members Disciplinary Sanction Guidelines (March 2009 edition) (the Guidelines), as well as the case law cited by the parties relative to violations similar to those admitted to by the Respondent, namely: Re Futher, 2008 IIROC 29; Re Budnik, 2011 IIROC 55; Re Gareau, 2011 IIROC 72; Re Hanna, 2012 IIROC 71; Re Skelton, 2012 IIROC 46; Re Steinhoff, 2012 IIROC 39; Re Groome, 2013 IIROC 28; Re Jones, 2013 IIROC 58; Re *Martens*, 2013 IIROC 40.

¶ 91 We also studied the terms and conditions of the first settlement agreement entered into between the parties and analyzed the reasons for the first hearing panel's decision to refuse acceptance.

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[12] Settlement Agreement, Part II, par. 7.

[13] Settlement Agreement, Part II, par. 8.

¶ 92 Finally, we took into account the mitigating circumstances, as well as certain aggravating factors, arising from the agreed-upon facts, which we shall now discuss.

6.1. Mitigating circumstances

¶ 93 The Respondent, from the very first, cooperated with Staff of IIROC when he was asked for his assistance or for information as part of the investigation, an attitude that is deserving of our recognition.

¶ 94 In addition, we estimate that the acknowledgment of responsibility by the Respondent facilitated the disciplinary process and reduced the costs ultimately borne in this regard by the IIROC members.

¶ 95 The Respondent admitted his misconduct by signing the Settlement Agreement, a fundamentally positive factor.

¶ 96 He has, as we have seen,[14] expressed profound regret in letter P-2. This letter helped fill a gap which was one of the reasons cited by the first hearing panel for rejecting the initial settlement agreement.

¶ 97 The Respondent has no disciplinary history, which allows us to presume that, prior to the misconduct that led to these proceedings being instituted, he upheld the high standards of conduct that characterize IIROC-regulated firms and their representatives, and more particularly, he used due diligence in discharging his duty to evaluate the suitability of any recommendations he made to his clients to purchase, sell, exchange or hold securities, in accordance with the Rules.[15]

¶ 98 Respondent is now in a precarious financial situation, as exhibit P-2 reflects. This must be taken into account when assessing the proposed financial penalty, along with the fact that EA was partially compensated by Canaccord for the losses he suffered by reason of Respondent's misconduct.

¶ 99 Finally, EA indirectly facilitated the commission, by the Respondent, of the misconduct that led to the former's losses, when he signed a NCAF for his cash account that he knew contained inaccurate information, thus hindering the effectiveness of the supervision that Canaccord is required to apply to prevent such dealings on the part of its representatives. We cannot ignore this.

6.2. Aggravating factors

¶ 100 The harmful effects of the violations admitted to by the Respondent are entirely attributable to him. His pleadings and his misconduct in respect of the applicable Rules on suitability, show him to be the chief cause of the losses incurred by EA and, consequently, the Respondent must be assigned a high degree of participation in the violation.

¶ 101 We cannot ignore the fact that Respondent's conduct was a contributory cause to considerable financial prejudice to EA, given the latter's financial circumstances. Pursuant to the trades made by the Respondent, EA lost $115,640.43, namely 85% of his capital before partial indemnification by Canaccord.

¶ 102 The facts demonstrate that EA did not have an investor profile with a high risk tolerance, given his modest portfolio, his objectives and his lack of knowledge of the investment world.

¶ 103 On the contrary, he was an unsophisticated investor, whose knowledge of investing and finance was limited, and who therefore relied on the Respondent to faithfully discharge his professional duties.

¶ 104 The core duty and responsibility of an investment advisor is to make suitable recommendations in accordance with the clients' objectives and risk factors, and to properly obtain instructions before implementing trades. Where almost total reliance is placed upon the investment advisor, as it was in the present case, the responsibility to make suitable investments is heightened.[16]

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[14] See supra, pars. 71 and 80.

[15] See more specifically Rule 1300.1 (q), *Supervision of Accounts*.

