

Re Renaud

IN THE MATTER OF:

**The Dealer Member Rules of the Investment Industry Regulatory
Organization of Canada**

and

Ferdinand Renaud

2016 IIROC 20

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

Heard: March 16, 2016 at Vancouver, BC

Decision: May 24, 2016

Hearing Panel:

Stephen D. Gill, Chair, Barbara Fraser and Richard W. Thomas

Appearances:

Lorne Herlin, Senior Enforcement Counsel for IIROC

No one Appearing for the Respondent

DECISION AND REASONS

ALLEGED CONTRAVENTIONS

¶ 1 The Investment Industry Regulatory Organization of Canada (“IIROC”) issued a Notice of Hearing on September 29, 2015 alleging that Ferdinand Renaud (the “Respondent”) committed the following contraventions:

Count 1

Between 2007 and 2013, Renaud failed to use due diligence to ensure that the recommendations that he made for the accounts of his clients GM and ADM were suitable for them, contrary to IIROC Dealer Member Rule 1300.1(q) (IDA By-law 1300.1(q) prior to June 1, 2008).

Count 2

In 2012, Renaud engaged in discretionary trading for the accounts of his clients GM and ADM without the accounts having been approved and accepted as discretionary accounts, contrary to IIROC Dealer Member Rule 1300.4.

Count 3

Between 2007 and 2013, Renaud failed to use due diligence to ensure that the recommendations that he made for the accounts of his clients RB and JB were suitable for them, contrary to IIROC Dealer Member Rule 1300.1(q) (IDA By-law 1300.1(q) prior to June 1, 2008).

¶ 2 The Notice of Hearing stipulated that the hearing would be held before a Hearing Panel of IIROC on a date to be fixed by the Hearing Panel on November 3, 2015. At that time it was determined that the hearing would take place on March 16, 2016 commencing at 10:00 a.m. at Charest Reporting, 885 West Georgia Street,

16th Floor, Vancouver, BC. The affidavit of service of Shannon Mathieson sworn March 8, 2016 was duly filed (Exhibit 3) and clearly established that the Respondent was advised in December, 2015 that the hearing would be held on March 16, 2016. In its registered letter to the Respondent Mr. Herlin also advised that pursuant to IIROC Rules 7.2 and 13.5 the Hearing Panel should proceed with the hearing as set out in the Notice of Hearing without further notice to the Respondent; accept as proven the facts and contraventions alleged by IIROC staff in the Notice of Hearing; and order penalties and costs against the Respondent pursuant to IIROC Dealer Member Rules 20.33 and 20.49.

¶ 3 The Panel notes that in response to a telephone conversation between Mr. Herlin and the Respondent, the Respondent sent an email on August 31, 2015 in which he stated, inter alia "...you can do whatever you want, and I do not intend to talk to you.". The Respondent did not attend the hearing, nor did he have counsel present.

¶ 4 At the hearing, the Panel ruled that it would proceed in the absence of the Respondent. Further, the Panel determined that, pursuant to Rules 7.2 and 13.5 of the Rules of Practice and Procedure, it would proceed. The Panel then heard and reviewed documentation relating to the allegations put forward. The Panel then decided that, pursuant to Rules 7.2 and 13.5 of the Rules of Practice and Procedure, it was satisfied to accept as proven the facts and contraventions alleged by staff in the Notice of Hearing. Subsequently, the Panel heard submissions from enforcement counsel with respect to penalties and costs and made an order.

¶ 5 Notwithstanding the foregoing, enforcement counsel submitted further information to the Hearing Panel relating to the matters in question, the said information being contained in three affidavits of Michael Smith: Affidavit No. 2 sworn February 22, 2016 (Exhibit 5); Affidavit No. 3 sworn February 25, 2016 (Exhibit 6); and Affidavit No. 4 sworn March 14, 2016 (Exhibit 4). As the relevant facts are set forth in the Notice of Hearing, we reproduce them here, namely paragraphs 1 to 45 of the Notice of Hearing.

Overview

- ¶ 6
1. Renaud was the Registered Representative who responsible for the accounts of GM, ADM, RB, and JB.
 2. Between 2007 and 2013, Renaud made recommendations for their accounts which were not suitable because, among other things, they resulted in their accounts being concentrated in oil and gas securities and having a level of high risk securities which exceeded their risk tolerance levels.
 3. In addition, in February 2012 Renaud engaged in discretionary trading in the accounts of GM and/or ADM.

