Re St. Pierre

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Marc Leon St. Pierre

2022 IIROC 29

Investment Industry Regulatory Organization of Canada
Hearing Panel (Alberta District)

Heard: November 8, 2022 in Edmonton, Alberta (by videoconference)
Decision: November 8, 2022
Reasons for Decision: 21, 2022

Hearing Panel:
Eric Spink, KC, Chair, James Ross and Martin Davies
Appearances:
David McLellan, Senior Enforcement Counsel
Andrew Wilson, for Marc Leon St. Pierre (absent)
Marc Leon St. Pierre (absent)

REASONS FOR DECISION

Introduction

¶ 1 This hearing was conducted by videoconference on November 8, 2022. At that time, the Panel rendered its decision, with these written reasons to follow.

¶ 2 The hearing was conducted pursuant to Sections 8203 and 8205 of the Consolidated Enforcement, Examination and Approval Rules ("Rules") of the Investment Industry Regulatory Organization of Canada ("IIROC"). Proceedings commenced by a Notice of Hearing and Statement of Allegations dated September 14, 2022, which alleged a single contravention:

> Between April 2015 and August 2021, Marc Leon St. Pierre (the "Respondent") misappropriated funds from his clients' accounts, contrary to IIROC Rule 1400 and Dealer Member Rule 29.1 (prior to September 1, 2016).

¶ 3 To summarize the Statement of Allegations (attached as Appendix 1), it alleges that the Respondent misappropriated $10,403,090.59 from clients' accounts, used a variety of methods and processes to deceive both the clients and his employer, transferred funds between the clients' accounts and outside bank accounts controlled by the Respondent, including $4,840,709.08 transferred to outside bank accounts, and used that amount for the Respondent's personal benefit. Paragraph 12 of the Statement of Allegations says:

> On July 7, 2022, St. Pierre attended an interview with IIROC Staff in which he specifically admitted, under oath, to misappropriating a total of approximately $4,000,000 from the Clients over a six year

period ending in August, 2021. In addition, he stated that these funds were transferred to personal bank accounts owned or controlled by him at other Canadian financial institutions for his personal use.

Failure to respond

¶ 4 An affidavit of service was entered in evidence. It included a letter from the Respondent's counsel to IIROC's counsel dated October 6, 2022, acknowledging service of the Notice of Hearing and Statement of Allegations and saying:

> Mr. St. Pierre does not intend to contest the allegations made against him by IIROC. Given this, I do not anticipate appearing at the hearing of this matter. You have my permission to provide a copy of this letter to the hearing panel.

¶ 5 IIROC's counsel invited the Panel to proceed with the hearing on the merits, accept as proven the facts and contravention alleged in the Statement of Allegations, hear submissions on sanctions, and impose sanctions and costs. IIROC's counsel referred to Rules 8415(4) and 8423(12) which are set out below:

> 8415(4):
>
> > If a respondent who has been served with a notice of hearing does not serve and file a response in accordance with subsection 8415(1), the hearing panel may proceed with the hearing of the matter on its merits on the date of the initial appearance set out in the notice of hearing, without further notice to and in the absence of the respondent, and the hearing panel may accept as proven the facts and contraventions alleged in the statement of allegations and may impose sanctions and costs pursuant to section 8209 or 8210, as applicable.
>
> 8423(12):
>
> > If a respondent who has been served with a notice of hearing does not attend the hearing on the merits, the hearing panel
> >
> > (i) may proceed with the hearing in the respondent's absence and may accept as proven the facts and contraventions alleged in the notice of hearing and statement of allegations, and
> >
> > (ii) if it finds that the respondent committed the alleged contraventions, may hear submissions on sanctions from Enforcement Staff immediately, without a further hearing on sanctions and costs, and may impose sanctions and costs pursuant to sections 8209 or 8210, as it considers appropriate.

