Re Jones

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Alvin Rupert Jones

2020 IIROC 45

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

Heard: October 19, 2020 in Toronto, Ontario via videoconference
Decision: December 10, 2020

Hearing Panel:
Honourable Robert P. Armstrong, Q.C., Chair, Selwyn Kossuth and Timothy Pryor
Appearance:
Natalija Popovic, Senior Enforcement Counsel for IIROC
Jerome H. Stanleigh, Counsel Alvin Rupert Jones
Alvin Rupert Jones (present)

REASONS FOR DECISION ON PENALTY

I. INTRODUCTION

¶ 1 After hearing the evidence and submissions of counsel in relation to this matter, this Panel found Mr. Jones in breach of his obligations under IIROC Dealer Member Rule 18.14 and Consolidated Rule 1400.

¶ 2 The basis upon which Mr. Jones was found in breach of his obligations is fully set out in our Reasons for Decision dated August 28, 2020.

¶ 3 This Panel has now received submissions on the appropriate penalty.

II. THE POSITION OF IIROC

¶ 4 Counsel for IIROC submits that the following penalties are warranted in this case:

a) fine of $30,000;

b) disgorgement of $500;

c) suspension of two months upon any re-registration;

d) a requirement to rewrite the Canadian Securities Institute Conduct and Practice Handbook (CPH) examination upon any re-registration; and

e) costs of $10,000.

¶ 5 In support of IIROC's penalty submissions, counsel submits that this Panel should consider the

following three issues:

a) whether the sanction will be sufficient to prevent the Respondent from engaging in similar misconduct in the future;

b) whether the sanction will be sufficient to restrain other registrants from engaging in similar misconduct; and

c) whether the sanction will encourage public confidence in the investment industry and IIROC's regulation of the capital markets.

¶ 6 Counsel for IIROC submits that the appropriate penalties should address both specific and general deterrence, which is a well-settled principle in cases such as this. In this regard, counsel cites the following cases which address the issues of general and specific deterrence: *Re Cartaway Resources Corp.,* [2004] 1 S.C.R. 672 and *Re Mills,* [2001] 1 DACD No. 7. In *Re Mills*, the hearing panel made the following statement concerning general deterrence at page 3:

> Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its members to expect for the conduct under consideration, it may undermine the goals of the Associations' disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly dismiss its deterrent effect. Thus, the responsibility of the [hearing panel] in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention rather than punishment.

¶ 7 Counsel for IIROC also relies on the IIROC Sanction Guidelines, which set out certain general principles. Included in the Sanction Guidelines, cited by counsel, is the following statement:

> "… with respect to an individual respondent, consideration should be given to a *bona fide* inability to pay when imposing a fine." (see General Principle No. 7).

¶ 8 Counsel for IIROC also emphasized a number of key factors peculiar to this case, which this Panel should address in considering the appropriate penalty. Those key factors are set out in the following paragraphs:

(i) The number, size and character of the transactions in issue

¶ 9 Counsel for IIROC emphasized that Mr. Jones's client, CM, invested in a garden hose business a total of $150,000 in 2015. These funds were generated from the sale of CM's securities, mutual funds and dividend-paying equities held for her by Manulife. In 2016, she invested a further $55,000 in the garden hose business by use of her line of credit with Manulife as well as an unrelated bank line of credit.

(ii) Whether the Respondent engaged in numerous acts/or a pattern of misconduct

¶ 10 Counsel submitted that the Respondent engaged in numerous acts and a pattern of misconduct including the following:

a) He incorporated a federal numbered company which was the corporation through which the garden hose business was carried on;

b) he acted as chief financial officer of the company for which he was shown on corporate records as a director;

c) he obtained the provincial business licence for the business which noted that he was a person authorized to make the filing for the licence as a Director of the company; and

d) he represented himself as the CFO of the business in emails to third parties that showed that he

had a significant involvement in the business, which included such matters as dealing with packaging and price lists, cash flow projections, warehousing in the USA and related business matters.

(iii) Whether the Respondent engaged in the misconduct over an extended period of time

¶ 11 The prohibited conduct engaged in by the Respondent took place over 18 months between June 2015 and April 2017.

