Unofficial English Translation

Re Duchaine

IN THE MATTER OF:

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

and

Steve Duchaine

2015 IIROC 01

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

Hearing held on: September 10, 2014; September 26, 2014; October 3, 2014; November 6, 2014; November 7, 2014
Decision rendered on: December 22, 2014

Hearing Panel
Me Jean-Pierre Lussier, Panel Chair, Ms. Danielle Le May and Mr. Normand Durette
Appearances
Me Sébastien Tisserand, Counsel for IIROC
Me Catherine Gendron, Counsel for the Respondent

DECISION

¶ 1 Our Hearing Panel was seized of a complaint dated July 17, 2014, according to which the Respondent must answer to these five counts:

Count 1

Between March and August 2010, the Respondent misrepresented to several clients that the principal amount of a corporate debenture was 100% guaranteed upon maturity when it was in fact a non-guaranteed debenture, contrary to IIROC Dealer Member Rule 29.1;

Count 2

On September 30, 2010, October 27, 2010 and April 29, 2011, the Respondent recommended and acquired securities that were unsuitable for a client's investment objectives and time horizon for the purpose of generating commissions, contrary to IIROC Dealer Member Rule 1300.1(q)

Count 3

In August 2011, the Respondent recommended and substituted bonds in a client's portfolio for the purpose of generating commissions, preferring his own interests ahead of the client's, contrary to IIROC Dealer Member Rules 1300.1(q) and 29.1;

Count 4

In April and August 2010, the Respondent executed transactions on clients' accounts, charging commissions that were not within the bounds of good business practice, contrary to IIROC Dealer Member Rules 1300.1(o) and 29.1;

Count 5

On or around February 23, 2011, the Respondent tried to forge a client's signature to complete a retirement savings plan application form which was missing the signature, contrary to IIROC Dealer Member Rule 29.1.

1. BACKGROUND

¶ 2 On September 10, 2014, the Respondent appeared and entered a guilty plea on counts 1, 2 and 3 above. He pleaded not guilty on counts 4 and 5. On November 6, 2014, the date set for the hearing on the merits of counts 4 and 5, he decided to plead guilty on count 4. Thus, the hearing pertained only to count 5.

2. THE EVIDENCE

¶ 3 Other than a voluminous documentation, the evidence consisted of the testimony of five witnesses: Stéphane Gauthier, investigator at IIROC, SM ― referred to as Ms. L in the Notice of Hearing ― Respondent's assistant at the material time, SB, manager of the branch where the Respondent worked, MN ― referred to as client K in the Notice of Hearing ― a client of the Respondent at the time, and the Respondent Steve Duchaine.

¶ 4 Before summarizing the proof by testimony, the Hearing Panel dispensed with proof of the documentary evidence concerning counts 1 and 4, to which Counsel for IIROC referred in order to establish the Respondent's lack of credibility. More particularly, Counsel for IIROC pointed out numerous inconsistencies in the versions given by the Respondent to the IIROC investigator.

¶ 5 Our Hearing Panel shall therefore confine itself to summarizing the testimony of SM, SB, MN and the Respondent with respect to count 5.

¶ 6 ***SM*** worked at the Québec City branch of Laurentian Bank Securities (LBS) at the material time. She was the assistant for several investment advisors, including the Respondent. Her supervisor was the branch manager SB. She considers that, in the course of her employment, she always maintained good relations with the Respondent.

¶ 7 She tells that in February 2011, Respondent gave her some documents to open an account. She noticed that the client's signature was missing on one of the documents. She informed the Respondent who retorted: [TRANSLATION] "Hang on, I'll fix that for you." Respondent went into his office and returned 30 to 60 seconds later with the document signed. She then spontaneously told him that she could not accept the document. She adds that she knew that the Respondent had signed the document himself, since there was no client in his office.

¶ 8 SM does not remember whether she kept the document in question or returned it to the Respondent. But she asserts that he did not protest at all when she rejected the document.

¶ 9 The next morning, SM outlined the situation to the manager SB, who was away when the incident occurred the day before. When the Respondent arrived at the office, she noticed that the manager called him in right away. When the Respondent emerged from the office, she told him that she did what she felt was her duty. He did not respond.

¶ 10 SM does not remember what happened to the form. She believes that it was destroyed since, she notes, that was the procedure in force at LBS. The form filed in evidence is, she believes, the one that really was signed by the client, but she does not know what happened to the form that she rejected. She asserts that she was standing next to the Respondent when she told him that a signature was missing. And, while she was still standing there, she saw the Respondent enter his office immediately and return a few seconds later with the document signed.

¶ 11 ***SB*** relates that when SM told him about the incident that occurred the day before, he met with the

Respondent right away. The latter told him that it was the end of the RRSP contribution period and that he should not have done what he did. He promised that he would never do it again, SB adds. After their meeting, SB sent the Respondent the following email at 8:36 a.m. on February 25, 2011.

