

Re Beaudoin

In the matter of:

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

The By-Laws of the Investment Dealers Association of Canada

and

Jean-Luc Beaudoin

[2011] IIROC No. 29

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

Hearing Dates: February 21, 2011; February 22, 2011; February 23, 2011; February 25, 2011; February 28,
2011; March 1, 2011; March 2, 2011; March 25, 2011; March 31, 2011; April 8, 2011

Date of Deliberation: April 11, 2011
(30 paragraphs)

Hearing Panel:

Me Jean-Pierre Lussier, Chair; Mr. Gilles Archambault; Mr. Marcel Paquette

Appearances:

Me Diane Bouchard, for IIROC

Me Julie-Martine Loranger, for Respondent

Decision

¶ 1 On May 19, 2010, an action was lodged by IIROC against the Respondent by means of a Notice of Hearing listing four (4) violations of various regulations of the IDA (Investment Dealers Association of Canada).

¶ 2 Over the summer of 2010, the Respondent filed a motion for cancellation of certain allegations in the Notice of Hearing. This motion was dismissed by the Hearing Panel at the end of August 2010 and several dates were set for the hearing on the merits, which commenced February 21, 2011.

1. The alleged violations

¶ 3 The Notice of Hearing lists four counts which read as follows:

1. For the period from December 2004 to July 2006, the Respondent failed in his duty to protect the public in supervising the transactions effected in the personal accounts of representatives A, B and C, who were under his supervision, in regard to the receipt of numerous securities of public companies without this arousing any questions on his part and without his ensuring that these transactions were within the bounds of good business practice, contrary to Regulation 1300, Policy No. 2 and to By-law 29 of the Association;

2. For the period from December 2004 to July 2006, the Respondent failed in his duty to protect the public in supervising the transactions effected in the client accounts of representatives A, B and C, who were under his supervision, in regard to the recommendation of and trading in the securities of D and E, without this arousing any questions on his part as to their suitability and without his ensuring that the trades thus effected were within the bounds of good business practice, contrary to Regulation 1300, Policy No 2 and By-law 29 of the Association;
3. For the period from January 2006 to March 2006, the Respondent failed in his duty to protect the public, relative to trades effected in the account of F, a client of the team of A-B, by representative A, who was under his supervision, in the securities of G and H, without this arousing any questions on his part as to their suitability and without his ensuring that the trades thus effected were within the bounds of good business practice, considering that this client was a consultant to these companies and that there were signs of market manipulation, contrary to Regulation 1300, Policy No. 2 and By-law 29 of the Association;
4. For the period from December 2004 to August 2006, the Respondent failed to track and keep a proper record of his daily supervision reviews and of his inquiries and their follow-up, with regard to the trades effected by representatives A, B and C, contrary to Policy No. 2 and By-law 29 of the Association.

2. The evidence

¶ 4 For the reader's benefit, we thought it would be useful to summarize the essence of the evidence for each count. We do so based on the exhibits, and the testimony, notably that of IIROC investigator Paul Rondeau and that of the Respondent himself.

a) Count 1

¶ 5 The Respondent was appointed manager of the Brossard branch in December 2004. In this capacity, he was in charge of supervising the 16 or 17 representatives of the branch. Among these representatives were A (Alain Béland), B (Natalie St-Amant) and C (Jean-Guy Ducharme). Almost concomitantly, Alain Béland formed a team with Jean-Guy Ducharme (December 2004) and, in June 2005, Natalie St-Amant joined their team.

¶ 6 From December 2004 to July 2006, the evidence shows that on sixteen (16) occasions, a substantial number of securities in public companies were deposited in the account of one or another of the three team members, or the team's administrative assistant, or again, Alain Béland's spouse. As branch manager, the Respondent, who had access to the pro accounts, did not question the account holders on the private origin of the securities. The Respondent, in his testimony, confirmed that when he started the job, he knew that several insiders or consultants from some of these companies and the members of the Béland team had shares in these companies. He also knew that a substantial number of the branch's clients also held securities in these companies. But his concern, he adds, was to make sure that when the representatives made purchasing recommendations to their customers, they were not selling their own shares.

¶ 7 Moreover, the Respondent adds that, unless he was informed by the representatives that the latter had made a private placement, he had no way of knowing this otherwise. And, in fact, he was not informed of the private placements effected by the members of the Béland team, by the team's administrative assistant, and by Alain Béland's wife. His only verification tool was the commissions reports.

