

Re Maurice

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

And

Paul Maurice

2022 IIROC 35

Investment Industry Regulatory Organization of Canada
Hearing Panel (New Brunswick District)

Heard: October 31, 2022 via videoconference
Reasons for Decision: January 17, 2023

Hearing Panel:

Edward W. Keyes K.C., Chair, Ken Wheelans and Thomas Kostandoff

Appearances:

Francis Larin, Senior Enforcement Counsel

Alexander Bien-Aime, for Paul Maurice

Paul Maurice (present)

DECISION ON PENALTY

INTRODUCTION

¶ 1 In our Reasons for Decision issued on July 26, 2022 ([Re Maurice 2022 IIROC 18](#)), this Hearing Panel found that the following contraventions alleged in the Notice of Hearing and Statement of Allegations dated April 28, 2020, were proven:

- (i) **Contravention 1:** In January and February 2020, the Respondent engaged in discretionary trading in the joint account of two clients, without this account having been previously approved and accepted as a discretionary account, contrary to Dealer Member Rule 1300.4 and 1300.5; and
- (ii) **Contravention 2:** Between May and December 2020, the Respondent made misrepresentations to Enforcement Staff during the course of an investigation, contrary to Consolidated Rule 1400.

¶ 2 As directed, a penalty hearing in this matter was held on October 31, 2022.

SUMMARY OF THE EVIDENCE AND FINDINGS

¶ 3 At the time of the hearing the Respondent had been an investment advisor with CIBC Wood Gundy since 2005.

¶ 4 As a result of a complaint filed by the Respondent's clients AH and LH, IIROC commenced an

investigation which alleged that in January and February 2020 the Respondent engaged in discretionary trading, involving 9 trades, in an account that had not been previously approved and accepted as a discretionary account. AH and LH testified at the hearing that the Respondent did not speak with them in January and February 2020 prior to his making any of the trades in their account.

¶ 5 During the investigation, the Respondent provided both his handwritten notes, as well as Croesus notes to IROC Enforcement Staff (“Enforcement Staff”), which purported to detail his calls with the clients that he asserted were determinative evidence that he had in fact called AH and/or LH before he made each of the trades in question. Neither his handwritten nor Croesus notes detailed the time the calls were supposedly made by the Respondent to AH and in particular relating to a call recorded as taking place on February 26, 2020 on which the Panel heard detailed evidence.

¶ 6 When the Respondent was interviewed by Enforcement Staff on December 9, 2020 regarding the complaint (and specifically around the February 26, 2020 trade) made in AH’s account, he could not tell the IROC investigator at what time he spoke with AH on February 26, 2020 regarding the trade.

¶ 7 Notwithstanding that he could not recall when he had spoken with AH on February 26, 2020 during his interview, the Respondent testified at the hearing that he had spoken with AH on AH’s cell phone at 7am that morning. The Respondent’s assistant, Ms. Hari, testified that the Respondent made the call to AH at around 8am on February 26, 2020.

¶ 8 We found, based on the evidence before us, that AH had lost his cell phone at approximately 6:30am on February 26, 2020, as he was exiting a vehicle dropping him off at the Halifax Airport prior to leaving on a trip to Florida and accordingly he could not have spoken to AH at 7am on that date as he claimed.

¶ 9 The evidence that AH did not speak to the Respondent on February 26, 2020 was also supported by the Rogers Call Detail Records entered as an exhibit at the hearing which did not list any calls from the Respondent to AH on that date.

¶ 10 Based on all of the evidence before us, we found the Respondent not to be credible and his claim to have spoken with AH on February 26, 2020, before he executed the trade, to be untrue.

¶ 11 The Respondent had told Enforcement Staff during his December 9, 2020 interview, that the Rogers phone records, when obtained, would confirm that he had spoken with AH on the dates that the 9 trades in question were made. The Rogers Call Detail Records disclosed only 5 calls between the home and cell phone numbers of AH, LH and the Respondent, and that none of the 5 calls took place on the dates the 9 trades in question were made.

