

# Re Ramsay

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**

**and**

**Pirkko Ann Ramsay**

2013 IIROC 13

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

Heard: March 25, 2013  
Decision: March 31, 2013

**Hearing Panel:**

Edward T. McDermott (Chair), David W. Kerr and Hugh McNabney

**Appearances:**

Ms. Diana Iannetta, Senior Enforcement Counsel, Investment Industry Regulatory Organization of Canada  
No one appearing for the Respondent, Pirkko Ann Ramsay

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## REASONS FOR DECISION

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### PURPOSE OF HEARING

¶ 1 This Hearing Panel was constituted pursuant to Part 10 of Dealer Member Rule 20 and Section 1.9 of Schedule C.1 to Transition Rule No. 1 of the Investment Industry Regulatory Organization of Canada (“IIROC”).

¶ 2 The Notice of Hearing which initiated this matter states that the purpose of the hearing is to determine whether the Respondent committed the following contraventions as alleged by the Staff of IIROC.

- a) In June 2009 and March 2010, the Respondent engaged in personal financial dealings by borrowing funds from two clients, AA and AB, without the knowledge, consent or authorization of her employer Member firm, and in so doing acted contrary to Dealer Member Rule 29.1;
- b) In 2009 and 2010, the Respondent misappropriated funds from AA and AB, and in so doing, acted contrary to Dealer Member Rule 29.1; and
- c) In April 2012, the Respondent, while a former registrant of IIROC, failed to cooperate with an IIROC investigation by refusing to give information about her conduct, contrary to Dealer Member Rule 19.5.

### SERVICE OF NOTICE OF HEARING

¶ 3 The Notice of Hearing filed in this matter however stated that at the scheduled hearing date of March 25, 2013, the parties would “set a date for hearing”. The specific wording of the Notice of Hearing is as follows:

**TAKE NOTICE** that pursuant to Part 10 of Dealer Member Rule 20 and Section 1.9 of Schedule C.1 to Transition Rule No. 1 of the Investment Industry Regulatory Organization Canada (‘IIROC’), a **set date hearing** will be held before an IIROC hearing panel (the ‘Hearing Panel’) on March 25, 2013, at the offices of IIROC in the Ontario Room, 121 King St. West, Toronto, Ontario, M5H 3T9, at 10:00 a.m., or as soon thereafter as this matter can be heard. (emphasis added)

¶ 4 The above referenced Notice of Hearing was mailed by registered mail to the Respondent at her last known address as recorded in IIROC’s registration file (the “NRD”), namely 603 Oliver Road, Thunder Bay, Ontario, T7B 2H4. Affidavit evidence was filed with the Hearing Panel on behalf of Ricki Ann Newmarch, a litigation administrative assistant with IIROC, indicating that the Notice of Hearing was indeed mailed by registered mail to such address and that it was returned to her with a notation “Moved/Unknown”.

¶ 5 IIROC then attempted to effect personal service of the Notice of Hearing on the Respondent at the Oliver Road location and was informed by the process server (who also filed an affidavit with the Hearing Panel) that neither the Respondent nor her daughter resided at such address. The individuals who were residing there had received other mail for the Respondent and her daughter and had returned it to the sender. There was also a new owner of the premises who had no knowledge of any forwarding address for the Respondent or her daughter.

¶ 6 On January 15, 2013, this Hearing Panel was provided with a Notice indicating that a set hearing date of March 25, 2013 had been established to determine this complaint against the Respondent.

¶ 7 In the meantime, on or about February 21, 2013, IIROC Enforcement Staff were informed by counsel for the individual complainants in this matter of a new address where counsel believed the Respondent now resided, namely:

325 Highway 527

Shuniah, Ontario P7A 0N3

¶ 8 Upon receipt of that information Ms. Newmarch then sent the very same Notice of Hearing to the Respondent at such address together with a letter indicating that on the hearing date of March 25, 2013, IIROC intended to proceed with a determination of the complaint rather than utilize such date to set a hearing date.

¶ 9 Ms. Newmarch was advised that such materials were not delivered to the Respondent as Canada Post could not effect delivery and no one responded to the notice card advising that the material was available to be picked up at the post office.

¶ 10 The evidence before the Hearing Panel therefore indicates that the Notice of Hearing was never personally served upon the Respondent. It was however mailed by registered mail to the Oliver Road location being the Respondent’s last known address on the registration records of IIROC.

¶ 11 There is no evidence however to indicate that IIROC caused a Notice to be given to the Respondent either by personal service or registered mail to her last known address on the NRD, i.e., the Oliver Road location, to the effect that the date of March 25, 2013 would be utilized to hear and determine all evidence and argument relating to the substance of the charges as set forth in the Notice of Hearing. The only indication that such date would be used for that purpose was set forth in IIROC's letter of February 21, 2013 which was mailed to the suspected new residence address and not to the last known address on record in the NRD.

¶ 12 Rule 5.2 of IIROC’s Rules of Practice and Procedure (which apply to enforcement proceedings brought under Dealer Member Rule No. 20, Part 10) provides as follows:

### **5.2 Manner of Service - Notice of Hearing**

A Notice of Hearing shall be served by one of the following methods:

- (a) by personal service on the Respondent;
- (b) 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; or
- (c) where a Respondent is represented by counsel, by delivering a copy of the Notice of Hearing to the Respondent's counsel with the consent of counsel.

