Re Trudeau

IN THE MATTER OF:

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

and

Jean-Louis Trudeau

2017 IIROC 51

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

Date of hearing on the merits: November 15, 2017
Date of decision: December 12, 2017

Hearing Panel:
The Honourable Benjamin J. Greenberg, Q.C., C. ARB., Hearing Panel Chair; Mr. Guy L. Jolicoeur and Ms. Elaine C. Phénix
Appearances:
Francis Larin, Enforcement Counsel
Jean Louis Trudeau, Respondent

UNANIMOUS DECISION ON THE MERITS

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I. INTRODUCTION, HISTORY AND FACTS OF THE MATTER

¶ 1 This case focuses on the question of what is meant by a "discretionary account" and on the activities of the RESPONDENT in the context of JR's account with Mackie Research Capital Corporation (**MACKIE**). The Hearing on the Merits was held on November 15, 2017.

¶ 2 The RESPONDENT was a registered representative with MACKIE and, as of 2002, was approved as a registered representative with the COMPLAINANT, as well as its predecessor, the Investment Dealers Association of Canada (**IDA**).

¶ 3 JR had been a client of MACKIE since 1990 and her representative was FC. On or around October 26, 2012, FC left MACKIE's employ, and FC and MACKIE decided between them that the client JR would henceforth be served at MACKIE by the RESPONDENT, to which JR and the RESPONDENT consented.

¶ 4 However, even though JR's registered representative at MACKIE was henceforth the RESPONDENT, FC remained involved and advised JR on her investments at MACKIE.

¶ 5 What's more, in a duly executed power of attorney, JR authorized FC to deal with the RESPONDENT in her name and to order purchases and sales of securities for her accounts.

¶ 6 On November 25, 2014, JR sent MACKIE and the RESPONDENT a letter of complaint that read as follows:

> "By Registered Mail
>
> November 25, 2014
>
> WITHOUT PREJUDICE
>
> Jean Trudeau (jtrudeau@mackieresearch.com)
>
> Mackie Research Capital Corporation
>
> 4, Place Ville-Marie
>
> Suite 100
>
> Montréal, QC
>
> H3B 2E7
>
> Re : JR
>
> File : XXXX
>
> To the attention of Mr. Trudeau
>
> This letter is further to our meeting of November 18, 2014 which FC, attended.
>
> I am hereby putting you in default so as to reimburse me $81,826 within ten days of receipt of this default letter failing which we will advise the L'Autorité des Marchés Financiers. This amount represents the losses my investment account incurred from October 1, 2012 to November 18, 2014, inclusive.
>
> These losses stem uniquely from your carelessness in that you did not respect the fundamental rule which applies to all facets of the relationship between a broker and their client namely: KNOW YOUR CLIENT WELL. In fact, you purchased for my account highly tax beneficial investments when you should have known that my annual tax rate is low.
>
> As you are aware, my investment account with your firm did not grant you a discretionary mandate. Despite that:
>
> - You purchased stakes without first communicating with me or FC. Some of the positions were too substantial for a portfolio such as mine.
> - You sold investments which F and I would have kept. Again, you should have communicated with me prior to undertaking such transactions.
> - The fixed income securities which you purchased, without my authorization, do not correspond to the AAA rated government securities that were sold so as to

purchase such investment.

In addition, my account should have been managed conservatively as such represent a substantial portion of my assets.

I HEREBY REQUEST THAT EFFECTIVE IMMEDIATELY YOU CEASE TO UNDERTAKE ANY TRANSACTION ON MY BEHALF WITHOUT FIRST COMMUNICATING WITH ME.

NOW THEREFORE ACT ACCORDINGLY

JR

_____

Montréal, Qc

Telephone: XXXX

C.c. Geoff Whitlam, President (gwhitlam@mackieresearch.com)

Don Stevenson, Montréal branch manager (dstevenson@mackieresearch.com)

Mark Censale, Director of Compliance (mcensale@mackieresearch.com)"[1].

¶ 7 As a consequence of the aforesaid letter, a "COMSET" was registered regarding the RESPONDENT and the COMPLAINANT initiated an investigation.

¶ 8 On or around November 28, 2014, the RESPONDENT left MACKIE's employ and has not been a registrant of the COMPLAINANT since that time.

¶ 9 Upon conclusion of the investigation, the COMPLAINANT alleged two contraventions by the RESPONDENT, which stated the following:

"**Alleged contraventions**

1. During the period between January 29, 2013 and October 29, 2014, the Respondent executed unauthorized trades in a client's accounts, contrary to IIROC Dealer Member Rule 29.1;

2. Subsidiarily, between January 29, 2013 and October 29, 2014, the Respondent engaged in discretionary trading in a client's accounts, without the accounts having been preauthorized by the firm as "discretionary" accounts, contrary to IIROC Dealer Member Rules 1300.4 and 1300.5."