Renaud

4. From February 2001 to June 2011, Renaud worked as a Registered Representative at the Kelowna business location of Canaccord Genuity Corp. (Canaccord).
5. From June 2011 to September 2013, Renaud worked as a Registered Representative at the Kelowna business location of Raymond James Ltd. (Raymond James).
6. Since September 2013, Renaud has not been an IIROC Approved Person.

GM & ADM

7. GM and ADM are married. GM was born in 1943 and ADM was born in 1947.
8. In 2003 GM and ADM were referred to Renaud by their accountant. At that time they owned and operated a recreational vehicle resort and a marina. In 2007 they both retired.
9. GM and ADM had moderate investment experience.

GM & ADM Open Accounts at Canaccord

10. Ultimately, GM and/or ADM opened the following three accounts at Canaccord:

- in August 2003, a margin account in the name of a private company that GM was the president of (the GM Company Margin Account);
- in April 2004, a margin account in the name of a private company that ADM was the president of (the ADM Company Margin Account); and
- in May 2007, a joint margin account which had both a Canadian and US dollar component (the M Joint Margin Account).

The GM Company Margin Account

11. The Account Information Form (the AIF) that GM completed in August 2003 on behalf of the GM Company Margin Account indicated that the investment objectives for the account were:

- 80% moderate growth - medium risk; and
- 20% short term trading - high risk.

12. The Account Information Update Form (the AIF Update) which GM completed in October 2009 on behalf of the GM Company Margin Account indicated that the investment objectives for the GM Company Margin Account were:

- 20% income - low to medium risk;
- 60% moderate growth - medium risk;
- 10% short term trading - medium to high risk; and
- 10% speculative - high risk.

ADM Company Margin Account

13. The AIF that ADM completed in April 2004 and the AIF Update which she completed in October 2009 on behalf of the ADM Company Margin Account indicated that the investment objectives for the ADM Company Margin Account were:

	Income - Low to Medium Risk	Moderate Growth - Medium Risk	Short Term Trading - Medium to High Risk	Speculative - High Risk
April 2004 AIF	15%	70%	10%	5%
October 2009 AIF Update	20%	60%	10%	10%

M Joint Margin Account

14. The AIF that GM and ADM completed in May 2007 and the AIF Update that they completed in October 2009 on behalf of the M Joint Margin Account both indicated that their investment objectives for the M Joint Margin Account were:

- 80% moderate growth - medium risk; and
- 20% short term trading - medium to high risk.

GM & ADM Transfer Their Accounts to Raymond James

15. In or around August 2011, the GM Company Margin Account, the ADM Company Margin Account, and the M Joint Margin Account were transferred to Raymond James.

16. In August 2012, all of the holdings in the ADM Company Margin Account were transferred into

a new personal margin account in the name of ADM (the ADM Margin Account).

17. The Raymond James Client Account Agreements that were completed by GM and/or ADM for the GM Company Margin Account, the ADM Company Margin Account, the ADM Margin Account, and the M Joint Margin Account (collectively, the M Accounts) each indicated that the:

- account objectives were 25% income; 50% growth; and 25% speculative; and
- risk tolerance was 75% medium and 25% high.

18. At all material times, Renaud was the Registered Representative who was responsible for the M Accounts at Canaccord and Raymond James.

19. GM and ADM relied on their investments with Renaud for income.

20. The October 2009 AIF Update for the M Joint Margin Account indicated that GM and ADM's estimated net liquid assets were approximately \$2,000,000 and their estimated net fixed assets were \$2,500,000.

Concentration in M Accounts

21. As detailed in the following table, for a number of months approximately 50% or higher of the holdings in the M Accounts were concentrated in oil and gas securities:

Account	Level of Oil and Gas Securities
GM Company Margin Account	January 31, 2007 to July 31, 2011
ADM Company Margin Account/ADM Margin Account	January 31, 2007 to September 30, 2012
M Joint Margin Account	May 31, 2007 to August 31, 2009 October 31, 2010 to May 31, 2011

Purchase of High Risk Securities in M Accounts

22. As detailed above, the stated account objectives for the M Accounts dictated that the vast majority of their holdings should have been invested in low and medium risk securities. Instead, a large portion of the holdings in the M Accounts were invested in high risk securities. As a result, as summarized in the following table, for numerous months the level of high risk securities in the M Accounts exceeded the stated levels for high risk securities.

