Re Biduk

IN THE MATTER OF:

The By-Laws of the Investment Dealers Association of Canada

and

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

and

Roger Michael Biduk

2013 IIROC 19

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

Heard: October 16 and 17, 2012
Decision: April 23, 2013

Hearing Panel:
The Honourable Benjamin J. Greenberg, Q.C., C. ARB., Chair, Mr. Michel Duchesne, Mr. Denis Marc Gagnon,
Appearances:
Maître Sébastien Tisserand, (**the** "Enforcement Counsel") on behalf of IIROC and the IDA

UNANIMOUS DECISION ON THE MERIT

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A. HISTORY OF THE FIVE COMPLAINTS AND THE PROCEEDINGS HEREIN

¶ 1 It will be helpful to the understanding of this DECISION ON THE MERITS by the reader to summarize the history of the complaints and the proceedings engaged in this case, as well as, where applicable, the disposition of the latter.

¶ 2 At the time that the subject matter of the five complaints herein took place, the RESPONDENT was a Registered Representative ("**RR**") in the employ of UNION SECURITIES LTD. ("**UNION**" or the "**FIRM**"). Both the FIRM and the RESPONDENT were at all times relevant herein subject to the regulatory authority of, firstly, the IDA and then IIROC.

¶ 3 During the period from December 1, 2007 to August 20, 2008, four of the five Clients of the RESPONDENT (the "**Clients**") described below filed a complaint against him.[1] The IDA processed and investigated those complaints until June 1, 2008, when the IDA and Market Regulation Services Inc. were merged to create IIROC. Thereafter, IIROC continued the investigation and the enforcement of those complaints against the RESPONDENT.

¶ 4 In order to protect the privacy of those five Clients of the RESPONDENT, each of them has been assigned a letter identification and will be referred to herein as "Client A.", "Client B.", "Client C.", "Client D." and "Client E.".

¶ 5 Upon the receipt of the complaints against the RESPONDENT, the Enforcement Department of the IDA commenced to investigate them and IIROC later continued those investigations. The IDA sought and received various information and documents from UNION.[2] After IIROC took over those complaints, the five Clients and the RESPONDENT were interviewed/interrogated under oath by Mr. Stéphane Gauthier, the investigator in the employ of IIROC who was assigned to this case.[3]

¶ 6 In addition to being carried out under oath, each interview/interrogation by Mr. Gauthier was effected in the presence of another IIROC investigator and was also videotaped and thereafter transcribed by an Official Court Reporter/Stenographer.

¶ 7 The interviews/interrogations of the RESPONDENT on July 7, 2009 and of Client B. on January 19, 2010 were in the additional presence of IIROC investigator, Mr. Colin Lovegrove. Also present at the RESPONDENT's interview/interrogation was his then attorney, Maître Sébastien Caron. (See, respectively, Exhibits P-33 and P-145); those of Clients D. and E. together on February 24, 2009, of Client C. on February 27, 2009 and of Client A. on March 3, 2009 were all in the additional presence of IIROC investigator, Mr. Nicolas D'Astous (see, respectively, Exhibits P-79, P-64 and P-123).

¶ 8 After the investigations of those five complaints against the RESPONDENT were completed, the "Complex Track" disciplinary proceedings herein were instituted against the RESPONDENT by way of a "Notice of Hearing" dated February 9, 2012 signed for IIROC by Ms. Carmen Crépin, its Vice-President for the Province of Québec.

¶ 9 In addition to setting out in very extensive and elaborate detail the specific acts of which the

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[1] Three of them addressed their complaints to UNION and the fourth one to the Autorité des Marchés Financiers ("**AMF**"). See Exhibits P-49, 67, 81, 91 and 103. UNION referred to the IDA the complaints of the three Clients that had been addressed to it.

[2] See Exhibits P-8, P-10 and P-94.

[3] As well, Client A. was interviewed/interrogated together with her husband, even though he was at no time a client of the RESPONDENT.

RESPONDENT is accused, the Notice of Hearing advised him that a Preliminary Hearing would be held at 10:00 AM on February 28, 2012 at IIROC's Montreal Office, 5 Place Ville Marie, Suite 1550.

¶ 10 Moreover, on February 8, 2012, the Hearing Coordinator of IIROC sent the usual form of "Memorandum" to the Enforcement Counsel and the three Members of the Hearing Panel, informing them that the Preliminary Hearing would take place in the Boardroom at IIROC's said Montreal office on the date and at the time indicated in paragraph [9] above.

