

Re Steel

IN THE MATTER OF:

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

and

Jordan Steel

2013 IIROC 06

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

Heard: February 5, 2013
Decision: February 5, 2013

Hearing Panel:

Leon Getz, Q.C., Brian Field and Brian Worth

Appearances:

Wietzke Gerber for the Investment Industry Regulatory Organization of Canada

No appearance for Mr. Steel

DECISION

INTRODUCTION

¶ 1 These proceedings were initiated by a Notice of Hearing dated October 15, 2012 in which IIROC alleges that between January 2010 and August 2011 (the “Relevant Period”) Mr. Steel engaged in conduct constituting a breach of Dealer Member Rule 29.1. That Rule imposes upon persons such as Mr. Steel an obligation to observe high standards of ethics and to refrain from business conduct or practices that are unbecoming or detrimental to the public interest. The specific and very serious allegation against Mr. Steel is that during the Relevant Period he misappropriated approximately \$40,000 from two investment advisors for whom he worked as a registered assistant. The Particulars of the allegation are set out in some detail in the Notice of Hearing.

SERVICE OF THE NOTICE OF HEARING

¶ 2 Mr. Steel did not file a Response to the Notice of Hearing and he did not appear, either in person or by counsel, at the Hearing. IIROC’s Rules of Practice and Procedure contemplate that if a Respondent fails to do either of these things the Panel may proceed in his or her absence, may accept the facts and violations alleged in the Notice of Hearing as proven and may impose appropriate sanctions provided, in either case, that it is satisfied that the Respondent has been served with the Notice of Hearing.¹

¶ 3 As a threshold matter, therefore, we must be so satisfied. Section 5.2 (b) of IIROC’S Rules of Practice and Procedure provides that service may be effected “by delivering a copy of the Notice of Hearing by registered mail to the Respondent’s last known address as recorded in the Organization’s Registration file”. Section 5.4 of those Rules says that as proof of service we may accept a sworn statement of the person who served the document.

¹ See Rules of Practice and Procedure (“ROP”), sections 7.2 and 13.5.

¶ 4 Based on an Affidavit of Mr. Young Row, a Senior Investigator employed by IIROC, recounting in detail the various steps taken to serve the Notice of Hearing we are satisfied that Mr. Steel was served as required by section 5.2 (b) of the Rules. It is perhaps worth noting that on August 7, 2012, during a telephone conversation, Mr. Steel specifically acknowledged having received a copy of a draft notice of hearing and indicated that he wished to settle the matter. That draft seems virtually identical to the Notice of Hearing. The telephone conversation was the last contact between Mr. Steel and a representative of IIROC. Numerous later attempts to make contact with him, described by Mr. Row, have proved unsuccessful in the sense that none of them elicited any response.

¶ 5 Having regard to the matters that we have referred to, we are satisfied that it is appropriate to accept as proven the facts and violations alleged in the Notice of Hearing and to impose appropriate sanctions. We note, in this general connection, that in an interview with IIROC Staff on April 23, 2012, Mr. Steel admitted the essential facts.

THE FACTUAL BACKGROUND

¶ 6 Based on the Particulars to the Notice of Hearing, the material facts are these:

- a. During the Relevant Period Mr. Steel worked as the assistant for two Investment Advisors, Lily Fey (“Fey”) and Chris Morgan (“Morgan”), both of whom were employed as investment advisors by Canaccord Genuity Corp. (“Canaccord”) and each of whom had a separate book of business. He was entitled to 1.5% of their gross commissions. The Canadian commissions were calculated automatically; for US commissions, however, Mr. Steel had to manually prepare an Assistant/Associate Bonus Requisition Form (“Form”).
- b. In the case of Ms. Fey, Mr. Steel prepared the Form with the correct US commission amount owing to him but after they had been signed by her he altered it by increasing the commission amounts and sent the altered Forms to Canaccord’s Payroll Department. As a result he was overpaid some \$13,300 from Ms. Fey’s US commissions.
- c. In the case of Mr. Morgan, who did not do enough US business to generate commission income for Mr. Steel, he took old Forms that had been signed by Mr. Morgan, altered them by entering fictitious commission amounts, and sent them to the Payroll Department. As a result he was paid some \$27,200 to which he was not entitled.
- d. In total, then, Mr. Steel misappropriated a total of approximately \$40,500.
- e. The pattern of misappropriation began in January 2010 and continued uninterrupted until around the end of August 2011. It involved, in the case of Ms. Fey, some 20 payments involving amounts varying from about \$121 to about \$1,786; and in the case of Mr. Morgan, 13 payments involving amounts varying from about \$750 to about \$4,665.
- f. The misappropriation was discovered near the end of August or beginning of September 2011. Canaccord management met with Mr. Steel on September 30, 2011 and confronted him. Although he initially denied everything, he eventually acknowledged the facts, explaining that he had been in desperate financial circumstances. His employment was forthwith terminated and he was escorted from the premises.
- g. On October 7, 2011 Canaccord demanded repayment of the misappropriated funds but Mr. Steel has not yet repaid any of them.
- h. Mr. Steel admitted the essential facts set out above in an interview with IIROC staff on April 23, 2012.

