Unofficial English Translation

Re Bergeron

IN THE MATTER OF:

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

and

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

and

Daniel Bergeron

2013 IIROC 15

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

Hearing held on February 26, 2013
Decision rendered on March 29, 2013

Hearing Panel
Robert Monette (Chair), Elaine Cousineau Phénix, John Ballard
Appearances
Me Martin Hovington, Counsel for IIROC
Me Jacques Demers, Counsel for the Respondent (by conference call)

DECISION

¶ 1 At the hearing on February 26, 2013, the Hearing Panel heard the pleadings of counsel for both parties, who requested ratification of the settlement agreement concluded between them on January 24, 2013, the whole in accordance with Rule 15 of the Rules of Practice and Procedure[1].

¶ 2 At the end of the hearing, the Hearing Panel declared itself satisfied with the pleadings of counsel for both parties, and more specifically the book of authorities filed by counsel for IIROC.

¶ 3 Before proceeding with the discussion, the Hearing Panel intends to briefly summarize the facts described in the Settlement Agreement, the content of which complies with the formalities provided in Rule 14 of the Rules of Practice and Procedure. The agreement is appended at the end of this decision, and forms an

[1] Unless otherwise specified, the Hearing Panel is referring to the IIROC Dealer Member Rules of Practice and Procedure.

integral part thereof.

THE AGREEMENT

¶ 4 The Respondent admits to the following contraventions:

A. Between 2002 and 2009, the Respondent, while a registered representative with CIBC World Markets Inc. (**CIBC Wood Gundy**), in recommending and suggesting investments in Ressources Dasserat stock to seven (7) of his clients, failed in his role of gatekeeper by not using due diligence to verify the nature of the investment and by not doing adequate follow-up of his clients' investments subsequently, contrary to IIROC Dealer Member Rule 29.1 [IDA By-law 29.1 prior to June 1, 2008];

B. Between June 2002 and September 2003 approximately, the Respondent, while a registered representative with CIBC Wood Gundy, facilitated a purported purchase, by seven (7) of his clients, of shares in Ressources Dasserat, in a private off-book investment which constituted an outside business activity without the knowledge of his firm, contrary to IIROC Dealer Member Rule 29.1 [formerly IDA Bylaw 29.1].

¶ 5 On the first count, Respondent admits to serious laxness and gross negligence over a continuous period of seven (7) years in that, more particularly, but without limitation:

- he prepared share purchase agreements for investments in Ressources Dasserat shares, without thorough analysis,
- he did not do any checking into Ressources Dasserat or its promoter,
- he did not follow up appropriately on his clients' investments,
- faced with crucial information on the unfruitful result of the investment, he took no steps to communicate the information.

¶ 6 On the second count, Respondent admits that he concealed unauthorized investments from his firm when he did not use the firm's official correspondence or accounts to execute the investment in Ressources Dasserat shares. Following an internal investigation, the firm concluded that the Ressources Dasserat investment was never authorized, and that in so doing, he had broken with internal policy.

¶ 7 The terms of settlement agreed between the parties are:

- an aggregate fine in the amount of $40,000: $20,000 on count A, and $20,000 on count B;
- a 60-day suspension from approval in any capacity;
- a six(6)-month period of close supervision once the suspension is lifted;
- as a condition for continued approval, successful completion of the Conduct and Practices Handbook (CPH) Course within one year of the decision to be rendered in the matter of this settlement agreement; and
- costs in the amount of $5,000 payable to IIROC.

¶ 8 The higher courts have clearly defined the role of a disciplinary panel when seized of a settlement agreement. This role is similar to that of a court of criminal jurisdiction when faced with a joint submission on sentence.

¶ 9 In Rault v. Law Society of Saskatchewan [2009 SKCA 81 (CanLii)], the Saskatchewan Court of Appeal reached this conclusion after a detailed analysis of the question;

> Par.19 …Therefore, all members and the Law Society have a vested interest in ensuring that matters proceed expeditiously. If the member co-operates with the investigation and hearing process and, as happened in the instant case, pleads guilty, and puts an

> Agreed Statement of Facts before the Hearing Committee, the Law Society is relieved of the burden of proving the allegations in what could, in some instances, be a complicated and protracted hearing with the usual risks and vagaries that may occur in the course of such hearings. If the parties negotiating compromise agreements cannot expect their efforts will be respected, there is little incentive to attempt to negotiate a resolution. For this reason, joint submissions on sentence should be considered by the Discipline Committee in a principled way similar to the jurisprudence in criminal matters and as applied by discipline committees in the provinces noted above.