¶ 6 IIROC's counsel submitted that the present case is precisely the type of situation the Rules are intended to address and referred the Panel to the following decisions: *Re Ng* 2022 IIROC 15; *Re McCarthy* 2021 IIROC 33; *Re Woodward* 2018 IIROC 6; *Re MacArthur* 2017 IIROC 29; *Re Turcotte* 2017 IIROC 33; *Re Scerbo* 2017 IIROC 57; *Re Malley* 2014 IIROC 29; *Re Ryan* 2012 IIROC 29; and *Re Connacher* 2011 IIROC 28.

¶ 7 The Panel adjourned briefly, then delivered our decision that the Respondent's failure to respond or appear in this matter should be construed as an admission of the allegations, analogous to a plea of "guilty". The Panel accepted as proven the facts and the contravention described in the Statement of Allegations, and asked IIROC's counsel to proceed with submissions on sanctions and costs.

Submissions and decision on sanctions

¶ 8 IIROC's counsel made submissions seeking the following sanctions and costs:

- a permanent ban on approval in any capacity;
- a fine of $1,000,000;

- disgorgement in the amount of $4,849,000; and
- costs of $100,000.

¶ 9 After hearing submissions and adjourning to consider, the Panel imposed the suggested sanctions and costs.

Guidelines, previous decisions, and factors in determining sanctions

¶ 10 As stated in the 2015 IIROC Sanction Guidelines ("Guidelines"):

> The purpose of sanctions in a regulatory proceeding is to protect the public interest by restraining future conduct that may harm the capital markets. In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence), and to deter others from engaging in similar misconduct (general deterrence). ...
>
> General deterrence can be achieved if a sanction strikes an appropriate balance by addressing a Regulated Person's specific misconduct but is also in line with industry expectations. Any sanction imposed must be proportionate to the conduct at issue and should be similar to sanctions imposed on respondents for similar contraventions in similar circumstances. The sanction should be reduced or increased depending on the relevant mitigating and aggravating factors.

¶ 11 IIROC's counsel referred to the following decisions: *Re McCarthy* 2021 IIROC 33; *Re Howell* 2016 IIROC 48; *Re Melville* 2014 IIROC 51; *Re Kumar* 2015 IIROC 33; and *Re Ahn* 2011 IIROC 31. In all those cases, severe sanctions were imposed because they all involved some form of theft from clients. IIROC's counsel pointed out that this case has the dubious distinction of being the largest misappropriation from clients in the history of IIROC or its predecessor.

¶ 12 Only two of the factors listed in the Guidelines favored the Respondent: his lack of any prior disciplinary history and his admission of wrongdoing. The Panel agreed with IIROC's counsel's submission that those factors are rendered insignificant by the overwhelming aggravating factors in this case.

¶ 13 Principle #6 in the Guidelines says:

> A permanent bar should be considered where:
>
> - the contraventions involve significant harm to the investing public, the integrity of the market or the securities industry;
> - the misconduct had an element of criminal or quasi-criminal activity; or
> - there is reason to believe that the respondent cannot be trusted to act in an honest and fair manner in their dealings with the public, their clients, and the securities industry as a whole.
>
> A fine and/or disgorgement should be considered even where a permanent bar is imposed in egregious cases involving significant harm to investors or to the integrity of the securities industry as a whole.

¶ 14 The Respondent's contravention meets all of the factors warranting a permanent bar, plus a fine and disgorgement, and the Panel found this case egregious in the extreme. The magnitude of the Respondent's fraud is extraordinary by every measure (size, duration, depth of deception, and vulnerability of victims) and so is the resulting harm to victims and the integrity of the securities industry as a whole. The Panel adopted and applied the statement from *Re McCarthy*:

> In an industry that has trust as its most fundamental principle, theft is a repudiation of the most basic industry value. Theft from several clients, carried out over a lengthy period, by numerous acts … and various forms of deceit, adds to the magnitude of this violation. Simply put, it cannot be tolerated.