¶ 12 We found that the evidence before us clearly established that the Respondent made misrepresentations to Enforcement Staff during their investigation of this matter.

¶ 13 We therefore concluded that the Respondent failed to observe the high standards of ethics and conduct expected of him as an IROC registrant.

¶ 14 We found that he engaged in conduct that breached regulatory requirements and was unbecoming and detrimental to the public interest. His actions would likely diminish investor confidence in the integrity of the securities markets in breach of Consolidated Rule 1400 regarding the standards of conduct expected of a registrant.

GENERAL PRINCIPLES REGARDING SANCTIONS

¶ 15 As is stated in the IROC Disciplinary Sanction Guidelines (“Sanction Guidelines”) the primary purpose of the IROC disciplinary process “is to maintain high standards of conduct in the securities industry.” The

Sanction Guidelines are intended to assist hearing panels in the fair and efficient determination of appropriate sanctions to be imposed after disciplinary hearings.

¶ 16 The Sanction Guidelines describe the principles to be applied and illustrate how case-specific factors must be considered in determining the appropriate sanctions to be imposed in each case.

¶ 17 The purpose of sanctions in a regulatory proceeding is to protect the public interest by restraining future conduct that may harm the capital markets. To achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence), and to deter others in the industry from engaging in similar misconduct (general deterrence).

¶ 18 In *Re Mills*, [2001] I.D.A.C.D. No 7 at p. 3, the role of deterrence in the disciplinary process and sanctions to be imposed was discussed by the panel:

Industry expectations are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its members to expect for the conduct under consideration, it may undermine the goals of the Associations disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus, the responsibility of the [hearing panel] in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention, rather than punishment.

¶ 19 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.

¶ 20 Under Part II - Key Factors in Determining Sanctions, the Sanction Guidelines provide further guidance to hearing panels when exercising their discretion with respect to sanctions. It provides a non-exhaustive list of factors to be considered by panels in determining the appropriate sanction.

¶ 21 In coming to our decision on an appropriate penalty in this matter, we considered the Principles and Key Factors set out in the Sanction Guidelines as well as the submissions of counsel and the cases that we were referred to as precedents.

SANCTIONS REQUESTED BY IIROC

¶ 22 IIROC seeks the imposition of the following sanctions, which IIROC Enforcement Counsel (“Enforcement Counsel”) submits are appropriate in the circumstances of this case:

- a. for Contravention 1 - fine of \$10,000;
- b. for Contravention 2 - fine of \$50,000;
- c. a permanent ban, or alternatively, a suspension of between 24 and 48 months;
- d. the Respondent be required to rewrite the Conduct and Practices Handbook (“CPH”) examination prior to being registered with IIROC; and
- e. an order requiring the Respondent to pay costs of between \$30,000 to \$40,000.

SANCTIONS REQUESTED BY THE RESPONDENT

¶ 23 Respondent’s Counsel submits that the following sanctions are appropriate in this matter:

- a. for Contravention 1 - a fine of between \$7,500 and \$10,000;
- b. for Contravention 2 - no fine if costs in the matter were to be set at between \$30,000 and \$40,000; and

- c. a suspension of between 6 and 9 months.

ANALYSIS AND DECISION

¶ 24 There is little dispute between the parties regarding what penalties should be imposed for the discretionary trading as set out in Contravention 1. It usually attracts a fine. Enforcement Counsel acknowledged that the number of discretionary trades carried out by the Respondent were on the low end of the scale, did not involve a large amount of money, nor did they cause losses to the clients.

¶ 25 The sanctions imposed for Contravention 1 in similar cases referred to us by Enforcement Counsel typically resulted in a fine in the range of between \$5,000 and \$10,000 together with a requirement that the respondent rewrite the CPH. See *Re Brum* 2020 IIROC 39; *Re Black* 2020 IIROC 33; *Re Li* 2020 IIROC 28; *Re Pace* 2019 IIROC 11 and *Re Lemire* 2018 IIROC 24.