¶ 11 The affidavits sworn by Maître Tisserand and his assistant, both dated February 16, 2012 and, as well, the certificate of Bailiff Robert Charles Lortie dated February 14, 2012, all of which were filed with the Hearing Panel, offer mute testimony of the difficulties experienced by the Enforcement Counsel in his efforts to serve the proceedings herein to the RESPONDENT.

¶ 12 In the result, by way of a further "Memorandum" on February 21, 2012, the Preliminary Hearing before the Hearing Panel herein was re-set for and took place on March 20, 2012, however in the absence of the RESPONDENT. At the Hearing, the Enforcement Counsel satisfied us that the RESPONDENT had received due Notice and surely was aware that the Preliminary Hearing in his case was re-scheduled to be held on March 20, 2012.

¶ 13 At the Preliminary Hearing which took place on March 20, 2012, we set in motion the fixing of the dates of the Merits Hearing and, as the transcript of the Preliminary Hearing clearly reveals, we "bent over backwards" and went to extraordinary lengths in order to:

(a) assure ourselves that the RESPONDENT would have clear and adequate Notice of the date, time and place of the Merits Hearing; and

(b) offer to him every encouragement possible to attend at and participate in the Merits Hearing;

all to no avail.

¶ 14 For example, we directed the Enforcement Counsel to arrange to have the Notice of the Merits Hearing sent to the RESPONDENT by regular mail to his known address, since it had been observed in previous instances that the RESPONDENT had evaded registered mail. As well, although the Procedures and Regulations of IIROC do not require or provide for it, we directed the Enforcement Counsel to also send to the RESPONDENT a copy of the transcript of the Preliminary Hearing, at which the Chairman of the Hearing Panel made the effort to speak in English for the eventual comprehension by the then absent RESPONDENT, as in the past he had complained that he could not understand the proceedings as he could neither speak nor read French.

¶ 15 At page 14 of the Notice of Hearing we find the following paragraphs:

> *"**RESPONSE TO NOTICE OF HEARING***
>
> ***TAKE FURTHER NOTICE** that Respondent must serve upon IIROC Staff a Response to the Notice of Hearing in accordance with Rule 7 of the Rules of Practice and Procedure, within twenty (20) days (for a Standard Track disciplinary proceeding) or within thirty (30) days (for a Complex Track disciplinary proceeding) from the effective date of service of the Notice of Hearing*
>
> ***FAILURE TO RESPOND OR ATTEND HEARING***
>
> ***TAKE FURTHER NOTICE** that, if Respondent fails to serve a Response or attend the hearing, the Hearing Panel may, pursuant to Rules 7, 2 and 13.5:*
>
> (a) proceed with the hearing as set out in the Notice of Hearing, without further notice to Respondent;
>
> (b) accept as proven the facts and contraventions alleged by Staff of IIROC in the Notice of

Hearing; and

(c) order penalties and costs against Respondent pursuant to Dealer Member Rule 20.33, 20.34 and 20.49".

¶ 16 However, in spite of all our efforts in that regard, when the Merits Hearing was held on October 16 and 17, 2012, it was again in the absence of the RESPONDENT.[4]

¶ 17 Moreover, at no time until this day has the RESPONDENT complied with the first of the two paragraphs of the Notice of Hearing that are cited *in extenso* at paragraph [15] above.

¶ 18 As the RESPONDENT has not produced a Response or entered a Plea, the Hearing Panel has proceeded on the basis that the RESPONDENT is presumed to have denied all the allegations made against him and to have pleaded "not-guilty" to both counts.

¶ 19 Consequently, the Enforcement Counsel was called upon to prove IIROC's Case against the RESPONDENT.

B. RESPONDENT'S APPROVAL AND DISCIPLINARY HISTORIES

¶ 20 The details under this Chapter may be gleaned from pages 2 and 3 of the Notice of Hearing, as well as from the RESPONDENT's interview/interrogation held on July 7, 2009 and various facts elicited from the five complainants who each underwent an interview/interrogation.

¶ 21 From March 1991 to February 2003, the RESPONDENT was a registered mutual fund salesman and financial security advisor, initially for Investors' Services Ltd., later for DPM Financial Planning Group Inc. and then for Diversifolio Financial Services Ltd. and iForum Securities Inc.

¶ 22 In February 2003, he ceased his mutual fund activities and became a retail RR until January 2006 with "unrestricted practice" for iForum Securities Inc., which was an IDA Member at that time.

¶ 23 From January 2006 to April 2010, the RESPONDENT served as a retail RR at UNION, again with "unrestricted practice". In January 2006 UNION was an IDA member and later became IIROC regulated. Finally, on June 1, 2008, the RESPONDENT became a registrant of IIROC.