Disgorgement

¶ 15 IIROC's counsel referred to the following cases on disgorgement: Re Poonian v. British Columbia Securities Commission 2017 BCCA 207; Re Limelight Entertainment Inc. 2008 OSC 990; Re Oriens Travel & Hotel Management 2014 BCSC 277; Re Magneson 2022 LNABASC 29; and Re Fauth 2019 ABASC 102. Those cases considered disgorgement in the context of securities legislation, and IIROC's counsel submitted that some of the same principles should be applied when interpreting Rule 8210(1)(ii).

¶ 16 Rule 8210(1)(ii) enables a panel to order:

> (ii) disgorgement of any amount obtained, including any loss avoided, directly or indirectly, as a result of the contravention.
>
> The British Columbia *Securities Act*, s. 161 (1)(g), enables an order:
>
> … that the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention.
>
> The Alberta *Securities Act*, s. 198(1)(i), enables an order:
>
> … that the person or company pay to the Commission any amounts obtained or payments or losses avoided as a result of the non-compliance.
>
> The Ontario *Securities Act*, s. 127(1)10, enables an order:
>
> … requiring the person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance.

¶ 17 The British Columbia Court of Appeal decision in *Re Poonian* shows that, although differences in wording (particularly, the inclusion or exclusion of the phrase "directly or indirectly") can be significant in some cases, the basic purpose and function of all the provisions is the same (paras 79-82, citations omitted):

> [79] I agree with the following discussion in *Re Limelight Entertainment Inc.* about the origins of the disgorgement remedy in Ontario, and find those observations applicable to interpreting s. 161(1)(g), which is similarly worded:
>
> > [48] The Five Year Review Report referred to the United States Securities and Exchange Commission ("SEC") disgorgement powers and noted that the following principles have been established in SEC decisions:
> >
> > (a) the SEC has ruled that disgorgement is "an equitable remedy designed to deprive [respondents] of all gains flowing from their wrong, rather than to compensate the victims of the fraud";
> >
> > (b) the SEC has ruled that "any risk of uncertainty [in calculating disgorgement] should fall on the wrongdoer whose illegal conduct created that uncertainty"; and
> >
> > (c) the SEC has ruled that once the SEC has established a disgorgement figure, the burden shifts to the respondent to disprove the reasonableness of that number.
>
> Although we are not bound by SEC decisions, we agree with these general principles, subject to the comments below.
>
> [80] I also agree with the decisions of securities commissions in British Columbia and across the country concluding s. 161(1)(g), or its counterparts, is not compensatory in nature.
>
> [81] The purpose of s. 161(1)(g) is to compel a wrongdoer to give up any ill-gotten amounts. (While the purpose has been described in the cases as "ill-gotten gains", I find it more accurate to refer to them as "amounts", as the statute provides, and because, as discussed below, there is no "profit" element.) In

Streamline, for example, the majority of the Commission said:

> [55] … The purpose of a section 161(1)(g) payment is to remove from a respondent any amounts obtained through a violation of the Act. Given that, how a respondent spent the funds raised is not relevant for such purpose. Also, a respondent's ability to pay the amount is not relevant for such purpose.
>
> [82] The taking away of any amounts obtained or payment or loss avoided deprives a person who fails to comply of any benefit. Therefore, the person is deterred from non-compliance. In that sense, s. 161(1)(g) also has a deterrence purpose. This purpose is consistent with the Act's overarching remedial and protective nature.

¶ 18 Essentially the same principles were applied by the Alberta Securities Commission in *Re Magneson* (at paras 35-37, citations omitted):

