Unofficial English Translation

Re Beaudoin

IN THE MATTER OF:

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

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

Jean-Luc Beaudoin

2011 IIROC 66

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

Hearing held on December 5, 2011
Decision rendered on December 20, 2011
(24 paragraphs)

Hearing Panel:
M[e] Jean-Pierre Lussier (Attorney and Hearing Panel Chair), Mr. Gilles Archambault, Mr. Marcel Paquette
Appearances:
Me Sébastien Tisserand for IIROC
Me Julie-Martine Loranger for the Respondent

DECISION

1. On May 18, 2011, our Hearing Panel found the Respondent guilty on two of the four counts with which IIROC had charged him. One of the accepted counts charged the Respondent with failing in his duty to protect the investing public relative to several trades made for a client by a team of representatives, trades that gave the appearance of market manipulation. The other count alleged that he failed to keep a trace or record of his daily supervision reviews, his inquiries and their follow-up.

2. The parties each presented evidence respecting the penalty. IIROC filed a sworn statement by an Enforcement Assistant who calculated the costs relative to the investigation, which concerned three members of a team of representatives and the Respondent, as Branch Manager. The latter also gave testimony respecting the penalty. He explained that he stepped down as Branch Manager in May 2010 at the insistence of three senior officers of the firm. The whole time he worked as Branch Manager (December 2004 to May 2010), he also served his own clientele. Mr. Beaudoin's income declined considerably as a result of the media coverage of the IIROC prosecution. He lost clients and referrals from caisse populaire advisors. He also lost his remuneration as Branch Manager after May 2010. Finally, following the decision by our Hearing Panel, he began to experience health problems (hypertension and depression).

3. Counsel for the parties presented their respective arguments ably and at length. IIROC submitted that

the Respondent never acknowledged his misconduct and recommended an aggregate fine of $50,000, prohibition from acting as a Branch Manager for a period of 12 months, the obligation to retake the Branch Managers course and examination, and costs of up to $25,000. Counsel for the Respondent first pleaded that it was thanks to the Respondent that the firm even conducted the investigation of the representatives who were at fault. She also pointed out that it is very rare, if not non-existent in the jurisprudence, for disciplinary action to be taken against a Branch Manager after he reported breaches by his representatives. According to counsel, the Hearing Panel should take into account the Respondent's resignation, his unintentional conduct, the absence of financial profit, etc. She suggested that the Hearing Panel limit itself to a light penalty.

4. Before setting out our conclusions on the factors to consider and the penalties adopted, our Panel wishes to recall certain circumstances relating to the counts that have been accepted.

5. Count 3 concerns a series of trades made on behalf of a client which, because of their frequency, gave the appearance of market manipulation. These trades were detected by the firm's Market Monitoring Department. Our Panel is convinced that it was not easy for the Respondent to detect that these trades gave the appearance of market manipulation. Keep in mind that he devoted only part of his time to the management of the branch, spending the rest of his time serving his clientele. In the circumstances, the fact that these trades represented insubstantial amounts and could also give the impression that the client was just a "day trader" probably induced the Respondent to give them only cursory attention or to close his eyes. The fact remains that a Branch Manager who attentively reviews the daily trading reports has the task of raising questions about this type of trading. The fact that the Respondent also acted as a representative for his personal clientele is not a reason to cut corners in his supervisory tasks. That said, while this explanation does not excuse the Respondent, it represents a circumstance that our Hearing Panel will take into account, especially since we are persuaded that the Respondent was not motivated by any malicious intent.

6. Count 4 concerns deficiencies in supervision regarding undated or unsigned reports. These reports contained no trace that answers to questions had been obtained, nor of any other follow-up. Here as well, our Hearing Panel did not conclude an absence of supervision, but rather an absence of any trace or record of supervision. Once again, the Respondent's dual role, without constituting an excuse, explains his omissions.