(iv) Whether the conduct was intentional, willfully blind, or reckless with respect to regulatory requirements

¶ 12 Counsel for IIROC notes that the Respondent did not advise Manulife of his involvement in this business, and Manulife only became aware of it as the result of a complaint. The Respondent's position was that he did not have an obligation to disclose this activity to Manulife.

(v) The extent of harm to clients or other market participants

¶ 13 CM lost the entire amount of her investment in the business. She settled with Manulife for $100,000.

(vi) The extent of harm to market integrity or the reputation of the marketplace, or both

¶ 14 Counsel for IIROC submitted that by failing to disclose his involvement in an outside business to Manulife, the Respondent caused harm to the integrity or reputation of the securities industry.

(vii) The level of vulnerability of the injured or affected client(s)

¶ 15 Counsel for IIROC submitted that the Respondent's client, CM, had been his client since 2014. At the time, CM was approximately 50 years of age and was investing with Manulife to generate retirement income. In about June 2015, she had sold a real estate property and invested the proceeds of the sale of the property of approximately $350,000 with the Respondent.

(viii) The Respondent's relevant disciplinary history

¶ 16 The Respondent has no disciplinary history.

(ix) The extent to which the Respondent obtained or attempted to obtain a financial benefit from the misconduct

¶ 17 It does not appear that the Respondent received any financial benefit from his involvement in this business. He did earn commissions of approximately $500 as a result of selling some of CM's securities in order to make her investment in the garden hose business.

(x) Whether the Respondent accepted responsibility and acknowledged the misconduct to his or her employer or the regulator prior to detection and intervention by the Dealer Member or the regulator

¶ 18 The Respondent did not disclose his involvement in the business to Manulife or to IIROC, although it is to be noted that during the investigation by IIROC, he fully cooperated in a lengthy interview with the IIROC investigator.

(xi) Whether the Respondent was subject to internal discipline by the Dealer Member

¶ 19 The Respondent was terminated by Manulife when CM lodged her complaint with Manulife.

¶ 20 Counsel for IIROC emphasized the seriousness of the breach in this case as set forth in a number of IIROC decisions including: *Trueman (Re),* 2016 IIROC 29; *Dennis (Re*), 2011 IIROC 3; *Raby (Re*), 2013 IIROC 30; and *Hodge (Re*), 2013 IIROC 31.

¶ 21 In *Trueman (Re)*, the panel made the following statement in respect of the fundamental obligation to disclose outside business activities at paragraph 39:

> When a person undertakes activity outside the auspices of a firm, that fundamental protection provided for in securities regulation is unable to occur…one should never forget the fundamental principle of outside business activity and disclosure. For the Respondent and anybody else who might read these reasons in the future, it should be very clear that these are fundamental protections in the securities regulatory framework and we cannot tolerate people who do not adhere to them.

¶ 22 Counsel for IIROC placed particular emphasis on *Hodge (Re*). In that case, Mr. Hodge was charged with three counts – two counts of unauthorized outside business activity and one count of conduct unbecoming or detrimental to the public interest. Mr. Hodge was fined $45,000 on count one, $30,000 on count two, and $10,000 on count three, received a one-year suspension from registration with IIROC, a 12-month period of strict supervision upon any return to the industry, an obligation to rewrite the CPH examination upon any return to the industry and was required to pay costs of $5,000.

¶ 23 Finally, counsel for IIROC submitted that the Respondent was an experienced registrant in a position of trust in respect of his clients. He was deeply involved in an undisclosed business activity, including acting as a Director and CFO for a period of 18 months. Such conduct fell short of the public's expectations of registrants and the penalty should reflect the nature of such conduct, which has damaged the integrity and reputation of the securities industry.

III. THE POSITION OF THE RESPONDENT

¶ 24 Counsel for the Respondent submitted that CM was a sophisticated businesswoman, who was engaged for several months in the garden hose business and controlled the funding of the business before she decided she did not want to continue.

¶ 25 Counsel also submitted that CM was successful in recovering one half of her investment from Manulife.

¶ 26 The other investor was offered full recovery of his investment by Manulife and refused the offer.

¶ 27 Counsel for the Respondent submitted that there is no evidence that he benefitted from the investments made by either of the two complainants. He added that neither of the two complainants were called as witnesses at the hearing. Counsel had made it clear at the outset that they should have been called as witnesses.

