

Re Prior

IN THE MATTER OF:

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

and

Glenn Prior

2013 IIROC 01

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

Hearing: January 7, 2013
Decision: January 17, 2013

Hearing Panel:

Patrick T. Galligan, Q.C., Chair, Mary Savona, Peter Bailey

Appearances:

Susan Kushneryk, Enforcement Counsel

Glenn Prior, Respondent, in person

REASONS FOR DECISION

REASONS FOR THE ORDER MADE ON JANUARY 7, 2013

(1) **Overview**

¶ 1 On November 6, 2012 the Respondent, Glenn Prior, an Approved Person, appeared before this Hearing Panel in answer to the following notice of application which had been served upon him:

TAKE NOTICE that on Tuesday, November 6, 2012, at Legal Transcript Services, 350 Bay Street, 7th Floor, in Toronto, Ontario, at 10:00 a.m. or as soon as thereafter as this application can be heard, staff of the Investment Industry Regulatory Organization of Canada (“IIROC”) will make application to a Hearing Panel in an Expedited Hearing **ON NOTICE** to Glenn Prior pursuant to Dealer Member Rules 20.41, 20.43, 20.45 and 20.49 and Rule 16 of the Rules of Practice and Procedure.

THE APPLICANT SEEKS THE FOLLOWING RELIEF:

1. An order providing that:
 - (a) Prior’s rights and privileges of approval for registration in any capacity or category with IIROC are permanently terminated;
 - (b) Prior shall pay the costs of the investigation and hearing of this matter in the amount of \$25,000; and
2. Such further and other relief as counsel may request and the Hearing Panel may permit.

¶ 2 The Respondent requested an adjournment in order for him to obtain legal advice. Enforcement Counsel did not oppose the request for an adjournment. Accordingly the application was adjourned until January 7,

2013.

¶ 3 On January 7, 2013 the Respondent appeared without counsel. He advised us that he had obtained legal advice, but that he could not afford to have counsel represent him at the hearing. We decided to proceed with the hearing.

¶ 4 The evidence was presented by way of the affidavit of Michael Arthur, sworn on October 23, 2012. Submissions were made by Enforcement Counsel. The Respondent explained some of the background which had led him to his difficulties. He did not dispute the fact that he was charged in criminal court with a substantial number of offences relating to forgery. The evidence discloses that, apparently in pursuance of an agreed joint submission by Crown counsel and by his defence counsel, the Respondent pleaded guilty to, and was found guilty of, the following offence:

Glenn Prior, ... did knowingly cause Christine Pickering to act upon forged documents to wit:
RBC Dominion contrary to the *Criminal Code of Canada*.

¶ 5 After considering the evidence, the submissions made by Enforcement Counsel and the circumstances and position related to us by the Respondent we made the following order:

THIS PANEL HEREBY ORDERS THAT:

1. Prior's rights and privileges of approval for registration in any capacity or category with IIROC are permanently terminated; and
2. Prior shall pay the costs of the investigation and hearing of this matter in the amount of \$25,000.

¶ 6 These are our reasons for making that order.

(2) Expedited Hearings

¶ 7 Expedited hearings are provided for in IIROC Dealer Member Rules 20.41 through 20.49. Those rules authorize an extraordinary process because, according to Rule 20.41, Staff is entitled to seek an order which could have drastic consequences for an Approved Person "without notice to the Respondent". In this case we think that Staff exhibited fairness and wisdom when it elected to give the Respondent notice which enabled him to appear and be heard.

¶ 8 This process can be invoked for only the most serious of reasons. Rule 20.43 deals with expedited hearings relating to Approved Persons. The process can be evoked when there has been cancellation of registration or approval; when, in certain circumstances, there has been failure to cooperate; when criminal charges are involved; and where an Approved Person has failed to comply with certain conditions imposed upon him/her. The provisions of Rule 20.43(1) are relevant to this case:

20.43 Types of Expedited Hearings - Approved Persons

- (1) A Hearing Panel may impose any of the penalties set out in Rule 20.45 upon an Approved Person in any of the following circumstances:

...

Criminal Charges

- (d) where an Approved Person has been charged with a criminal offence relating to theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation or unauthorized trading, and such criminal charge likely brings the capital markets into disrepute;

[Emphasis added]

¶ 9 We have emphasized the word "forgery" because that is the criminal offence with which we were here concerned. The other thing that we note is that the particular criminal charge must be one which "likely brings

the capital markets into disrepute”.

¶ 10 A plain reading of Rule 20.43(1)(d) shows that before this Hearing Panel could have authority to impose a penalty it must be satisfied of two essential conditions:

- (a) The Respondent has been charged with an offence relating to forgery, and
- (b) Forgery is a criminal charge that likely brings the capital markets into disrepute.