Account	Level of High Risk Securities Exceeded Account Parameters
GM Company Margin Account	January 31, 2007 to June 30, 2013
ADM Company Margin Account/ADM Margin Account	October 30, 2010 to September 30, 2012
M Joint Margin Account	May 31, 2007 to September 30, 2008 February 28, 2009 to May 31, 2013

23. In or around July 2013, GM and ADM complained to Canaccord about Renaud's conduct.

Losses in M Accounts

24. As detailed in the table below, between January 1, 2007 and June 30, 2013 the combined market value of the M Accounts declined by approximately \$525,211:

Account	Value of Assets as of December 31, 2006	Net Deposits or (Withdrawals)	Value of Assets as of June 30, 2013	Profit or (Loss)
GM Company Margin Account	\$623,651.41	(\$212 000)	\$171,675.89	(\$239,975.52)
ADM Company Margin Account/ ADM Margin Account	\$120,246.92	(\$91,000)	(\$12,304.89)	(\$41,551.81)
M Joint Margin Account	\$475,373.09	(\$174,000)	\$57,688.89	(\$243,684.20)

25. These losses include approximately \$30,959 in interest charges due to the use of margin.

Discretionary Trading in Two of the M Accounts

26. At no point did Renaud obtain written authorization for discretionary trading, and none of the M Accounts were designated and approved as discretionary by Raymond James.

27. As detailed below, in February 2012 Renaud placed five orders for the GM Company Margin Account and two orders for the M Joint Margin Account (the February 2012 Orders):

Date	Account	Buy/ Sell	Quantity	Security	Price	Cost/ Proceeds
February 13, 2012	GM Company Margin Account	Buy	2,000	Aston Hill Senior Gold Producers Income Corp.	\$8.312	\$16,954.00
February 13, 2012	GM Company Margin Account	Sell	6,870.806	Qwest Energy Canadian Resource Series A	\$3.359	\$23,076.98
February 13, 2012	GM Company Margin Account	Sell	7,661.122	Stone &Co Resource Plus Class Series A	\$3.305	\$25,321.54
February 13, 2012	M Joint Margin Account	Sell	3,064.449	Stone &Co Resource Plus Class Series A	\$3.305	\$10,128.62
February 14, 2012	M Joint Margin Account	Buy	1,000	Canbanc Income Corporation	\$9.740	\$9,930.00

February 14, 2012	GM Company Margin Account	Buy	2,000	Canbanc Income Corporation	\$9.710	\$19,810.00
February 22, 2012	GM Company Margin Account	Buy	400	Front Street Flow-Through 2012-I Limited Partnership	\$25.000	\$10,000.00

28. Renaud used his discretion with respect to the security, quantity, price, and/or timing of the February 2012 Orders.

RB & JB

29. RB and JB are married. They were both born in 1946.

30. At all material times, RB owned and operated a water truck which serviced the oil industry and JB was retired.

31. RB and JB had moderate investment experience.

RB & JB Open Accounts at Canaccord

32. In November 2004, RB and JB opened the following three accounts at Canaccord:

- a Registered Retirement Savings Plan (RRSP) account in the name of RB (the RB RRSP Account);
- a RRSP account in the name of JB (the JB RRSP Account); and
- a joint margin account (the B Joint Margin Account).

RB RRSP Account, JB RRSP Account, & Joint Margin Account

33. The AIFs which were completed in November 2004 and the AIF Updates which were completed in December 2008 on behalf of the RB RRSP Account, the JB RRSP Account, and the Joint Margin Account each indicated that the account objectives and risk tolerance levels for these accounts were:

- 30% income - low to medium risk;
- 40% moderate growth - medium risk;
- 15% short term trading- medium to high risk; and
- 15% speculative- high risk.

RB Company Account

34. In October 2005, RB opened up a margin account at Canaccord in the name of the RB Company (the RB Company Margin Account). RB was the president and JB was the secretary of the company.