[16] *Re Gareau* [2011] IIROC 72, par. 15.

¶ 105 The facts reveal that Respondent's misconduct is not the result of a temporary lapse of judgment. Rather, it involves repeated and generalized actions that spanned several years.

¶ 106 Indeed, Respondent's misconduct is the fruit of an investment strategy that was lucidly and willfully planned, orchestrated and executed.

¶ 107 The Respondent was enriched by commissions earned on trades that were executed contrary to his client's real investor profile. These commissions, which represented a sum of $8019.34 for the totality of the trades effected by the Respondent in EA's accounts, were never reimbursed by the Respondent.

VII. PENALTIES

¶ 108 In evaluating the reasonableness of the penalties accepted by the parties in the Settlement Agreement, we note, first of all, that section 3.1 of the Guidelines recommends a minimum fine of $10,000 for infractions similar to those committed by the Respondent, disgorgement of profit, the obligation to rewrite the CPH exam, a period of close or strict supervision, and a period of suspension (in most egregious cases where elements of deception and false or misleading statements are involved).

¶ 109 Paragraph 4.2 of the Guidelines' General Principles list five factors that might justify such a suspension of approval. Of these five factors, three might be deemed applicable in the Respondent's case: (i) there have been numerous serious transgressions; (ii) there has been a pattern of misconduct; and (iii) the misconduct in question has caused some measure of harm to the integrity of the securities industry as a whole.

¶ 110 Therefore, the Settlement Agreement rightly imposes a four-month suspension of approval in any capacity with IIROC. This period of suspension does not appear unreasonable in light of the precedents invoked before us in this regard, specifically in: Re Futher [2008] IIROC 29; Re Budnik [2011] IIROC 55; Re Gareau [2011] IIROC 72; Re Hanna [2012] IIROC 71; Re Steinhoff [2012] IIROC 39; and Re Jones [2013] IIROC 58.

¶ 111 The Hearing Panel finds, in respect of the agreed-upon facts, the Respondent's ability to pay, the fact that he will have to pay an additional $3,000 in disgorgement of the commissions collected, and costs in the amount of $2,500, that the fine of $12,500 provided in the Settlement Agreement is consistent with the Guidelines' parameters and does not differ unreasonably, given the circumstances, from the precedents invoked before us (Re Futher, supra; Re Hanna, supra; Re Skelton [2012] IIROC 46), in which the gravity of the misconduct was similar.

¶ 112 Finally, a 12-month period of strict supervision once suspension is lifted, and an obligation to retake and pass the Conduct and Practices Handbook Course as a condition for reapproval, are additional sanctions that seem fully justified to us.[17]

Conclusions

¶ 113 For all of these reasons, we allow the joint recommendation of the parties and accept the Settlement Agreement before us.

¶ 114 As for us, the penalties agreed to in the Settlement Agreement, in respect of the agreed facts and the additional evidence that completes them, in all respects meet the criteria of fairness and reasonable appropriateness that enable us proceed accordingly .

FOR THESE REASONS, the Hearing Panel:

ACCEPTS the Settlement Agreement appended to this decision and notably assesses the following penalties against the Respondent:

1) A fine in the amount of $12,500;
2) Disgorgement of $3,000 representing the fees collected;

[17] On this subject, see *Re Futher, Re Gareau, Re Skelton*, *Re Jones*, supra; *Re Groome* [2013] IIROC 28; *Re Martens* [2013] IIROC 40) and the parameters provided in the guidelines.

3) A four(4)-month suspension of approval in any capacity.

4) Strict supervision for a period of 12 months upon reapproval;

5) Successful completion of the Conduct and Practices Handbook Course as a condition for re-approval;

6) Costs in the amount of $2,500.

Signed at Montréal, Québec, March 23, 2015.