> [TRANSLATION]
>
> "From: [SB]
>
> Sent: Friday, February 25, 2011 8:38 AM
>
> To: Duchaine Steve
>
> Subject: [MN]
>
> Importance: High
>
> Steve,
>
> Forging a client's signature is a very serious action, regardless of the reason; it is illegal and contrary to the code of ethics. In this case, the RRSP account application form was not signed and you brought it back signed a few minutes later.
>
> Consider this email an official warning not to ever do that again, and to follow our industry's rules and our code of ethics to the letter.
>
> I will not tolerate any further breach of the compliance rules.
>
> [S]
>
> ***[SB]***
>
> (sic)"

¶ 12 He adds that it was during their February 25 meeting that he asked the Respondent to have his client MN sign. SB adds that the Respondent would challenge him when he felt a criticism was unwarranted. He did not do so on February 25, either directly or by replying to his email.

¶ 13 SB did not report the incident to Compliance because he deemed that the lesson had been learned and that this behaviour would not be repeated. Neither did he ever see the form on which the Respondent had forged the client's signature.

¶ 14 ***MN***, the client, remembers little about opening his RRSP account. He does remember, however, that the Respondent phoned him to ask him to come sign a form. At the time, his place of work was approximately 500 m from the Respondent's office. He put on his coat, took the elevator, exited the building, climbed into his car and drove to the Respondent's office. The latter was waiting outside for him and had him sign the form. It was all done, he says, within days of his meeting with the Respondent (stenographer's notes of his testimony, page 59, lines 8 to 19).

¶ 15 ***Steve Duchaine*** relates that MN came to his office to open an RRSP account. Afterwards, the Respondent recounts that he gave the documents to SM, who pointed out to him that a signature was missing. This was not the first time he had forgotten something of the sort, he says, as he suffers from attention deficit disorder.

¶ 16 When he returned the form to SM, she told him that the client was not the one who signed it. He did not make a big deal about it, says he, because [TRANSLATION] "he didn't want any trouble with her." When he met with SB the next day, he asserts that he never admitted having signed the form in place and lieu of the client. Nevertheless, he did not feel it necessary to reply to his email.

3. THE ARGUMENTS

¶ 17 Counsel for **IIROC** argued at length about the Respondent's complete lack of credibility, considering that he had lied to a number of clients, to the AMF and even to LBS when he received money for transferring

his clientele. There is no reason not to give credence to the statements by SM and SB and the Hearing Panel should uphold count 5 against the Respondent.

¶ 18 Counsel for **the Respondent** emphasized that the Respondent had no reason to plead not guilty on count 5, having already pleaded guilty on the first four counts, unless he truly did not commit the alleged violation. She points out that the form filed in evidence is the one that, according to the testimony, was signed by MN. The Hearing Panel should wonder about the fact that the chief compliance officer at LBS, when interviewed by the IIROC investigator, mentioned that the form was the one the Respondent had signed, whereas the evidence shows - she repeats - that the signature on this form is in fact the client's. According to Counsel, the evidence is far from being sufficiently clear and convincing to justify a guilty verdict. She ends by saying that MN was not generally in Québec City on Fridays. He therefore did not sign the form on Friday the 25th, but on February 23rd or 24th.

¶ 19 In rebuttal, Counsel for IIROC argued that the assumptions raised by Counsel for the Respondent are not supported by the evidence, because the client MN never said that he was not in Québec City on February 25th. Moreover, he did not know where he was on February 23rd or 24th either.

4. DECISION AND REASONS

¶ 20 According to the proof by testimony, the form entered into evidence (Exhibit 63) was indeed signed by the client MN. There is no reason for our Hearing Panel to dismiss MN's testimony when he states that the Respondent called him to come in and sign the form.

¶ 21 But the issue here is not whether the form (Exhibit 63) is a fake. What must be decided is whether the evidence proves that on February 23, 2011, the Respondent attempted to forge Mr. MN's signature in order to complete an application form for a Retirement Savings Plan.

¶ 22 To begin with, let us keep in mind that the burden of proof that the prosecutor must establish is on a balance of probabilities, not beyond a reasonable doubt. Although allegations of disciplinary misconduct can entail severe consequences and hearing panels hold that the proof must be clear and convincing, the burden of proof remains that of a balance of probabilities taking into account the totality of the circumstances. On this subject, it is useful to reread what the Hearing Panel wrote in Gareau[1]. In paragraph 4 of the decision, one reads the following:

> "¶ 4 There is no dispute between the parties with respect to a burden of proof. IIROC must establish on a balance of probabilities that the elements of each count are established before this panel can conclude that there has been a contravention as alleged in the count. The degree of proof is the civil standard (on a balance of probabilities) and not the criminal standard (beyond a reasonable doubt). The courts have found that in disciplinary proceedings the tribunal must be reasonably satisfied that the alleged facts occurred and in making this finding must take into account the totality of the circumstances including the nature and consequences of the facts to be proved, the seriousness of an allegation made and the gravity of the consequences that will flow from a particular finding. The consequences of finding that a Registered Representative was in contravention of IIROC's by-laws, rules and regulations are potentially severe. Thus, it has been held that, "the degree of proof required must be nothing short of clear and convincing based upon cogent evidence which is accepted by the tribunal". (Re Boulieris (2004), 27 O.S.C.V. 1597, affirmed [2005] O.J. No. 1984 (Ont. Div. Ct.) »
>
> (emphasis added)

¶ 23 After analysis of all of the evidence, our Hearing Panel reached the conclusion that there is clear and convincing proof that on February 23, the Respondent forged his client's signature on an application form for a retirement savings plan. The form was refused for this reason by the Respondent's assistant. The next day, after the branch manager had reprimanded the Respondent, the latter apparently telephoned his client, that day or the

---

1 Re Gareau 2011 IIROC 53;

next, to ask him to come in to sign the aforesaid form, which is moreover confirmed by the witness MN (stenographer's notes of his testimony, page 59, line 19).