35. The AIF that RB completed in October 2005 and the AIF Update that he completed in December 2008 on behalf of the RB Company Margin Account both indicated that the investment objectives for the RB Company Margin Account were:

- 20% income - low to medium risk;
- 60% moderate growth - medium risk;
- 10% short term trading - medium to high risk; and
- 10% speculative- high risk.

RB & JB Transfer Their Accounts to Raymond James

36. In July 2011, the RB RRSP Account, the JB RRSP Account, the B Joint Margin Account, and the RB Company Margin Account (collectively, the B Accounts) were transferred to Raymond James.

37. The Raymond James Client Account Agreements that RB and JB completed for the B Accounts each indicated that the:

- account objectives were 25% income; 50% growth; and 25% speculative; and
- risk tolerance was 75% medium and 25% high.

38. At all material times, Renaud was the Registered Representative who was responsible for the B Accounts at Canaccord and Raymond James.

39. RB and JB relied on their investments for income.

40. The December 2008 Update form for the B Joint Margin Account indicated that RB and JB's estimated net liquid assets were approximately \$400,000 and their estimated net fixed assets were \$600,000.

Concentration in B Accounts

41. As detailed in the following table, for a number of months approximately 50% or higher of the holdings in the B Accounts were concentrated in oil and gas securities:

Account	Level of Oil and Gas Securities 50% of Higher
RB RRSP Account	January 31, 2007 to August 31, 2010 May 31, 2011
JB RRSP Account	January 31, 2007 to March 31, 2010
B Joint Margin Account	January 31, 2007 to May 31, 2010 January 31, 2011 to June 30, 2011 November 30, 2011 to April 30, 2013
RB Company Margin Account	January 31, 2007 to September 30, 2009

Purchase of High Risk Securities in B Accounts

42. As detailed above, the stated account objectives for the B Accounts dictated that the vast majority of their holdings should have been in low and medium risk securities. Instead, a large portion of the holdings in the B Accounts were invested in high risk securities. As a result, as summarized in the following table, for numerous months the level of high risk securities in the B Accounts exceeded the stated risk tolerance levels for high risk securities.

Account	Level of High Risk Securities Exceeded Account Parameters
RB RRSP Account	April 30, 2010 to April 30, 2013
JB RRSP Account	April 30, 2010 to April 30, 2013
B Joint Margin Account	April 30, 2010 to April 30, 2013
RB Company Margin Account	January 31, 2007 to October 31, 2008 March 31, 2009 to January 31, 2013

43. In around May 2013, the assets in the RB RRSP Account, the JB RRSP Account, and the Joint B Margin Account were transferred to another Dealer Member. The assets in the RB Company Margin

Account were transferred to another Dealer Member in August 2013.

44. Ultimately, RB and JB complained to Canaccord and Raymond James about Renaud's conduct.

Losses in B Account

45. As detailed in the table below, between January 1, 2007 and April 30, 2013 the combined market value of the B Accounts declined by approximately \$306,585:

Account	Value of Assets as of December 31, 2006	Net Deposits or (Withdrawals)	Value of Assets as of April 30, 2013	Profit or (Loss)
RB RRSP Account	\$145,682.63	\$8,070.81	\$96,885.44	(\$56,868.00)
JB RRSP Account	\$176,854.38	0	\$80,483.98	(\$96,370.40)
B Joint Margin Account	\$125,147.29	(\$77,000)	\$55,135.82	\$6,988.53
RB Company Margin Account	\$247,638.81	\$133,169.00	\$220,472.25	(\$160,335.56)

ANALYSIS

Concentration

¶ 7 The Panel acknowledges that the Notice of Hearing sets forth allegations of “concentration”, which we accept on a broad brush basis; however “concentration” is a determination which in essence reflects the opinion of the party making the determination and we may or may not agree with the specific determinations made by IIROC staff. In this particular instance it may be more prudent to suggest that the ‘weighting’ in a particular industry sector was not suitable for lower risk situations.

¶ 8 In particular, there are circumstances the Panel can envision in which concentration in an industry sector might be suitable for clients. For example, if the client had experience in working and investing in the industry sector, or if the risks of lack of diversification had been explained thoroughly and the client had accepted the risks, we might have a different view of the matter.