Jean Martel

Chair

Marcel Paquette

Panel Member

Élaine C. Phénix

Panel Member

SETTLEMENT AGREEMENT

I. BACKGROUND

1. The Enforcement Staff of IIROC and the Respondent, Jean-Yves Gaudreault, consent and agree to the settlement of these matters by way of this settlement agreement ("the Settlement Agreement");

2. The Enforcement Department of IIROC has conducted an investigation ("the Investigation") into the conduct of Jean-Yves Gaudreault;

3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada (IDA) and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between the IDA and IIROC, which came into force June 1, 2008, the IDA has retained IIROC to provide the necessary services for the IDA to carry out its regulatory functions.

4. The Respondent consents and agrees to be subject to IIROC's jurisdiction;

5. The Investigation disclosed matters for which the Respondent may be disciplined by a Hearing Panel appointed pursuant to Part C of Schedule C.1 to Transition Rule No. 1 of IIROC (the Hearing Panel).

II. JOINT SETTLEMENT RECOMMENDATION

6. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement;

7. The Respondent admits to the following contraventions of IIROC Rules and Guidance and IDA By-Laws, Regulations or Policies:

    1. Between May 2005 and October 2010, the Respondent failed to use due diligence to ensure that his recommendations to buy, sell and/or hold securities were suitable for his client, contrary to IIROC Dealer Member Rule 1300.1(q) (Regulation 1300.1(q) of the IDA prior to June 1, 2008);

8. Staff and the Respondent have accepted the following terms of settlement:

    a) A fine in the amount of $12,500;

    b) Disgorgement of $3,000 representing the fees collected;

    c) A four(4)-month suspension of approval in any capacity.

d) Strict supervision for a period of 12 months upon reapproval;

e) Successful completion of the Conduct and Practices Handbook Course as a condition for re-approval;

9. The Respondent agrees to pay IIROC costs in the amount of $2,500.

III. STATEMENT OF FACTS

(i) Acknowledgment

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

(ii) Factual Background

Summary

11. The Respondent was client EA's investment advisor from January 2005 to October 2010;

12. During this period, Respondent recommended the purchase of high-risk speculative securities to his client EA, without taking into account this client's investor profile;

13. During this same period, Respondent recommended that client EA continue to hold these speculative securities, contrary to said client's investor profile;

THE REPRESENTATIVE JEAN-YVES GAUDREAULT

14. Respondent was approved as an investment advisor with IIROC from May 1995 to March 2011, having in turn been employed with Lévesque Beaubien Geoffrion, Scotia Capital Inc. and Canaccord Genuity Corp. (Canaccord);

15. Respondent was employed with Canaccord from May 2005 to March 2011;

16. On June 1, 2008, Respondent became a registrant of IIROC;

17. In March 2011, Respondent ceased to be a registrant of IIROC.

THE CLIENT EA

18. The client EA was a teacher of graphic design who had principally worked as a freelancer throughout his 14-year career;

19. In 2005, he was 36 years of age, had a yearly income of approximately $60,000, and a net worth of approximately $60,000;

20. Before opening an account at Canaccord, EA's experience with investing was limited to mutual funds, having never before purchased or held shares or had a discount brokerage account;

21. When he opened his account at Canaccord in 2005, EA's knowledge of investing and of how the securities exchanges work was at best fair and at worst poor.

OPENING OF CASH ACCOUNT – JANUARY 2005

22. EA first became acquainted with the Respondent at a sports club, at which time he expressed an interest in meeting with the Respondent;

23. EA therefore met the Respondent on or around January 24, 2005 at the Respondent's temporary offices in Québec City;

24. At the time, Respondent was still employed at Scotia Capital Inc.;

25. At this meeting, EA allegedly mentioned to the Respondent that he wanted a portfolio similar to what he had with his previous advisor, which consisted exclusively of balanced and growth mutual funds;

26. Contrary to EA's true investor profile, the Respondent entered on the *New Client Application Form*

*(**NCAF**)* for the cash account, investment objectives that were 100% speculative with a high risk tolerance;