¶ 24 After having been suspended from the FIRM by an e-mail sent to him at 12:28 PM on April 12, 2010, via a further e-mail sent by the RESPONDENT to the compliance officer of the FIRM at 2:37 PM that same day,[5] he resigned his position at UNION and has not since then served or functioned as a RR.

¶ 25 On June 6, 2006, the RESPONDENT was found guilty on 3 counts by the disciplinary committee of the Chambre de la Sécurité Financière in their File No. CD00-0565. Those counts were:

A. Having effected a trade that was not in the investor's interest, by converting RRSP investments to investments that did not reflect the financial circumstances and investment objectives of his Clients;

B. Having forged or induced a third party to forge his Client's signature; and

C. Having failed to cooperate and to reply promptly to correspondence from the syndic.

¶ 26 On February 27, 2007, the disciplinary committee of the Chambre de la Sécurité Financière imposed the following sanctions on the RESPONDENT:

COUNTS A and B: Temporary revocations of his certificate for, respectively three (3) months and one (1) year, to be discharged concurrently; and

COUNT C: a $3000 fine, with costs.

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[4] As for the propriety and justification for holding a Hearing in the absence of a respondent, see at paragraphs [99] to [102] below.

[5] See Exhibit P-42.

C. THE FACTS[6]

i) *Client A.*

¶ 27 Client A., then age 53, was a single woman employed as an executive assistant at an electronics firm at an annual salary of $45,000.

¶ 28 Her "New Client Application Form", dated from February 7, 2006, Exhibit P-112, indicates "Good" as her level of investment knowledge when, in fact, at her prior broker her investment history was limited to mutual funds. She had therefore never traded in individual securities.

¶ 29 That Form also stated her investment objectives as "40% Long Term Growth", "40% Medium Term" and "20% Short Term Trading".

¶ 30 Moreover, as to her levels of Risk Tolerance, it showed "Medium 50%" and "High 50%". In fact, her level of Risk Tolerance was "Low", in view of the fact that she was then considering imminent retirement.

¶ 31 It also indicated the amount of $100,000 as her "Estimated Net Liquid Assets", without however mentioning that most of her liquid assets available to invest were the product of a divorce settlement.

¶ 32 Client A. signed the filled-out Form under the erroneous assumption that it would permit her to invest in individual securities and benefit from good returns.

¶ 33 On April 3, 2006, less than two months after she had signed the "New Client Application Form" Exhibit P-112, and without any significant change having occurred regarding her personal or financial circumstances, the RESPONDENT presented to her a filled-out "Update" to that Form, Exhibit P-114.

¶ 34 In Exhibit P-114, the indicated level of her investment knowledge remained as "Good", but the other qualifications were modified from those of Exhibit P-112. Her "Investment Objectives" were then shown as "50% Medium Term" and "50% Short Term", whereas her "levels of Risk Tolerance" were changed to "High 100%".

¶ 35 In the result, at the end of the day Client A. lost $21,250, a large proportion of the total amount that she had invested through the RESPONDENT.

¶ 36 She consequently sent two letters of Complaint about the RESPONDENT, one to UNION, Exhibit P-91, and the other to the AMF, Exhibit P-103.

¶ 37 It would appear that Client A.'s level of understanding of the market for individual securities was quite limited and was grossly overstated by the RESPONDENT in Exhibits P-112 and P-114.

ii) *Client B.*

¶ 38 Client B., at the time 41 years of age, was then recently divorced, with two young children to support. Her job was as a cleaner in a hospital and later in private homes. Her annual income was then $30,000.

¶ 39 She too had a quite limited knowledge of investing in spite of her UNION "New Client Application Form" dated February 16, 2006 for a "Canadian Funds Margin" Account, Exhibit P-137, having indicated that her level of such knowledge was "Good".

¶ 40 As for her "Investment Objectives", that Form indicated "20% Long Term Growth"; "30% Medium Term" and "50% Short Term Trading", as well as for her levels of Risk Tolerance, "Medium 30%" and "High 70%".

¶ 41 Here too, without in each case any significant change having intervened, on July 25, 2006, Exhibit P-138 and August 2, 2006, Exhibit P-139, "Updates" were prepared and filled in by the RESPONDENT, presented to Client B. and signed by her.

¶ 42 Respectively, those two "Updates" both continued to show her "Investment Knowledge" as "Good", but

[6] Always as at the beginning of the time period from February 2006 to May 2008.

both altered her "Investment Objectives" to "100% Short Term Trading" and her "level of Risk Tolerance" to "High 100%".

¶ 43 Coupled with the fact that those levels related to a margin account, there was created by the RESPONDENT for Client B. a very risky and dangerous situation. When added to the concentration of her investments as to the industry and company(ies) as discussed at paragraphs [86] to [89] below, it was a recipe for disaster.