SANCTIONS

¶ 7 IIROC asks us to order that Mr. Steel:

- a. be subject to a permanent ban on approval;

- b. be fined \$100,000;
- c. pay IIROC \$6,500 on account of the costs incurred in connection with these proceedings.

¶ 8 In our view these are reasonable and appropriate sanctions and, for the reasons below, we so order.

¶ 9 Misappropriation of funds belonging to another is theft. Almost invariably it involves dishonesty and deliberation. Dealer Member Rule 29.1 imposes obligations to observe high standards of ethics and to refrain from business conduct or practices that are unbecoming or detrimental to the public interest. Theft is fundamentally at odds with the notions of integrity that lie at the heart of those obligations.

¶ 10 Mr. Steel's experience in the industry was relatively short in duration. He has no disciplinary history. The salient features of his misconduct are succinctly described above.

¶ 11 IIROC has for some years had in place certain "Disciplinary Sanctions Guidelines" (the "Guidelines"). These are divided into two parts: the first deals with general principles that the Organization considers should inform the sanctioning decision; the second sets out its views concerning the considerations that may be relevant to the imposition of sanctions for specified breaches of its Bylaws and Rules.

¶ 12 We do not think it is necessary to consider here at any great length the general principles identified in the Guidelines. They are for the most part obvious, involving such matters as the need to protect the investing public and the integrity of the securities markets and preventing a repetition of conduct of the kind that is being sanctioned.

¶ 13 The Guidelines say, appropriately in our view, that "misappropriation is one of the more serious regulatory offences and the penalty upon conviction is generally a permanent bar, with few exceptions". They also suggest the imposition of a minimum fine of \$25,000.

¶ 14 In the light of the facts set out above, we have little hesitation in imposing a permanent ban on approval of Mr. Steel. The decision of the Hearing Panel in *Re McCrea*, [2000] IDACD No. 1, January 24, 2000 reinforces us in our view that this is appropriate. Though in detail the facts there were of course different from those here, the essential character of the misconduct was virtually identical. Mr. McCrea's transactions were considered tantamount to misappropriation of funds from his employer and certain colleagues. That is also true of Mr. Steel's misconduct. Again, as in the case of Mr. Steel, Mr. McCrea's misconduct extended over a lengthy period – in that case some two years and in this, some 18 months. Mr. McCrea's conduct was described as "conscious and deliberate" and that description is equally apt to Mr. Steel. He essentially acknowledged this, and that he knew what he did was wrong, in his interview with IIROC staff on April 23, 2012. The hearing panel in Mr. McCrea's case imposed a permanent ban on approval, and we think that nothing less is required in the case of Mr. Steel.

¶ 15 Mr. McCrea profited to the tune of some \$37,000 from his misconduct. Mr. Steel's profit was approximately \$40,000. The hearing panel in the case of Mr. McCrea imposed a fine of \$100,000. We are not aware of anything that would support the imposition of a lesser fine here. We accordingly impose a fine of \$100,000.

COSTS

¶ 16 IIROC seeks an order that Mr. Steel reimburse it in the amount \$8,454 on account of its costs. The governing provision of the Dealer Member Rules relating to awards of costs is section 20.49 (1) which says that a hearing panel may assess and order any Corporation Staff investigation and prosecution costs determined to be appropriate and reasonable in the circumstances. In support of its request Ms. Gerber tendered a bill of costs showing the hourly rates for enforcement counsel and investigation staff and the hourly rates of the personnel involved. We are satisfied that the amounts claimed are appropriate and reasonable in the circumstances and we accordingly make the requested order.

SUMMARY

¶ 17 In summary, we order that Mr. Steel:

- (a) be subject to a permanent ban on approval in any capacity;
- (b) be fined \$100,000; and
- (c) reimburse IIROC in the amount of \$8,454 on account of its costs in connection with this matter.

As of February 5, 2013

Leon Getz, Panel Chair

Brian Field, Panel Member

Brian Worth, Panel Member

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