27. Respondent also wrote that EA possessed a fair knowledge of investing with extensive knowledge of IPOs, contrary to reality which was quite different than that described above;

28. Before signing and initialing the NCAF, EA expressed to the Respondent his discomfort with the investment objectives and risk tolerance entered on the NCAF, indicating to the Respondent that he did not want to risk his capital in any way whatsoever;

29. In an effort to sound reassuring, Respondent indicated to EA that the latter should not worry about what was stated on the form, that it was just internal paperwork and that if EA wanted access to the securities that Respondent was trading in and recommending to all his clients, he had no choice but to enter that EA's investment objectives were 100% speculative and his risk tolerance high;

30. The Respondent took this opportunity to outline his investment philosophy which was based on small cap securities, reassuring EA about the companies in which he was investing;

31. Indeed, Respondent mentioned to EA that he was fairly intimately acquainted with the top executives at Odesia Group Inc. (Odesia) and Power Tech Corp. (Power Tech) and that he therefore had superior knowledge of the actual situation of these companies, which constituted an important advantage on the market;

32. On the strength of Respondent's representations, and after a summary review of the NCAF, a cash account was opened in EA's name (cash account);

33. However, the NCAF for the cash account was not signed by the Respondent in his capacity as EA's investment advisor, since he was not yet employed at Canaccord; it was signed by a representative of Canaccord's Montréal office on March 7, 2005.

OPENING OF RRSP ACCOUNT AND UPDATE OF CLIENT FILE – JUNE 2005

34. Respondent officially began working at Canaccord in May 2005;

35. He met with EA again in June 2005 in order to update the latter's client file and to open an RRSP brokerage account (RRSP account);

36. On this occasion, EA reiterated his discomfort regarding the investment objectives and risk tolerance mentioned on the NCAF; the Respondent consequently updated his investment objectives;

37. The investment objectives stated on the client file for the RRSP account were accordingly established at 80% moderate growth and 20% speculative, with a risk tolerance of 80% medium risk and 20% high risk;

38. However, Respondent failed to amend the investment objectives and risk tolerance in the client file for the cash account, which continued to show investment objectives that were 100% speculative with a risk tolerance that was 100% high, contrary to EA's real investor profile.

EA'S PORTFOLIO BEFORE HIS TRANSFER TO CANACCORD

39. In June 2005, EA proceeded to transfer his investments to Canaccord;

40. The following table shows the portfolio that was transferred to Canaccord:

EA's portfolio transferred to Canaccord			
Account	**Fund**	**Value**	**% of portfolio**
Cash	AIC Canadian Focused	344,19 $	0,58%
Cash	AIC American Focused	1 503,46 $	2,51%

EA's portfolio transferred to Canaccord			
Account	**Fund**	**Value**	**% of portfolio**
Cash	Trimark Fund	1 073,82 $	1,80%
RRSP	AIC American Focused	5 986,44 $	10,01%
RRSP	Trimark Fund	5 408,44 $	9,04%
RRSP	Trimark Canadian	9 552,31 $	15,97%
RRSP	Fidelity Canadian Balanced	16 462,92 $	27,53%
RRSP	Bissett Canadian Fund	9 389,97 $	15,70%
RRSP	Bissett Small Cap Fund	7 369,45 $	12,32%
RRSP	Talvest Ren Global Hlth Sci	2 707,01 $	4,53%
	Total	59 798,01 $	100%

41. The portfolio transferred to Canaccord was a mix of balanced funds and growth funds (72% growth and 28% balanced) and represented 100% of EA's liquid assets.