¶ 44 In the result, at the end of it, Client B. lost $80,000, almost the total amount that she had invested through the RESPONDENT.

iii) *Client C.*

¶ 45 Client C. was 75 years old and retired when the RESPONDENT opened her Canadian funds RRIF account at UNION on June 6, 2006. Her annual income was then $24,000. During her working life she had been a "librarian" at McGill University.

¶ 46 Under "Investment Knowledge" in her "New Client Application Form"[7], the RESPONDENT marked off "Good", but that clearly had not been the case.

¶ 47 For Client C. as well, and apparently arbitrarily, the RESPONDENT filled in on her "Investment Objectives", "50% Long Term Growth" and "50% Medium Term". As for her acceptable "Risk Tolerance" levels, he showed "50% Medium" and "50% High".

¶ 48 Her "Estimated Net Liquid Assets" when Client C. opened her account at UNION were filled-in by the RESPONDENT as $55,000 and her "Estimated Fixed Assets" as $100,000.

¶ 49 For Client C., as for the others, approximately 6-1/2 weeks later, on July 21, 2006, without any apparent change in her personal or financial circumstances which might have justified it, the RESPONDENT filled out and had her sign an updated "New Client Application Form".[8]

¶ 50 In that document he modified her "Investment Objectives" to "25% Medium Term Growth" and "75% Short Term Trading" and her "Risk Tolerance Level" became "100% High", clearly levels which did not accord with her true "Investment Knowledge", age, retirement status and the value of her assets.

¶ 51 Yet, the most incomprehensible component of the choices that the RESPONDENT made for Client C. was that when he prepared that Update, he chose for her a "Canadian Funds Margin Account". (Our emphasis.)

¶ 52 Even more surprisingly, exactly one month after the RESPONDENT made the unnecessary and unjustified July 21, 2006 Update for Client C. by placing her in a Margin Account, on August 21, 2006, he put her through another update[9], this time in regard to her RRIF account mentioned at paragraph [45] above.

¶ 53 There, he went the limit, indicating "100% Short Term Trading" as her "Investment Objectives" and "100% High Risk Tolerance". Even more so than described at paragraph [50] above, here again those indications were contra-indicated in relation to Client C.'s investment knowledge, age, retirement status and the value of her assets.

¶ 54 At the end of the day, not unexpectedly, Client C. lost $14,228, a large percentage of her invested amount.

iv) *Clients D. and E.*

¶ 55 These Clients are a married couple, at the relevant time she was age 64 and he age 76.

¶ 56 The RESPONDENT first opened each one's account on June 7, 2006. They were friends of Client C., all

[7] Exhibit P-57.

[8] Exhibit P-58.

[9] Exhibit P-59.

three of them sharing a common ethnic origin. Client D., Mrs., was a laboratory technician when the RESPONDENT opened her Canadian Funds RRSP Account[10] and Client E., Mr., had been a carpenter and as at the opening of his Canadian Funds RIFF Account[11] and Canadian Funds LIF Account [12], had been retired since 13 years.

¶ 57 When those three accounts were opened by the RESPONDENT on June 7, 2006, the couple's annual income was $40,000 for Mr. and $25,000 for Mrs.

¶ 58 Their previous investment experience was in regard to RRSP and RRIF mutual funds. They had very limited exposure to, experience in or knowledge of equity investing.

¶ 59 Here again, apparently arbitrarily, the RESPONDENT entered "Good" as to each one's "Investment Knowledge" regarding all three accounts.

¶ 60 As well, in regard to all three of those accounts, the RESPONDENT entered for "Investment Objectives", "50% Long Term Growth" and "50% Medium Term Growth", evaluating the "Risk Factors" in all the accounts at "50% Medium Risk" and "50% High Risk".

¶ 61 In regard to Client E., on August 21, 2006, a scant two and one-half months after opening that Client's two accounts, the RESPONDENT effected an Update[13], whereas no significant change in Client E.'s personal or financial situation had occurred that might have required or justified that.

¶ 62 In that Update, as was the case for Clients A., B. and C., the RESPONDENT modified Client E.'s. "Investment Objectives" to "100% Short Term Trading" and his "Risk Factor" to "High 100%", quite an unorthodox-rating and a dangerous investment posture for a 76 year old retired gentleman of modest means and little investment knowledge.

¶ 63 At the end of the day, Clients D. and E. lost, respectively, $40,115 and $31,400, the bulk of the funds that the RESPONDENT had invested for them.

¶ 64 Moreover, in regard to all five Clients, there was a high degree of concentration in high technology stocks. Not only was there that sectorial concentration, it was also the case for the very few equity securities that the RESPONDENT chose for his five Clients.