¶ 8 In his testimony, the Respondent declared that he devoted approximately half of his time to serving his own customers, the rest being divided almost equally between supervision and branch administration. He did not, he says, do any specific monitoring of the pro accounts. He did not detect the receipt of the securities resulting from private placements in the pro accounts. Rather, he examined the order of priority and the volume

of the trades. He also testified to the effect that the deposit of securities did not appear on the daily commissions report, which was the only verification tool at his disposal at that time.

b) Count 2

¶ 9 On this count, the evidence revealed that, other than the branch representatives, the insiders and the consultants of companies D and E (designated respectively as C and A in the stenographer's notes), 128 clients of the branch held shares in D and 248 held shares in E. The Respondent confirmed to the IIROC investigator that these companies were not tracked by the firm. He also stated to the investigator that he did not remember having asked any of the members of the Béland team for analyses or other documentation that might enable recommendations to be made regarding the securities.

¶ 10 The Respondent stated at the hearing that he attended a presentation on company E at the branch. He himself did not have much faith in the potential of this company, nor in that of company D. And he did not at any time recommend the purchase of the securities to his own clients. Apart from the fact of giving his opinion to the representatives of the Béland team, he confined himself to telling them to make sure they had documents that would support their purchase recommendations. Otherwise, the representatives would on occasion show him newspaper clippings about the activities of these companies. He also added that when he became manager, there were quite a few securities of company E in the branch's client accounts, as well as in the accounts of the Béland team members. This was the main reason why he did not pay particular attention to these securities.

c) Count 3

¶ 11 The evidence revealed that F (referred to as H in the stenographer's notes) was a client served by Alain Béland. A retired police officer, F bought and resold a large number of shares in companies G and H (referred to respectively as G and F), of which he was an insider. His new client application form does not indicate that he is an insider of these companies. The firm's compliance department detected in January 2006 that this client was engaging in market manipulation. An email dated April 3, 2006 was sent to Alain Béland on this subject, and CC-ed to the Respondent, among others. Yet there is no trace of any supervision of the activities in this client's account between January and March 2006. The Respondent stated that, at the time, the account of client F was not a problem, with nothing indicating that he was an insider of any company at all.

d) Count 4

¶ 12 During the material period (December 2004 to August 2006), supervision by the Respondent was only verbal. Aside from a few annotations on the daily commissions reports, there is no documented intervention. The Respondent moreover acknowledged the fact in a letter that he wrote to the firm's manager of "Complaints and Disputes Management", Diane Lamothe, on January 16, 2008. Furthermore, the Respondent has acknowledged having played an active role in the examination of the branch by the Montréal Exchange in September 2004. And the examination report mentions the requirement that the manager sign or initial the daily and monthly reports and indicate the date they were reviewed. Similarly, any follow-up, such as replies obtained, must be documented, signed and dated. The Respondent was never disciplined for this by his firm.

e) On all counts

¶ 13 The Respondent has stated that Alain Béland was his team's star member. He had interpersonal skills and an energy and drive that were above average. He was very popular with the firm's sales department. He was named Recruit of the Year in 2005. When he became branch manager, the Respondent nevertheless had certain reservations regarding Alain Béland, considering that the usual regulatory framework was ill adapted to this kind of representative. That said, it was 2006 when the Respondent reported problems with Alain Béland to the Compliance Department, that he learned that clients had switched branches and had been compensated for their losses on certain transactions executed by the Béland team. The Compliance Department investigated and the firm disciplined representatives St-Amant and Béland (Ducharme had left the firm). The internal investigation eventually pertained to other actions taken by Béland, and the latter was dismissed. The IDA initiated its own investigation after the firm transmitted the results of its internal investigation.

¶ 14 Evidence was also given by Sylvain Thériault, who was hired in March 2005 as DS's compliance manager. He explained that the representatives had been informed of the existence of a compliance manual as of spring 2005. He also stated that the branch manager only had daily and monthly commissions reports with which to do supervision. The monthly report only showed accounts that had generated commissions of \$1500 or more. In May 2005, the manager did not have in hand any employee account statements for verification purposes unless there had been transactions in the account.

3. Decision and reasons

a) Count 1

¶ 15 The Respondent is alleged to have failed in his supervisory role in regard to the receipt in the pro accounts of numerous securities of public companies.

¶ 16 The evidence reveals that the Respondent did not realize that share certificates had been deposited in the personal accounts of the three representatives forming the Béland team.