¶ 10 Pursuant to the investigation conducted by the COMPLAINANT, JR and FC notified the COMPLAINANT's staff that they did not intend to appear or give evidence at the hearing on the merits of this case.

¶ 11 Since proof of Contravention No. 1 would have required JR and FC to give evidence and, given the current state of the law, the COMPLAINANT does not have the power to compel witnesses to appear at the Preliminary Hearing on September 12, 2017 and at the opening of the Hearing on the Merits of this case on November 15, 2017, the COMPLAINANT's legal counsel, Francis Larin, announced that it was dropping the first count and maintaining the second.[2]

II. COMPLAINANT'S POSITION

¶ 12 The COMPLAINANT argued that, based on certain admissions by the RESPONDENT, on the facts of the matter, as well as on the case-law on the matter, it is clear that the RESPONDENT never obtained JR's

[1] See exhibit 2.

[2] See lines 1 to 19 on page 12 of the transcript of the November 15, 2017 Hearing.

specific authorization for thirty (30) of the thirty-three (33) trades enumerated in paragraph 10 of the "STATEMENT OF ALLEGATIONS" entered into evidence by the COMPLAINANT.

¶ 13 Add to that the fact that the RESPONDENT never obtained a general authorization from JR to treat any of her accounts at MACKIE as "discretionary" accounts, and this is what led the COMPLAINANT to take the position that the RESPONDENT violated the provisions of IIROC Dealer Member Rule 1300.4 and Dealer Member Rule 1300.5.

¶ 14 Said provisions state:

> "RULE 1300
>
> SUPERVISION OF CLIENTS
>
> …
>
> 1300.4 A Registered Representative may not exercise discretionary authority over a customer account unless:
>
> (a) the Dealer Member has designated a Supervisor or Supervisors to be responsible for discretionary accounts;
>
> (b) the customer has given prior written authorization in compliance with in compliance with Rule 1300.5;
>
> (c) a Supervisor designated under subsection (a) has approved the account as a discretionary account and recorded that approval;
>
> (d) the Registered Representative authorized to effect discretionary trades for the account has actively dealt in, advised on or performed analysis for a period of two years with respect to all types of products which are to be traded on a discretionary basis; and
>
> (e) the account is maintained at the Dealer Member of the Registered Representative.
>
> 1300.5 The prior written authorization provided for by clause (a) of Rule 1300.4 must:
>
> (a) define the extent of the discretionary authority which has been given to the Dealer Member;
>
> (b) except for a managed account, have a term of no more than twelve months, unless the Dealer Member has satisfied the Corporation that a longer term is appropriate and the customer is aware of such longer term;
>
> (c) except for a managed account, only be renewable in writing;
>
> (d) only be terminated by the customer by notice in writing, effective on receipt of the notice by the Dealer Member except with respect to transactions entered into prior to the receipt; and
>
> (e) only be terminated by the Dealer Member by notice in writing, effective not less than 30 days from the date of delivery to the customer."

III. RESPONDENT'S POSITION

¶ 15 The RESPONDENT admits that JR never gave him general authorization to operate any of her accounts as a discretionary account. However, he adds that JR's testimony is flawed.

¶ 16 Thus, the RESPONDENT claims that JR or FC specifically authorized each of the thirty-three (33)

trades[3] enumerated in paragraph 10 of the STATEMENT OF ALLEGATIONS entered into evidence by the COMPLAINANT.

¶ 17 We note moreover that in the September 22, 2015 interview of the RESPONDENT by the IIROC investigator, Mr. Colin Lovegrove[4], the latter mentions thirty-two (32) trades[5]. The same is true of Exhibit 10, the table of trades that relate to JR, compiled and filed into evidence by Mr. Lovegrove.

¶ 18 The explanation of said discrepancy can be found in Mr. Lovegrove's testimony.[6]

¶ 19 Regardless of whether there were thirty-two (32) or thirty-three (33) trades relating to JR, this difference in no way alters our conclusions in the matter.

¶ 20 The RESPONDENT has explained that he spoke with JR periodically to develop and plan her investment strategy, at both the *macro* and *micro* levels.[7]

¶ 21 By *macro*, the RESPONDENT means the broad lines of JR's investment strategy, and by *micro*, he means the economic sector of the company whose stocks or bonds were being considered.