¶ 65 The RESPONDENT appeared to favour three or four high technology companies into which he invested his five Clients. Those extremely volatile equities were:

Advance Micro Development (AMD)

Qualcom Inc.

Broadcom Inc.

Sandisk Corp.

¶ 66 All five Clients of the RESPONDENT were unsophisticated (even naïve) investors to a greater or lesser degree and all five were vulnerable. They were each invested by the RESPONDENT in one or two of those companies; we repeat, a recipe for disaster.

D. DISCUSSION AND ANALYSIS

i) *The Burden of Proof*

¶ 67 As this is not a criminal case, the criminal law evidentiary burden of "proof beyond a reasonable doubt"

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[10] Exhibit P-77.

[11] Exhibit P-87.

[12] Exhibit P-88.

[13] Exhibit P-89.

has no application here.[14]

¶ 68 Consequently, the COMPLAINANT is not called upon to prove the guilty intent ("*l'intention coupable"*) or the "*mens rea"* of the RESPONDENT.

¶ 69 The burden that applies to the complainant here is essentially that of the civil law, that is by the "balance of probabilities", which can also be stated as by a "preponderance of the evidence".[15]

¶ 70 That level of proof has also been referred to as the "preponderance of probabilities."[16].

¶ 71 The current state of the law in Canada regarding the burden of proof in civil law matters was studied and proclaimed by the Supreme Court of Canada in 2008 in the case of *F.H.* v. *McDougall.*[17] There, Mr. Justice Rothstein wrote for the Court:

> *"[40] Like the House of Lords, I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof. I am of the respectful opinion that the alternatives I have listed above should be rejected for the reasons that follow.*
>
> …
>
> *[49] In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred."*

¶ 72 However, where in disciplinary proceedings a finding of culpability can lead to the revocation of a respondent's right to practice his profession or professional vocation, the evidence against him should be convincing.

ii) *The Two Counts Brought against the RESPONDENT*

¶ 73 As stated in the Notice of Hearing, the RESPONDENT is charged with two counts, as follows:

> *"1. Between February 2006 and May 2008, the Respondent failed to know many of his clients, and to define their investment objectives and risk tolerance according to the personal and financial circumstances of each client, contrary to IDA Regulation 1300.1 (a);*
>
> *2. Between February 2006 and May 2008, the Respondent failed to exercise due diligence by recommending to many of his clients a high-risk trading strategy that was inappropriate to his clients' personal and financial circumstances, contrary to IDA Regulation 1300.1 (q)."*

iii) *The Issues*

¶ 74 Those provisions of IIROC's RULE 1300, "**SUPERVISION OF ACCOUNTS**", declare:

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[14] Belhassen c. Avocats, [2000] D.D.O.P. 238, 10 et 11 (T.P.); Osman c. Médecins, [1994] D.D.C.P. 257, 263 (T.P.); Psychologues c. Da Costa, [1993] D.D.C.P. 266, 270 (T.P.); Notaires c. Champagne, [1992] D.D.C.P. 268, 280 (T.P.).

[15] See the case of *Kenneth Nott* et al IIROC No. 11-0211, 2010 IIROC 55, July 14, 2011, at paragraphs 99 to 103; and that of *Patrick David O'Neill*, IIROC No. 10-0327, November 11, 2010, at paragraphs 69 to 72.

[16] See at paragraphs 100 and 101 of the *Nott et al* judgment cited at footnote 15 above.

[17] See at [2008] 3 S.C.R. 4.

1300.1

"I***dentity and Creditworthiness***

(a) **EACH DEALER MEMBER SHALL USE DUE DILIGENCE TO LEARN AND REMAIN INFORMED OF THE ESSENTIAL FACTS RELATIVE TO EVERY CUSTOMER AND TO EVERY ORDER OR ACCOUNT ACCEPTED.**

…

Suitability Determination Required When Recommendation Provided

(q) *Each Dealer Member, when recommending to a customer the purchase, sale, exchange or holding of any security, shall use due diligence to ensure that the recommendation is suitable for such customer based on factors including the customer's financial situation, investment knowledge, investment objectives and risk tolerance."*

¶ 75 The purpose of those provisions is to assure the protection of investors, especially naive, non-sophisticated investors. To the extent that an RR observes and is faithful to those basic rules and his consequent fundamental duties and obligations towards his investor/client, he is not an insurer against losses that may be sustained by his client, no more so than the fact that he does not share in the profits earned by his client.

¶ 76 However, where the RR does not observe those basic rules and the client suffers losses, the RR is doubly exposed: he and his employer[18] can be held responsible civilly for those losses and also he can face disciplinary procedures.