¶ 24 As we have stressed, the proof by testimony has convinced us that the form (Exhibit 63) is indeed the one signed by the client himself. The form that the Respondent signed in his client's place was likely destroyed. Its destruction is unfortunate, but it does not alter our conclusion for the reasons set forth below.

¶ 25 First of all, there is the interest of the witnesses who testified. SM and SB have no interest in the outcome of this proceeding and, therefore, have no interest in distorting the truth. Obviously, the same cannot be said for the Respondent. If there was any reason to believe, for instance, that Ms. SM and the Respondent were at odds before or even after the alleged misconduct, one might believe that Ms. SM, in her testimony, might have some interest in blaming the Respondent. But, by the admission of both the Respondent and Ms. SM, that is not the case.

¶ 26 The same goes for SB. When the latter asserts that the Respondent admitted to him straight out that he tried to forge his client's signature and added that it would not happen again, to not believe him, our Hearing Panel would have to have some reason to doubt his testimony (opposing interest, enmity, vengeance, etc.). This is manifestly not the case.

¶ 27 Secondly, to appreciate the circumstances implies considering them in light of this notion that one might refer to as "the normal course of things".

¶ 28 What would the normal course of things be for a representative whose assistant refuses to accept a form on grounds that she claims that the client's signature is forged? The normal reaction of a representative would be to protest, that his assistant is mistaken, that the document is indeed signed by the client. Yet, what was the Respondent's reaction when Ms. SM refused to accept the form? No reaction, no protest. The Respondent went back to his office.

¶ 29 If, as the Respondent claims, he had taken the time to call his client to come to the office, and then wait at the building entrance to have the latter sign the document, it would have been normal to stress this to Ms. SM right away.

¶ 30 That nothing of the sort was said is easily explained by the fact that none of this could have occurred in such a short time (30 to 60 seconds in SM's estimation).

¶ 31 Regardless, the normal course of things would have been for the Respondent to provide Ms. SM with a plausible explanation, rather than retreat to his office without protest.

¶ 32 Similarly, what is the normal course of things when, the next day, the branch manager called the representative to his office and criticized him for having tried to forge his client's signature? If the form had indeed been signed by the client, the representative would have protested vigorously, even offered to contact the client for him.

¶ 33 Yet, according to the manager SB, the Respondent admitted having forged the client's signature and added that he would never do such a thing again. For his part, the Respondent has denied making such an admission. But then, how does one explain that he did not reply to the email (reproduced earlier) that his manager sent him just minutes after their meeting. What is the normal course of things for a representative unjustly accused by his branch manager? The answer is obvious.

¶ 34 It was up to the Respondent to explain his lack of response to the false accusations made by SM and SB. He did no such thing.

¶ 35 His denials at the hearing would be more believable if they had followed similar denials made to Ms. SM and Mr. SB at the time the allegations were made. To wait until the disciplinary hearing to do so seriously diminishes their scope.

¶ 36 In short, the Hearing Panel has the testimony of two individuals with no interest in the outcome of the proceeding, nor any reason to hold a grudge against the Respondent. They state that they reproached the latter for forging his client's signature. They also state that the Respondent did not object to their criticisms. On the

other hand, the Respondent, whose interest in the outcome of the proceedings is evident, offers no reasonable explanation for his failure to protest when his assistant rejected the form and when his branch manager criticized his conduct.

¶ 37 Our Hearing Panel therefore considers that the prosecution has met its burden of proof with clear and convincing evidence that the Respondent attempted to forge his client's signature on the retirement savings plan application form.

FOR THESE REASONS, THE HEARING PANEL:

¶ 38 ***RECOGNIZES*** the Respondent's guilty plea on counts 1, 2, 3 and 4 of the Notice of Hearing;

¶ 39 ***DECLARES*** that the Respondent contravened IIROC Dealer Member Rule 29.1 by attempting to forge a client's signature on a retirement savings plan application form on or around February 23, 2011;

¶ 40 ***SUMMONS*** IIROC and the Respondent to a penalty hearing on counts 1 through 5 of the Notice of Hearing, on a date to be determined by the Hearing Coordinator.

IN WITNESS WHEREOF WE HAVE SIGNED:

This December 22, 2014

Ms. Danielle Le May, Member of the Hearing Panel

Mr. Normand Durette, Member of the Hearing Panel

Me Jean-Pierre Lussier, Chair of the Hearing Panel