¶ 22 The RESPONDENT is of the opinion that, once JR had confirmed the *macro* and the *micro*[8], along with her required rate of return, this already constituted a specific authorization to trade and the RESPONDENT alone chose the specific company from which to purchase the stocks or bonds for JR's accounts.

¶ 23 The RESPONDENT asserts that he sometimes waited two to three weeks to execute a trade, in order to obtain the rate of return that JR had been promised.

¶ 24 He claims that JR is not being truthful when she denies the RESPONDENT's claims regarding the frequency and content of his conversations with her.

IV. ANALYSIS AND DISCUSSION

¶ 25 We shall begin by addressing the RESPONDENT's notions of *macro* and *micro*.

¶ 26 Like counsel for the COMPLAINANT, we are of the opinion that in the matter before us, the definitions of *macro* and *micro* put forward by the RESPONDENT are erroneous.

¶ 27 Investment strategies are neither *macro* nor *micro*. If we were to use the RESPONDENT's vocabulary, *macro* should identify the economic sector in which a company is operating, and *micro*, a specific company that is being targeted.

¶ 28 So, in this sense, the RESPONDENT did not have JR's consent for the thirty (30) trades that he executed.

¶ 29 What's more, as a consequence of the errors in his definitions, it is clear to us that the RESPONDENT did not have specific authorizations for the thirty (30) trades enumerated in paragraph 10 of the STATEMENT OF ALLEGATIONS entered into evidence by the COMPLAINANT[9].

¶ 30 Let us now turn to the notion of "discretionary account". First, there are the provisions of Rule 1300.4 and Rule 1300.5, entitled "SUPERVISION OF ACCOUNTS". They are cited *in extenso* in paragraph [14] above.

¶ 31 In addition, the landmark case on this subject is Re WENZEL[10]; that decision was handed down on

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[3] Items nos. 1, 31 and 32 were well and truly specifically authorized by FC.

[4] The transcript of the aforesaid interview was entered into evidence by IIROC, as Exhibit 9.

[5] See question No. 186 and RESPONDENT's answer on page 45 of the transcript of the interview.

[6] See page 35, line 7 to page 37, line 4 of the Transcript of the Hearing of November 15, 2017.

[7] The terms "macro" and "micro" are the RESPONDENT's.

[8] As the RESPONDENT defines these two terms.

[9] Items 1, 31 and 32 are excluded.

[10] [2005] ABASC 91.

February 4, 2005 by the ALBERTA SECURITIES COMMISSION.

¶ 32 Paragraph 47 reads:

> "47. What, then, is « discretionary trading »? The Canadian Securities Institute (the "Institute"), which offers securities-related training and materials, provides an answer. The Institute's "Conduct & Practices Handbook Course" textbook, a portion of which was entered into evidence, explains (at 91):
>
> > Regulations prohibit trades where the IA [investment advisor] exercises discretion with respect to any element of quantity, security, price or time. IAs must obtain the specifics of price, quantity, security and timing of the order from the client.
> >
> > ..."

¶ 33 See also paragraph 49:

> "We can summarize:
>
> > When a person effects a securities transaction for a client without obtaining from the client, in advance, specifics as to four elements of the transaction – quantity, security, price and timing – that person is exercising "discretion".
> >
> > The exercise of discretion is restricted to those registered as "portfolio managers", and authorization to exercise discretion must come from the client."

¶ 34 Numerous later cases have approved and applied the criteria enumerated in WENZEL and we uphold them here.[11]

V. FINAL DISPOSITION

¶ 35 This UNANIMOUS DECISION ON THE MERITS shall be signed by the members of the Hearing Panel in multiple copies. Each of these signed copies shall be legally valid and authentic and shall avail for all legal purposes.

¶ 36 IIROC's National Hearing Coordinator is hereby requested to set a date and organize a hearing in respect of the penalties to be imposed on the RESPONDENT.

VI. CONCLUSIONS

¶ 37 FOR ALL OF THESE REASONS:

> WE, the Members of the HEARING PANEL, CONCLUDE that the RESPONDENT was illegally exercising his discretion in respect of the thirty (30) trades enumerated in paragraph 10 of the STATEMENT OF ALLEGATIONS entered into evidence by the COMPLAINANT and FIND HIM LIABLE FOR THE SUBSIDIARY CONTRAVENTION alleged against him in this matter.

VII. SIGNATURES

Dated at Montréal (Québec) this 12th day of December, 2017

Benjamin J. Greenberg

Guy L. Jolicoeur

Élaine C. Phénix

[11] See for instance: A- *Re Karcz*, 2010 IIROC 22; B- *Re Shamseer*, 2011 IIROC 05; C- *Re Matthews*, 2014 IIROC 56; and D- *Re Li*, 2016 IIROC 07.