7. The Disciplinary Sanction Guidelines list certain factors that permit assessment of the severity of the misconduct as well as the principles to observe when imposing a penalty. The Guidelines state that penalties must take into account the protection of the investing public and the integrity of the securities markets. The imposition of a penalty must therefore have an essentially preventive objective, preferably to a punitive goal. Even deterrence and exemplariness primarily have the goal of preventing the recurrence of misconduct.

8. For a failure to supervise, the guidelines recommend a fine of $25,000, the obligation to rewrite the PDO exam and a period of suspension or permanent prohibition from director/officer/supervisory responsibilities. In egregious cases, the Guidelines even provide for a permanent bar from approval in any capacity. Regarding these penalties, the Guidelines mention certain additional considerations. They deal with the extent of inadequacy of the procedures for supervision, the extent of employee misconduct, the amount of losses as a result of misconduct, "red flag" warnings, and corrective measures taken since the discovery of the problem.

9. In light of these considerations, it is important to keep in mind that the Respondent's misconduct regarding Count 3 must be assessed in light of the scarcity of inquiry tools that were at his disposal, and in light of the fact that neither the clients of the firm nor the firm itself suffered any financial losses. Moreover, our Panel cannot ignore that the Respondent has not held the position of Branch Manager since May 2010. The Respondent's good faith, his lack of enrichment from his misconduct, the absence of a prior disciplinary record, and his irreproachable conduct since the summer of 2006 are factors that must be considered in the imposition of a penalty.

10. We have noted his lack of acceptance of responsibility and the lack of acknowledgment of his misconduct. This is certainly an aggravating circumstance. However, this may be the only such circumstance for which he can be blamed. It must be said on this score that the Respondent was extremely surprised to be

accused of several acts of misconduct, when he considered that he had originated the investigation and the penalties imposed on his branch's team of representatives. Indeed, this investigation began when a Branch Manager of another firm contacted the Respondent to ask him why a client's account had not been transferred. The Respondent made some inquiries and informed this Branch Manager that the client had signed a cancellation of his transfer request. This is when it was noticed that the client's presumed signature was not really his and the investigation began. This is also when the Respondent learned that this client had been compensated by the representatives of the Béland team.

11. However, it would be an act of mental evasion to give the Respondent sole credit for the discovery of the blameworthiness of the representatives under his supervision. The real source of investigation essentially was the information transmitted to the Respondent by the Branch Manager of another firm, who could not explain why an account had not been transferred to his branch. However, it was the Respondent who informed his firm's Compliance Department, bringing the whole situation to light.

12. We consulted the case-law to which the two parties referred us and will comment briefly on each of these decisions.

13. *Sesto Deluca*[1] concerned a Branch Manager whose supervision had been inadequate. The Hearing Panel only reprimanded him, on the grounds that he had not acted dishonestly, that he had cooperated in the investigation, that he had no disciplinary record and that he had made efforts to supervise his personnel.

14. In *Schillaci*[2], for failure to supervise and keep proper records, this Branch Manager received a $15,000 fine and was ordered to pay costs limited to $10,000. He was also ordered to retake the PDO course. The Hearing Panel took his inexperience and his absence of enrichment into account.

15. In *Van Hee*[3], on four counts of failure to supervise and keep proper records, the penalty was a $40,000 fine and $15,000 in costs, all subject to the obligation to retake the PDO course. It must be noted that the gaps in supervision had resulted in losses for three clients, losses that the Hearing Panel described as considerable given their financial position. The *Van Hee* decision was particularly interesting because of the thorough study of the jurisprudence in similar matters and the detailed analysis of the factors that must be taken into account when establishing a penalty.

16. In *Graham*[4], on two counts of failure to supervise, the Respondent was condemned to a $50,000 fine and $15,000 in costs and ordered to retake the PDO course. In this case again, there had been substantial losses (over $700,000) for a total of fourteen clients.