¶ 77 IIROC's RULE 2500 entitled "**MINIMUM STANDARDS FOR RETAIL CUSTOMER ACCOUNT SUPERVISION**" is also *ad rem* here. Sub-paragraph (c) of its **Introduction** declares:

> *"The compliance with the know-your-client rule and suitability of investment requirements is primarily the responsibility of the Registered Representative. The supervisory standards in this Rule relating to know-your-client and suitability are intended to provide Supervisors with guidelines on how to monitor the handling of these responsibilities by the Registered Representative."*

¶ 78 An analysis of the facts regarding the RESPONDENT's five Clients as set out at paragraphs [27] to [66] above leads us to the inescapable conclusion that the RESPONDENT did not "know" them.

¶ 79 He treated their "New Client Application Forms" as a bothersome bit of paperwork, with no apparent knowledge or understanding of the meaning and/or purpose of that Form in the light of IIROC'S RULES 1300 and 2500.

¶ 80 The RESPONDENT approached the task of filling in and compiling those forms clearly in an arbitrary and perfunctory manner. He worked out an arbitrary template and applied it across the board for those five Clients; a "one-size-fits-all" approach.

¶ 81 In the face of clear evidence that each one of them had little or no experience in the trading of securities of individual issuers, he stated each one's "Investment Knowledge" as "Good".[19]

¶ 82 Insofar as the RESPONDENT's standard answer to "Investment Objectives" in the "New Client Application Forms", he repeatedly inserted a split among "Long Term Growth" and "Medium Term"[20] then moving on the "Updates", albeit that each of them was unnecessary and not called-for, to either a split between

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[18] In fact, in the present case Client B. has issued civil damages proceedings before the Quebec Superior Court claiming $217,767.32 "jointly and severally" (sic) from the RESPONDENT and UNION. See Exhibits P-128 and P-130.

[19] See at paragraphs [28], [34], [39], [42], [46] and [59].

[20] See at paragraphs [29], [34], [40], [47] and [60].

"Medium Term" and "Short Term Trading" or entirely "Short Term Trading".[21]

¶ 83 As for the level of "Risk Tolerance", there too in the "New Client Application Forms" he would indicate either a split between "Low" and "Medium" or among "Low", "Medium" and "High".[22] On the "Updates", he either split between "Medium" and "High" or went with 100% "High".[23]

¶ 84 In conclusion, in regard to the form for opening new accounts for clients, although it was an essential instrument[24] that permitted a RR to get to "know" his/her new client, it is clear to us that for the RESPONDENT, it was a necessary bother that he had to do in order to pass the scrutiny of his Branch Manager and that he chose to do with a minimum of effort and following an arbitrary "one-size-fits-all" template.

¶ 85 The RESPONDENT showed an absolute disregard for the important "know-your-client" rule and did a manifest disservice to his clients.[25]

¶ 86 In regard to the RESPONDENT having over-concentrated the securities holdings of his five Clients here, the Canadian investment industry has always recognized the inherent danger of an investor concentrating his/her holdings of securities in a given sector of the economy; let alone in the volatile securities of only one or two issuers in that given sector.

¶ 87 That principle recognizes the old saying: "*Don't put all your eggs in one basket"*. Diversification is the key. That is why relatively small and, more importantly, inexperienced/unsophisticated investors are generally better-off in professionally managed conservative mutual funds, and even there in those that are more-diversified rather than less-diversified.

¶ 88 IIROC's counsel furnished to us at Tab 45 in the binders that it filed in this case the article by Mr. Brian Olson[26] entitled "*The Concentration Trap"*, April 26, 2007.

¶ 89 He wrote there at pages 2 and 5 of 6:

> At page 2*: "**Why are concentrations so risky?***
>
> *Regardless of how it came about, a concentrated position can have a dramatically negative impact on the long-term wealth-creating ability of a portfolio. The risk comes from the extreme reliance a portfolio has on one position. If the stock does poorly, it can pull the portfolio down. Consider the risks to any one company and its product line: mismanagement, product obsolescence, fraud, new competitors entering the market and more. The key to any diversification strategy is to try to reduce this company-specific (or unsystematic) risk, which the market does not compensate you for taking.*

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[21] See at paragraphs [34], [42], [49], [50], [53] and [62].

[22] See at paragraphs [30], [40], [47] and [60].

[23] See at paragraphs [34], [42], [50], [52], [53] and [62].

[24] See at lines 12 to 23 at page 27 of the Hearing transcript of October 17, 2012.