¶ 10 As for the criteria for appeal court intervention in a criminal matter, the Québec Court of Appeal summarized these criteria in *Sylvio Poulin c. Sa Majesté la Reine* 500-10-004614-101, rendered on October 13, 2010.

> [TRANSLATION]
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> Par. 9 Our Court has on many occasions stated the approach that a judge must take when deciding not to follow a joint suggestion from counsel: Verdi-Douglas c. R. (2002), 162 C.C.C. (3d) 37; Sideris c. R., [2006] J.Q. no 12153; 2006 QCCA 1351 ; Boucher-Gagnon c. R., 2006 QCCA 903 , Bazinet c. R., 2008 QCCA 165 ; Paradis c. R., 2009 QCCA 1312 ; Bergeron c. R., 2010 QCCA 1205.
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> Par. 10 While the judge is not bound by the joint suggestion of the parties, he may not set it aside unless it is unreasonable, contrary to the public interest or likely to bring the administration of justice into disrepute. Furthermore, he must inform counsel of his reluctance regarding their suggestion and give them the opportunity to respond.

¶ 11 In summary, when faced with a settlement agreement, the hearing panel shall evaluate the reasonableness of the agreement. More particularly, the hearing panel shall ensure that the key factors expressed in the Disciplinary Sanction Guidelines have been taken into consideration and that the proposed penalties are within a range of penalties imposed previously for similar contraventions.

¶ 12 It is this task that the present Hearing Panel shall endeavor to fulfill in accordance with the above-defined role.

DISCUSSION

¶ 13 Let it be noted from the outset that the agreement was negotiated by experienced attorneys over a long period of time. Counsel for the Respondent informed and advised the latter on all clauses of the agreement and on their effect.

¶ 14 The parties, through their respective counsel, have declared themselves satisfied with the result obtained and are now requesting that the Hearing Panel accept their agreement.

¶ 15 In order to determine penalties and evaluate the seriousness of the misconduct, the parties identified certain analytic factors based on the Disciplinary Sanction Guidelines.

¶ 16 Among the aggravating factors, the following bear mentioning:

- the Respondent's high degree of participation in the commission of the offences,
- the harm caused due to the financial losses incurred by seven (7) clients of the Respondent,
- the omission of due diligence over a period of six (6) years,
- the Respondent's lack of cooperation in an internal investigation conducted by his firm.

¶ 17 Among the mitigating factors, we note;

- the absence of any disciplinary history on the Respondent, who was a broker for 20 years,
- the partial compensation of the clients by the firm,

- the fact that the Respondent did not benefit financially from the situation,
- the Respondent's guilty plea and his cooperation in the IIROC investigation.

¶ 18 The Hearing Panel has weighed the soundness of the key factors retained and considers them relevant in respect of the alleged violations and the penalties provided.

¶ 19 The Hearing Panel has also studied the decisions filed by the parties which target similar misconduct. Among this list, *Thompson* (24 July 2004) *Aloni* (2008 IIROC 10) and *Georgakopoulos* (2009 IIROC 41) concerned with the lack of diligence in the verification of investments, while *Hazen* (21 June 2006), *Michaels* (0202 February 04) and *White* (2010 IIROC 25) address trading without the knowledge of the firm.

¶ 20 Taking into account the specific facts in each matter, the Hearing Panel is satisfied that the penalties recommended in this Settlement Agreement fall within the range of sanctions imposed in similar matters.

¶ 21 Moreover, the Hearing Panel notes that the Respondent is facing civil suits for the same incidents and that the situation is therefore not yet settled.

CONCLUSION

¶ 22 Keep in mind that the Hearing Panel must not substitute its own discretion for that exercised by the parties in reaching their settlement agreement.

¶ 23 The Hearing Panel concludes that the agreement reached by the parties is not unreasonable. The proposed sanctions are appropriate to the conduct and respondent before it and promote general adherence to industry rules and standards.

¶ 24 Additionally, the Hearing Panel is convinced that the penalties meet the goals of the disciplinary process whose prime function is to protect the public and the reputation of the securities industry.

¶ 25 Consequently, the Hearing Panel confirms its acceptance of the Settlement Agreement between the parties.