UNSUITABILITY OF RECOMMENDATIONS

42. From the very start of their relationship, Respondent was recommending to EA the purchase of high-risk speculative securities, namely Odesia and Power Tech;

43. Odesia was a company that offered business solutions to help managers improve their company's performance by having relevant information about their company at their fingertips whenever they needed it;

44. Power Tech was a company that designed and manufactured percussion buckets for the construction, demolition, drilling, forestry and military markets;

45. Both these companies' securities were considered volatile and high risk, requiring extra diligence on the part of the investment advisor recommending these securities to clients, especially to uninformed clients such as EA;

46. Respondent represented to EA that the risk associated with the Odesia and Power Tech shares was less because he had a personal connection with the top executives of these two companies, in addition to being knowledgeable about their activities, which gave him a form of control over these securities, as well as a privileged relationship that gave him access to first-hand information ahead of other investment advisors;

47. Respondent reassured EA about these companies by representing to him that, although they were small, they were sound and had international contracts;

48. Also, they completed each other very well since it was practically impossible, according to the Respondent, for these two companies to experience difficulties at the same time, so the position in one company would cover the position in the other ("*hedge*");

49. In the course of IIROC's investigation, Respondent admitted the following elements during his interview:

    a. that when EA's account was opened at Canaccord, it had been agreed that the latter's investment objectives were 80% medium risk and 20% high risk;

    b. that he recommended Odesia and Power Tech securities to almost all of his clients, including EA, because he knew some of the companies' insiders and tracked their activities very closely;

c. that Odesia and Power Tech were high-risk growth securities.

50. Even though client EA was informed of the high risk associated with the securities in his portfolio, having signed a Canaccord form to that effect, the Respondent failed to use due diligence when he recommended the purchase as well as the long-term holding of these securities to EA;

51. From June 2005 to September 2010, EA's portfolio never reflected EA's real investor profile, be it in terms of the investment objectives or the risk tolerance;

52. From June 2005 to May 2009, Respondent purchased 135,000 Odesia shares for EA's account, a net value of $44,567.49;

53. In October 2010, EA's loss in regard to this position stood at nearly 70% of the initial value;

54. From June 2005 to February 2010, Gaudreault purchased 157,000 Power Tech shares for EA's account, a net value of $68,633.53;

55. In October 2010, EA's loss in regard to this position stood at more than 96% of the initial value;

56. The net loss in EA's portfolio in October 2010 was $115,640.43, representing an 85% loss of value;

57. The following table illustrates the concentration of these two securities in EA's portfolio:

Analysis of concentration			
Date	Odesia	Power Tech	Total
June 2005	5,08%	0,00%	5,08%
Dec 2005	6,81%	12,46%	19,27%
June 2006	15,01%	24,05%	39,06%
Dec 2006	21,19%	18,62%	39,80%
June 2007	30,00%	30,26%	60,26%
Dec 2007	32,06%	28,08%	60,14%
June 2008	28,54%	32,39%	60,92%
Dec 2008	52,42%	29,74%	82,16%
June 2009	37,81%	28,61%	66,43%
Dec 2009	36,47%	25,40%	61,87%
June 2010	70,88%	14,21%	85,09%
Sep 2010	71,56%	11,35%	82,90%

58. Between 2005 and 2010, the trades effected by Respondent in EA's accounts grossed $20,048.34 in commissions, representing $8,019.34 in net commissions;

59. Moreover, in addition to the share purchases in Odesia and Power Tech, Respondent also recommended and executed numerous short-term speculative trades in EA's portfolio;

60. The number of short-term speculative trades effected by Respondent were unsuitable given EA's investor profile.

IV. TERMS OF SETTLEMENT

61. 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.

62. The Settlement Agreement is subject to acceptance by the Hearing Panel;

63. The Settlement Agreement shall become effective and binding upon the Respondent and Staff from the date of its acceptance by the Hearing Panel.

64. The Settlement Agreement will be presented 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.

65. 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.

66. 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.

67. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel;

68. 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.

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

70. 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 «Québec» (Québec), on « November 17, » 2014.

	« Jean-Yves Gaudreault »
Witness	**Jean-Yves Gaudreault**
	Respondent

AGREED TO by Staff, at Montréal, Québec, this November 17, 2014.

«Linda Vachet»	**«Martin Hovington»**
Witness	**Me Martin Hovington**
	Enforcement Counsel, for Staff of IIROC