¶ 26 Regarding Contravention 2, Enforcement Counsel argued that the Respondent's conduct in misleading Enforcement Staff in this matter was so serious and should attract, if not a permanent ban, at least a lengthy suspension together with a significant fine as set out above. Respondent's Counsel argued that a suspension was all that was called for and was opposed to a fine in the range as argued by Enforcement Counsel arguing instead that only costs be awarded.

¶ 27 In the decisions referred to us by Enforcement Counsel (and on a review of the cases that were referenced in those decisions), we note that it is cases involving deliberate, ongoing, deceitful conduct, resulting in harm to market integrity that typically led to the imposition of lengthy suspensions. As well, cases where the conduct is deemed to be egregious are the ones that usually resulted in a permanent ban being imposed.

¶ 28 We considered all the cases referred to us by Enforcement Counsel. The decisions were of assistance in considering how circumstances differ among cases involving similar contraventions. We found that although some had similar facts, none had the same facts as the case before us. The cases provided general guidance on how to apply principles to the facts of this particular case.

¶ 29 In *Re Movassaghi* 2022 IIROC 01, involving the forging of client's signatures on account documents and misleading Enforcement Staff in interviews, the respondent was fined \$50,000 and was permanently banned from registration with IIROC.

¶ 30 In *Re Storelli* 2021 IIROC 20, the respondent was found to have made misrepresentations to IIROC, created fictitious accountant statements, concealed information from IIROC, and provided misleading testimony all over a significant period of time. Notwithstanding that he had no previous disciplinary history, the respondent in this matter was fined \$50,000 and was prohibited from approval in the industry for a 4-year period.

¶ 31 In *Re Blythe* 2020 IIROC 20 (a matter involving the assistant to Movassaghi referred to above), the hearing panel, in accepting a settlement agreement where the respondent misled Enforcement Staff in a sworn interview, issued a penalty that included a fine of \$10,000 and a 9-month suspension from registration with IIROC.

¶ 32 In *Re O'Brien* 2020 ABASC 160, the Alberta Securities Commission reduced the penalties imposed by an IIROC hearing panel, where a respondent was found to have made misrepresentations to both his firm and Enforcement Staff. The suspension originally imposed was reduced from 2 years down to 9 months, and the fine was reduced from \$100,000 to \$50,000.

¶ 33 In *Re Rudensky* 2018 IIROC 38 and 2019 ONSEC 24, a respondent was given a substantial fine and a two-year suspension as a result of engaging in personal dealings with a client and misleading his firm.

¶ 34 Enforcement Counsel also referred the Panel to the decisions in Re Tsao 2022 IIROC 03 and Re Nelson 2022 IIROC 2019, which he described as cases involving “no-shows”. In those cases (as well as many others as referred to in Re Nelson), the respondent failed to show up and participate in the disciplinary process resulting in those hearing panels issuing permanent bans on registration.

¶ 35 Enforcement Counsel argued that the circumstances of this matter should be considered similar to a “no-show” and a permanent ban is needed as the Respondent’s misrepresentations resulted in the disciplinary process being drawn out requiring IIROC Staff to spend significant time and resources continuing its investigation into the Respondent’s actions. We are not convinced that the facts here can, or should, be likened to a “no show” situation.

¶ 36 While Enforcement Counsel acknowledged that the prior decisions referred to did not support a permanent ban but a suspension, he argued that a permanent ban was appropriate in this case as a suspension would not adequately meet the standard required to meet the goal of general deterrence for the industry.

¶ 37 Respondent’s Counsel argued that the misrepresentations in question should be considered a one-time occurrence limited to the December 9, 2020 interview only. While the misrepresentations made by the Respondent occurred in the December interview, we disagree that they can be considered a one-time occurrence as their impact on the investigation was significant requiring IIROC to continue its investigation well beyond what would have been required if he had been truthful with Enforcement Staff from the outset.