FOR THESE REASONS:

¶ 26 The Hearing Panel accepts the Settlement Agreement and gives effect to it on the date of this Decision.

Montréal, March 29, 2013

Robert Monette, Chair

Elaine Cousineau Phenix, Panel Member

John Ballard, Panel Member

SETTLEMENT AGREEMENT

I. BACKGROUND

1. Enforcement Staff of the Investment Industry Regulatory Organization of Canada (Staff) and Daniel Bergeron (the Respondent) consent and agree to the settlement of these matters by way of this settlement agreement (Settlement Agreement) ;

2. The Enforcement Department of the Investment Industry Regulatory Organization of Canada (IIROC) has conducted an investigation (the Investigation) into the conduct of the Respondent.

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:

   a) Between 2002 and 2009, the Respondent, while a registered representative with CIBC World Markets Inc. (CIBC Wood Gundy), in recommending and suggesting investments in Ressources Dasserat shares to seven (7) of his clients, failed in his role of gatekeeper by not using due diligence to verify the nature of the investment and by not doing adequate follow-up of his clients' investments subsequently, contrary to IIROC Dealer Member Rule 29 [IDA By-law 29.1 prior to June 1, 2008];

   b) Between June 2002 and September 2003 approximately, the Respondent, while a registered representative with CIBC Wood Gundy, facilitated a purported purchase of shares in Ressources Dasserat, by seven (7) of his clients, in a private off-book investment, which constituted an outside business activity without the knowledge of his firm, contrary to IIROC Dealer Member Rule 29.1 [formerly IDA Bylaw 29.1].

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

   a) an aggregate fine in the amount of $40,000: $20,000 on count A and $20,000 on count B;

   b) a 60-day suspension from approval in any capacity;

   c) a six(6)-month period of close supervision once the suspension is lifted;

   d) as a condition for continued approval, successful completion of the Conduct and Practices Handbook (CPH) Course within one year of the decision to be rendered in the matter of this Settlement Agreement;

9. The Respondent agrees to pay IIROC costs in the amount of $5,000.

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. It is alleged that the Respondent interested his clients in an off-book investment not recorded in the books of the firm CIBC Wood Gundy (the firm) without performing a due diligence of this investment;

12. It is also alleged that Respondent failed to do adequate follow-up of his clients' interests in said investment after actively facilitating their participation;

13. Finally, it is alleged that Respondent acted without the knowledge of his firm in regard to this investment, contrary to the firm's policies and procedures;

THE RESPONDENT

14. The Respondent began his career as a representative in 1983;

15. The Respondent was employed with CIBC Wood Gundy from December 2001 to October 2009;

16. From October 2009, he was in the employ of Desjardins Securities;

THE OFF-BOOK INVESTMENT IN RESSOURCES DASSERAT

17. Ressources Dasserat is a mining company active in the precious metals sector, incorporated in Québec in 1996 and headquartered in Rouyn Noranda;

18. L.V., a so-called businessman from New Brunswick, approached Ressources Dasserat in 2002 and offered to amass for them the sum of $200,000, which the company needed in order to go public;

19. L.V. subsequently approached the Respondent as the promoter of Ressources Dasserat in order to talk to him about this investment opportunity, and this is how the Respondent began to interest some of his clients in this investment;

ON COUNT A)

20. In 2002, when L.V. approached the Respondent, he claimed to have a contact at Ressources Dasserat;

21. The Respondent then suggested to some of his clients that they invest in Ressources Dasserat shares, which he presented to them as an excellent investment;

22. However, the Respondent did not do any checking into Ressources Dasserat, nor did he obtain any documentation on the company; neither did he give his clients any documentation on the investment;

23. Moreover, the Respondent did not do any checking on L.V., even though it was his first time doing business with this promoter for investment purposes;

24. Between about June 2002 and September 2003, Respondent's clients G.B., M.N., J.S., R.S., G.G. and P.G., and J.L. invested in total some $181,500 in order to purchase shares in Ressources Dasserat;

25. Respondent would prepare share purchase agreements by hand, which he then had his clients sign, mentioning the amount invested, the number of shares subscribed, and the share price;

26. The agreement was signed by L.V. on behalf of Ressources Dasserat;

27. As part of signing the share purchase agreements, the clients would remit to the Respondent cheques and/or bank drafts made out either to lawyers' trust accounts, or directly to the promoter L.V.;

