

Re Azeff and Bobrow

IN THE MATTER OF:

**An expedited hearing pursuant to Rule 20.42 of the Investment
Industry Regulatory Organization of Canada (IIROC)**

and

Paul David Azeff and Korin David Bobrow

2015 IIROC 41

Investment Industry Regulatory Organization of Canada
Hearing Panel (Quebec Section)

Heard: November 17, 2015 in Montreal, Quebec
Oral decision made at the hearing on: November 17, 2015
Decision issued: November 23, 2015

Hearing Panel

Mtre Michèle Rivet *Ad. E.*, Chair, Denis-Marc Gagnon and Danielle Le May

Appearances

Mtre Francis Larin, Enforcement Council for IIROC

Mtre Marc-André Fabien *Ad. E.* and Mtre Brandon Farber for the Respondents

DECISION ON THE APPLICATION FOR ADJOURNMENT

¶ 1 The decision on the application for postponement was made orally at the hearing and the reasons supporting the decision of the Hearing Panel are given here, as explained orally.

¶ 2 As counsel for IIROC and Paul David Azeff and Korin David Bobrow presented their arguments in French, the decision is in French.

¶ 3 In accordance with Dealer Member Rule 20, *Corporation Hearing Processes*, IIROC is making an application to the Hearing Panel, at an expedited hearing pursuant to Dealer Member Rule 20.41, for suspension of registration with IIROC for Mr. Azeff and Mr. Bobrow (*hereinafter the "Respondents"*), in application of Dealer Member Rules 20.43 and 20.45 as well as Rule 16 of the Rules of Practice and Procedure, and for any other order that the Hearing Panel may deem appropriate.

¶ 4 Rule 20.41 specifies that expedited hearings may be held without notice to the Respondent in the circumstances prescribed in Rule 20.43, which is alleged here. Counsel for IIROC has given notice to the Respondents, who are represented by counsel.

¶ 5 Counsel for the Respondents is applying for a postponement of this hearing for several reasons, which we summarize briefly here without describing them exhaustively: In this case, the situation is not urgent; in addition, it is necessary to have more preparation time to make full answer and defence; and, finally, the counsel retained specifically by the Respondents for the purposes of this application by IIROC cannot proceed

today because she has been detained outside the country.

¶ 6 There is no urgency: On March 24, 2015, the Ontario Securities Commission recognized that the Respondents had broken the law and, on August 24, made its decision on the appropriate sanctions, including a registration ban for 10 years; these decisions are now being appealed and the motion for a stay of these decisions was dismissed on October 21, 2015. Consequently, counsel argues, there is no final decision at this stage.

¶ 7 Furthermore, counsel for the Respondents argues that most of the business activities of the Respondents are in Quebec, and therefore under the administration of the AMF, which postponed the matter *pro forma* to November 19; consequently, the main regulator who should be concerned is not intervening in an immediate and urgent manner.

¶ 8 Beyond the factual reasons, the Respondents' fundamental right to make a full answer and defence and have the counsel of their choice must be applied here.

¶ 9 This is what is provided in Appendix A, Section 5, of the Recognition of the Investment Industry Regulatory Organization of Canada as a self-regulatory organization under the *Act respecting the Autorité des marchés financiers*, which states:¹

“Subject to applicable law and the Rules and by-laws of IIROC, before rendering a decision that affects the rights of a person or company in relation to membership, registration or enforcement matters, IIROC must provide that person or company an opportunity to be heard.”

¶ 10 The Delegation of functions and powers to IIROC also provides that:²

“The functions and powers delegated by the Authority hereunder shall be exercised in accordance with the provisions of *An Act respecting administrative justice*, R.S.Q., c. J-3”.

¶ 11 Lastly, counsel for the Respondents argues the right to counsel, a fundamental right recognized under section 23 of the Quebec *Charter of Human Rights and Freedoms*,³ which implies a reasonable time period to find a lawyer and allow such lawyer to prepare for the case adequately.⁴

¶ 12 Counsel for IIROC objects to this application for postponement and essentially argues the importance of protecting the public and the urgent need for action in this particular case.

¶ 13 On the one hand, IIROC's application is based on the decisions rendered in Ontario with regard to the Respondents, which is therefore nothing new, decisions that are at the same time enforceable even if they are not actually final. Consequently, the Hearing Panel could suspend the Respondents until the final decision.

¶ 14 Furthermore, it adds that there is a need to act urgently to protect the public. This is why the motion to stay the decision of the Ontario Securities Commission was dismissed.⁵

¶ 15 The Ontario Securities Commission had clearly indicated in its Sanctions Decision dated August 24th, 2015 that:⁶

¹ *Recognition of the Investment Industry Regulatory Organization of Canada as a self-regulatory organization under the Act respecting the Autorité des marchés financiers*, R.S.Q. c.A-333.2 (*sic*), Decision 2008-PDG-0126.

² *Delegation of functions and powers to the Investment Industry Regulatory Organization of Canada*, Decision 2009-PDG-0100.

³ *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12.

⁴ *Nemer v. Comité de surveillance de l'Association des intermédiaires en assurance de personne de Québec*, 500-02-038471-913, SOQUIZ (*sic*) AZ92031297.

⁵ Stay of the Sanctions Motion - Endorsement, October 19th, 2015, A. Kruziick J.

⁶ Re Azeff and Bobrow et al., Ontario Securities Commission, August 24th, 2015, Reasons and Decision on Sanction and Costs, at paragraph 28.

“Continued registration for Azeff and Bobrow, even under strict supervision, does not provide a sufficient shield to the market(...) We have no confidence that Azeff and Bobrow would resist temptation any more in the future that they did in the past.”

¶ 16 The Hearing Panel must therefore strike a balance between the right to counsel on the one hand and IIROC’s mission on the other hand to ensure that the public is adequately protected.

¶ 17 In this regard, we cannot grant the request of counsel for the Respondents to adjourn until January 2016. However, we believe that adjourning the hearing for a few days would not jeopardize the protection of the public and would respect the fundamental right to counsel. This is therefore the conclusion that we have reached.

¶ 18 **FOR THESE REASONS:**

THE HEARING PANEL

ALLOWS the application for postponement;

DECLARES that it will hear the application no later than December 3rd;

REQUESTS that counsel for both parties agree on a date and notify the National Hearing Coordinator thereof so that she can arrange it;

DECLARES that it will be available for the hearing on the date thus agreed upon.

Michèle Rivet

Denis-Marc Gagnon

Danielle Le May

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