¶ 28 Counsel advised that the Respondent had a 15-year unblemished employment history with Manulife. He was terminated without notice. He was advised that whatever commissions were owing to him would be used to repay the settlement that Manulife made with the complainants.

¶ 29 Counsel for the Respondent provided the following personal history of the Respondent:

- He is 65 years old, and recently lost his life partner to cancer. [redacted]
- [redacted].
- [redacted].
- He is not presently employed. He is attempting to find employment in the music industry, but so far has not been successful.

¶ 30 In respect of the penalties proposed by counsel for IIROC, counsel for the Respondent submits that although they may be considered reasonable, Mr. Jones would be burdened with a debt he will be unable to pay for a considerable period of time, if at all.

¶ 31 The Panel asked counsel to provide us with the details of the Respondent's financial position. As a result, we were provided with an affidavit of the Respondent, which indicated that on the sale of his house in Barrie, he received $[redacted]. From that amount, he paid off:

a) Manulife bank payout of first mortgage in the amount of $ [redacted];

b) second private mortgage to [redacted] in the amount of $ [redacted]

c) third private mortgage paid to [redacted] and [redacted] in the amount of $ [redacted];

d) commissions paid out on the sale amounting to $ [redacted];

e) City of Barrie outstanding property taxes in the amount of $ [redacted]

¶ 32 He therefore received net proceeds of sale of $ [redacted].

¶ 33 The Respondent stated in his affidavit that he is now impecunious. If he is required to pay the amounts submitted by counsel for IIROC, he will be required to declare bankruptcy.

¶ 34 He is presently paying $ [redacted] a month for rental of a shared basement apartment.

¶ 35 He owns a 2011 Cadillac valued at $ [redacted]. He has $ [redacted] in a savings account.

¶ 36 He has no RRSP and owes $ [redacted] on his credit cards. [redacted].

¶ 37 He does not drink alcohol and does not smoke.

IV. ANALYSIS AND CONCLUSION

¶ 38 We accept the legal principles to be applied in sentencing as articulated by counsel for IIROC. We agree that any penalty must be sufficient to prevent the Respondent from engaging in such conduct in the future. We also agree that the penalty must be seen as sufficient to restrict other registrants from engaging in such conduct. Finally, it is important the penalty should encourage public confidence in the investment industry.

¶ 39 There is no doubt that the offence committed by the Respondent is serious and, as was clearly stated in *Trueman (Re*), the obligation for a registrant to disclose outside business activity is a fundamental protection of the securities industry. In this case, there is no suggestion that the Respondent was unaware of his obligation.

¶ 40 However, in arriving at a just penalty, we are also obliged to consider any mitigating factors in favour of the Respondent.

¶ 41 We note that the Respondent has no prior record in respect of his 15-year history with Manulife. He is a first-time offender.

¶ 42 It is important to consider the Respondent's personal circumstances and his ability to pay the sizable penalty sought by counsel for IIROC. The evidence before us on this issue, by way of affidavit, was not challenged by counsel for IIROC.

¶ 43 We accept the evidence that the Respondent is impecunious. He is unemployed and clearly, at the age of 65, he has no reasonable expectation of becoming employed in the securities industry anytime soon. Based on his affidavit, his prospects for gainful employment of any kind are dim. He is a man who, because of this unfortunate deviation from a productive life in the securities industry has come on hard times.

¶ 44 In arriving at an appropriate penalty in this case, we must also be guided by the language of General Principle No. 7 of the IIROC Sanctions Guidelines, which is referred to above and is repeated here:

> "… with respect to an individual respondent, consideration should be given to a bona fide inability to pay when imposing a fine."

¶ 45 Taking the above into account, we must arrive at a penalty sufficient to prevent future misconduct by the Respondent, to send a message to other registrants from engaging in such conduct and to encourage public confidence in the investment industry.

¶ 46 In our view, the appropriate penalty in this case is the following:

(a) a fine of $17,500;

(b) disgorgement of $500;

(c) suspension of two months upon any re-registration;

(d) a requirement to rewrite the CPH examination on any re-registration; and

(e) costs of $5,000.

¶ 47 We so order the above.

Dated at Toronto, this 10 day of December, 2020.

Robert P. Armstrong"

Selwyn Kossuth

Timothy Pryor