17. In *Youden*[5], for failure to supervise, the Hearing Panel imposed a $70,000 fine and $15,000 in costs, in addition to the obligation to retake the Branch Manager course and rewrite the exam. This case involved a failure to supervise for a period extending over two years. It must be noted that two clients had suffered losses. Also, in this case, the IDA called for a long suspension (four years) and over $100,000 in costs. On this subject, the Hearing Panel concluded that the amount of costs awarded should not be so excessive as to deny the respondents the reasonable possibility of contesting the allegations. We discuss this question in our decision on penalty in the Natalie St-Amant case, heard jointly with this one. We see no need to repeat the comments we made in that case; suffice it to say, insofar as the costs are concerned, that they also apply to the case at hand.

18. In *Stevenson*[6], on four counts of failure to supervise, the Panel endorsed a settlement agreement whereby the Respondent was given a twelve-month suspension as Manager and was ordered to retake the PDO course, pay a $50,000 fine and pay $5,000 in costs. It must be noted that in this specific case the Respondent was in a conflict of interest with the representative concerned, due to a personal loan the representative had made to him.

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1 Re Sesto Deluca [2007] 30 OSCB 5473;
2 Re Schillaci [2007] I.D.A.C.D. 6;
3 Re Van Hee [2009] IIROC no. 34;
4 Re Graham [2005] I.D.A.C.D. 21;
5 Re Youden [2005] I.D.A.C.D. 52;
6 Re Stevenson [2008] IIROC no. 24;

19. In *Donnely*[7], the Respondent's failure to supervise concerned the accounts of about sixty clients, several of whom had very low incomes. A settlement agreement was reached whereby the Respondent was suspended for forty-five days and ordered to pay a $50,000 fine, plus costs set at $8,500.

20. In *Bouchard*[8], this Branch Manager was imposed a $30,000 fine plus $3,500 in costs, along with a ban on approval in any capacity for six months, and a permanent prohibition from "officer" responsibilities. Added to all this was the requirement of a twelve-month period of close supervision after passing the exam for the Conduct and Practices Handbook Course. It must be noted that this penalty not only concerned a failure to supervise, which had prevented the protection of a client during suspicious trading activities, it also considered the Respondent's long experience, the fact that this was a repeat offense and the fact that the Respondent had compensated a client without the firm's knowledge. These considerations, one must agree, are totally absent from the case currently under study.

21. In short, from all this jurisprudence, it must be concluded that penalties vary considerably according to the circumstances of a case. In our opinion, the Respondent's case indubitably ranks among the least serious cases. No client was wronged and, while the Respondent showed negligence in the way he performed his supervision, it must be agreed, in his defence, that he had few supervisory tools and that he was attempting to reconcile his tasks as a representative with his duty as a supervisor.

22. We reiterate, without any need to explain them again, the additional considerations we took into account in the case of Natalie St-Amant, especially those concerning the time elapsed since the offences and the costs. These circumstances apply both in the Respondent's case and in Natalie St-Amant's case. As for what we called the penalty by the firm, this also applies indirectly to the Respondent, since the evidence revealed that, at the time the Notice of Hearing was served, three officers of the firm had pressured the Respondent to resign from his position. He did resign, thereby renouncing substantial annual compensation.

23. For all these considerations, we have agreed to impose a penalty more directed to the protection of the investing public and the integrity of the securities markets than to punishing the Respondent, who was never motivated by any dishonest intention in this entire matter. Bearing this in mind, our Hearing Panel considers that a $10,000 fine, plus payment of costs limited to $5,000, will be a penalty proportionate to the circumstances as a whole, given that we are associating it with an obligation to retake the PDO course in the event that the Respondent wishes to hold such a position again.

24. **FOR THESE REASONS, THE HEARING PANEL:**

1. ***IMPOSES*** an aggregate fine of $10,000 on the Respondent, for the two counts combined;
2. ***ORDERS*** the Respondent to reimburse the costs, limited to $5,000;
3. ***IMPOSES,*** as a condition on eventually holding another partner/director/officer position, the requirement that the Respondent retake the PDO course and exam.

December 20, 2011

Gilles Archambault, Hearing Panel Member

Marcel Paquette, Hearing Panel Member

M[e] Jean-Pierre Lussier, Attorney and Hearing Panel Chair

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7 Re Donnely [2010] IIROC no. 32;
8 Re Bouchard [2010] IIROC no. 13;