¶ 9 The Panel also wishes to make it clear that industry sector concentration could occur in any industry, not just the oil and gas sector.

¶ 10 For the purposes of this hearing, however, we accept that concentration or weighting in an industry segment was unsuitable for the clients in question, as described in the Notice of Hearing.

High Risk

¶ 11 Similarly, we accept the allegations of excessive “high risk” on a broad brush basis, because the specific determinations as to which securities were “high risk” were based on IIROC staff’s opinion, which we may or may not agree with.

¶ 12 In particular, there is no industry standard methodology for assessing risk and a cursory review by the Panel of some securities designated as “high risk” indicated some securities which some Panel members did not necessarily agree were “high risk.”

Discretionary Trading

¶ 13 The Panel accepts IIROC staff's submissions relating to unauthorized discretionary trading on the evidence that the clients were out of the country at the time the trades occurred.

Contraventions Proven

¶ 14 The Panel, having considered the facts and allegations set forth in the Notice of Hearing, and further having received extensive submissions from Enforcement Counsel with respect to the three affidavits of Michael Smith that were entered in evidence, the Panel accepted that the contraventions had been proven in accordance with the onus of proof on a balance of probabilities.

Penalty

¶ 15 We then invited Enforcement Counsel to make submissions as to the appropriate sanctions, including costs. Enforcement Counsel requested the following sanctions:

- (a) an \$80,000.00 fine;
- (b) a 12 month suspension; and
- (c) costs of \$20,000.00.

¶ 16 In support of this submission, Enforcement Counsel filed a Brief of Authorities which contained IIROC Dealer Member Rule 20; Investment Dealers Association of Canada Regulations 1300.1(q) and 1300.4; IIROC Dealer Member Rules 1300.1(q) and 1300.4; the IIROC Sanction Guidelines; and 10 reported decisions as to penalties imposed by other Hearing Panels. In addition, Enforcement Counsel provided a Bill of Costs (Exhibit 7) which totalled some \$48,400.00; however Enforcement Counsel was only seeking \$20,000.00 with respect to costs.

¶ 17 The cases which Enforcement Counsel referred to, and made submissions with respect to, are as follows:

- (a) Re Steinhoff, 2013 BC Sec Com 308;
- (b) Re Brody, 2013 IIROC 39;
- (c) Re Jones, 2012 IIROC 48;
- (d) Re Gareau, 2011 IIROC 53;
- (e) Re Harding, 2011 IIROC 65;
- (f) Re Wilson, 2011 IIROC 47; and
- (g) Re Shamseer, 2011 IIROC 5.

¶ 18 Enforcement Counsel made careful and thoughtful submissions with respect to penalty, bearing in mind the facts of this case.

¶ 19 The Panel, in considering the penalties requested, and the authorities referred to, have considered the protection of the investing public; the integrity of the capital markets; general deterrence; the protection of the IIROC membership; and the integrity of the IIROC enforcement process. Further, the Panel took into consideration IIROC's Sanction Guidelines, and the decisions provided by Enforcement Counsel in IIROC's Brief of Authorities on Penalty.

¶ 20 In the Panel's opinion, the contraventions that have been proven herein are serious matters. The events in Count 1 and Count 3 took place over an extended period of time, namely 2007 to 2013. In our view the penalty that is imposed must deter other persons who would act in a similar manner. We are also concerned about possible damage that may be caused to the integrity of the capital markets. The losses that occurred in the clients' accounts are significant. Given the ages and circumstances of the clients, it is unlikely they would be able to recoup those losses.

¶ 21 We note that in the decision of Re Mills, (2001) IDA CD No. 7, April 17, 2001, the Panel stated:

“Industry expectations and understandings 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 Association’s disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the District Counsel in the 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.”

ORDER

¶ 22 Having considered the various authorities, and the submissions of Enforcement Counsel, the Panel imposed the following penalties:

- (a) a fine in the amount of \$80,000.00;
- (b) the Respondent be suspended for 12 months commencing on the date of the hearing, namely March 16, 2016;
- (c) the Respondent pay costs of \$20,000.00.

This Decision may be signed in counterpart.

Stephen D. Gill, Chair

Barbara E. Fraser

Richard W. Thomas

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