¶ 38 In our opinion, the following Sanction Guideline Principles and Key Factors are applicable to this matter, considering Principles 1 and 5:

- a. Both the discretionary trading carried out by the Respondent and the misrepresentations he made to Enforcement Staff breached the trust relationship that must exist between a respondent and his clients, his firm, and the regulator for the protection of the marketplace and the public.
- b. The Respondent’s actions were not inadvertent or careless but were deliberate, intentional, and calculated all in an effort to delay and mislead IIROC.
- c. The Respondent deliberately lied in his interview when he was asked if the Rogers Call Detail Records IIROC would obtain would corroborate his claim to have called AH and/or LH prior to making the trades in question.
- d. His handwritten and Croesus notes supporting his claim to have called AH and/or LH before the trades were made, were fabricated with the intent of impeding and misleading IIROC’s investigation.

¶ 39 From a mitigation viewpoint, we took into consideration the following factors:

- a. The trades in question were low in volume and did not cause losses for the clients.
- b. The Respondent did not personally gain from the trades in question other than in the normal course.
- c. The Respondent has no prior disciplinary history.
- d. Following the hearing, Respondent’s Counsel advised IIROC that the Respondent’s employment had ended as a result of our decision on liability.

¶ 40 We agree with Enforcement Counsel that there must be significant penalties to ensure effective general deterrence for misleading IIROC failing which IIROC risks losing the ability to effectively perform its

regulatory functions in the public interest. We also agree that a significant sanction needs to be imposed to ensure deterrence not only for the industry in general but also and to ensure specific deterrence for the Respondent.

¶ 41 In *Re Movassaghi*, the decision of *Re Papp* 2016 IIROC 51 (para 18) was referenced, quoting *Re Morrison* 2009 IIROC 4 at para 51:

The securities industry is a business of trust and confidence. Approved Persons must above all conduct themselves with trustworthiness and integrity, and act in an honest and fair manner in all their dealings with the public, their clients, and the securities industry as a whole. Approved Persons have agreed to abide by and comply with the Association's By-laws, and that includes the duty to cooperate in any investigation. As was said in *Re Stewart* (supra), there is a general principle that the requirement to cooperate in any investigation is fundamental to maintaining an efficient, competitive market environment, and also to maintain the integrity of the securities system and protect the public interest.

¶ 42 The hearing panel in *Re Papp* added at para 19:

It cannot be overemphasized the adequate regulation is the lifeblood of the industry. It is the means by which the investing public's confidence in the integrity of the industry is maintained. There is not room for those, like Mr. Papp, who choose not to follow the rules and especially, to hide that fact. He had a choice; it was between joining the industry or staying out. Once he elected to become a part of it, he was bound by all the prevailing rules. It is necessary to make it clear to him, and all others who might be similarly inclined to be selective, that the rules are not optional.

¶ 43 Trust is a necessary element in all relationships within the securities industry, including the relationship between IIROC and its registrants. IIROC, now the New Self-Regulatory Organization of Canada, regulates the securities industry to protect the public interest to ensure market integrity and confidence by the public in the capital markets. The public must have confidence that registrants will comply with their regulatory responsibilities. Honesty and candor by registrants with the New Self-Regulatory Organization of Canada is essential to ensure it can carry out its oversight function, including timely and efficient investigations of client complaints and potential registrant misconduct.

¶ 44 In this matter, the Respondent clearly breached the trust that was expected and placed in him not only by his clients and his firm, but also a registrant with IIROC. As a result of his conduct in this matter he deserves to be sanctioned.

¶ 45 While the Respondent's misrepresentations during the interview and investigation are serious, we do not find, in the circumstances of this matter, that they are of such an egregious nature to require that the Respondent be permanently banned from registration in order to protect the public interest and the integrity of the capital markets.

¶ 46 On considering the facts and submissions, we find that a suspension from registration and a significant fine will serve to deter both the Respondent himself and others in the industry from making misrepresentations to Enforcement Staff during the course of an investigation.