¶ 13 Rule 13.5 deals with the situation where a respondent having been served with a Notice of Hearing fails to appear at the hearing. That section provides as follows:

### **13.5 Where Respondent Fails to Attend Disciplinary Hearing**

Where a Respondent, having been served with a Notice of Hearing, fails to attend a disciplinary hearing, the Hearing Panel may proceed in the absence of the Respondent and may accept as proven the facts and violations alleged by the Organization in the Notice of Hearing.

Upon making a finding of the violations as alleged in the Notice of Hearing, the Hearing Panel may immediately hear submissions of the Organization regarding an appropriate penalty and may impose such penalty, as it deems appropriate, pursuant to Dealer Member Rule 20.33 and 20.34.

¶ 14 As can be seen from the foregoing the only methods by which a Notice of Hearing can be served upon a respondent is set forth in Rule 5.2 and, in the context of these circumstances, includes either personal service or 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.

¶ 15 Clearly IIROC did send a Notice of Hearing by registered mail to the Respondent at her last known address on the NRD but such Notice of Hearing did not put her on notice that the hearing date of March 25, 2013 would be utilized to hear and determine the issues in this proceeding.

¶ 16 Under the provisions of Rule 13.5, the consequences of not attending a hearing once the Respondent has been "served" with a Notice of Hearing are substantial and can result in significant penalties against the Respondent. It is therefore critical that the Hearing Panel be satisfied that a respondent has been properly served with the Notice of Hearing under the provisions of the Rules before proceeding to hear and determine the matter, particularly in the absence of the Respondent.

¶ 17 At the outset of the hearing of this matter on March 25, 2013, the Hearing Panel was asked by Enforcement Counsel to make a finding that the above referenced Notice of Hearing (incorporated as part of Exhibit 1 in this proceeding) had been duly served on the Respondent in accordance with the provisions of the Rules of Practice and Procedure of IIROC governing disciplinary hearings of this nature.

¶ 18 The Hearing Panel was provided with a copy of a letter dated March 20, 2013 (which had only been received by Enforcement Counsel on Friday, March 22, 2013) from the Respondent who was not in attendance at the hearing. In such letter the Respondent indicated that she had never received any mail from the Investment Dealers Association and only recently found out that there were allegations being made against her by reason of the fact that someone informed her that such allegations were on the Internet. She indicated that she was unaware of the allegations or that a proceeding was to be held until she referenced what was on the Internet. She then proceeded to deny certain of the allegations against her while conceding that she had borrowed money from a client in contravention of the Rules of IIROC.

¶ 19 After reviewing the evidence relative to the issue of service and hearing the submissions of Enforcement Counsel, the Hearing Panel indicated that it was concerned that proper notice of a hearing into this complaint, which would determine the guilt and liability of the Respondent had not been properly given under the provisions of the Rules of Practice and Procedure of IIROC. Enforcement Counsel urged the Hearing Panel to find that proper service of the Notice of Hearing had been effected and if not, the Hearing Panel should in the circumstances of this case exercise its discretion under Rule 1.5(d) and waive any procedural irregularity relative to the issue of service. Rule 1.5(d) provides as follows:

### 1.5(d) Procedural Power of the Panel

A Panel may:

... (d) waive any procedural requirement set out in these Rules upon the request of one or both parties.

¶ 20 It is the view of this Hearing Panel however that proper service of a Notice of Hearing is integral to a fair hearing of this matter in accordance with the principles of natural justice and accordingly is not a procedural issue that should be waived by this Panel.

¶ 21 The Hearing Panel is satisfied that under the provisions of Rule 5.2(b), the Respondent was given notice that the date of March 25, 2013 would be utilized as a date to set a future hearing date to hear and determine the allegations against the Respondent.

¶ 22 Notwithstanding the substantial efforts of IIROC to notify the Respondent of these proceedings, it is our view that the additional notice sent by IIROC to a subsequently suggested new address for the Respondent (which was not her last known address as recorded in IIROC's Registration file) was not technically in compliance with the service requirements of Rule 5.2(b). The cases referred to by Enforcement Counsel in support of IIROC's position (*Re Puccini* [2007] I.D.A.C.D. No. 11 and *Re Ryan* 2012 LNIROC 29) are distinguishable as in those cases service of a Notice of Hearing was effected by registered mail in accordance with the provisions of Rule 5.2(b).

¶ 23 This Panel has accordingly determined to use the date of March 25, 2013 to establish or "set" a date(s) for the hearing of the complaint against the Respondent without consultation with the Respondent who did not attend on this date. Members of the Panel and Enforcement Counsel have accordingly agreed to request the National Hearing Coordinator to schedule this matter for hearing on May 21 and 24, 2013. We also direct Enforcement Counsel to cause a Notice of Hearing to be served on the Respondent for such dates in accordance with the provisions of Rule 5.2.

¶ 24 Such service could be effected by personal service now that the address of the Respondent's current residence has been confirmed (in her letter of March 20, 2013).

¶ 25 Alternatively, in the view of this Hearing Panel, service of such Notice of Hearing by registered mail to the Respondent's last known mailing address on the NRD would satisfy the technical requirements of Rule 5.2. If this method of service is adopted, we would also suggest that a further copy of the Notice of Hearing be sent by registered mail to the mailing address set forth in the Respondent's letter of March 20, 2013 (which is different from the address of the Respondent's residence specified in such letter).

¶ 26 This hearing is accordingly adjourned to be rescheduled for May 21 and 24, 2013.

DATED this 31<sup>st</sup> day of March 2013.

Edward T. McDermott, Chair

David W. Kerr, Industry Representative

Hugh McNabney, Industry Representative

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