¶ 17 The evidence reveals moreover that the only real tools available to the Respondent for his supervision activities were the daily transaction reports and the monthly reports of clients whose accounts had generated more than \$1500 in commissions. The manager could also view the pro account reports each month on condition that there had been transactions during the month. With just these tools, it was difficult to discover that the representatives had made private placements when all that appeared on their account was the deposit of a share certificate. It was a simple journal entry and there was no transaction associated with it. Deposits of share certificates did not appear on the daily and monthly transaction reports. IIROC has argued that the manager had access to the CRESUS and ISM softwares and, through them, he could have detected the trading history in the representatives' accounts. This is accurate, but in the opinion of the Hearing Panel, such software is never used for supervision purposes.

¶ 18 In short, with the tools available to the Respondent, it is difficult to maintain that his failure to detect the private placements of representatives who only deposited a share certificate in their account was the result of negligence on his part and, for this reason, we acquit the Respondent on this count.

b) Count 2

¶ 19 We have reached the same conclusion on this count. We have discussed at length in the complaint directed at representative Natalie St-Amant – in particular concerning Count 2, which alleges that she recommended to clients that they invest in companies D and E – the reasons why a representative might validly have a different point of view than another representative or his branch manager concerning a security and its prospective earning value. We refer the reader to this discussion.

¶ 20 In this case, while the Respondent did not share the views of certain of his representatives regarding the potential of the shares in the securities of D and E, this still does not mean that he failed in his duty of supervision. On the one hand, he made sure that his representatives explained to him what they had based themselves on. He also read the newspaper clippings which outlined the future prospects of these companies. His obligation consisted in knowing his representatives and making sure that they had done an analysis of the security before recommending it to clients. There is nothing in the evidence that might imply the contrary. When he started his job as branch manager, these securities were already in the portfolio of many clients, including company insiders and consultants. He knew that the representatives of the Béland team had some and his concern was to make sure, on the one hand, that absolute priority was given to the client's interests and, on the other hand, that there was no conflict of interest between the representatives and the clients.

¶ 21 We are not of the opinion that the Respondent failed in his duty of supervision in regard to the trades effected in the securities of D and E and, consequently, we do not accept this count as well founded.

c) Count 3

¶ 22 We are of the opinion that this count is well founded. The most cursory examination of the daily transactions reports would have shown successive purchases and sales of securities of the same companies with no apparent logical connection. These successive purchases and sales within the same day or the same month should have caused the Respondent to wonder.

¶ 23 Our Hearing Panel is conscious that the supervision of transactions effected by over a dozen representatives is no easy task for a branch manager who has a goodly clientele of his own to serve. But that is no excuse to evade his responsibilities as gatekeeper.

¶ 24 IIROC has claimed that the Respondent allegedly told Béland, regarding the numerous transactions effected by client F, to write that they were unsolicited. This fact has not been proven to our satisfaction. The phone conversation between Laflèche Montreuil and Béland is only hearsay as to the veracity of the facts reported by Béland. The latter did not testify and, what's more, from all the evidence presented at the hearing, this individual's credibility would be at the very least debatable. In short, the evidence does not allow us to conclude that the Respondent was aware of these doubtful transactions effected by client F through Béland. We are instead inclined to conclude the contrary, that the Respondent was never aware of these doubtful transactions because his supervision based on the daily reports contained large gaps.

¶ 25 Our Hearing Panel consequently considers that the Respondent failed in his duty to protect the public relative to the trades in the account of F, given that there were signs of market manipulation. We uphold this count as well founded.

d) Count 4

¶ 26 The evidence is clear that the Respondent kept no trace or record of his supervision reviews. He admitted this, in fact, to the complaints manager at DS, in a letter dated January 16, 2008 (cf. E-36), that his daily follow-ups always remained verbal. The gaps in supervision were also noted in the firm's examination report (cf. E-40). The branch had been examined by the authorities of the Montreal Exchange before the Respondent came on board, but the examination report produced after the Respondent had taken over management of the branch reported several shortcomings; for example, the daily and monthly supervision reports were neither dated nor signed. There is no trace of any questions raised and replies obtained or any follow-up being done.

¶ 27 Once again, the Hearing Panel realizes that the gaps in supervision can be explained by the dual role of the Respondent who, in addition to supervision, had a clientele to serve. We can certainly consider this situation under the heading of penalty, but it is not an excuse for evading his ethical obligations. We consider this fourth count to be well founded.

FOR THESE REASONS, THE HEARING PANEL:

¶ 28 ***DECLARES*** counts 1 and 2 unfounded;

¶ 29 ***DECLARES*** counts 3 and 4 well founded;

¶ 30 ***SUMMONS*** the Respondent to a penalty hearing on a date that remains to be set.

May 18, 2011

Gilles Archambault, Hearing Panel Member

Marcel Paquette, Hearing Panel Member

Me Jean-Pierre Lussier, Attorney and Hearing Panel Chair