[25] In that regard see the IIROC case of *Kenneth Gareau*, IIROC No. 11-0294, 2011 OCRCVM 53. Decision of October 19, 2011, where we may read at paragraph 31: "¶ 31 *In Lamoureux the Commission made reference to two obligations imposed on registrants that are separate concepts but practically interwoven. The first obligation is to "know your client" and the second is the "suitability" obligation, which is the obligation to determine whether an investment is appropriate for a particular client. The Commission commented on the relationship between the New Client Application Form (NCAF) and the obligation to provide suitable recommendations. The Commission stated: Re Gareau [2011] IIROC No. 53 Page 6 of 35*

> *Neither the "know your client" obligation or the "suitability" obligation can be fulfilled merely by completing poorly-constructed forms or by following a procedure in a perfunctory fashion. Forms and procedures are merely tools that can assist in performing a task and that may provide reminders or evidence of efforts undertaken or not undertaken. (at Part IV(B)(3)(b)).*"

[26] CFA, Vice-President, Head of Portfolio Consulting, Charles Schwab & Co. Inc.

Another way to illustrate the risk of a stock concentration is by looking at the number of S&P 500® index companies showing losses in years when the market performed well … "Some Stocks drop Even as the Index Rises"). In 2006, when the index rose nearly 16%, nearly a quarter of its stocks had negative performance. And in 1999, despite the index posting a 21% gain, over half of its constituents showed a loss. The lesson here: If you held enough stocks, you might not be too worried about owning those stocks that fell in any one year. Sufficient diversification is the tool that helps contain and control the downside risk … ".

At page 5: *"Although the potential reward of shooting for the moon with one near-and-dear stock may seem tempting, the risks should far outweigh the temptation. We often hear amazing stories of those who made fortunes on individual companies, but we rarely hear about the far larger number who paid the price of a high-risk strategy with big losses and sacrificed retirement goals."*

iv) ***The Expert : Mr. Gilles Ouimet***

¶ 90 Other than the Investigator, Mr. Stéphane Gauthier, the only other witness heard was Mr. Gilles Ouimet. His credentials are impeccable and he has a vast experience in the investment/securities field, in which he has worked and been involved in various capacities since March 1984; some 28 years at the time he testified before us on October 17, 2012.

¶ 91 His C.V. is appended to his REPORT dated April 19, 2012. His REPORT is very eloquent as to his perception and analysis of Mr. Biduk's work activities in regard to Clients A., B., C., D. and E.. His REPORT was of great assistance to us. He underscored various conclusions reached by Mr. Stéphane Gauthier.

¶ 92 He opined that effecting "Updates" at a frequency too soon after the initial opening of a client account is counter-productive and can have an effect opposite to that sought and intended by that exercise. **WE AGREE**.

¶ 93 Mr. Ouimet declared that it is illogical for a RR to complete a client's "New Client Application Form" by simply asking the client to fill in the blanks. After getting to "know" his client, a RR must reply himself/herself to some of the questions on that Form. A client, says Mr. Ouimet, is usually not competent to objectively evaluate his/her own investment knowledge. **WE AGREE**.

¶ 94 All the "Updates" effected by the RESPONDENT, opined Mr. Ouimet, were inappropriate, unnecessary and counter-productive. The expert believed that doing so was an attempt by the RESPONDENT to cover himself regarding the theretofore trading history of each of Clients A., B., C., D. and E, much of which contradicted each such client's "New Client Application Form".[27] **WE AGREE**. That Boscoe citation could equally be applied to each of the RESPONDENT's Clients A., B., C., D. and E. here.

¶ 95 Mr. Ouimet also decried the very high levels of concentration of the investments of those Clients that were carried out by the RESPONDENT, as we have already commented at paragraphs [86] to [89] above. **WE AGREE**.

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[27] See Maître Tisserand's summary of Mr. Ouimet's comments in that regard from line 25 at page 205 to line 14 at page 206 of the Hearing transcript of October 17, 2012. See also at paragraphs 56 to 58 of the IIROC Bulletin, No. 3480 concerning Mr. Laurence Edward M. Boscoe, which is at Tab 6 of IIROC'S "**RÉGLEMENTATION ET AUTORITÉS**" filed with us by Maître Tisserand, where we may read:

"56.The CPH provides that an NCAF should be updated whenever there is a major change in a client's circumstances that could affect the client's investment objectives, creditworthiness or risk tolerance.

57. At the time that the NCAF Update was completed, there had been no material change to HF's personal or financial circumstances,.

58. The NCAF Update for HF's Accounts was inappropriate for HF given that there were no material changes in HF's circumstances to warrant the update. The NCAF Update was completed for no reason other than to "paper" HF's Accounts and to justify the contents of those accounts, which were already unsuitable for HF."