(3) Analysis

¶ 11 We were, therefore, required to decide whether the Respondent had been charged with forgery and whether forgery is an offence likely to bring capital markets into disrepute.

(a) Forgery

¶ 12 Exhibit J to the affidavit of Michael Arthur is a transcript of the criminal proceedings against the Respondent in the Superior Court of Ontario on February 10, 2012. That transcript shows that the Respondent was charged with and convicted of the offence quoted in paragraph 4 above. Indeed, in his representations to us, the Respondent did not deny that conviction. Thus the first essential condition to our authority to impose a penalty was established.

(b) Disrepute to the Capital Markets

¶ 13 The investment industry is one in which the persons working in it have control of other people’s money and assets. By that very fact those persons must act with complete integrity. The public expects the industry to have integrity and honesty. Conduct which is dishonest must always bring the industry and the trading markets into disrepute. There is authority upon the effect of forgery upon the securities industry. We adopt what was said by the I.D.A. Hearing Panel in *re Bell* [2005], I.D.A.C.D. No. 15 at paragraph 35:

Forgery is always serious. It is unequivocally condemned because it is fundamentally dishonest and dangerous. Any act of forgery is a step onto a steep and slippery slope of deception that is always potentially harmful to clients and actually harmful to the Member firm and the securities industry as a whole.

[Emphasis added]

¶ 14 That extract confirmed our opinion that the second essential condition to our authority to impose penalties had been established. We held no doubt that we should exercise that authority.

(4) Penalty

¶ 15 The penalties which a Hearing Panel may impose upon an Approved Person are set out in Rule 20.45(1):

...

- (a) suspension of approval or Membership;
- (b) imposition of terms or conditions on a suspension of approval or Membership;
- (c) imposition of terms or conditions on continued approval or Membership;
- (d) direction to immediately cease dealing with the public;
- (e) an order with terms and conditions to facilitate the orderly transfer of client accounts from a Dealer Member suspended under this Rule;
- (f) termination of the rights and privileges of approval or Membership;
- (g) expulsion of an Approved Person or Dealer Member from the Corporation; or
- (h) imposition of a Monitor pursuant to Rule 20.46.

¶ 16 Earlier in these reasons we did not feel it necessary to review the circumstances of the case because the basis upon which the application was made and the evidence which supported it were narrow and unchallenged.

It is appropriate to say a very few words about the background insofar as that bears upon penalty. The charge of which the Respondent was convicted does not arise out of an isolated incident. It was but one of a series of forged guarantees which the Respondent used to obtain financing to support his personal trading. We doubt that, when he started out, the Respondent forged a guarantee with a deliberate attempt to cheat the lender or the person whose name he had forged. He got himself on, to use the words from *Re Bell*, “a steep and slippery slope of deception”. The Respondent had been in the financial industry for many years without any disciplinary history. He used the forged guarantees to finance speculative trading in his own account. Without those guarantees it is unlikely that he would have been able to continue to trade to the levels at which he did. Ultimately when his investments foundered the loss to the lender was \$676,289.41.

¶ 17 Enforcement Counsel suggested to us that the penalty in this case ought to be a permanent termination of the Respondent’s rights and privileges. The Respondent, as noted above, has no disciplinary history and has cooperated with Staff in its investigation. He told us that he did not want to lose his ability to earn his living in the industry in which he has been working for many years.

¶ 18 In *Re Bell* the panel distinguished between “more and less egregious examples of forgery” and declined to grant a permanent termination in that case. Whatever may be the yardstick by which one might determine what are more or less egregious examples of forgery, it is our opinion that, in this case, there are three factors which remove it from being the subject of any realistic comparison with other examples of forgery. They are:

- (a) The forgery was deliberate and repeated.
- (b) The Respondent made the forgeries in order to benefit himself.
- (c) His forgeries caused significant harm to another.

¶ 19 Whether or not there may be a case where a forgery does not require a permanent termination, the presence of those three factors in this case, in our opinion, mandated a permanent termination of the Respondent’s rights and privileges. Accordingly we made that order.

(5) Costs

¶ 20 Rule 20.49 authorizes a Hearing Panel to award costs in addition to the imposition of a penalty. Enforcement Counsel suggested an award of \$25,000 towards IIROC’s costs of the investigation and hearing. We found that amount to be reasonable and justified. Accordingly we ordered that the Respondent pay an award of costs in that amount.

DATED at Toronto this 17th day of January 2013

The Hon. P. T. Galligan, Q.C. - Chair

Mary Savona - Industry Representative

Peter Bailey - Industry Representative

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