¶ 47 In our opinion a suspension from registration with the New Self-Regulatory Organization of Canada for a period of 10 months together with a fine of \$50,000 is both appropriate and required in these circumstances and will serve to act as a sufficient deterrent to both the Respondent and the industry as a whole. The Respondent will also be required to rewrite the CPH examination before registering with the New Self-Regulatory Organization of Canada and pay costs as discussed and set out below.

¶ 48 We were not persuaded by Respondent's Counsel's argument that a suspension greater than 6 to 9

months would effectively prevent the Respondent from seeking registration in the future. The principles of deterrence and the seriousness of the Respondent's conduct must be reflected in the penalties levied and, in our opinion, the suspension imposed is in line with industry expectations and will serve to protect the integrity of the markets and the disciplinary process.

COSTS SUBMISSIONS

¶ 49 Enforcement Counsel provided evidence showing that IIROC's actual costs in this matter were \$109,634.26. Enforcement Counsel submitted that a cost award of between \$30,000 and \$40,000 would be reasonable in the circumstances. Respondent's Counsel agreed with this amount but conditional on no fine being levied on Contravention 2.

¶ 50 In *Re Van Hee 2009 IIROC 34* (para 106), the panel outlined a number of non-exhaustive factors to take into account in determining the amount of a cost award against a respondent. While the cost award provisions have changed since that decision was issued (the current Rule 8214 refers only to costs incurred by IIROC and time spent by IIROC staff and does not refer to an assessment of appropriate and reasonable costs), the factors referenced in *Re Van Hee* are still relevant to the Hearing Panel's exercise of discretion in awarding costs.

¶ 51 As has been stated by other panels, costs should not be used as a further penalty and must bear some relation to the actual costs incurred, the contraventions, and any other financial penalties.

¶ 52 In deciding what would be an appropriate cost award in this case, we took into account the following factors, including factors noted by Counsel in their submissions:

- a. The investigation and disciplinary process was clearly prolonged by the Respondent's misrepresentations, and his continuing deception and misconduct was a direct cause of IIROC incurring significant costs in this case. Had the Respondent not misled IIROC and initially admitted to the discretionary trading, the issues would likely have been resolved in a timely manner and potentially via a settlement agreement.
- b. The Respondent continued to assert that he had received authorization to carry out the trades in question up to and during the hearing. We found the handwritten and Croesus notes he prepared were not accurate, and that his assertion on the stand that he had spoken to AH on February 26, 2020 was false. The Rogers Call Detail Records clearly supported IIROC's allegations allowing the Panel to conclude that Respondent was not credible and had made misrepresentations to IIROC during the investigation.

¶ 53 It is necessary in our opinion to ensure that the cost award sends a message to others in the industry that breaches of the nature before us will result in significant consequences. In determining a cost award, we also must consider that an award that is too low might result in a loss of public confidence in IIROC's ability to effectively regulate the markets generally.

¶ 54 We considered the costs submissions of both parties and, given the circumstances of this case, a cost award of \$25,000 in this matter is reasonable and appropriate and does not constitute an additional penalty.

ORDER

¶ 55 Upon considering the matter before us, we order the following sanctions to be imposed on the Respondent, Paul Maurice, for contravening IIROC Dealer Member Rules 1300.4, 1300.5 and Consolidated Rule 1400:

- (a) a fine of \$10,000 regarding Contravention 1;

- (b) a fine of \$50,000 regarding Contravention 2;
- (c) a suspension from registration with the New Self-Regulatory Organization of Canada for a period of 10 months;
- (d) the Respondent be required to rewrite the CPH examination prior to being re-registered with the New Self-Regulatory Organization of Canada; and
- (e) payment of costs in the amount of \$25,000.

Dated at Saint John, New Brunswick on January 17, 2023.

Edward W. Keyes

Ken Wheelans

Thomas Kostandoff

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