> [35] If we consider it to be in the public interest, we may order a respondent to disgorge - i.e., to pay to the ASC - any amounts obtained or any payments or losses avoided as a result of the respondent's non-compliance with Alberta securities laws (see s. 198(1)(i) of the Act). The intention is to remove any financial benefit of a respondent's misconduct and thus to remove the incentive for the misconduct to be repeated, whether by that respondent or by others.
>
> [36] We adopt the discussion of the law governing disgorgement orders set out in *Re Fauth*. The main principles from Fauth were summarized in *Rustulka*:
>
> - the first step in deciding whether disgorgement should be ordered is to determine whether the respondent obtained a monetary amount arising from his or her contraventions of the law. The second step is for the trier of fact to decide whether a disgorgement order is in the public interest, which typically involves consideration of the goals of specific and general deterrence;
> - Staff must prove the approximate amount obtained by the respondent. If the respondent believes that amount is inaccurate or unreasonable, the burden shifts to him or her to demonstrate why. Any uncertainty should be resolved against the respondent;
> - it does not matter if the respondent has spent or otherwise dissipated some or all of the funds, as the Act speaks to "any amounts obtained" rather than any amounts retained. To find otherwise would be to reward the wrongdoer for spending ill-gotten gains quickly enough to avoid later enforcement;
> - for the same reason, a disgorgement order can be made even where the respondent is impecunious. As the ASC panel in *Re Magee* explained, "it would seem perverse that disgorgement could be ordered against a respondent who has retained amounts illegally obtained, but not against a respondent who has squandered such amounts";
> - disgorgement orders are discretionary, and it is within our discretion to order payment of all or less than the full amount obtained by a respondent as a result of his or her non-compliance with Alberta securities laws.
>
> [37] To the foregoing, we would add that Staff's burden of proof of the amount obtained directly or indirectly remains the balance of probabilities. We also note that the amount obtained may include any amounts obtained by companies under an individual respondent's direction or control.

¶ 19 The Panel found that Rule 8210(1)(ii) reflects the same principles. Applying those principles to this case, the Panel was satisfied that IIROC Staff had proven that the Respondent obtained $4,840,000 as a result

of his contravention, and that disgorgement of that amount was required in order to meet the objectives of specific and general deterrence in this case.

Fine

¶ 20 Fines and disgorgement have different, but complementary, purposes. Although disgorgement is an important component of deterrence, it is insufficient by itself because it merely puts the Respondent in the same position as before the contravention. The purpose of a fine is to impose an additional financial cost in order to specifically deter the Respondent and generally deter others from similar conduct. In this case, the Panel found that a fine of $1,000,000 was appropriate for that purpose.

Costs

¶ 21 An affidavit attaching a Bill of Costs was entered in evidence, showing IIROC's costs of investigation and prosecution to be just over $100,000. The Panel was satisfied with that evidence so, pursuant to Rule 8214, we ordered the Respondent to pay costs of $100,000.

Conclusion and summary

¶ 22 The Panel found that, between April 2015 and August 2021, the Respondent misappropriated funds from his clients' accounts, contrary to IIROC Rule 1400 and Dealer Member Rule 29.1 (prior to September 1, 2016).

¶ 23 Pursuant to Rule 8210(1)(ii), the Panel ordered that the Respondent:

- be permanently barred from approval in any capacity;
- pay disgorgement of $4,840,000; and
- pay a fine of $1,000,000.

¶ 24 Pursuant to Rule 8214, the Panel ordered that the Respondent pay costs of $100,000.

Dated at Edmonton, Alberta this 21 day of November 2022.

Eric Spink, KC, Chair

James Ross

Martin Davies

APPENDIX 1

STATEMENT OF ALLEGATIONS

Further to a Notice of Hearing dated September 14, 2022, Enforcement Staff make thefollowing allegations:

PART I – REQUIREMENTS CONTRAVENED

Between April, 2015 and August, 2021, the Respondent misappropriated funds from his clients'accounts, contrary to IIROC Rule 1400 and Dealer Member Rule 29.1 (prior to September 1, 2016).

PART II – RELEVANT FACTS AND CONCLUSIONS

Overview

1. The Respondent, Marc Leon St. Pierre (St. Pierre) was a Registered Representativeemployed with ATB Securities Inc. (ATB), an IIROC-regulated firm, in Red Deer, Alberta.
2. Between April, 2015 and August 2021 (Relevant Period), St. Pierre misappropriated a totalof approximately $10,403,000 from the accounts of 16 of his clients (Clients). In total, he

transferred approximately $5,595,000 to the Clients' accounts, and transferred out a net amount of approximately $4,840,000, to outside bank accounts personally owned or controlled by him. These funds, totalling $4,840,000 were used for his own personal benefit.