28. However, the investment never materialized;

29. Throughout 2003 and the ensuing years, Respondent's clients called him regularly to find out what was happening with their investment since, notably, none of them had received any share certificates following their investment;

30. Although the Respondent reassured his clients each time, in actual fact he never did any serious follow-up regarding his clients' investment in Ressources Dasserat;

31. In sporadic contact with L.V. once or twice a year, the Respondent contented himself with vague answers and reasons which he qualified as "inventive" to explain the delay in receiving the share certificates;

32. Moreover, even in 2007, when he learned that Ressources Dasserat's had abandoned its plan to go public and that L.V. was in trouble with the tax authorities, he took no action and did not inform his clients;

33. At no time did the Respondent verify his clients' shareholder status directly with Ressources Dasserat, even though he acknowledged during the investigation that it was the best way to check into what was happening with the investment;

34. On this score, Respondent admitted the following facts during his interview with IIROC:

    i. he had informed his clients of the existence of an interesting investment in Ressources Dasserat;

    ii. he had served as "go-between" in the transactions between his clients and the promoter L.V.;

    iii. none of his clients ever met L.V., all of them having dealt solely with the Respondent to make the investment;

35. The Respondent, as his clients' investment representative and their only contact in connection with their investment in Ressources Dasserat, had an obligation to do adequate follow-up of the investment;

36. By his own admission, Respondent "did not push enough" and "did not do much" to follow up on the investment, contenting himself with passing on vague and evasive answers to his clients regarding the investment;

37. Respondent consequently exhibited gross negligence in his follow-up of his clients' investments in Ressources Dasserat, and a lack of diligence in regard to the checks that he should have run on the investment and the promoter L.V.;

38. To date, the Respondent's seven (7) clients have still not received any shares from Ressources Dasserat;

39. All have recovered 50% of their initial investment in settlements with CIBC Wood Gundy;

ON COUNT B)

40. The private placements made by purchasing shares in Ressources Dasserat had not been authorized by his employer CIBC Wood Gundy;

41. What's more, Respondent sought to conceal his investments from his firm, as appears from the following facts:

    a) the share purchase agreements drafted by the Respondent were handwritten, on paper without the official CIBC Wood Gundy letterhead;

    b) the Respondent allegedly told his client P.G. that he would be unable to make the purchase through CIBC Wood Gundy, which is why Respondent and P.G. met at another financial institution to issue the July 2002 bank draft;

    c) the bank draft from G.G., another of the Respondent's clients, was issued on his personal account rather than his CIBC Wood Gundy account, with no transfer between the two;

    d) the bank draft from J.S., for its part, was issued on his account with another financial institution, while for G.B., the bank draft came from the CIBC Bank and was made to the order of L.V.

    e) the share purchase agreements for the Ressources Dasserat shares were not in the CIBC Wood Gundy client accounts in October 2009;

    f) it was only on or around June 15, 2009 that the branch manager J.B. learned from his staff that L.V. had been convicted of fraud and that the latter had been in contact with the Respondent who denied doing business with the latter;

42. It was only after the Respondent's departure that the branch manager J.B., having become the investment advisor for the Respondent's former clients, learned from his clients that they had supposedly invested in Ressources Dasserat;

43. It was at this point that the firm opened an internal investigation into the Ressources Dasserat investment at the end of which they concluded that the investment had never been authorized and that it violated the firm's internal policy on off-book investments;

44. Thus, the Respondent effected a private investment that was not approved by CIBC Wood Gundy, thus engaging in outside business activities without the knowledge of the firm and contrary to the firm's internal policy in matters of off-book investments;

IV. TERMS OF SETTLEMENT

45. In accordance with Dealer Member Rule 20.35 to 20.40 inclusively, and Rule 15 of the Dealer Member Rules of Practice and Procedure;

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

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

48. 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.

49. 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.

50. 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.

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

52. 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.

53. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent shall be payable immediately on the effective date of the Settlement Agreement;

54. Unless otherwise stated, suspensions, prohibitions, expulsions, restrictions and other conditions or terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at Montreal, Quebec, this_____ day of _____ 2013.

« WITNESS» « DANIEL BERGERON»

WITNESS: **DANIEL BERGERON**

RESPONDENT

AGREED TO by Staff of IIROC at Montréal, Québec, this_____day of_____ 2013.

« LINDA VACHET » « MARTIN HOVINGTON »

WITNESS: **MARTIN HOVINGTON**

Enforcement Counsel, for Staff of IIROC