¶ 96 The RESPONDENT did not even understand or know his role as a RR[28], let alone conform to it, opined Mr. Ouimet, or if he did understand it, he clearly violated the concepts that underlie his role. He gambled with the money of Clients A., B., C., D. and E.[29]. **WE AGREE.**

¶ 97 Mr. Ouimet described the RESPONDENT's actions and/or inactions in regard to the Clients A., B., C., D. and E. as "**TEXTBOOK**" examples of what a RR **should not,** better still, **must not do**. **WE AGREE**.

¶ 98 Mr. Ouimet declined qualifying as "investment strategies" the RESPONDENT's investment practices regarding the five Clients involved here.[30] It was a "model", says the Expert, applied as a "one-size-fits-all" approach. **WE AGREE**.

¶ 99 From the manner in which the RESPONDENT failed to comply with Mr. Gauthier's repeated convocations and, moreover, his failure to appear at the Preliminary Hearings on February 28, 2012 and March 20, 2012 , and the Merits Hearing on October 16 and 17, 2012, the RESPONDENT's strategy is clear to us.

¶ 100 That strategy is: deny, deny, deny; delay, delay, delay and, "ostrich-like", evade, evade, evade; and hope that the problem will go away, as in fact it did in some of the cases of his earlier dismissals and suspension based upon client complaints.

¶ 101 A respondent subjected to a disciplinary proceeding by IIROC cannot evade his professional and legal responsibilities by simply not showing up at the hearings.

¶ 102 IIROC hearing panels have frequently sat and ruled in the absence of a respondent who was boycotting the proceedings.[31]

¶ 103 The evidence before us is abundantly clear, cogent, convincing and damning against the RESPONDENT. He is clearly dishonest and a liar; as well as a confirmed forger in a previous disciplinary matter.[32]

¶ 104 In the face of the mountain of uncontradicted evidence before us, we are thoroughly convinced and have concluded that the RESPONDENT must be declared guilty of each of the two Counts brought against him herein by IIROC.

E. THE NEXT STAGE OF THESE PROCEEDINGS

¶ 105 The Hearing Panel hereby instructs IIROC, after confirming with us as to our availability for the holding of a Sanctions Hearing, to fix a date for same and then communicate this DECISION to the RESPONDENT and provide to him an appropriate period of Notice for the convocation and the holding of the Sanctions Hearing.

F. CLOSING PROVISION

¶ 106 Each duplicate original of this DECISION, signed by the three Members of the Hearing Panel, is equally

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[28] See from line 10 to 13 at page 97 of the Hearing transcript of October 17, 2012.

[29] See at lines 7 to 11 at page 60 of the Hearing transcript of October 17, 2012.

[30] See from line 17 at page 96 to line 7 at page 97 of the Hearing transcript of October 17, 2012.

[31] See as an example the case of *Brian Vaughn Wilson*, IIROC No. 11-0242, 2011 IIROC 47, at paragraph 1, at Tab 14 of IIROC's "**RÉGLEMENTATION ET AUTORITÉS**" filed with us by Maître Tisserand, where we may read:

*"**Procedural Matters***

1. Non-appearance of Respondent

¶ 1 On June 8th, the Respondent faxed a letter to counsel for IIROC which was made available to the panel members immediately prior to the set-date hearing on June 10, 2011. In this letter, the Respondent clearly stated that he would "not attend the hearing on June 10, 2011 nor will I be attending any other proceedings related to" this matter. In accordance with his letter, the Respondent did not appear at this hearing, but immediately prior thereto he provided to IIROC an affidavit to which was attached his letter of June 8, 2011 and a letter from his doctor which stated that she "did not recommend Mr. Wilson be exposed to any situation which subjects him to any undue stress or pressure."

[32] See at paragraph [25] above.

valid and authentic and may serve as such for all legal purposes.

G. CONCLUSIONS

¶ 107 FOR ALL THOSE REASONS:

We, the MEMBERS of the Hearing Panel, **unanimously find the RESPONDENT, Roger Michael Biduk, GUILTY** on each and both of the two Counts brought against him in this case.

We **ORDER** the **IIROC** Hearing Coordinator, after confirming with us as to our availability for a **Sanctions Hearing**, to fix a date for same and to **communicate** this **DECISION** and a **Notice of the Convocation** of the **Sanctions Hearing** to the RESPONDENT and provide to him an appropriate period of notification for the convocation and holding of the **Sanctions Hearing**.

AND WE HAVE SIGNED at Montréal, Québec on April 23, 2013:

The Honourable Benjamin J. Greenberg, Q.C., C. ARB., Panel Chairman

Mr. Michel Duchesne, Panel Member

Mr. Denis Marc Gagnon, Panel Member

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