3. St. Pierre misappropriated the funds through a variety of methods involving unauthorized withdrawals and deposits of bank drafts and electronic funds transfers. St. Pierre was able to misappropriate the funds by deceiving both the Clients and his firm through the falsification of the Clients' information and records.

4. The majority of the Clients were over 75 years old, and were vulnerable. ATB has reimbursedthe Clients in full with respect to the net funds misappropriated by St. Pierre, plus opportunity costs attributable to lost market gains.

Registration History

5. Beginning in March, 2008, St. Pierre became employed with ATB. He became an IIROC Registrant in January, 2012.

6. In August, 2021, ATB terminated St. Pierre's employment as a result of an internal investigation. He has not been employed with an IIROC-regulated firm since.

Misappropriation of Client Funds

7. During the Relevant Period, St. Pierre misappropriated funds from the Clients' accounts through at least five different methods. These five methods involving frequent withdrawalsand deposits of funds, typically through the use of bank drafts and electronic funds transfers, between the Clients' accounts, internal ATB accounts and outside bank accountsowned by him. All of the transactions occurred without the Clients' knowledge or authorization.

8. The five methods were facilitated by eight different processes, which St. Pierre used to deliberately deceive both the Clients and his employer, and reduce the likelihood ofdetection. These processes included using fake email addresses, changing account statements to electronic statements only, falisifying account statements, altering account statements, using fake mailing addresses, changing EFT instructions, and diverting tax slips.

9. The total funds misappropriated, broken down by client, are as follows:

	Client Name	Funds Misappropriated	Funds Transferred by St. Pierre to Clients	Net Funds Misappropriated (to outside St. Pierre Accounts)
1.	DB	$1,833,535.83	$1,750,500.00	$83,035.83
2.	RC	$100,000.00	$100,000.00	$0
3.	JC	$360,000.00	$360,234.81	$0
4.	CJ	$147,000.00	$47,000.00	$100,000.00
5.	RM	$357,491.48	$30,000.00	$327,491.48
6.	PM & AM	$130,000.00	$0	$130,000.00
7.	RMi	$94,723.43	$5,500.00	$89,223.43
8.	LN	$303,765.79	$0	$303,765.79
9.	KP	$3,701,957.67	$3,040,381.48	$661,576.19
10.	HR	$80,000.00	$91,546.48	$0
11.	BS	$250,000.00	$0	$250,000.00
12.	CS	$138,000.00	$159,139.29	$0
13.	GT	$991,500.00	$0	$991,500.00

	Client Name	Funds Misappropriated	Funds Transferred by St. Pierre to Clients	Net Funds Misappropriated (to outside St. Pierre Accounts)
14.	DV	$1,580,142.65	$0	$1,580,142.65
15.	SW & DW	$94,973.74	$11,000.03	$83,973.71
16.	JW	$240,000.00	$0	$240,000.00
Total		**$10,403,090.59**	**$5,595,302.09**	**$4,840,709.08**

10. Of the funds misappropriated, St. Pierre made frequent payment of funds between individual Clients' accounts, in order to cover up the misappropriations from other Clients' accounts.

11. During the Relevant Period, St. Pierre transferred funds totaling $4,840,709 to outside bank accounts personally owned or controlled by him at other financial institutions. These fundswere used for his own personal benefit.

12. On July 7, 2022, St. Pierre attended an interview with IIROC Staff in which he specifically admitted, under oath, to misappropriating a total of approximately $4,000,000 from the Clients over a six year period ending in August, 2021. In addition, he stated that these funds were transferred to personal bank accounts owned or controlled by him at other Canadianfinancial institutions for his personal use.

DATED at Calgary, Alberta, this 14th day of September, 2022.