

Re Brodie

In the matter of:

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

and

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

and

John Edward Brodie

2012 IIROC 52

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

Heard: September 12, 2012

Decision: delivered orally September 12, 2012, written reasons September 17, 2012

Hearing Panel:

Richard Bird, Q.C.(Chair), Bruce Walker and John Chappell

Appearances:

Milton Chan, Enforcement Counsel, Investment Industry Regulatory Organization of Canada
Brian Awad, Counsel for the Respondent

PANEL DECISION ON MOTION

THE MOTIONS

¶ 1 The Respondent made three motions pertaining to a disciplinary hearing in the above matter scheduled for commencement on October 15, 2012. After the motions were filed, counsel for IIROC issued to a Revised Notice of Hearing. Counsel for the respondent indicated that the changes made in the Revised Notice of Hearing were a satisfactory response to the first two motions and he did not proceed to argue the issues raised by the first two motions. That left only the motion of whether IIROC should be directed to produce an expert report or other evidence on the suitability of the investments that were recommended to clients of the respondent.

¶ 2 Counsel for the respondent made two arguments in this regard. First he relied on IIROC Rule 12 that deals with expert witnesses and their reports. Secondly, he raised the issue of the duty of regulatory organizations to provide in advance all material that is to be used at a hearing. He pointed out that not to do so would be a denial of natural justice. Counsel wanted some assurance that this would be done.

¶ 3 The panel rejects both grounds for any order or directions at this time.

¶ 4 First, it is not for the panel to decide what evidence that IIROC introduces at the hearing. There is no obligation on IIROC to introduce the opinion of an expert and thus we see no reason to order such course of action. If it should be determined that expert evidence is necessary and it has not been introduced, then the consequence will likely be that IIROC has not proved the first allegation in the Revised Notice of Hearing. That, however, has yet to be determined. Rule 12 does not require expert evidence. It deals with the procedures

that are to be followed if expert evidence is to be introduced at the hearing.

¶ 5 Nor is the panel in any position to determine if IIROC has disclosed all of the material that it intends to introduce at the hearing. The Set-Date Order in this proceeding provides in paragraph 4 that “IIROC Staff shall serve its compendium of documents, witness list, and witness statements, if any, by no later than Monday, September 17, 2012.” The panel is of the view that it is premature for it to decide anything further regarding the disclosure of evidence at this time.

¶ 6 The motion is denied.

DATED this 17th day of September, 2012.

Richard Bird, Q.C. Chair

Bruce Walker, Member

John Chappell, Member

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